CH

CHUUK STATE SUPREME COURT

Federated States of Micronesia

Trial Division - Weno, Chuuk

FILED
FEB 24 2011
Clerk of Court, CSSC

TRUK TRADING CO., INC.	)	CSSC NO. 124-2010
	)	
Plaintiff,	)	**ORDER DENYING DEFENDANT'S MOTION TO DISMISS, ORDER DENYING PLAINTIFF'S MOTION TO ORDER LAND SURVEY, ORDER TO HOLD ACTION IN ABEYANCE**
	)	
v.	)	
	)	
TAKAKO JOHN, CHIYODA JOHN, CHINDA JOHN,	)	
	)	
Defendants.	)	
	)	

A hearing was scheduled on January 26, 2011 for argument on issues parties were ordered to brief and for defendant's motion to dismiss filed November 4, 2010. Defendants failed to file a brief.

On the issue of whether this Court has jurisdiction to order Chuuk State Land Commission to survey, or re-survey plaintiff's land, plaintiff cites, among other cases, Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56 (App. 1993), Pau v. Kansaou, 8 FSM Intrm. 524 (Chk. 1998), and Small v. Roosevelt, Innocenti, Bruce and Crisotom, d/b/a RIBC, 10 FSM Intrm. 367 (Chk. 2001), in support of his position that the court should issue such an order. The court finds that the most relevant of the cases cited are distinguishable under the facts before it.

Kapas began as a trespass action and became a boundary dispute. Pau v. Kansou, 8 FSM Intrm. 524, 527. The court in Kapas vacated a trial court decision and remanded it to Land Commission for boundary determination so that other issues in the case might be resolved. Id. It did this in part because ownership of the land where the alleged trespass occurred was disputed. Small v. Roosevelt, Innocenti, Bruce and Crisotom, 10 FSM Intrm.

367 at 369. But, as plaintiff correctly states, "[c]ertificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Stephen v. Chuuk, 11 FSM Intrm. 36, 41 (Chk. S. Ct. Tr. 2002). The Court is bound to follow this rule. Plaintiff has provided copies of certificates of title to Lot Nos. 040-A-07 and 040-A-23. Defendants do not dispute the veracity of the copies provided, nor have they presented or offered any relevant or even meaningful evidence to the Court that would support a claim that TTC uses or occupies or has otherwise encroached upon land it does not own.

Accepting the certificates of title as prima facie evidence, the Court finds that the ownership of Lot Nos. 040-A-07 and 040-A-23, under the facts presently before it, is certain: they are owned by Truk Trading Co., Inc. Unlike Kapas, remand to Land Commission for the purpose of establishing ownership is not warranted because ownership is not at issue. A Certificate of Title must, with exception of rights of way, taxes, and leases of less than one year, set "forth the names of all persons or groups of persons holding interest in the land," id., *and should include a description of the land's boundaries.*" Small, 10 FSM Intrm. at 370 (emphasis added). If plaintiff requires a description of the boundaries of lots that he unquestionably owns, then it behooves him to obtain the relevant documentation from Land Commission directly, especially in light of his accusations of trespass. Plaintiff has demonstrated no special circumstances that would justify or otherwise necessitate the kind of assistance he requests of the Court.

The Court agrees that plaintiff must "prove a wrongful interference with his possessory interest in the property . . . [to include] possession of the property, the time and location of the trespass, [and] the act of trespass" in order to prevail. In re Parcel No. 046-A-

01, 6 FSM Intrm. 149, 155 (Pon. 1993). But it is not for the Court to assist him in proving any or all of these elements in the manner requested absent a showing of special circumstances. For plaintiff to make the request in the first place suggests that uncertainty about his land boundaries implicates the allegation of trespass; otherwise it is unclear what the purpose of such a survey would be. While true that upon the Court's order the certification or surveying of boundaries might be expedited, that alone is not sufficient to warrant accommodating the request. His motion is denied.

