

FILED

OCT 23 2017

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

<p>BERNIE HITTO and HANDY EMIL,</p> <p>Plaintiffs,</p> <p>v.</p> <p>RAEIN TOKA and NANCY CALEB (aka NANCY PIAMON) on behalf of BILLY PIAMON,</p> <p>Defendants,</p> <p>v.</p> <p>ALDEN BEJANG, AUN JAMES, AMON JEBREJREJ and CALORINA KINERE,</p> <p>Defendants/Counterclaimants.</p>	<p>CIVIL ACTIONS 21-80 and 1986-149</p> <p>ORDER DENYING DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR POST-JUDGMENT INTEREST</p>
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Scott Stege, counsel for plaintiffs and counsel for defendant in Case No. 2003-059
James McCaffrey, counsel for defendants/counterclaimants
Roy Chikamoto, counsel for proposed intervenors
Rosalie Konou, counsel for proposed intervenors
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On May 22, 2015, Associate Justice Dinsmore Tuttle (“Judge Tuttle”) issued a judgment in this matter. The judgment determined the alap and senior dri jerbai interest holders on Aibwij, Monke and Lojonen wetos. It also lifted a long-standing preliminary injunction and directed that the funds held in the Bank of Guam trust account be distributed.

Judge Tuttle's judgment was affirmed by the Supreme Court on July 28, 2017.

Defendant/Counterclaimants ("DCs") were and are the prevailing parties as to Monke and Lojonen wetos.

On August 24, 2017, DCs filed a motion asking the Court to award them post-judgment interest from May 22, 2015. Plaintiffs opposed the motion. Oral arguments were heard on October 9, 2017.

Awards of post-judgment interest are governed by 30 MIRC §102, which states, "A judgment for the payment of money . . . shall bear interest at the rate of nine percent (9%) a year from the date it is filed." The award of post-judgment interest is statutorily mandated if the judgment is a "judgment for the payment of money."

DCs argue that Judge Tuttle's judgment is a judgment for the payment of money. They primarily rely on *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288 (9th Cir. 1995). In that case, the trial court awarded the plaintiff a judgment in the amount of \$184,000 plus costs and pre-judgment interest. Defendants appealed but were unsuccessful. Plaintiff then asked the trial court to award post-judgment interest on the previously awarded pre-judgment interest. The trial court refused. On appeal, the Ninth Circuit reversed. Because the trial court judgment was a judgment for the payment of money, the *Air Separation* opinion is not particularly helpful here.

Although plaintiffs fail to support their opposition with pertinent caselaw, they do state what seems obvious – a money judgment is a decree in which one person is judicially determined to owe money to another person. Judge Tuttle's judgment does not do that.

The Nebraska Supreme Court, in *Welch v. Welch*, 519 N.W.2d 262, 274 (NE 1994), defines a judgment for the payment of money as “one which is immediately due and collectible where its nonpayment is a breach of duty on a judgment debtor.” See also *Fry v. Fry*, 775 N.W.2d 438, 443 (NE 2009). Judge Tuttle’s judgment does not require plaintiffs to pay anything to anyone, and consequently, their failure to do so would not be a breach of their duty.

DCs argue that the portion of Judge Tuttle’s judgment that orders the distribution of funds from the Bank of Guam trust account is a judgment for the payment of money. In *J.M. Robinson-Norton Co. v. Corsicana Cotton Factory*, 31 Ky.L.Rptr. 527 (Ky. Ct. App. 1907), the Kentucky Court of Appeals held that the trial court judgment was a judgment for the payment of money, but then distinguished a judgment directing the distribution of money held in a court fund, stating, “An order for the distribution of a fund in court is not an order for the payment of money by the appellant. * * * So such orders have been held not [to be] judgments for the payment of money.”

Judge Tuttle’s judgment is a judgment determining customary land titles. It is not a judgment for the payment of money.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS:

1. DCs’ motion for post-judgment interest is denied.

DATED this 23rd day of October, 2017.

BY THE COURT:



COLIN R. WINCHESTER
Associate Justice