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**IN THE HIGH COURT**
**OF THE**
**REPUBLIC OF THE MARSHALL ISLANDS**

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| **Eigigu Holdings Corporation**<br><br>Plaintiff,<br><br>v.<br><br>**Leander Leander and Lijun Leander**<br><br>Defendants. | **Civil Action No.: 2014-067**<br><br>**AMENDED MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISQUALIFY MASEK** |

## FACTUAL BACKGROUND

The request for disqualification of opposing counsel in this case arises from the very unusual circumstances of the case, under which opposing counsel appears to have, or to have had access to, business records that rightfully belong to Eigigu Holdings Corporation ("EHC"), but which EHC does not possess because these records were apparently never provided to EHC by its employee, Rubin Tsitsi. These records should include at least lease agreements, lease negotiations, and rental payment records.

The events that led to this case began with a letter to EHC, in care of Rubin Tsitsi ("Tsitsi"), from the landowners asserting lease violations, including nonpayment of rent and numerous other breaches/defaults. (Ex. A [2/15/12 Ltr. from David Strauss

to Eigigu].) For reasons that need not be restated here, EHC was unaware that it owned the underlying lease during the relevant period and, therefore, did not exercise supervision over Tsitsi, who was managing the subleases. (Benjamin Aff. ¶ 4.) It must be presumed that Tsitsi, who was accountable to no one, simply kept the money. (Benjamin Aff. ¶ 5.) In order to resolve the alleged defaults, EHC had to pay over $180,000 in back lease payments, payments that it was Tsitsi's responsibility to have paid. (Benjamin Aff. ¶ 8.).

As a result of the asserted violations, Tsitsi was eventually terminated by EHC and instructed to leave the premises. (Ex. B [7/12/12 Ltr. from Michael Aroi to Rubin Tsitsi].) Tsitsi refused to leave, however, even in the face of potential criminal charges related to these matters. (Ex. C [7/17/12 Ltr. from Eigigu to Rubin Tsitsi].) Instead, in November 2012, Tsitsi, through Masek, brought an action against EHC for "unpaid wages and entitlements." (*See* Civ. Act. No. 2012-202; *see also* Ex. D [8/2/12 Ltr. from Rubin Tsitsi to David Aingimea].)

EHC eventually had to take legal action to have him removed from the premises. (*See* Civ. Act. No. 2013-005.) Moreover, before Tsitsi, through Masek, filed the action against EHC for "unpaid wages and entitlements", the Republic of the Marshall Islands' Immigration Division issued a removal order against Tsitsi which was served on Tsitsi on August 7, 2012 (*See* Civ. Act. 2012-144). Masek represented Tsitsi in that Immigration Division action, filing an appeal on August 21, 2012. Masek remained as counsel to Tsitsi for the next two years on the Immigration matter until the Court denied the appeal on May 30, 2014, ordering Tsitsi to depart within 7 days of the date of the denial. At some point, allegedly due to non-payment of fees, Masek attempted to

withdraw from all representation of Tsitsi. The Court allowed Masek to withdraw from all but the Immigration action, Civ. Act. 2012-144. Unfortunately, either during those 7 days or shortly thereafter the May 30, 2014 Order to depart the Republic, Tsitsi died in Majuro. Neither of the other actions were resolved before Tsitsi's death, and the matters were eventually dismissed. (Benjamin Aff. ¶ 6).

After Tsitsi brought Civil Action No. 2012-202, he represented to EHC that he would provide copies of payments to prove that he had acted properly in conducting EHC's business. (Benjamin Aff. ¶ 7.) He did not provide those documents. (Benjamin Aff. ¶ 8.) In fact, during the entire period of these actions, EHC continued its attempts to obtain its business records, which Tsitsi, as its employee, had the responsibility for keeping, but never received anything at all. (Benjamin Aff. ¶ 8.) Rather, Tsitsi, undoubtedly with the knowledge and/or assistance of his attorney, John Masek, attempted to essentially blackmail EHC into acceding to his demands for additional wages and entitlements by withholding from EHC documents and records that properly belong to EHC until Tsitsi's demands were met. (Benjamin Aff. ¶ 7.) In his March 6, 2014 Answer to the Plaintiff's Complaint in Civil Action 2014-021, paragraph 12, Mr. Tsitsi stated that since his termination by Plaintiff on July 13, 2012, he was under no obligation to maintain custody of Plaintiff's records, and that when he vacated the [Eastern Gateway Hotel] premises (during the last week of December 2013) he left empty-handed. Yet in August 2012, after his termination he stated (*see* Ex. D) that he had Plaintiff's business records and was willing to work with the Plaintiff in proving payments he Tsitsi made on behalf of the Plaintiff.

It must be reasonably presumed that during the period of the litigation, Masek, as Tsitsi's attorney, in at least three different actions, at least had access to EHC's business records, which Tsitsi was charged with keeping, including lease and lease negotiations with Tsitsi by various lessees, including the Leanders, the defendants in the present case, and their rental payment records. In fact, it is reasonable to presume that Masek may have had, and may still have, actual possession of some or all of those records. As noted, Tsitsi died before the cases that he was a party to were resolved, and the only remaining source of information about the whereabouts and contents of those documents and records, and of Tsitsi's knowledge of and/or involvement in the matters reflected therein, is Masek.