Defendant's motion to dismiss was tendered in part to enable Land Commission to determine ownership of Lot No. 040-A-07. But that is not necessary. His motion is also denied.

That aside, the Court is willing to hold the matter open in abeyance until such time as plaintiff has obtained the documentation he requires from Land Commission to proceed with his action for trespass. Plaintiff is advised to inform the Court by letter, copying defendants, as to how he wishes to proceed and request the next date for a status conference in this matter. He should do so within the next 4 – 12 weeks. Any status conference previously set at the last hearing is hereby adjourned unless parties advise to the contrary.

IT IS SO ORDERED.

This 24th day of February, 2011.

Repeat R. Samuel
Associate Justice

Entered this 24th day of February, 2011.

Clerk of Court

CHUUK STATE SUPREME COURT
Federated States of Micronesia
TRIAL DIVISION - WENO, CHUUK

TOSIKO KUBO, MARTINA HARTMAN, JULIANA HARTMAN, Plaintiffs, vs. ISIWY EZRA, Defendant.	)	CSSC-CA. NO. 14-2008 **ORDER**

FILED
SEP 0 3 2008
By
Clerk of Court, CSSC

Background

1. On February 21, 2008, plaintiffs filed their complaint to quiet title.

2. On March 5, 2008, defendant filed his answer and affirmative defenses.

3. On April 4, 2008, plaintiffs filed their motion to amend complaint.

4. On June 9, 2008, Sachko Tatasy Williander, individually and on behalf of her children and brothers and sisters, filed a self-entitled "motion to intervene and intervener's complaint."

5. There was no proof of service filed with the motion although a summons was apparently requested and was issued for the proposed complaint.

6. On June 26, 2008, plaintiffs responded to the motion with a self-entitled "motion to strike" opposing the proposed intervener's motion to intervene.

Analysis

In their June 26, 2008 "motion to strike," plaintiffs assert that the proposed interveners' combined motion to intervene and proposed complaint are deficient in a

number of respects. First, plaintiffs contend that service of the motion to intervene was improper because proposed interveners sought service of process under Civil Rule 4 when service was required to be performed under Rule 5.

The court agrees. A motion to intervene must be served, like other motions in a pending action, according to the requirements of Rule 5. *Id.* Additionally, Chuuk State Supreme Court GCO No. 01-06 requires that a certificate of service be filed with the motion. If and when the court grants a motion to intervene, then service of process of the intervener's complaint is performed according to the requirements of Rule 4. In this case, proposed interveners apparently sought to serve process according to Civil Rule 4. As a result, the proposed interveners did not file a proof of service with their motion as required by Civil Rule 5(c) and GCO No. 01-06, and service was not otherwise in accordance with the requirements of Rule 5.

Plaintiffs' second contention is that the combined motion and proposed pleading are deficient on their face. A motion to intervene must state the grounds for intervention and be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought. Chuuk Civ. R. 24(c). The court agrees with plaintiffs' general contention that proposed interveners' failed to comply with the requirements of Rule 24(c), with the caveat that the court will consider the issue under Rule 12(e), as a request for a more definite statement, rather than as a motion to strike pursuant to Rule 12(f).

First, Rule 10(a) requires the designation of the parties in a caption. As a matter of good practice, mischaracterizations of the parties to an action should be avoided. In the proposed interveners' caption to their motion, they mischaracterize themselves as parties when they have not yet been permitted to intervene. Second, the proposed

interveners' do not in their proposed pleading set forth claims in numbered paragraphs "the contents of which shall be limited as far as practicable to a statement of a singled set of circumstances" as required by Civil Rule 10(b). As a result, the averments of the pleading are "vague" and "ambiguous" (*see* Rule 12(e)) and not sufficiently "simple, concise, and direct" (*see* Rule 8(e)(1)) to reasonably require a responsive pleading. Finally, although no technical form of pleadings is required, the complaint is required to have a caption. Chuuk Civ. R. 10(a). Although proposed interveners no doubt intended that the caption for their motion would also serve as the caption for their proposed complaint, the better practice would have been to properly caption the motion to intervene and then set forth the complaint in a separately captioned document, which may appropriately indicate the addition of the interveners as parties. (Upon granting of the motion to intervene, it is then proper to serve process of the pleading under Rule 4.)

