

**FEDERATED STATES OF MICRONESIA  
SUPREME COURT TRIAL DIVISION**

Cite as *Yap v MV Cecilia I*, 13 FSM Intrm. 403 (Yap 2005)

**THE STATE OF YAP  
Plaintiff**

**vs.**

**THE M/V CECILIA I, JOHN T. SABLAN, RICHARD REDDY, PACIFIC  
PETROLEUM, and PACIFIC PETROLEUM CORPORATION  
Defendants**

CIVIL ACTION NO. 2005-3000

**ORDER AND MEMORANDUM**

Martin Yinug  
Associate Justice

Decided: September 19, 2005

**APPEARANCES:**

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**HEADNOTES**

**Civil Procedure - Dismissal; Civil Procedure - Pleadings**

An answer is a pleading, and a party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Lack of personal jurisdiction may be asserted in the answer to the complaint or by motion made before answering. An amended answer containing a motion to dismiss served five days after service of the original answer, is well within the 20-day period specified in Rule 15(a) for amending a pleading as a matter of right. *Yap v. M/V Cecilia I*, 13 FSM Intrm.

403, 407 (Yap 2005).

#### **Civil Procedure - Pleadings; Jurisdiction - Personal**

Personal jurisdiction as a defense is waived only if the party raising it fails to raise it in a motion permitted by Rule 12(b), in his answer, or in an amendment to the answer permitted under Rule 15(a). Personal jurisdiction may not be raised in an amendment that requires leave of court. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 407 (Yap 2005).

#### **Civil Procedure - Dismissal; Jurisdiction - Personal**

For purposes of a motion to dismiss for lack of personal jurisdiction over a defendant, the allegations of the complaint are accepted as true, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Allegations based on information and belief are insufficient to support in personam jurisdiction, except where the truth of those allegations are admitted in the responsive pleading. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 407 (Yap 2005).

#### **Admiralty - Ships - Charter; Contracts**

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 408 (Yap 2005).

#### **Admiralty - Ships - Charter**

A requirement for a true bareboat charter is that the charterer selects his own master and crew. If the owner provides the master and crew, tendering them as the agents of the charterer, the charter is a demise, although not technically a "bareboat" charter. Of these three varieties of charter parties, the demise charter has unique characteristics. A demise is the transfer of full possession and control of the vessel for the period covered by the contract. The charterer obtains the right to run the vessel and carry whatever cargo he chooses. The ship is manned and supplied by the charterer as well. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 408 (Yap 2005).

#### **Admiralty - Ships - Charter**

The legal test of a demise charter is whether the owner of the vessel completely and exclusively relinquished possession, command and navigation to the demisee. A demise is present where the provisions of the charter show that those in charge of the vessel are intended to be the agents and servants of the demisee, not the shipowner. For most purposes, the charterer in a demise is treated as an owner, termed *pro hac vice*. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 408-09 (Yap 2005).

#### **Admiralty - Ships - Charter**

The owner's fundamental obligation under the demise charter party is to provide a seaworthy vessel of the specified class and type at the beginning of the charter term. A warranty of seaworthiness of the vessel will be implied; it may, however, be qualified or even waived. The seaworthiness warranty extends only to the charter's beginning;

subsequent to delivery the vessel's seaworthiness is the charterer's responsibility unless otherwise stated. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 409 (Yap 2005).

### **Admiralty - Ships - Charter**

The demise charterer's basic obligation is to pay the charter hire stipulated in the charter party. At the end of the charter term, the vessel must be returned in the same condition as received excepting ordinary wear and tear. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 409 (Yap 2005).

### **Admiralty - Ships - Charter; Jurisdiction - In Rem**

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the ship's operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties, pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 409 (Yap 2005).

### **Jurisdiction - Personal**

The FSM Supreme Court has personal jurisdiction over persons residing or found in the FSM or who voluntarily appear. Exceptions to this general rule are found in the FSM long-arm statute, 4 F.S.M.C. 204, which specifies the conditions under which a defendant found outside the FSM may be hailed into court here. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 410 (Yap 2005).