The importance of the above facts in the present case might be briefly summarized as follows. Masek presumably has, or had access to, business records and documents that belong to EHC and that which bear on matters involved in its current dispute with the Leanders. It is known, for example, that the Leanders got a sweet deal from Tsitsi, under which their rent for approximately half the hotel was about the equivalent of only $6,000 per year. The fair market rental value for those premises at the time would have been approximately $120,000 to $170,000 per year. (Benjamin Aff. ¶ 9.) It must be assumed that Tsitsi got something out of the deal, and that there were improprieties and illegalities involved.

It is known, for example, that the Leanders entered into sub-subleases with a number of lessees and have allowed, if not promoted, prostitution, which constitutes illegal conduct, as well as a breach of the purported underlying lease between the Leanders and Tsitsi, and that the sub-sublessees have refused to allow inspection of the

premises, which is also a breach of the purported underlying lease. (Benjamin Aff. ¶ 11.) It is reasonable to assume that Tsitsi was aware of, if not involved with, these and other improprieties and illegalities and that Masek, as Tsitsi's attorney during all these related matters, was privy to that information.

In fact, Masek, in July 2011, also represented at least one of the sub-sublessees that was involved in organized gambling, and immigration and prostitution violations (Ex. E [July 8, 2011 excerpt from *Marshall Islands Journal*]). Although that case did not proceed because the violations were discovered in a raid that was found to be illegal for lack of a valid search warrant (Ex F [July 15, 2011 excerpt from the *Marshall Islands Journal*], Masek would likely have had documents and other records related thereto, records that, again, should have been forwarded to EHC as business records related to violations by the Leanders of the underlying lease, but that were never provided to EHC, and that would undoubtedly have had implications for Tsitsi had the cases against him gone forward, and that have implications for the present litigation as well. (Benjamin Aff. ¶ 13.)

What is not known is how much Masek knew about Tsitsi's negotiations and dealings, the illegal activities under the sub-subleases, and possible illegal activity by Tsitsi, what documents and/or information Tsitsi provided to Masek, and whether Tsitsi may have brought the documents and information to Masek for the purpose of seeking legal advice on how to avoid potential criminal charges or how to gain a tactical advantage on his claims for wages and entitlements. It may be assumed at the very least, however, that Masek is privy to information that is important to EHC in the present litigation, some of which is likely adverse to his former client, Tsitsi, some of which is

likely adverse to his current clients, the Leanders, and some of which may even implicate Masek, himself, in improper conduct.

The fact that Masek presumably possesses such information makes his disqualification as opposing counsel in the present case imperative for a number of reasons. First, because Tsitsi is dead, and because none of this information was ever given to EHC, Masek is the only known potential source available, and EHC will, therefore, have to question Masek, as a fact witness, on all related relevant fact questions. Second, because some of the questions and potentially some of the answers to those questions involve potential threats by Tsitsi against the Leanders or their sub-sublessees, or potentially improper bases for preferential treatment of the Leanders or their sub-sublessees, and whether Masek advised Tsitsi in any of these matters, Masek may well be required to provide answers that implicate him in illegal, or at least unprofessional, conduct. Third, because some of the questions and potentially some of the answers to those questions involve illegal activity by some of the Leanders' sub-sublessees, Masek may well be required to provide answers that would prejudice the Leanders' defense in this case.[1] Finally, it follows that if Tsitsi gave Masek documents and other records in order to seek Masek's legal advice, those documents might be covered by the attorney-client privilege, even though they belong to EHC and even though they would not otherwise be privileged in terms of the relationship between Masek and Tsitsi. If so, EHC could be foreclosed for obtaining the evidence that

[1]While it may be the case that EHC would not have standing to seek disqualification on this basis alone, it is certainly something that the court should consider in looking at the equities.

rightfully belongs to it and that will be necessary for proving its case against the Leanders. Clearly, therefore, the facts of the case require that Masek be disqualified as opposing counsel.

## ARGUMENT

### I. SINCE MASEK IS THE ONLY KNOWN POTENTIAL SOURCE AVAILABLE, EHC WILL NEED TO QUESTION MASEK, AS A FACT WITNESS, ON ALL RELATED RELEVANT FACT QUESTIONS INVOLVING TSITSI'S ACTIVITIES AND THE DOCUMENTS AND RECORDS HELD BY HIM

The ABA's Model Rules of Professional Conduct provide that a lawyer may not act as an advocate in a trial where he is likely to be a necessary witness, except in certain circumstances not relevant here. ABA Rules of Prof'l Conduct R. 3.7(a). Some of the analogous state rules broaden the Rule to include a situation in which the lawyer ought to be called as a witness—that is, whenever the lawyer's testimony could be significantly useful—based on the rationale that a lawyer's testimonial role may adversely affect his advocacy role. *See, e.g.*, *Mut. Life Ins. Co. of N.Y. v. Liberty Mut. Ins. Co.*, 746 F. Supp. 375, 376-78 (S.D.N.Y. 1990); *Healthcrest, Inc. v. Am. Med. Int'l, Inc. (AMI)*, 605 F. Supp. 1507, 1510-11 (D. Ga.1985).

As the court explained in the *Mutual Life Insurance* case, which involved a fee dispute:

> It may seem trite to remind lawyers that they are officers of the Court and that, as such, they are required to exercise independent professional judgment at all stages of a litigation, e.g., to evaluate with a dispassionate eye the validity and non-validity of the positions their client wishes them to take and to render professional advice to their client as to the best method of achieving the proper result at a minimum legal expense to their

> client. These judgments can only be made by independent counsel, not by counsel seeking to justify the very expenses she incurred for her client.