In the form submitted, interveners' proposed complaint is too vague and ambiguous for defendants to reasonably frame a responsive pleading. Indeed, the court will treat the combined motion and pleading rather as a motion to intervene only and concludes that the motion to intervene is deficient because it was not filed with an attached proposed pleading. Chuuk Civ. R. 24(c).

Finally, plaintiffs filed a motion to amend their complaint on April 4, 2008. The request for amendment appears to be the result of a need to correct clerical or typographical oversight.

Conclusion

The court therefore orders proposed interveners to refile and serve their motion to intervene so that it complies with Rule 24(c), including an attached pleading that complies with the pleading rules. If a certificate of service is not filed within ten (10) days of service of this order, the proposed interveners' motion for intervention is denied without prejudice and without further order of the court.

The deadline for filing a response to plaintiffs' motion to amend their complaint is hereby set to ten (10) days from service of this order. If there is no opposition, that motion is granted without further order of the court.

So ordered this 3rd day of September _, 2008.

Camillo Noket, Chief Justice
Chunk State Supreme Court

Entered this 3rd day of September _, 2008.

Clerk of Court

CHUUK STATE SUPREME COURT
Federated States of Micronesia
TRIAL DIVISION - WENO, CHUUK

CHUUK STATE Plaintiff, vs. TAFSON MENISIO Defendant.	)	CSSC CRIMINAL CASE NO. 084-2007 **ORDER DENYING DEFENDANT'S MOTION FOR A BILL OF PARTICULARS AND MOTION TO DISMISS**

FILED
SEP 21 2007
By _____
Clerk of Court, CSSC

With respect to Defendant Tafson Menisio's motion for bill of particulars and his motion to dismiss, the Court has reviewed the briefs filed by each party. The Court denies the motions. The reasons follow.

PROCEDURAL BACKGROUND OF MOTIONS

1. In its criminal information filed on June 16, 2007, the Government charged Defendant Menisio with two counts of aggravated assault and two counts of assault with a dangerous weapon, relating to his alleged stabbing of Tener Rufes at approximately 5:00 p.m. on June 14, 2007 in front of the Deal Fair Store in Nantaku Village, Weno Island and his alleged stabbing of Tener Rufes again at 5:30 p.m. on the same day on a road in Nantaku Village. An affidavit of Detective Fanes Meika was filed with the information.

2. On June 19, 2007, Menisio filed his motion for discovery and, separately, a motion for a bill of particulars and a motion for dismissal of counts I and III of the information.

3. On June 25, 2007, The Government filed Detective Fanes Meika's amended affidavit in support of the information. The only substantial change from the June 16, 2007 affidavit is the addition of a reference, in paragraph 5, to the location of the victim ("outside of the Deal Fair Store in Nantaku Village, Weno Island") where Menisio is alleged to have first stabbed him.

4. On July 31, 2007, the Government filed its response to Menisio's discovery request and its opposition to Menisio's motion for bill of particulars. In its discovery response, the Government, among other things, offered to make its entire case file available for Menisio's inspection and copying (*Plaintiff's Response*, paragraph 2).

5. With its July 31, 2007 responses to Menisio's discovery requests, the Government also filed its own requests for discovery to Menisio.

6. As of September 20, 2007, Menisio's motion to dismiss remained unopposed and Menisio had not yet responded to the Government's discovery requests.