### **Jurisdiction - Personal**

The FSM Supreme Court has personal jurisdiction, under 4 F.S.M.C. 204(1)(c), over a cause of action that arises from the operation of a vessel or craft within the FSM territorial waters. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 410 (Yap 2005).

### **Jurisdiction - Personal**

The reach of the FSM's long-arm statute is circumscribed by the constitutional requirement that the putative defendant must have "minimum contacts" with the forum so that requiring him to litigate there does not offend "traditional notions of fair play and substantial justice." Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 410-11 (Yap 2005).

### **Civil Procedure - Dismissal; Jurisdiction - Personal**

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 411 (Yap 2005).

### **Jurisdiction - Personal**

When a vessel is the subject to a bareboat charter, the hallmark of which is that the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner, the vessel's owner cannot be said to have undertaken the operation of a vessel or craft within the FSM territorial waters within the meaning of 4 F.S.M.C. 204(c), and personal jurisdiction over the vessel's owner will not lie on that basis. Yap v.

M/V Cecilia I, 13 FSM Intrm. 403, 411 (Yap 2005).

**Jurisdiction - Personal**

In analyzing the degree and extent of a defendant's business contacts with a forum jurisdiction, it is the nature and quality of acts and not their number that determines whether transactions of business have occurred. It does not mean that any single act suffices to allow personal jurisdiction. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 411 (Yap 2005).

**Jurisdiction - Personal**

Being the recipient of a letter sent from a jurisdiction, without more, does not aid the personal jurisdiction analysis. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 412 n.3 (Yap 2005).

**Jurisdiction - Personal**

The act of sending the single letter, which recites that the vessel remains under a bareboat charter and that the owner was put in a very bad position as a result of receiving only two charter payments over the course of two years and eight months, does not suggest a sufficient basis upon which to conclude that the owner was doing business in the FSM and subject to personal jurisdiction here, and neither does being the recipient of 60 e-mails or copies of e-mails sent to others. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 412 (Yap 2005).

**Jurisdiction - Personal**

When no evidence exists that the charter agreement between the owner and the charterer created an obligation on the owner's part to engage in any business activity in the FSM, although the vessel operated in Yap waters beginning in April of 2001; allegedly discharged petroleum effluent into Yap waters; and ultimately grounded in the Yap harbor, the existence of the bareboat charter leads to the conclusion that personal jurisdiction over vessel owner does not lie under the doing business provision of the FSM long-arm statute notwithstanding the presence of the vessel here. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 412 (Yap 2005).

**Civil Procedure - Dismissal; Jurisdiction - Personal**

When a vessel owner never purposefully availed himself of the privilege of conducting activities in the FSM because of the bareboat charter of his vessel, for the court to exercise in personam jurisdiction over the vessel owner would violate well established notions of fair play and substantial justice. The vessel owner's motion to dismiss will be granted and he will be dismissed as a defendant. Yap v. M/V Cecilia I, 13 FSM Intrm. 403, 412 (Yap 2005).

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**COURT'S OPINION**

**MARTIN YINUG, Associate Justice:**

On March 31, 2005, the defendant John T. Sablan served his answer and cross-claims on the other parties to this litigation. Five days later, on April 5, 2005, Sablan served his amended responsive pleading that contained an answer, his cross-claims, and a motion to

dismiss for lack of personal jurisdiction on the basis that Sablan had no control at relevant times over the M/V *Cecilia I*, which was the subject of a bareboat charter between the defendant Pacific Petroleum and Sablan, and that he lacked the necessary minimum contacts with the forum sufficient to subject him to this court's jurisdiction. On April 18, 2005, the State of Yap served a response to the motion to dismiss in which it urges that the court has personal jurisdiction over Sablan for the environmental damage alleged in the complaint because he is the owner of the *Cecilia*, which is now grounded in the Colonia harbor, and has operated the *Cecilia* in Yap state waters. Also on April 18, 2005, Yap moved in the alternative to amend its complaint to add two allegations: that this court has jurisdiction of Sablan under 6 F.S.M.C. 131(1); and that "[u]pon information and belief, Defendant John T. Sablan has visited, made telephone calls, written letters and written and received e-mail correspondence to and from the Federated States of Micronesia on an unspecified number of occasions, both related to and unrelated to *Cecilia*." Alternate Motion for Leave to Amend at (unnumbered) 10. Yap's motion to amend the complaint is unopposed. The motion is granted.