746 F. Supp. at 377.

As the court explained in *Healthcrest*, which involved a contract issue and questions surrounding what had transpired at certain meetings in which the lawyers who has helped draft the contract were present:

> [T]he plaintiff wants the counsel that represented him throughout the negotiations process to also represent him at trial. This Court feels great sympathy for the plaintiff who wishes to retain counsel whom it is familiar with and trusts. This Court also feels, however, that *the testimony of the plaintiff's attorneys in this case is crucially important and that the fact-finding process will be severely limited if the plaintiff's attorneys do not testify at trial*.

605 F. Supp. at 1511 (emphasis added).

Where the attorney has knowledge that is highly relevant and peculiarly in his possession, disqualification is imperative. *Kubin v. Miller*, 801 F. Supp. 1101, 1112 (S.D.N.Y. 1992).

These cases, of course, generally contemplate the situation where a lawyer will be called upon to testify *on behalf* of his client. *See id.* (lawyer who had unique knowledge of making and repudiation of contested agreement had to be disqualified). Where an attorney may be called *other than on behalf of his client* and his testimony may be prejudicial to his client, the rule applies with even greater urgency. *See Optyl Eyewear Fashion Int'l Corp. v. Style Cos.*, 760 F.2d 1045, 1048 (9th Cir. 1985) (and cases cited).

When, as here, the disqualification motion is brought against opposing counsel who will be called to testify, the courts generally require consideration of the following

factors: First, whether the proposed testimony would provide evidence that is material to the issues being litigated; second, whether the evidence could be obtained elsewhere; and, third, whether the anticipated testimony might be prejudicial to the attorney's client. *See Nat'l Bank of Andover, N.A. v. Aero Stand. Tooling, Inc.*, 30 Kan. App. 2d 784, 791-92, 49 P.3d 547, 553 (2002), *review denied* (Sept. 24, 2002).

The standard for showing prejudice is that the lawyer's testimony will be sufficiently adverse to his client that the client will have an interest in discrediting his own lawyer's testimony. *E.g.*, *World Plan Executive Council, U.S. v. Zurich Ins. Co.*, 810 F. Supp. 1042, 1047-49 (S.D. Iowa 1992). The testimony that will be sought from Masek concerning the records, documents, and dealings of Tsitsi will go to the very heart of the issues in the current litigation—whether there was impropriety in and surrounding and under the contract that Tsitsi purportedly made with the Leanders. The evidence cannot be obtained elsewhere because Tsitsi has died and the only remaining source of information about his records, documents, and dealings is his lawyer, Masek. Finally, the anticipated testimony is likely to be highly prejudicial to the Leanders, particularly if it shows that illegality was contemplated, or at least countenanced, by Tsitsi in entering into a sweet deal with the Leanders, at EHC's expense.

The courts are expected, even when a client claims substantial hardship from disqualification, to balance the interests of the client, the court, and the opposing party. *D.J. Inv. Group, L.L.C. v. Dae/Westbrook, L.L.C.*, 2006 UT 62, ¶ 12, 147 P.3d 414, 419. Since in the present case, Masek will be called upon to testify on fact issues about which he has unique knowledge and about records that are peculiarly in his knowledge or possession, without which EHC has no source of evidence about its own records and

affairs, the justification for disqualification is that much more imperative, particularly given that at least some of the information will almost certainly be adverse to the Leanders' interests in this litigation.

## II. SINCE THERE IS OTHERWISE PREJUDICE TO THE LEANDERS, AND AT LEAST AN APPEARANCE OF IMPROPRIETY, THE EQUITIES ALSO SUPPORT MASEK'S DISQUALIFICATION

This case involves the unusual circumstance that opposing counsel has evidence that rightfully belongs to EHC, but that EHC neither has nor has access to, because its employee failed and refused to forward documents and records related to EHC's operations to EHC and then provided them, or access to them, to his attorney instead, in litigation against EHC. As a preliminary matter, it should be clear that those documents and records are properly the property of EHC. As the courts have repeatedly stated, corporate records belong to the corporation and are held by whatever custodian only in an agency capacity, both during the custodian's employment and thereafter. *E.g.*, *Gloves, Inc. v. Berger*, 198 F.R.D. 6, 10-11 (D. Mass. 2000) (citing *United States v. White,* 322 U.S. 694, 699 (1944)). The custodian should not, therefore, be able to invoke any personal privilege related thereto. *United States v. Wujkowski*, 929 F.2d 981, 983-84 (4th Cir. 1991).

Nevertheless, it is also the law that a lawyer is not allowed to reveal information related to his representation of a client without that client's informed consent. ABA Model Rules of Professional Conduct, Rule 1.6(a). Similarly, a lawyer who has previously represented someone may not later represent another party in any substantially related matter in which the latter's interests are materially adverse to the

former's. ABA Model Rules of Prof'l Conduct R. 1.9(a). Finally, a lawyer is not to unlawfully obstruct another party's access to evidence or to unlawfully alter, destroy, or conceal evidence having potential evidentiary value. *Id.* R. 3.4(a). There is no question that the evidence sought by EHC relates to Masek's representation of Tsitsi and that Tsitsi, now dead, cannot give informed consent to its disclosure. There is also no question that Masek's representation of the Leanders in the present case involves matters that are substantially related to those in the Tsitsi litigation. There is no question, finally, that Masek either formally or informally approved of the obstruction of EHC's access to the documents and records sought.