DEFENDANT'S MOTION FOR BILL OF PARTICULARS

In his motion for bill of particulars, Menisio does not specify what particulars he is seeking, but asserts generally that he has a right to be informed of the nature of the accusations against him.[1]

APPLICABLE LAW FOR BILL OF PARTICULARS

Pursuant to Chuuk Crim. R. 7(c)(1), a criminal information "shall be a plain, concise and definite written statement of the essential facts constituting the offense charged." In addition, an information must be signed by an attorney for the state. Finally,

[1] Menisio also appears to argue that the Government must identify which of the six charges in the criminal information that it intends to pursue. The Government is, however, entitled to pursue multiple claims based on the same act. *See e.g. Laion v. FSM*, 1 FSM Intrm. 503, 529 (App. 1984). ("A trial court may in its discretion permit a case involving separate charges based upon the same act to proceed to trial.").

for each count there must be "citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated." *Id.* Allegations against the defendant in one count may be incorporated by reference in another count. *Id.*

If the information does not sufficiently inform the defendant of the charges against him, the defendant has the available remedy of filing for a bill of particulars pursuant to Chuuk Crim. R. 7(e). The purpose of a bill of particulars "is to inform the defendant sufficiently about the charge so he can prepare his defense and can avoid surprise." *Hartman v. FSM*, 5 FSM Intrm. 224, 232 (App. 1994). A bill of particulars, like a motion for a more definite statement in civil cases, is typically requested when the defendant is unable to determine from the information what the charges are against him. *See FSM v. Kansou*, 14 FSM Intrm. 128, 131 (Chk. 2006).

A bill of particulars is not a matter of right. It rests within the trial court's sound discretion. *FSM v. Sam*, 14 FSM Intrm. 398, 401 (Chk. 2006).[2] The test on passing on a motion for a bill of particulars should be whether it is necessary that the defendant have the particulars sought in order that prejudicial surprise be avoided. The sole question should be whether adequate notice of the charge has been given the defendant. *FSM v. Sam*, 14 FSM Intrm. 398, 401 (Chk. 2006).

A motion for a bill of particulars should make clear what relief the defendant is seeking, and should be worded definitely enough that if it is granted the court could enforce its order. *Id.* at 402. A motion for a bill of particulars must be denied when the motion has failed to specify the particulars sought, or makes a catchall request for

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[2] The timing for the filing of a motion for bill of particulars is set forth in Rule 7(f), which states "a motion for a bill of particulars may be made before the initial appearance or within ten days after arraignment or at such later time as the court may permit..." *FSM v. Sam, supra*, at 402.; *see also FSM v. Kansou*, 14 FSM Intrm. 128, 131 (Chk. 2006).

"particulars." *FSM v. Sam*, supra at 402. No bill of particulars is necessary if the government has provided the information needed in some other satisfactory form, such as when the government has adopted an "open file" discovery policy, giving the defendants the opportunity to inspect all relevant documentary and physical evidence. *Id.* A motion for a bill of particulars will be denied, even if timely, when the motion fails to specify the particulars sought, and when it appears that the government has provided the information through other means. *FSM v. Sam*, 14 FSM Intrm. 398, 402 (Chk. 2006).

APPLICATION OF LAW TO FACTS: BILL OF PARTICULARS

In this case, the information was signed by an attorney for the Government, it identifies the defendant and his alleged victim and sets forth the essential facts giving rise to the counts against him including the time, place, surrounding circumstances, and the specific acts against the victim. The Government cites the specific statutory provision supporting each count.

Menisio filed his motion for a bill of particulars and his motion to dismiss three days after the Government filed its information. Menisio also filed his discovery requests on the same day, which the Government timely responded to on July 31, 2007. The Government's discovery responses address each of Menisio's requests and offer to make available the Government's entire case file for Menisio. Menisio has not objected that the Government's discovery responses are insufficient in any way.

The court finds that the Government has set forth its charges against Menisio in compliance with Rule 7(c)(1), it has complied with the Menisio's discovery requests to the extent of offering full disclosure of its case file against Menisio, Menisio does not specifically identify any "particulars" being sought, and Menisio has not, in any case, set

forth any grounds demonstrating that the particulars sought are necessary to avoid prejudicial surprise. Therefore, the court finds no grounds for granting Menisio's motion for a bill of particulars.

