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REPUBLIC OF THE MARSHALL ISLANDS

Supreme Court 2017-05

IN THE SUPREME COURT
REPUBLIC OF THE MARSHALL ISLANDS

JERAKOJ J. BEJANG, AUN JAMES; and
HERING DREBON, GEORGE INOK
Defendants/Counterclaimants, Appellants

v.

BERNIE HITTO and HANDY EMIL.
Plaintiffs, Appellees

On appeal from the High Court
H.Ct. CA 21-80 and 1986-149 (Consolidated)
Hon. Colin R. Winchester, Justice

Answering Brief of Appellees

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I. STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED.....

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I. The May 22, 2015 Judgment was not a "judgment for payment of money

- A. Marshall Islands law only provides for Post Judgment Interest when the Judgment provides for payment of money by a debtor**
- B. Judgments adjudicating an interest in Land are not Money Judgments**
- C. By denying Post Judgment Interest motion, High Court considered US Case law and held the Judgment a Judgment determining customary land titles, and not a judgment for payment of money.**

II. Judge Tuttle's Judgment was explicit, for it clearly adjudicated land interests rather than entered a money judgment.

- A. A reference to "Fund", by itself in a Judgment, does not make the Judgment a Money Judgment for Post Judgment Interest (30 MIRC §102.) purposes.**

III. The High Court's 23 October 2017 order acceptance of 1/3 per weto equal distribution formula, as not the Tuttle Judgment which adjudicated interests in land.

IV. Both equity and law make Post Judgment Interest wrong in this Case.

- A. By appealing the Bikej Case Plaintiffs relied on the High Court Judgment of Justice H.D. Johnson and the well supported doctrine of three wetos referred to as one weto.**
- B. Appellants confuse "shall" with what a Money Judgment is.**
- C. This Court should sustain the High Court Order denying the Motion for Post Judgment Interest**

VII. CONCLUSION

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Certificate of Service

LIST OF AUTHORITIES CITED OR REFERRED TO HEREIN

Lobo v. Jejo, 1 MILR (REV.) 224, 225 5

Dribo v. Bondrik, et al , 3 MIR 127, 135 (2010) 5

Welch v. Welch, 519 N.W. 2d 262, 274 (NE 1994) 5

Fry v Fry, 775, N. 2d 438, 443 (NE 2009) 6

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Air Separation, Inc. Underwriters at Lloyd’s of London, 45 F.3d 288, 290 (9th Cir. 1995)..... 6

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STATUTES

30 MIRC §102 4, 5, 9,10 11

30 MIRC §103 4, 5, 9,10,11

OTHER RESOURCES

Black’s Law Dictionary, 5th Ed. 197911

Appellees, by and through Counsel Scott H. Stege, submit this ANSWERING BRIEF based upon Appellants Opening Brief following the High Court's denial of a motion for Post Judgment Interest from the date Judgment was entered by Judge Dinsmore Tuttle, in the Bikej Case, in the High Court in the merger of CA 21-80 and CA 1986-149, dated May 22, 2015.

I. STATEMENT OF GROUNDS ON WHICH JURISDICTION HAS BEEN INVOKED

No objection.

II. STATEMENT OF THE CASE

In September 1980 Appellee's late-predecessors filed "Abner v. Jibke" as Civil Action 21-80 in to judicially confirm their claim to inherited superior Morjenkot land rights in the three Bikej Island wetos of Aibwij, Monke and Lojonen, at Kwajelein Atoll. Those three wetos were historically and traditionally referred to simply as "Aibwij". The dispute went to court when Iroj Lojelan Kabua's announced land rights in Aibwij belonged, not to Abner's bwij, but to a man named "JIBKE". The case was later refiled as C.A 1986-149, consolidated with CA. 21-80, and in 1997 Appellants intervened. Following a joint High Court Traditional Rights Court trial on Ebeye in 2001 and TRC opinion, the case was adjudicated by High Court Judge H.D. Johnson in 2002. Final adjudication of all land rights was hand down in in a final Judgment by Judge Dinsmore Tuttle on May 22, 2015 alab and drijerbal rights in Appellees for one weto (Abwij) Appellees, and alab and drijerbal rights in the other two (Lojonen and Monke) in Appellants. On appeal, this this Court sustained Judge Tuttle's judgment. Appellants sought a High Court Order for Post Judgment Interest. The High Court denied the motion ruling that Judge Tuttle's judgment ending "The Bikej Case" was not a money judgment but instead a judgment adjudicating an interest in land . Appellants appealed.