In the present case, because Masek's representation of the Leanders grew out of events that occurred during his representation of Tsitsi, and because he has knowledge from having represented Tsitsi that is adverse to the Leanders' interests in this case, although the representation of Tsitsi and then the Leanders is not inherently adverse, there is an impropriety that will inevitably occur when Masek is required either to testify or to produce documents and records as to those events. Some of the evidence that will be sought from Masek, for example, whether testimonial or documentary, may well show improper conduct between Tsitsi and the Leanders and/or that illegal activity by some of the Leanders' sub-sublessees was known or even approved by the Leanders. As such, Masek will likely be required to provide evidence that would prejudice the Leanders' defense in this case.

Although the mere appearance of impropriety, without more, will not justify disqualification under the revised rules, a reasonable probability that a specifically identifiable impropriety actually occurred is sufficient. *See Bayshore Ford Truck Sales,*

*Inc. v. Ford Motor Co.*, 380 F.3d 1331, 1340 n.10 (11th Cir. 2004). In that case, the court found no actual impropriety because the party's only argument went to credibility. That case, however, gives insight into why this case demands an opposite result. The court explained:

> [W]hile the Dealers argue that Sutherland was in possession of information about Peach State's ownership, operation of dealership, tax matters, and the Reynolds' estate planning matters, the Dealers only posit that this information was worthwhile as impinging on matters of credibility. The dealers do not appear to allege that any information in Mr. Ganz' possession would have given Sutherland insight into the breach of contract claim.

*Id.*

There is no question that in the present case, Masek and Tsitsi had an attorney/client relationship covering numerous controversies, that Tsitsi appears to have been involved in improper and probably illegal activities that involved the lease agreements at issue in the present case and that led to those controversies, and that that relationship brings at least an appearance of impropriety to his representation of the Leanders, if not an actual conflict.

Moreover, some of the evidence to be sought from Masek may involve threats by Tsitsi against, or potentially improper or illegal bases for preferential treatment, of lessees. Masek may be required to provide answers that implicate ***him*** in at least unprofessional conduct. *See In re Vanderbilt (Rosner-Hickey)*, 57 N.Y.2d 66, 74-79 & n.8, 439 N.E.2d 378, 383-86 & n.8, 453 N.Y.S.2d 662, 667-70 & n.8 (1982) (cannot bootstrap all evidence received by attorney into attorney-client privilege); *cf. In re Kave*, 760 F.2d 343, 357-58 (1st Cir. 1985) (applying privilege to production of witnesses' own

notes that might have been incriminatory). Where an attorney has a personal interest in protecting his own, or his firm's, reputation and may be called as a witness on related matters, courts have found the conflict unwaivable, such that disqualification is required. *E.g.*, *United States v. Locascio*, 357 F. Supp. 2d 536, 556 (E.D.N.Y. 2004); *see also World Plan Executive Council*, 810 F. Supp. at 1049.

Finally, Masek will likely testify that Tsitsi gave him the contested documents and other records in order to seek Masek's legal advice and that they are, therefore, covered by attorney-client privilege, which Tsitsi cannot waive because he is dead, even though the documents and records belong to EHC, and even though they would not otherwise be privileged in terms of the relationship between Masek and Tsitsi. *See Lindley v. Life Inv'rs Ins. Co. of Am.*, 267 F.R.D. 382, 391-92 (N.D. Okla. 2010) (attorney-client privilege protects confidentiality of clients' communications in seeking legal advice), *aff'd in pertinent part*, Nos. 08-CV-0379-CVE-PJC, 09-CV-0429-CVE-PJC, 2010 WL 1741407 (N.D. Okla. Apr. 28, 2010); *Simon v. G.D. Searle & Co.*, 816 F.2d 397, 403-04 (8th Cir. 1987) (same); *cf. Vanderbilt*, 57 N.Y.2d at 74-79, 439 N.E.2d at 383-86, 453 N.Y.S.2d at 667-70 (discussing coverage of attorney-client privilege, which covers only disclosures necessary for, and made for the purpose of, obtaining legal advice and only if material would have been privileged if it had remained with the client). It does not appear that the documents and records provided by Tsitsi should be privileged, but if they are, or if Masek destroys or has destroyed them, EHC could be foreclosed for obtaining evidence that rightfully belongs to it and that will be helpful, if not critical, for proving its case against the Leanders, while Masek, if allowed to

represent the Leanders, will be able to conduct discovery and trial with an unfair advantage.

More importantly, even if Masek does not have the documents and records in his possession, he has knowledge from them and knowledge from representing Tsitsi about EHC's past operations that were carried out by Tsitsi without EHC oversight during the relevant time period, that is greater than EHC's own knowledge is and can ever be. As the court explained in a somewhat different context but in terms equally applicable to this one:

> A likelihood here exists which cannot be disregarded that Mr. Boyko's knowledge of private matters gained in confidence would provide him with greater insight and understanding of the significance of subsequent events in an antitrust context and offer a promising source of discovery. This likelihood is enhanced by recognition of the fact that the allegations of a complaint are not always an accurate appraisal of the relevant period of time in antitrust cases. Discovery and trial proof frequently introduce ramifications rendering earlier events relevant.

*Chugach Elec. Ass'n v. U.S. Dist. Ct. for Dist. of Alaska at Anchorage*, 370 F.2d 441, 443-44 (9th Cir. 1966).

Masek's possession of knowledge that should, by right, be evidence in EHC's hands, and EHC's inability to obtain that evidence, would place Masek at a decided tactical advantage and EHC, conversely, at a decided disadvantage. It is that same knowledge, moreover, that creates not only an impossibly difficult hurdle for EHC in making its case against the Leanders, even with the possibility of Masek's testimony and production of documents, but also creates divided loyalties because the interests of Tsitsi, his former client, are adverse to those of the Leanders, his current clients. *See In re Paradyne Corp.*, 803 F.2d 604, 609 (11th Cir. 1986).