For the reasons that follow, Sablan's motion to dismiss for lack of personal jurisdiction is granted.

## **I. Discussion**

### *A. Waiver of personal jurisdiction*

In its response to Sablan's motion to dismiss, Yap urges that Sablan waived the personal jurisdiction question by his March 31, 2005, answer that did not raise the issue. However, Rule 15(a) of the FSM Rules of Civil Procedure provides that

[a] party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served.

An answer is a pleading. FSM Civ. R. 7(a). Personal jurisdiction may be asserted in the answer to the complaint or by motion made before answering. FSM Civ. R. 12(b). Sablan's answer contains cross-claims, but those cross-claims are not directed toward Yap. Thus no responsive pleading by Yap is required. Since Sablan served his amended answer containing the motion to dismiss five days after serving his original answer, he was well within the 20 day period specified in Rule 15(a) for amending a pleading as a matter of right. Personal jurisdiction as a defense is waived only if the party raising it fails to raise it in a motion permitted by Rule 12(b), in his answer, or in an amendment to the answer permitted under Rule 15(a). Morgan Guaranty Trust Co. of New York v. Blum, 649 F.2d 342, 345 (5th Cir. 1981). Personal jurisdiction may not be raised in an amendment that requires leave of court. *Id.* Sablan raised the personal jurisdiction defense as part of a timely amended answer that did not require leave of court. Thus he did not waive the personal jurisdiction defense.

### *B. Personal jurisdiction over Sablan*

The complaint contains five causes of action all based on the central allegation that the *Cecilia*, now grounded in Colonia harbor in Yap, has on numerous occasions from April 4,

2002, until the present discharged petroleum based effluent. The first cause of action is for declaratory and equitable relief for environmental violations; the second seeks civil penalties for the same; the third is for damages for environmental violations; the fourth is for public nuisance; and the fifth is a claim for damages for abandonment. For purposes of a motion to dismiss for lack of personal jurisdiction over a defendant, the allegations of the complaint are accepted as true, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 127 (Pon. 1999). Allegations based on information and belief are insufficient to support in personam jurisdiction, except where the truth of those allegations are admitted in the responsive pleading. *Cf.* 32A Am. Jur. 2d *Federal Practice and Procedure* § 1544 (1982) (allegations on information and belief insufficient to support diversity jurisdiction).

Facts taken as true for purposes of the motion to dismiss are that on April 12, 2001, Sablan, as owner of the *Cecilia*, a vessel registered in Cambodia, entered into a standard bareboat charter agreement with Pacific Petroleum for the *Cecilia*. A copy of the agreement, which is the Baltic and International Maritime Conference Standard Bareboat Charter with emendations, is attached to the motion to dismiss as exhibit "A." The period of the charter was 12 months, with two additional one-year extensions possible. Sablan, who is not a citizen or resident of the FSM, signed the charter agreement as owner. Defendant Richard Reddy signed the charter agreement on behalf of the charterer, Pacific Petroleum, and using the name Pacific Petroleum and Pacific Petroleum Corporation operated the vessel in Yap waters beginning in April of 2001. A February 2, 2005, settlement agreement (signed by Sablan on behalf of himself, and by Reddy on behalf of Pacific Petroleum) that is attached to Sablan's motion to dismiss states that Pacific Petroleum had full and sole control over the *Cecilia* from April 12, 2001 (the charter date) forward, and failed to re-deliver the *Cecilia* to Sablan.<sup>1</sup> From April 4, 2002, through the end of 2002, the Yap Environmental Protection Agency received and investigated at least eight incidents involving oil spills by the M/V *Cecilia* and her operators. An incident occurred in Woleai in April, 2003, that affected the *Cecilia*'s seaworthiness, and in July of 2003, the *Cecilia* arrived in Yap Harbor where the vessel ultimately grounded. In February, 2004, Yap EPA issued a cease and desist order directed to the defendants to stop the discharge of pollutants from the *Cecilia*. No compliance with the cease and desist order occurred.

