

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION - STATE OF POHNPEI

STATE OF CHUUK, et al.)	CIVIL ACTION NO. 1995-085
)	
Plaintiffs,)	
)	
v.)	ORDER GRANTING ENLARGEMENT
)	OF TIME
SECRETARY OF DEPARTMENT OF)	
FINANCE et al.,)	
)	
Defendants.)	
)	

On July 31, 1997, the Court issued a Scheduling Order setting September 12, 1997 as the deadline for the parties in this action to complete discovery or file dispositive motions. On September 16, 1997, plaintiffs faxed to the Court a motion for "a short extension of time" to file their motion for summary judgment. Plaintiffs' Motion ("Pl. Mtn."), p. 1.¹ Plaintiffs' counsel included an affidavit stating that plaintiffs' motion for summary judgment, along with supporting exhibits and affidavits, was completed and copied on September 3, 1997, and served on defendants by first class mail from Hawaii on September 4, 1997. Affidavit of Jon M. Van Dyke, Esq. ("Van Aff."), p. 2. The motion for summary judgment was received by counsel for the defendants on September 16, 1997, and filed with the Court on September 23, 1997.

¹ The Court does not accept faxes for filing. See Rule 5(e) of the FSM Rules of Civil Procedure. Thus, this Motion was not actually filed with the Court until it was received by mail on September 23, 1997.

The Court received a letter from FSM Assistant Attorney General Terence M. Brown on September 18, 1997, stating that the Attorney General's Office had received plaintiffs' motion for summary judgment on September 16, 1997, and that defendants would need more time to respond due to the delay in the service by mail.² On September 22, 1997, the FSM Attorney General's Office filed a motion seeking an enlargement of time and permission to file a cross motion for summary judgment. Defendants' Motion ("Def. Mtn."), p. 1.

Defendants seek a sixty (60) day enlargement of time to respond to plaintiffs' summary judgment motion and file their cross motion. Mr. Brown states in his motion for enlargement of time that the parties are in agreement that this case involves issues which are well suited for adjudication by summary judgment. Def. Mtn., p. 3. Also, according to the affidavit supporting defendants' motion, Mr. Brown contacted Mr. Van Dyke, who consented to the enlargement.

Counsel for plaintiffs also requests oral argument on plaintiffs' motion for summary judgment, and requests that the Court postpone the pretrial conference (currently set for October 27, 1997) and the deadline for filing pretrial statements (currently set as October 17, 1997).

² As Mr. Brown notes in his letter, under the FSM Rules of Civil Procedure, defendants normally have ten days to file a response to a motion for summary judgment, with an additional six days if service is effected by mail. FSM Civ. R. 4 (e). Thus, defendants technically were required to respond to plaintiffs' motion by September 22, 1997 even though they did not receive the motion until September 16, 1997.

Rule 6(b) allows this Court to enlarge time at its discretion. At the status conference held on April 2, 1997, representations were made to the Court that plaintiffs' counsel intended to file motions in this case "within the next three or four weeks." See Minutes Entry, filed 4/5/97, p. 1; see also Scheduling Order, dated July 31, 1997. While the Court granted the parties until September 12, 1997 to file dispositive motions, it was anticipated at the time of the April, 1997 status conference that the parties would conclude discovery and file the relevant motions well before these deadlines. Instead, plaintiffs' motion was not filed with the Court until nine (9) days past the deadline.

Because of the delay with which counsel for the defendants received plaintiffs' motion for summary judgment, the Court will permit defendants the enlargement they seek for filing a response and cross motion. The Court also will grant plaintiffs' request for oral argument on these motions. In addition, the Court will suspend its scheduling order, and postpone the pretrial conference and deadline for filing pretrial statements until after it has ruled on these dispositive motions.

Good cause having been shown, defendants' motion for an enlargement of time is hereby GRANTED. Defendants shall have sixty (60) days from September 16, 1997, the date on which defendants received plaintiffs' motion for summary judgment, to respond the motion and file their cross motions, if any.

Plaintiffs motion for oral argument on their motion for summary judgment is also hereby GRANTED, and the Court hereby

sets a hearing for argument on all dispositive motions for December 16, 1997, at 10:00 a.m. Finally, the Scheduling Order entered by the Court on July 31, 1997 is hereby AMENDED to postpone the pretrial conference and the deadline for filing pretrial statements until after the Court rules on the dispositive motions.

So ordered the 26th day of September, 1997.



Andon L. Amaraich
Presiding Justice

Entered this 26th day of September, 1997.



for Kohsak M. Keller
Chief Clerk of Courts