The Court must keep in mind its duty to balance the interests of the client, the court, *and the opposing party*. *D.J. Inv. Group*, 2006 UT 62, ¶ 12, 147 P.3d at 419. The Court must also keep in mind that where there is any doubt about the matter, it should be resolved in favor of disqualification. *Locascio*, 357 F. Supp. 2d at 556. Clearly, therefore, the equities of the case require that Masek be disqualified as opposing counsel.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that both under the rules and under the equities of the case, EHC's Motion to Disqualify Masek should be granted.

Respectfully submitted,

Date: November 18, 2014

Gordon C. Benjamin, Plaintiff's Attorney

**CERTIFICATE OF SERVICE**

I, Gordon C. Benjamin, counsel to Plaintiff, do hereby certify that I emailed a copy of the above to Defendants' counsel, John Masek, at jemesq@hotmail.com, on November 18, 2014.

Gordon C. Benjamin, Plaintiff's Attorney

**IN THE HIGH COURT**
**OF THE**
**REPUBLIC OF THE MARSHALL ISLANDS**

**Civil Action No.: 2014-067**

**Eigigu Holdings Corporation**

Plaintiff,

v.

**Leander Leander and Lijun Leander**

Defendants.

**AFFIDAVIT OF PLAINTIFF'S COUNSEL**

I, Gordon C. Benjamin, do solemnly declare and affirm under the penalties of perjury that the matters and facts set forth below are true to the best of my knowledge, information and belief:

1. I am the Plaintiff's attorney of record in this matter.

2. The Plaintiff's current Chairman, Mr. David Aingimea, and Board, based in the Republic of Nauru, were unaware of Eigigu Holdings Corporation's ("EHC") holding in the Eastern Gateway Hotel and the Jable housing projects in Majuro at the time the current Chairman came into office in late 2011.

3. The Chairman and Board discovered their leasehold interest in the Eastern Gateway Hotel and Jable housing after doing an inventory, and interviews, with those with knowledge of the history of Nauru holdings around the world.

4. The Chairman and Board were unable to find any records or reports from Tsitsi regarding the Eastern Gateway Hotel or Jable housing project in any entity or organization in Nauru. The Chairman and Board determined that Tsitsi was operating unsupervised and did not account to anyone for many years until the point of the Board's investigation.

5. Since EHC could not find any records of receipts of revenue from sub-lessees at the Eastern Gateway Hotel, they presumed Tsitsi simply kept the money.

6. I was the attorney of record for EHC as Plaintiff in Civil Action 2013-005 (Rubin Tsitsi as Defendant, with John Masek as counsel); as Defendant in Civil Action 2012-202 (Rubin Tsitsi as Plaintiff, with John Masek as counsel); and, as Plaintiff in Civil Action 2014-021 (Rubin Tsitsi as Defendant, with Karotu Tiba as counsel, for Public Defender's Office). None of these actions were resolved as Tsitsi passed away in early June 2014.

7. In a letter dated August 2, 2012, Exhibit D to Amended Memorandum in Support of Plaintiff's Motion to Disqualify Masek filed on November 18, 2014, ("Amended Memorandum"), Mr. Tsitsi admitted having company records proving, among other things, that he had made payments to landowners, and maintained company records. When Tsitsi, through John Masek, filed a complaint against EHC for employment benefits in November 2012, Eigigu again asked for the company records, and Tsitsi refused.

8. From the time my clients had started asking for company records, and Tsitsi admitting he had company records, Tsitsi never provided any EHC company records to EHC.

9. In 2002, the Leanders paid Tsitsi approximately $200,000 in cash in return for a lease of essentially half of the Eastern Gateway Hotel. That lease was to cover the period approximately 2001 to 2035, essentially 33-34 years. The $200,000 for 34 years calculates to no more than $6,000 per year. The market value for that area is approximately $120,000 to $170,000 per year.

10. In late December 2013, after a few iterations, EHC entered into a final new lease with the traditional landowners, meeting the demand of the traditional landowners to pay alleged

non-payments of approximately $180,000; such payments for which Tsitsi said he had proof of payments, but refused to give such proof to EHC.

11. In 2012, 2013, and 2014, EHC has attempted to inspect, with reasonable notice, the premises that the Leanders subleased from Tsitsi, but has been re-buffed by the tenants, even after I talked to Leander Leander to instruct the sub-sublessees to facilitate inspection. This is a breach of the Leanders' sublease with Tsitsi.

12. EHC has recently uncovered evidence of illegal activities continuing on the premises that Leander subleased from Tsitsi.

13. On or around July 2-3, 2011, John Masek represented and defended sub-sublessees of the Leanders at the Eastern Gateway Hotel premises against evidence of illegal gambling and other illegal activities obtained by police in a raid conducted without search warrants. EHC has never seen any of those documents or evidence.

