

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