III. Points on which Appellant relies- Appellees comment on Appellants Points.

A Judgment adjudicating land rights is just that. It is not a Judgment to pay money by one of the parties to another one of the parties. It does not create a debtor/creditor responsibility which, if becomes entitles the creditor to seek enforcement for payment due but unpaid.

IV. Standard of Review

Appellees do not object that the Standard of Review in this appeal is *de novo* a matter of law.

However, Appellees do object to the statement that the appeal rests entirely on an interpretation of the Post Judgment Interest statute, 30 MIRC §102 alone for, in the present case, any interpretation 30 MIRC §102 must also fairly consider 30 MIRC §103, for Judgments adjudicating and interest in land, which Appellants fail to mention or cite in their Opening Brief. Appellants contention that Tuttle's Judgment was a Money and not an adjudication of land interests is at best misleading.

V. QUESTIONS PRESENTED

Questions presented by Appellants are restated as:

VI. ARGUMENT

- 1. There no provision at Marshall Islands law which permits application of post judgment interest stemming from a Judgment which adjudicates an interest in Land, e.g. the Tuttle Bikej Case Judgment.**
 - A. No Marshall Islands cases support Appellants claim of post judgment interest taken from a Judgment adjudicating an interest in land.**
 - B. The fact that Kwajalein Land Payments were attributable to the lands in dispute in the Bikej case, does not define the Tuttle Judgment for other than what it is; a Judgment adjudicating an interest in land, and not a money judgment.**

Appellants cite only two Marshall Islands cases, *Lobo v. Jejo* and *Dribo v. Bondrick*, and neither one is offered in support of Appellants contention Judge Tuttle's Judgment at Bikej was a

money judgment from which Post Judgment Interest must be follow. Both of Appellants cited Marshallese cases are only offered as support of the claim for the *de novo* standard of Review. The other case Appellants cites are United States cases with little if any application to the Bikej Case where no payments were ordered in satisfaction of the Judgment. While the phrase “Money follows the land” is a catchy, it fails to illustrate how Judge Tuttle’s 2015 Judgment qualifies as a money judgment. Instead that that judgment is all about land interests and lifting injunction. Moreover, in arguing for Post Judgment Interest, Appellants cite not a single Marshalls or Trust Territory or Micronesian cases supporting their appeal.

C. High Court Judge Colin R. Winchester did not error in citing applicable US Cases in support of holding Judge Tuttle’s Judgment was not a money judgment.

Appellants attempt to take exception to the three cases cited by Judge Winchester in arriving at his Order denying the motion for post-judgment interest. Although Appellants note the three cases as being “less applicable”, Judge Winchester clearly demonstrated how they were indeed applicable in demonstrating what Judge Tuttle’s Judgment is and what it is not in relation to a claims it was a Money Judgment.

1. Welch v. Welch, 519 N.W. 2d 252, 274 (NE 1994) Judge Winchester noted that this case defines a judgment for the payment of money as “ one which is immediately due and collectable where its nonpayment is a breach of duty on a judgment debtor” noting the Judge Tuttle’s judgment required plaintiff’s to pay anything to anyone, and consequently their failure to do so would not be a breach of their duty.
2. Fry v. Fry, 778 N.W.2d 438, 443 (NE 2009) this case was cited by Judge Winchester for the same proposition with respect to a payment immediately due and collectable with nonpayment a breach of duty on a judgment debtor.

3. J.M. Robinson-Nortan Co. v. Corsicana Cotteon Factory, 31 Ky.L.Rptr. 527 (Ky.Ct. App. 1907). Appellants argue that the portion of Judge Tuttle’s judgment which ordered release of funds following 30 days, from the Bank of Guam account, make the Tuttle Judgment a judgment for the payment of money. However, the Kentucky Court of Appeals first held that the trial court was a judgment for the payment of money, but then distinguished a judgment directing distribution of money held in a court fund, stating, “An order for 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.”