14. Further this Affiant sayeth not.

Date: November 18, 2014

Gordon C. Benjamin, Affiant
Attorney for the Plaintiff

**David M. Strauss, P.C.**
Attorney at Law

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February 15, 2012

Republic of Nauru
Nauru Local Government Council
Eigugu Holdings Corporation
c/o Ruben Tsitsi
Box 106
Majuro, MH 96960

Re: Default of Lease Agreement for the Eastern Gateway Hotel

Dear Mr. Tsitsi:

The purpose of this letter is to again inform you, on behalf of the current landowners of Remejon and Wotje wetos, to-wit: Jurelang Zedkaia, Hilda Samuel, Frances Laninbit, and Barbara Laninbit-Lobje, that the lessee is in default of the terms and conditions of the August, 1990, Lease Agreement for the Eastern Gateway Hotel, in that the lessee:

1. Failed to pay the annual rent on the premises on July 15 of each year (from July 15, 2004, to July 15, 2011) as required by Section 3(b) of the lease;

2. Failed to comply with all national and local government statutes, ordinances, and regulations as required by Section 5 of the lease;

3. Failed to prevent the commission of waste or nuisance on the premises as required by Section 6 of the lease;

4. Failed to diligently prosecute to completion the construction of the hotel complex on the premises, keep the hotel open for business, and manage the hotel in an efficient, orderly, and lawful manner as required by Section 12(a) of the lease;

5. Failed to keep and maintain the premises and improvements thereon, including adjacent walkways, in good, tenantable, sanitary, and neat order, condition, and repair as required by Section 13(a) of the lease;

6. Failed to promptly repair and restore damage or partial destruction of buildings and improvements on the premises to a condition as good or better than that which existed prior to such damage or partial destruction as required by Section 13(b) of the lease;

7. Failed to keep all improvements on the premises insured for full replacement value against loss or damage due to fire, vandalism, typhoons, and wave damage as required by Section 14(a) of the lease;

8. Failed to maintain personal injury liability insurance covering the premises and the improvements in the amounts of $500,000 for injury or death to any one person, $500,000 for injury or death of any number of persons in one occurrence, and $500,000 property damage liability as required by Section 14(b) of the lease; and

9. Failed to maintain worker's compensation insurance in the form and amounts as is required under the laws of Guam as required by Section 14[c] of the lease

Additionally, the landowners have received a copy of the October 12, 2010, letter from the Honorable Nauru Minister of Foreign Affairs Dr. Kieren Keke to the Honorable Marshall Islands Minister of Foreign Affairs John Silk relinquishing the land lease on the Eastern Gateway Hotel site.

Please be advised that the landowners demand that all of the above defaults be cured no later than Monday, March 19, 2012. If you have any questions, do not hesitate to contact me.

Sincerely,

David M. Strauss

cc: Jurelang Zedkaia
Hilda Samuel
Yolanda Lodge

Exhibit B

ORIGINAL

**Republic of Nauru**
**Department of Foreign Affairs & Trade**
*Tel: (674) 444 3133 Ext : 267*

13 July 2012

Mr. Rubin Tsitsi
Majuro, Marshall Islands 96960

Dear Sir,

This is to remind you that in accordance with Cabinet Resolution 128/2012 on 23rd April 2012, Cabinet decided to :

1. Terminate your services as the Eigigu Holdings Cooperation representative to the Marshall Islands with immediate effect.

2. Terminate your tenure as a representative of the Nauru Government to the Republic of Marshall Islands with immediate effect.

Further it was decided that Mr. David Aingimea will act as the representative of the Nauru Government to the Republic of the Marshall Islands and has full authority to represent the Government of Nauru and Eigigu Holdings Cooperation during this interim period.

The Department would appreciate your kind assistance and cooperation in facilitating the necessary arrangements to give effect to this decision.

Yours Sincerely,

Michael Aroi
**Acting Secretary for Foreign Affairs & Trade**

DEPARTMENT OF FOREIGN AFFAIRS
REPUBLIC OF NAURU
REPUBLIC OF NAURU

Exhibit C

COPY

Rubin Tsitsi
Majuro.

7/17/12

Rubin,

Please excuse my freehand letter as I do not have immediate access to a printer.

This is a final request to you to vacate 'Eastern Gateway property. This request gives you extra time until Friday 20th July 2012 for you to leave the property. You have stalled and done enough and it is time you did the right thing.

Please be advised that if this is not done and you have not vacated the property by then, we will have no choice but to take other action including the filing of criminal complaint against you in Nauru and apply for extradition for you to face those charges.

I write this as a final goodwill gesture seeking your co operation.

DAVID ANINGAWIYA
for Eigiga Holdings Corporation
and Nauru Government.

# Exhibit D

2nd August 2012

To: Mr. David Aingimea
Executive Chairman
Eigigu Holdings Corporation
Republic of Nauru

From: Rubin Tsitsi
Majuro Atoll, MH 96960

Re: Claims of Unpaid Wages and Entitlements. etc

My good Chairman,

I am in receipt of your letter dated 17th July 2012 re: vacating Eastern Gateway property

Firstly, I regret that was unable to meet with you and Minister(s) Marcus Stephen and Riddel Akua during your last trip to majuro but was bedridden due to swelling of leg.

I have accepted Mr. Mike Aroi official letter dated 13th July 2012 ending my tenure as representative of Nauru gov't and EHC IN Majuro.

I'd like to work out a reasonable time frame for me to vacate the premises and at the same time, wish to make certain claims of unpaid wages and entitlements etc. since my appointment and placement dated 28th June 1993.

Secondly, I have reviewed Strauss claim that annual rent for Eastern Gateway property was not paid since 15th July 2004, to 15th July 2011 pursuant to section 3(b) of the lease and I believe he had furnished you copy of default notice during your earlier visit with board member Dexter Bretcherfeld. I am prepared to work with you and provide whatever assistance or input during this interim period with copies of payments made from 15th July 2004 onwards to counter strauss ridiculous claims.

I look forward to your favourable response in due course.

Sincerely,

Rubin Tsitsi

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**US: Visa-free access to be reviewed: P3**

# Two more dead

## SUICIDE WATCH

The high rate of suicide is continuing to plague Majuro, with two suicides reported in the capital Sunday and Monday.