DEFENDANT'S MOTION TO DISMISS

In his motion to dismiss, brought pursuant to Chuuk Crim. R. 48(a), Menisio argues that his Due Process rights were violated because the information, the supporting affidavit and the statute(s) upon which the charges are based are vague. *Defendant's Motion to Dismiss*, p. 2.

APPLICABLE LAW FOR MOTION TO DISMISS

The authority presented by Menisio for his dismissal request is Chuuk Crim. R. 48(a), which provides "the attorney for the state may by leave of court file a dismissal of an information or complaint and the prosecution shall thereupon terminate..." The asserted grounds for the motion are: 1. that the information, or the affidavit filed in support, or both, gave Menisio inadequate notice of the charges against him in violation of his Due Process rights, and 2. the statute(s) upon which the charges are based are unconstitutionally vague. Menisio does not specify which particular statutory language, let alone what provisions, are vague or what aspects of the charges and supporting affidavit are vague.

APPLICATION OF LAW TO FACTS: MOTION TO DISMISS

The court has no record that the Government filed a timely response to Menisio's motion to dismiss. Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. *Marar v. Chuuk*, 9 FSM Intrm. 313, 314 (Chk. 2000). In the motion, Menisio does not present any

support for his blanket assertions that the charges against him are unconstitutionally vague. Certainly, a defendant's right to be informed of the nature of the accusations against him requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. *Laion v. FSM*, 1 FSM Intrm. 503, 507 (App. 1984). And, as discussed above, under appropriate circumstances, the sufficiency of a pleading in a criminal case may be challenged, usually by a motion for a bill of particulars. As presented, however, the court denies the motion because it is unable to ascertain, from its review of the motion and supporting memorandum, whether there is any factual or legal basis that may support it.[3] In any case, the issues raised in Menisio's motion to dismiss mirror those raised in Menisio's motion for a bill of particulars, which the court has addressed in detail herein.

CONCLUSION

IT WAS HEREBY ORDERED:

Defendant Tafson Menisio's motion for bill of particulars and motion to dismiss were denied.

So Ordered this 21st day of September, 2007.

Camillo Noket, Chief Justice
Chuuk State Supreme Court

Entered this 21st day of September, 2007

Clerk of Court

[3] The court notes that Chuuk Crim. R. 48(a) is not a proper authority for a defendant to request a dismissal.

CHUUK STATE SUPREME COURT
Federated States of Micronesia
TRIAL DIVISION - WENO, CHUUK

CSSC CA No. 88-2007

PASIENTE BISARAM, as candidate for Mayor, July31, 2007 Oneisom Municipal Election,

Plaintiff,

vs.

JOE SUTA, As Election Commissioner for Oneisom Municipality, and ORSIANA GRAHAM, as Oneisom Municipal Election Board member,

Defendants.

FILED
JUL 31 2007
Clerk of Court, CSSC

CSSC CA No. 89-2007

ONGICHY SOICHY, as candidate for Deputy Mayor, July 31, 2007 Oneisom Municipal Election,

Plaintiff,

vs.

JOE SUTA, as Election Commissioner for Oneisom Municipality, REDLINO MIOCHI, As Candidate for Deputy Mayor of Oneisom Muncipality,

Defendants.

ORDERING DENYING *EX PARTE* MOTIONS FOR TEMPORARY RESTRAINING ORDER AND PLAINTIFF BISARAM'S MOTION FOR PRELIMINARY INJUNCTION

On June 27, 2007 the Court heard oral argument from counsel for Plaintiff Pasiente Bisaram, in CSSC CA No. 88-2007, and Ongichy Soichy, in CSSC CA No. 88-2007, on their ex *parte* motions for temporary restraining order filed on the same day in

their respective cases. The Court also heard oral argument on Bisaram's motion for preliminary injunction. The Court denied all the motions for the reasons stated on the record and in accordance with this order.