The term "charter party" is used in maritime law to designate the "specialized form of contract for the hire of an entire ship, specified by name." 2 Thomas J. Schoenbaum, Admiralty and Maritime Law § 11-1, at 2 (4th ed. 2001). "Charter party" is used synonymously with "charter." Id. n.1. Three principal types are recognized:

(1) Under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; (2) Under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and (3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner.

Id., § 11-1 at 2 (footnote omitted). A requirement for "[a] true bareboat charter" is that the charterer "select[s] his own master and crew. If the owner provides the master and crew, tendering them as the agents of the charterer, the charter is a demise, although not

technically a 'bareboat' charter." Id. at 3 n.6. The same commentator notes that

[o]f these three varieties [of charter parties], the demise charter has unique characteristics. A demise is the transfer of full possession and control of the vessel for the period covered by the contract. The charterer obtains the right to run the vessel and carry whatever cargo he chooses. The ship is manned and supplied by the charterer as well. The legal test of a demise is whether the owner of the vessel "completely and exclusively relinquished possession, command and navigation to the demisee." Alternately stated, a demise is present where the provisions of the charter show that those in charge of the vessel are intended to be the agents and servants of the demisee, not the shipowner. For most purposes, the charterer in a demise is treated as an owner, termed *pro hac vice*.

Id. at 2-3 (footnotes omitted). Finally,

[t]he owner's fundamental obligation under the [demise] charter party is to provide a seaworthy vessel of the specified class and type at the beginning of the charter term. A warranty of seaworthiness of the vessel will be implied; it may, however, be qualified or even waived. The seaworthiness warranty extends only to the beginning of the charter; subsequent to delivery the seaworthiness of the vessel is the responsibility of the charterer unless otherwise stated.

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The demise charterer's basic obligation is to pay the charter hire stipulated in the charter party. At the end of the charter term, the vessel must be returned in the same condition as received excepting "ordinary wear and tear."

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the operation of the ship. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties, pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault.

Id. § 11-3, at 7-8.

In Ginsberg v. Livestock Express, 1991 American Maritime Cases 565, 571 (E.D. Va. 1990), the court held that it did not have personal jurisdiction over the owner of a vessel where the vessel was the subject of a bareboat charter. Livestock Express was an admiralty and Jones Act action by a crew member brought in U.S. district court in Virginia for personal injuries sustained on board the M/V *Charolais Express*, while the vessel was in port in Tunisia after a voyage from Richmond, Virginia. Id. at 565-66. Named as a defendant was Unimas, S.A., which, according to a declaration filed by Unimas, was a Panamanian corporation with its sole place of business in Panama City, Panama, that did not conduct any business in the United States and that was the sole owner of the vessel. Id. at 566. The *Charolais Express* was Unimas's only asset, and at the time of the injury, the vessel was under a bareboat charter by Unimas to a Philippine

corporation, which in turn chartered the vessel to Livestock Express, Inc., which in turn chartered the vessel to Esmah Nevada, Inc. Id. Yet another corporation, Vroon, B.V., managed the vessel. Id.

The court analyzed the question of personal jurisdiction under the first three provisions of the Virginia long-arm statute, Va. Code Ann. § 8.01-328.1(A)(1)-(3), beginning with the second and third sections, and concluding with the first. Livestock Express, 1991 American Maritime Cases at 567. The second section provides that Virginia may exercise personal jurisdiction over one who "contract[s] to supply services or things" in Virginia. Id. The court noted that the only contracts "even implicated" were the charters between Unimas and the Philippine corporation and between Unimas and Vroon, and that there was "no evidence before the court that those charters purport to bind Unimas to supply any services or things in Virginia." Id. The court concluded that personal jurisdiction did not lie over Unimas under this provision of the Virginia long-arm statute. Id. at 567-68.