More than a week ago, a young woman in Delap attempted suicide, but was saved by neighbors before she died.

On Sunday, a 17-year-old girl committed suicide in her home in Small Island by hanging herself. The family brought the body to Majuro Hospital and officials there said the family said she had been drinking alcohol prior to the suicide.

The following day, also in Small Island, a 20-year-old man committed suicide in his home, also by hanging.

The attempted and completed suicides by two women over the past two weeks is suggesting a new trend developing of women ending their lives by suicide. Historically in the RMI, virtually all suicides have been by men.

# Happy July 4!

**In a beautifully red-white-and-blue decorated Melele Room, US Ambassador Martha Campbell and Foreign Minister John Silk cut the 235th birthday cake during the US Embassy-sponsored July 4 party on Tuesday this week. Photo: Suzanne Chutaro.**

# 30 jailed in raid

GIFF JOHNSON

"It was a flagrant violation of people's rights — failing to get warrants, busting into private homes and arresting people on the flimsiest of charges."

"The police did a splendid job and I hope such action will be periodically carried out in the future."

These are the opposite reactions of two lawyers to a big RMI government raid on the Eastern Gateway Hotel complex Saturday night that resulted in the arrests of an estimated 30 people, reportedly Asians and some Marshallese citizens.

Attorney John Masek, who is representing several of the people charged with overstaying their visas as a result of Saturday's raid, said the police and immigration officers used the pretext of investigating gambling to "bust down doors, go into every apartment, take everyone out and then go through drawers in people's rooms." He said police took $20,000 from various people in the apartments.

Masek, who got the High Court to hold an unusual Sunday hearing to set bail for seven of the people arrested, said he is planning to file suit against the government for what he said was a raid that violated the RMI Constitution.

But RMI Chief Prosecutor Tubosoye Brown complemented the national and local police, immigration and labor officers for "doing a beautiful job" with the operation

Continued page 2

# Masek says cops stole $20,000

From page 1

Saturday night.

"The Gambling Act gives police the right to go into any premises without a search warrant," Brown said in dismissing charges that the raid violated Constitution provisions requiring warrants for entry into people's homes.

Brown said the RMI and local officers "swarmed in" to the Eastern Gateway facility, and video taped the entire action. "They caught people gambling, confiscated gambling paraphernalia and seized cash," he said. "All those arrested were gambling."

But people at the apartments tell a different story.

Zhou Xian-you, who is a Marshallese citizen, said he was on one end of the second floor apartments when he heard noise on the other side. "So I went to check and I found a policeman breaking down a door," Zhou said. "I told him not to break it, I'll tell the people to open it for him. But he said, 'don't talk, you're under arrest,' and he kept kicking down the door."

He said police went into 32 apartments, breaking down many of the doors. "They would knock but then not give time for people to open the doors before they broke them down," Zhou said. People say they lost thousands of dollars. Zhou said the raid scared many of the people who were subject to arrest.

He said he was released around midnight after police were made aware he was a Marshallese citizen. Then, while he was waiting in the parking lot at the National Police station for others to be released, he was arrested a second time and put back in jail. After he was released later on Sunday and returned to the apartment complex, he found "all the doors open, some were broken, pillows and clothing strewn on the floor with dresser drawers hanging open."

Both Zhou and Chinese Association spokesman James Wang said they didn't have an issue with immigration officials inspecting people's alien permits and if they find over-stayers, they have every right to arrest them. But Zhou said he's been in many countries and never experienced a raidlike this, and Wang said he believes government officials who conducted the raid were "just misled by some people" and "mistakes occurred during the action." The Marshall Islands, Wang said, "is a country of freedom, democracy and civilization"

Brown said starting next week, after police reports are received this week, criminal charges will be filed against people arrested for illegal gambling.

He said the "seven or eight" visa over-stayers did not need to be charged in court, and can be deported directly.

"Most of the people arrested on visa violations were already served with deportation notices," Brown said. "We intend to enforce the law and remove them from the island. Some of them have over-stayed their visitor visas by as many as two years."

Brown was complementary of the joint RMI-MALGov operation on Saturday. "The law breakers have never seen the police conduct such a spectacular raid," he said. "I hope they continue it. We don't mind the complaints."

Brown added that the point of the raid was to get evidence of gambling, which they did, and the police were instructed not to violate the rights of people.

In response to the accusation that police broke doors, Brown said "if doors were broken, it was because people were refusing to open them." He said the complaints were just "a few lawyers trying to discredit the office of the Attorney General."

Attorney Philip Okney, who is representing two of the people arrested Saturday, said in court documents that "the facts surrounding the arrest of petitioners smack of numerous unlawful activities by law enforcement officials and possibly acting under improper legal advice. Police and Immigration officers without first obtaining a warrant to search, seize or arrest petitioners, entered with force the premises where petitioners were located."

Brown said it was ridiculous for lawyers of those arrested to be demanding bail at midnight within a few minutes of people being arrested. "I told the police to process those arrested, and any that are suspects, read them their rights and tell them they can have a lawyer present," he said. "But we can't do bail at midnight. Nowhere in the world would they do that. It would be irresponsible to tell the police to let them go (right after they were arrested) because they are suspected of criminal activity." He said the Constitution allows people to be held for 24-hours and this situation did not violate this requirement.

But Masek said his clients were told by police that Brown ordered them not to release anyone until Monday. This is why he appealed to the High Court for a Sunday bail hearing, which Chief Justice Carl Ingram organized Sunday morning.