PROCEDURAL BACKGROUND AND FACTUAL BASES OF MOTIONS

1. Plaintiff Bisaram is a candidate in the July 31, 2007 Oneisom Municipal Election for the office of Mayor of Oneisom against the incumbent Enrino Paul. Plaintiff Soichy is a candidate for Deputy Mayor of Oneisom running against Redlino Miochy.

2. On June 27, 2007, in the Chuuk State Supreme Court Trial Division, Plaintiffs filed their verified complaints for declaratory and injunctive relief, motions for temporary restraining order with points and authorities, and motions for consolidation of cases. Bisaram also filed a motion for preliminary injunction and a verified petition to exclude/disqualify Redlino Miochy from running for Deputy Mayor in the July 31, 2007 Oneisom Municipal Election, with attached exhibits.

3. In their verified complaints, Bisaram and Soichy each allege malfeasance by members of the Oneisom Election Commission and Election Board relating to the July 31, 2007 Oneisom Municipal Election.

4. Bisaram's verified complaint alleges that Defendants Joe Suta and Orsiena Graham, in their official capacities as Oneisom Municipal Election Commissioner and Oneisom Municipal Election Board member, respectively, engaged in improper conduct with respect to the July 31, 2007 Oneisom Municipal Election, including improper acceptance and certification of nomination petitions (*Bisaram* Complaint, Paragraphs 12-15, 17), improper printing and casting of ballots (*Bisaram* Complaint, Paragraphs 18-19,

21), and refusing to provide the Master List of absentee ballots for review (*Bisaram* Complaint, Paragraph 22).

5. Bisaram's verified complaint also makes factual allegations against non-parties Redlino Miocho, a candidate for Deputy Party, and Jayvene Johnny, a candidate for Tonokas Municipality Village Chief, who are alleged to have been illegally certified as candidates.

6. In his request for relief, Bisaram seeks:

a. a judgment that the defendants are in violation of law;

b. Redlino Miochy's disqualification from running for Deputy Mayor in the Oneisom Municipal Election of July 31, 2007;

c. Jayvene Johnny's disqualification from running for Village Chief in the Oneisom Municipal Election of July 31, 2007;

d. Joe Suta's and Orsiana Graham's disqualification from planning, conducting, and certifying the Oneisom Municipal Election of July 31, 2007; and

e. a temporary restraining order against Joe Suta and Orsiana Graham prohibiting and enjoining them from participation in the Oneisom Municipal Election of July 31, 2007 in their official capacities.

7. Bisaram's motion for preliminary injunction contains the same allegations as his *ex parte* motion for a temporary restraining order.

8. Soichy's verified complaint contains identical allegations to that of Bisaram with respect to Joe Suta. Soichy does not, however, name Orsiana Graham as a party or make any allegations against her. Another difference with Bisaram's complaint is that Soichy makes at least an attempt to name one of the real parties in interest, Redlino Miochy, as a defendant.[1]

[1] Soichy does not identify Redlino Miochy as a party in the caption of his complaint, but Redlino Miochy is identified as a party in the body of the complaint (Paragraph 4). The Court has amended the caption to

9. Soichy's request for relief also mirrors that of Bisaram, except Soichy makes no request for relief relating to the conduct of Orsiana Graham.

10. According to their complaints, Plaintiffs initially filed petitions with the Chuuk State Election Commission requesting supervision over the July 31, 2007 Oneisom Muncipal election, but their request was denied.