In addition to the three enumerated cases cited in Judge Winchester’s denial of the motion, the High Court also dealt with the case Appellants signaled as their primary support of the Motion for Post Judgment Interest. *Air Separation, Inc. v. Underwriters at Lloyd’s of London* 45 F. 3d 288, 200 (9th Cir. 1995) involved payment under an insurance policy resulting from the loss by theft of avionics equipment, Appellants. The case involved payees, bonds ordered, payments and sanctions. The original money judgment provided for under 28 U.S.C. in that case made post judgment interest in that case mandatory and the provides ample policy reasons for doing so. However it is for that very reason Judge Winchester’s opinion noted that Appellant’s reliance on the *Air Separation Case* was “not particularly helpful here.” Because in stating the obvious,¹ it highlighted the fact that a money judgment is all about a holding one person judicially responsible for paying money to another person. That characterization formed Judge Winchester’s conclusion and why *Air Separation* inapplicability is understandable, for Judge Tuttle’s Judgment did not create that payment responsibility.

D. The three US state court decisions cited by Appellants having a land connection are not adjudications of land per se though Appellants assert they are.

The cases cited in Appellants Opening Brief as being more applicable than Judge Winchester's cited cases, are actually no more on point and less helpful on distinguishing whether the Tuttle Judgment is about Money or about adjudicating land interests.

1. McGriff v. McGill, 62 So.2d 28,29 (1952) A Jacksonville, Florida case involved a judgment for a deed, trustee powers, building space rental value, income and profits on commercial real property, makes it clearly a money judgment. The questions before the Supreme Court were 1) the legal effect of a deed to a trustee, and 2) the Courts power to enter judgment for the rental of the premises in a Quiet title proceeding. The opinion of the Supreme Court had little if anything the Judgment in the Bikej Case where Judge Tuttle resolved a land dispute and in so doing, lifted a Trust Fund injunction allowing for the distribution in conformity with the Judgment for the three disputed wetos.
2. Kuapuhi v. Pa, 31 Haw. 623 *1939) This was a case before the Hawaii Supreme Court over a writ of error and failure to timely pay a bond covering a \$117.40 judgment of costs judge Tuttle included in her judgment no order regarding costs but instead, it was an adjudication of interests in land. While the lower courts judgment for costs was a money judgment, the application of how this case relates to this Appeal is not explained.
3. Moser v. Thorp Sales Corp. 334 N.W. 2d 715 *1983). While Appellants point to this Iowa case as "most directly on point", it is undeniably the most complicated, multiple party case of the three. While it involved a Fund held in trust and a multiparty dispute over calculations and entitlements and priority to receive interest

and rents from the fund from which court costs, witness fees associated with the litigation would be paid in respect to the original purchase price for 285-farm in Iowa. The complexity of the case, which had gone up to the Supreme Court of Iowa thrice, is set up to and the accumulated interest held by the Clerk of Courts and the multiple parties including banks and Finance Corporations, make it as convoluted as the Tuttle Judgment is direct and clear however both Judgments arguably have land and a fund in common. While the Iowa case terms are present does not, however, make Judge Tuttle's judgment in the Bikej Case a Money Judgment. Indeed, it is simply the clearest case for why the Tuttle Judgment is NOT a money judgment. In the Court affirmed entitlements to principal amounts being withdrawn from the Fund as well as interest was appropriate. None of those holdings can be applied to the Tuttle Judgment which was, as noted, was an adjudication of an interest in land.

What is applicable in this Appeal in terms of whether or not Judge Tuttle's Judgment amounted to a Money Judgment, is the statutory provision in the Enforcement of Judgments Chapter, 30 MIRC §103 Judgments Affecting Land. Judge Tuttle's judgment named no winners or losers, no debtors or creditors, and designated no party responsible making payment in accordance with the Judgment. Nor did the Judgment direct payment of costs of suit, attorney fees or other payments, key signposts in money judgments, creating responsibility for a "payment of money" as that phrase is used in the current Money Judgment statute.