## Sunday court hearing

High Court Chief Justice Carl Ingram convened an extraordinary Sunday hearing when seven Chinese nationals petitioned the court for bail to be set so they could be released from Majuro jail.

The seven were among a large group arrested Saturday night in a raid run by RMI and MALGov police, Immigration and Labor Division officials.

Ingram issued an order to Chief Prosecutor Tubosoye Brown Sunday morning to show cause why he should not release the seven petitioners on bail. But bailiffs could not locate Brown, so the hearing moved forward without any presence from the AG's office.

Ingram set bail at $300 for Xiangxiu Shen, Yonghua Cai, Xiumei Wang, Hongzia Zhao, Peng Xun, Jian Pin Wang, and Xiaolian Chen.

Xian-You Zhou

Ex F
pg 1 of 1



# Police raid 'unconstitutional'

Two veteran RMI political leaders who rarely agree on anything this week said emphatically that the police and immigration raid on apartments at the former Eastern Gateway Hotel was a serious violation of the RMI Constitution.

"This was an abuse of authority by the Attorney General's office and the police," Speaker Alvin Jacklick told the Journal this week. "It needs investigation from the Nitijela." "This is against the people's rights under the Constitution," Kwajalein Senator Tony deBrum told the Journal. "Whether they are Chinese, Japanese or from Timbuktu. If the police do it to them, they can do it to us, too."

Both Jacklick and deBrum, who frequently cross swords in the political arena, said a warrantless invasion of people's apartments violates the Constitution's Bill of Rights. "We're not safe in our homes (if this type of action is allowed)," Jacklick said. But Chief Prosecutor and Acting Attorney General Tubosoye Brown dismissed the complaints.

"The subject of the police/immigration/labor raid has been over flogged," he said. "Feedback to our office from the public has been most encouraging. People knew that the spot that was raided was a gambling haven and a glorified brothel and were happy about the successful outcome of the operation, despite claims that police stole $20,000 and made away with several hanging underwear of Chinese ladies." He said he is working on "the filing of the charges against culprits and the deportation of the overstayers caught" that night.

The police action at the Eastern Gateway "indicates the police can go into anyone's house — the President's, my house," said Jacklick. "It must not be allowed."

The Constitution Convention in 1978-79 drafted the Bill of Rights to "ensure the rights of people and their property are protected from illegal and improper actions," the Speaker said. "As members of parliament, we have a duty to ensure the Constitution is upheld."

# Mayors are meeting at ICC this week

President Jurelang Zedkaia placed a challenge on outer island mayors Tuesday: "come up with workable solutions to address the hardships faced by outer island communities."

Speaking at the opening ceremony of the 19th Annual Marshall Island Mayors' Association Conference, Zedkaia echoed remarks delivered by Minister of Internal Affairs Norman Matthew who recognized the vital role outer island mayors' play for their community.

"The mayors are the eyes, ears and voice of the outer islands," he said. While recognizing the great strides mayors have achieved in targeting aid projects such as solar and water projects to their communities, Matthew highlighted that when it comes to hardship, it is the outer islanders who are always the first to suffer whether it be due to a lack of transportation or high food cost.

The two-day Mayors' conference is leading up to the 11th Annual Executive Leadership Conference, which will be held from July 20 to 22.

# Minister Kedi pleads 'no contest' to charges

Minister Kenneth Kedi pleaded "no contest" to three misdemeanor charges and he was given a suspended jail sentence and ordered to pay a $1,000 fine by Chief Justice Carl Ingram on Monday.

As part of a plea deal with the Attorney General's office, Kedi pleaded no contest to two misconduct in public office charges and one count of petit larceny. Seven other charges were dismissed by government prosecutor Tion Nabau. A 30-day jail sentence was suspended as was a $500 fine provided he pay a $1,000 fine and be of good behavior through September 6.

In comments issued to the Journal, Kedi said: "While I am still of the belief that as Senator for Rongelap Atoll, I was entitled to claim the refunds, the manner in which I obtained the refund may not have been proper. In any event, given that the charges were brought practically on the eve of filing nominations for the general elections and my official duties, and the fact that I may have gone about claiming the refunds in an improper way, I felt that entering a plea of no contest to three of the misdemeanor charges and the dismissal of all the felony charges was in my best interest.

"As noted by the Journal in previous editions, I am the first sitting minister to be charged under our criminal justice system and while not particularly pleased with this fact, I nevertheless welcome this development because I am a firm believer in the principle that 'no person is above the law.'"

Speaker Alvin Jacklick.

# Nitijela back on August 8

The Nitijela will open its last session of 2011, and its last session of the current four-year Nitijela term, on the second Monday of August.

"Speaker Alvin Jacklick has scheduled the opening of the Nitijela for 8 August," Clerk Gary Ueno confirmed this week.

# Jeh man stabbed; RMI police make arrest

National police investigators joined a Ministry of Health emergency voyage to Ailinglaplap to help a victim of an alleged stabbing.

On Sunday, around 8:15am a report was called into the Marshall Islands Police Department Central Headquarters in regards to an alleged assault and battery with a dangerous weapon," Captain Eric Jorbon told the Journal.

The Ministry of Health's "Ejmour 2" vessel was dispatched later the same day with medical staff and police investigators on board. Late on Sunday, a Marshallese male, 53 years of age, was arrested and brought into custody at the Majuro jail on July 11 at around 10:20pm for assaulting another Marshallese male, of the same age, in Jeh, Ailinglaplap Atoll.

"Investigators are currently investigating the circumstances of this allegation and will be submitting a comprehensive report to the Attorney General's Office once investigations are complete," Jorbon said.