APPLICATION OF LAW

1. A Temporary Restraining Order is not Warranted because there is no Immediate, Irreparable Harm.

In order for the Court to grant a temporary restraining order it is essential that there is a clear showing that immediate and irreparable injury or loss or damage would occur if the temporary restraining order is not granted. *Kony v. Mori*, 6 FSM Intrm. 28 (Chuuk 1993); *Wiliander v. Siales*, 7 FSM Intrm. 77, 80 (Chk. 1995). Irreparable injury means there is no adequate alternative remedy. *Id.*

Elections, particularly, are in the hands of the political branches. *Kony v. Mori*, 6 FSM Intrm. 28, 30. The Chuuk State Election Law of 1996 provides for remedies in election disputes. All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal elections whenever applicable unless otherwise specifically provided. *Chipen v. Chuuk State Election Comm'n*, 8 FSM Intrm. 300n, 300o (Chk. S. Ct. App. 1998). The Chuuk State Election Law, Chk. Pub. L. No. 3-95-26, §§ 126, 130, requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. *Aizawa v. Chuuk State Election Comm'r*, 8 FSM Intrm. 245, 247 (Chk. S. Ct. Tr. 1998). If the complainant is dissatisfied

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comport with Soichy's apparent intent to include Redicon Miochy as a Defendant. The *Bisaram* complaint does not identify Redlino Miochy as a party. Neither complaint names Jayvene Johnny as a party.

with the Chuuk State Supreme Court appellate division's decision, appeal to the FSM Supreme Court can be had. *Phillip v. Phillip*, 9 FSM Intrm., 226, 228 (Chk. S. Ct. Tr. 1999).

In *Kony v. Mori, supra*, the court faced a situation bearing some similarity to the one at bar. The plaintiffs requested a restraining order to delay the election on the day before the election, because the general registry still had not been made available to the plaintiff for inspection in violation of statutory mandate. Plaintiffs anticipated that such violation of election procedures would result in a tainted election. While the court was sympathetic to the anxiety of the plaintiffs who anticipated balloting malfeasance, the Court did not find irreparable harm. Rather, "where there is an alternative method of making complaint very specifically set out in the code, and when the code is very specific as far as the point at which the court can rule on the matter and even states the breadth of the ruling that can be reached at that point, damage is not irreparable. There are alternate and adequate remedies." *Kony v. Mori,* at 30; *see also Wiliander v. Siales*, 7 FSM Intrm. 77, 80 (Chk. 1995)(Where the election law provides for remedies that have not yet been used a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order.).

There may be cases in which the court would enter a matter before the election process has been completed. E.g., *Robert v. Mori*, 6 FSM Intrm. 394 (App. 1994) (appeal heard from final administrative decision of National Election Commissioner denying plaintiff place on the ballot for upcoming special election). This is not such a case. Here, assuming either plaintiff fails to get elected, any irregularities in the election results can be addressed by filing a complaint with the State Election Commission to seek a recount

or to aside the election. *Aten v. National Election Comm'r (II)*, 6 FSM Intrm. 74, 82 (App. 1993). Therefore, Plaintiffs have not demonstrated that they are in danger of immediate, irreparable harm.

A court must weigh three factors other than irreparable harm when considering injunctive relief. Those are: the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case. Where none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm injunctive relief will not be granted. *Wiliander v. Siales*, 7 FSM Intrm. 77, 80 (Chk. 1995).

The Court finds that neither Plaintiff has made a sufficient showing of irreparable harm to warrant injunctive relief. Therefore, analysis of the remaining factors is unnecessary.

2. Plaintiffs must Comply with Rule 65(b) Certification Requirement.

Plaintiffs' motions were filed *ex parte*. Rule 65(b) sets forth the requirements for filing an *ex parte* request for a temporary restraining order. According to Rule 65(b), the Court cannot grant an *ex parte* temporary restraining order without a showing that notice should not be required or of any attempts to give notice to the opponent. *Island Cable TV-Chuuk v. Aizawa*, 8 FSM Intrm. 104, 107 (Chk. 1997); Rule 65(b) ("a temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required").

Neither Plaintiff filed the certification required by Rule 65(b). Plaintiffs' motions for temporary restraining orders are therefore denied for the additional reason that the certification requirement set forth in Rule 65(b) were not met in this case.