While Appellants correctly note a Money Judgments section was also contained a "shall" provision way back to the 1966 Trust Territory Code, no Trust Territory period Marshalls District cases, or other Micronesia-area cases are cited. Appellants also fail to cite the

changes made in 30 MIRC Chapter 1 on Enforcement of Judgments, amended in 2009 by the Enforcement of Judgments (Amendment) Act, 2009. (P.L 2009-27). It was at that time language changes were added, making the distinction between Money Judgments and Judgments affecting Land statutorily clear. It was in 2009 the Nitijela enacted the Enforcement of Judgments (Amendment) Act restoring the Land Judgments section following its repeal in 2003 and making clear the distinction in the two Judgments. [Both [both money and land judgment sections are set forth below.]

§102 Money Judgments ~~Every~~A judgment for the payment of money shall be a lien upon the personal property of the judgment debtor and shall bear interest at the rate of nine percent (9%) a year from the date it is filed. **The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment, as provided in Part II of this Act.** (added amended portions highlighted in bold)

§103 Judgments affecting land A judgment adjudicating an interest in land shall, after the time for appeal has expired without notice of appeal being filed or after any appeal duly taken has been finally determined or after an order has been entered that an appeal shall not stay the judgment, operated the release or transfer of any interest in land in accordance with the terms of the judgment when filed, ~~when a copy thereof, certified by the Clerk of Courts, or any judge of the court, is recorded in the office of the Clerk of Courts.~~ (Strikethrough portion showing 2009 version, highlight mine.)

Since the Tuttle Judgment neither designated, established, adjudicated, or assigned to any judgment debtor(s) any obligation for the payment of money, Judge Tuttle's judgment could not be construed as a Money Judgment; rather, it is simply a Judgment adjudicating interests in land. Judge Winchester referred to Defendant/Counterclaimants ("DC's) in his Order as "prevailing parties as to Monke and Lojonen wetos," and not as judgment creditors for payments due from unspecified debtors. Judge Tuttle's judgment resolved a long standing land interest dispute while clearly demonstrating a considerable effort at reconciliation, understanding among the parties those involved in the three

wetos. In doing so it assigned no costs of suit, attorney fees or interest in respect to any payments to be paid, the hallmark of money judgments.¹ In denying Appellants' Post Judgment Interest motion, Judge Winchester ruled Judge Tuttle's Judgment had simply determined the alap and senior dri jerral interest holders on three wetos and lifted a long standing preliminary injunction directing that funds held at Bank of Guam trust account "may be distributed according to the judgment entered above, subject to a 30 day stay. No that is not hardly a Money Judgment. Black's provides help here.

Blacks's Law Dictionary, 5th Ed. 1979, page 907, defines "Money Judgement:

A final order, decree or judgment of a court by which a defendant is required to pay a sum of money in contrast to a decree or judgment of equity in which the court orders some other type of relief; e.g. injunction or specific performance.

Judge Tuttle's Judgment did not require a defendant, intervenor or any other party to pay a sum of money or pay costs of suit. Rather the Judgment specified a distribution procedure, in accordance with the judgment, for release of trust funds held by the Clerk of Courts at Bank of Guam consistent with the land interest adjudicated in the Judgment. Judge Tuttle's Judgment is logically and appropriately a Judgment described under Title 30, Civil Remedies and Special Proceedings, Chapter 1, Enforcement of Judgments, Section 103, Judgments affecting land.

¹ Judge Tuttle wrote, at page 3 of her lengthy and considered judgment, "Today the High Court enters final orders concerning this dispute, achieving a resolution in law. And while the Supreme Court has final authority to adjudicate this controversy, it still remains for the Irojlaplap and his people to achieve a resolution in fact. Many may disagree with the Court's adjudication, but the Irojlaplap, and his successors, are still owed a duty of loyalty are still owed a duty of loyalty by those whose interests are recognized by this adjudication. Only if these people honor their duties to one another, may justice be served."

II. The post-judgment calculation, be it characterized as “ministerial in nature” or otherwise, fails to alter the fact that “This was not a judgment about Funds”, but rather a Judgment adjudicating an interest in land.

A. A Judgment as to “Funds” and authority for the Clerk of Courts to distribute from a Fund, does not convert a Judgment adjudicating an interest in land into a Money Judgment.

Appellants cite Black’s Law Dictionary definition of “funds” attempting to make the case for a money Judgment understandable. The “trust” definition is unhelpful as demonstrating that by stretching the more narrow meaning and specificity of Money Judgment debtor and payment aspects of such a judgment emerge. Of course that was not Judge Tuttle’s intent and it is clearly not the language she chose.