Section (A)(3) of the Virginia statute allows personal jurisdiction over one "who acts directly or by an agent, as to a cause of action arising from the person's causing tortious injury by an act or omission" in Virginia. Livestock Express, 1991 American Maritime Cases at 568. The court stated that the plaintiff had alleged no act or omission occurring in Virginia that gave rise to his injury, and found no personal jurisdiction over Unimas under this section. Id. Section (A)(1) of the Virginia long-arm statute permits personal jurisdiction over one "who acts directly or by agent, as to a cause of action arising from the person's transacting any business" in Virginia. Id. The plaintiff urged that because he was taken aboard the *Charolais Express* in Virginia, his cause of action for personal injuries arose out of Unimas's contact and transaction of business there. Id. at 569. Noting that at issue was a bareboat charter; that plaintiff was not an employee or in any other way connected with Unimas; that plaintiff's injuries did not arise out of loading cargo or receiving cargo in Virginia; and that to the contrary, it was in Tunisia that the plaintiff had been injured when performing an instruction to locate a certain heifer in the cargo of cattle; the court concluded that Unimas was not doing business in Virginia. Id. Finally, citing Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404, 411 (1984), the Livestock Express court undertook a minimum contacts analysis of the jurisdictional facts, and concluded as follows:

There is no evidence before the court that Unimas ever purposefully availed itself of the privilege of conducting activities in Virginia. The only contacts between Unimas and the forum are the alleged three calls at the part [sic] of Richmond by the *Charolais Express* while the ship was under bareboat charter and not controlled by Unimas. To assert *in personam* jurisdiction under these facts would violate well established notions of fair play and substantial justice.

Livestock Express, 1991 American Maritime Cases at 569-71. With the foregoing as context, the court considers Yap's jurisdictional contentions.

Section 203 of Title 4 of the FSM Code provides that the FSM Supreme Court has personal jurisdiction over persons residing or found in the FSM or who voluntarily appear. Exceptions to this general rule are found in 4 F.S.M.C. 204, which is the FSM long-arm statute, and specifies the conditions under which a defendant found outside the FSM may be haled into court here. Specifically, Yap alleges that this court has personal jurisdiction over Sablan under 4 F.S.M.C. 204(1)(c), which states that the FSM Supreme Court has



personal jurisdiction over a cause of action that arises from "[t]he operation of a vessel or craft within the territorial waters . . . of the Federated States of Micronesia." In its motion to amend the complaint, to which Sablan did not respond, Yap adds a second jurisdictional basis, alleging that the court has personal jurisdiction over Sablan on the "transaction of any business" provision of the FSM long-arm statute, 4 F.S.M.C. 204(1)(a)2. Sablan, both in his original answer filed on March 31, 2005, and in his answer filed as part of his motion to dismiss on April 5, 2005, denies that he ever operated the vessel within the FSM. He urges that he lacks the necessary minimum contacts with the FSM to subject him to personal jurisdiction here.

### *1. Jurisdiction based on vessel operation*

The reach of the FSM's long-arm statute is circumscribed by the constitutional requirement that the putative defendant must have "minimum contacts" with the forum so that requiring him to litigate there does not offend "traditional notions of fair play and substantial justice." National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 129 (Pon. 1999). In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. *Id.* As previously noted, the allegations of the complaint are accepted as true for a motion to dismiss, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. *Id.* Yap points out that Sablan has not submitted an affidavit to support his motion. However, he has submitted with his motion to dismiss a copy of the charter between Sablan and Pacific Petroleum. Yap had not contested the authenticity of this document, which speaks for itself. To the extent that the charter's provisions conflict with the allegations of the complaint, the court will construe the charter provisions in the non-moving party's - i.e., Yap's - favor.

Paragraph 8(a) provides that "[t]he Vessel shall during the Charter period be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect;" and that "[t]he Charterers are required to establish and maintain financial security or responsibility in respecting oil or other pollution damage as required by any government" and "shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so." Paragraph 8(b) states that "[t]he Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel, and repair the Vessel whenever required during the Charter period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter." Paragraph 17 provides that "[i]n the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sum whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation." These provisions demonstrate that the *Cecilia* was subject to a bareboat charter, the hallmark of which is that "the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner." 2 Schoenbaum, *supra*, § 11-1, at 2. In these circumstances it cannot be said that Sablan undertook the "[t]he operation of a vessel or craft within the territorial waters . . . of the Federated States of Micronesia," within the meaning of 4 F.S.M.C. 204(1)(c). Personal jurisdiction does not lie over Sablan on this basis.