3. Plaintiffs must comply with Rule 65(c) Security Requirement.

Neither Plaintiff posted security for the issuance of a temporary restraining order. Chuuk State Supreme Court Rule of Civil Procedure 65(c) requires security for the issuance of a temporary restraining order. Rule 65(c); *Island Cable TV-Chuuk v. Aizawa*, 8 FSM Intrm. 104, 105 (Chk. 1997).

Plaintiffs' motions are therefore denied for the additional reason that they have not complied with Rule 65(c)'s requirement that the applicant give security before the issuance of a restraining order or preliminary injunction.

4. The Real Parties in Interest Should be Named Parties in this Action.

In an election dispute, the person whose right to the office is contested is the real party in interest. *In re Nomun Weito Interim Election*, 11 FSM Intrm. 461, 469-70 (Chk. S. Ct. App. 2003). In this case, the Plaintiffs are contesting the right of candidates Jayvene Johnny and Redlino Miochy to participate in the Oneisom Muncipal Election. Neither Plaintiff names Jayvene Johnny as a party in their complaint and only Soichy's complaint attempts to designate Redlino Miochy as a party.

Without naming the candidates as parties to this action, and giving them the benefit of Due Process of law in this matter, the Court is unwilling and unable to adjudicate their rights in this proceeding. The Court therefore denies the motions for the additional reason that the real parties in interest are not parties to this action.

5. The Chuuk State Supreme Court Trial Division does not have Jurisdiction over this Matter.

Under Chuuk state law, election contests are purely statutory, and the courts have no inherent power to determine election contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. *David v. Uman Election Comm'r*, 8 FSM Intrm. 300d, 300h (Chk. S. Ct. App. 1998). By this action, Plaintiffs' sought to contest an election that has not yet been decided. By statute, "no [Chuuk state] court has jurisdiction over an election contest until the election is completed." *Kony v. Mori*, 6 FSM Intrm. 28, 30 (Chk. 1993) *quoting* 26 Am. Jur. 2d Elections § 326, at 148.

Even upon completion of the election, the Chuuk State Supreme Court trial division does not have jurisdiction to hear an election contest and any election contest dispute filed in the trial division must be dismissed for lack of jurisdiction. *Mathew v. Silander*, 8 FSM Intrm. 560, 564 (Chk. S. Ct. Tr. 1998). Rather, an election complaint must first be filed with the Chuuk Election Commission according to statutory guidelines and procedures. *Phillip v. Phillip*, 9 FSM Intrm., 226, 228 (Chk. S. Ct. Tr. 1999); Chk. Pub. L. No. 3-95-26, §§ 126, 130. If dissatisfied with the Election Commission ruling, the complainant may appeal the ruling to the Chuuk State Supreme Court appellate division and, if dissatisfied with the Chuuk State Supreme Court appellate division ruling, to the FSM National Court. *Id.*

In sum, the Chuuk State Supreme Court trial division does not have jurisdiction over this matter because 1. Chuuk courts do not have jurisdiction over disputes regarding an election until after the election and the matter has first been appealed from a decision of the Chuuk State Election Commission, and 2. the Chuuk State Supreme Court trial

division does not have any jurisdiction over election disputes even after an appeal from the Chuuk State Election Commission. That this case involves a municipal election in a municipality without a provision for contesting or challenging an election does not change the analysis. *See Alafanso v. Suda*, 10 FSM Intrm. 553, 557 (Chk. S.Ct. Tr. 2002) (When a municipal election ordinance has no provision for contesting or challenging the election results after an election has been held, or for resolving election disputes, the state election law must apply to this phase of the election, and the proper forum to contest the municipal election is the Chuuk Election Commission.).

Therefore, the Court finds that it is without jurisdiction in this matter.

CONCLUSION

Accordingly, Plaintiffs' respective motions for an *ex parte* temporary restraining order and Bisaram's motion for preliminary injunction are denied and this case is dismissed for lack of jurisdiction.

So Ordered this 30th day of July, 2007.

Camillo Noket, Chief Justice
Chuuk State Supreme Court

Entered this 31st day of July, 2007

Clerk of Court