III. The Division of Funds, unlike the designation of the Holders of alab and senior dri jermal land interests on the three wetos, not adjudicated in Judge Tuttle’s Judgment.

To the extent Appellants seek to demonstrate Judge Tuttle’s Judgment was a Money Judgment by showing it “had to do with” a Court held Trust Fund and that “Fund” was subsequently divided though in a manner not provided for in the Judgment itself, that effort fails. The Judgment was simply not an allocation or a payment to creditors pursuant to a money Judgment.

IV. Equity is not on the side of Appellants in respect to this claim for Post-Judgment Interest.

A. Appellees decision to Appeal was not intended to “deprive Monke and Lojonen” claimants from “their money” but the same claimants continue to receive Kwajalein Land Payments notwithstanding claims of need.

Counsel argues that time is money compensated with Post Judgment Interest making it absolutely necessary there be a finding of a Money Judgment in order for the application of Post

Judgment Interest. Neither Law nor Equity in the Bikej Case justify construing Judge Tuttle's judgment as a Money Judgment and Judge Winchester came to the same conclusion. If equity rests on the side of Appellants or the side of Appellees, the "cost of the fight for justice" over 37 years, one may consider the threat (i.e. lose big) to take the remaining Aibwij portion of the Trust Fund to pay off, if successful, this Post Judgment Interest appeal, to satisfy those Monke and Lojonen Appellants and counsel who already have received well in excess of \$1M following this Case and from other Bikej Wetos while Aibwij Appellees, have received nothing by way of any distribution from the Bikej Case ever.

Judge Dinsmore Tuttle did not rule all that favorably for Plaintiffs. However Judge Tuttle was highly competent, professional, comprehensive and conscientious in the Judgment issued May 22, 2015. Her judgment was carefully reasoned, made no mention of Costs, money payments, creditors or debtors nor payments. From the Trust Fund, however, established by the Court and located at Bank of Guam on Majuro, Appellants have received well over \$1M while the Appellees have received nothing though with post judgment filings involving Aibwij weto, Plaintiff's case continues today. Appellants have benefited greatly.

B. No law or Black's Legal Dictionary citation describing the word "shall" can justify Appellants' claim they are owed Post Judgment Interest.


C. Post Judgment Interest calculation is unjustified although Counsel for Appellants uses it at times as though it was. other than as a consistent method of keeping regular tabs on what an Interest figure would look like to a Court, to Counsel, to Clients as though if it is done often enough it may grow into something real.

Neither S.Ct. Rule 37 nor the 30 MIRC §102 Money Judgment supports reversal of Judge Winchester's High Court denial of Appellants motion for Post Judgement

Interest applied from the date of Judge Dinsmore Tuttle's May 22, 2015 Judgment in the Bikej Case.

IX. CONCLUSION WITH SPECIFIC RELIEF SOUGHT

Requesting that this Court confirm the High Court Order of Justice Winchester denying the motion for Post Judgment Interest and awarding Plaintiffs-Appellees such reasonable relief as this Court may see fit to grant.

 6 May, 2019

Scott H. Stege
Attorney for the Plaintiffs (Appellees)

X. STATEMENT OF RELATED CASES

Cases captioned as Civil Actions No. 2003-059 and CA 2017-223 Formally merged for all purposes, would mean that were this Court to allow Post Judgment Interest, that outcome would affect cases directly in that they seek the same distribution of the funds attributable to Aibwij alab and Senior Dri Jerbal Interests from the Trust Account as do Plaintiffs/Appellees. Currently those captioned cases are scheduled for Trial in the Traditional Rights court in October, 2019.

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CERTIFICATE OF SERVICE

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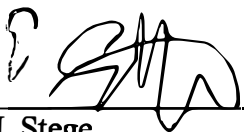
I, Scott Stege, certify I will file this date at the Majuro Courthouse the Appellees' ANSWERING BRIEF in Supreme Court 2017-05 and will serve either by e-mail or postal mail as soon as possible after filing, a Filed Stamped copy on counsel below.

JAMES McCAFFERY
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Dated: 6 May 2019



Scott H. Stege
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