### *2. Jurisdiction based on doing business*

Yap's second basis for urging the existence of personal jurisdiction over Sablan, per its motion to amend that is granted as a part of this order, is the "doing business" provision of the FSM long-arm statute, 4 F.S.M.C. 204(1). In support of this contention, Yap urges that "[u]pon information and belief, Defendant John T. Sablan has visited, made telephone calls, written letters and written and received e-mail correspondence to and from the Federated States of Micronesia on an unspecified number of occasions, both related to and unrelated to *Cecilia*." While there is presently no answer on record by Sablan to the two additional allegations, the court finds that even accepting the additional factual allegations documented by Yap, personal jurisdiction does not lie over Sablan under 4 F.S.M.C. 204(1).

In analyzing the degree and extent of a defendant's business contacts with a forum jurisdiction, it is "the nature and quality of acts and not their number that determines whether transactions of business have occurred. It does not mean that *any* single act suffices." Livestock Express, 1991 AMC at 568 (citing Processing Research, Inc. v. Larson, 686 F. Supp. 119 (E.D. Va. 1988)) (emphasis in original). To support its doing business contention, Yap offers one letter<sup>3</sup>, dated February 8, 2004, from Sablan to Joe Sinisi, then an assistant attorney general for Yap. The letter recites that the *Cecilia* is still under Pacific Petroleum and Reddy's "full responsibility;" that the vessel remains under the bareboat charter; that Sablan was put "in a very bad position" as a result of receiving only two charter payments over the course of two years and eight months; and that Sablan had contacted Reddy about a notice. In New Quick, this court held that two, and possibly four, letters sent into the FSM were insufficient to confer personal jurisdiction over the sender. 9 FSM Intrm. at 130. Here neither the act of sending the single letter, nor its contents, suggest a sufficient basis upon which to conclude that Sablan was doing business in this jurisdiction. In addition, Yap submits a listing of known e-mails to which Sablan was a party, and which appear to have as their subject *Cecilia* related matters. However, none of these approximately 60 e-mails were sent by Sablan - they were either sent to him, or he was the recipient of copies of e-mails sent to others. There is no indication that he responded to any of these, and thus the e-mails are not persuasive. To conclude otherwise would mean that the potential exists in the information age for a putative party to be, figuratively speaking, e-mailed into a lawsuit by virtue of his status as an e-mail recipient.

Moreover no evidence exists that the charter agreement between Sablan and Pacific Petroleum created an obligation on Sablan's part to engage in any business activity in the FSM. As the Virginia court in Livestock Express, 1991 AMC at 567, noted, there was "no evidence before the court that [the] charters purport to bind Unimas [the vessel owner] to supply any services or things in Virginia." There are differences between the facts of Livestock Express and the facts of the case at bar. In Livestock Express, the vessel had come to port in Virginia only three times, whereas here the vessel operated in Yap waters beginning in April of 2001; allegedly discharged petroleum effluent into Yap waters; and ultimately grounded in the Yap harbor. However, it is not the *Cecilia*'s substantial contacts with the FSM that are in question (*in rem* jurisdiction over a vessel conferred by its physical presence in the jurisdiction, Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001)), but rather the extent of the contacts of Sablan as owner in the specific context of the bareboat charter and the relationship that results as a matter of law between the owner and the charterer under this type of agreement. On this point, the common thread running through both the case at bar and Livestock Express is the bareboat charter, which was a determinative factor in the Livestock Express court's analysis. Id. at 569.

Similarly, the existence of the bareboat charter in this case leads to the conclusion that personal jurisdiction over Sablan does not lie under the doing business provision of the FSM long-arm statute notwithstanding the presence of the *Cecilia* here.

## **II. Conclusion**

Sablan did not "ever purposefully avail[] [himself] of the privilege of conducting activities" in the FSM. Livestock Express, 1991 AMC at 571. Under all the facts and circumstances presented by the bareboat charter at issue here, for this court to exercise in personam jurisdiction over Sablan "would violate well established notions of fair play and substantial justice." Id. Sablan's motion to dismiss is granted. He is dismissed as a defendant.

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