Supreme Court 2017-05

IN THE SUPREME COURT
REPULIC 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

REPLY BRIEF OF APPELLANT

James McCaffrey, M.I. Adm. # 103
James@McCaffreyFirm.com
THE MCCAFFREY FIRM, LTD.
RRE (BoMI) Bldg., 2nd Flr.
P.O. Box 509
Majuro, MH 96960, Marshall Islands
Tel: +692-625-6000
Fax (Virtual): +1-619-839-3778

Attorney for Defendants/Counterclaimants-
Appellants

16 MAY 2019

SUBJECT INDEX

INDEX OF AUTHORITIES

Cases

Statutes

Rules

ARGUMENT

I. The 22 May 2015 Judgment was both as to 'money' and 'land'

A. This is a Question of First Impression

Appellees criticize Appellants for not including Trust Territory or Marshall Islands cases interpreting 30 MIRC §102 and 30 MIRC § 103[1]. Before filing the Opening Brief, counsel for Appellants looked for such cases but did not find any.

Presumably, if Appellees knew of such cases they would have cited them in support of their contentions in their Answering Brief or, if contrary authority, disclosed them to the Court and distinguished them. Appellees cite no TT or RMI cases themselves.

Appellants believe the issues in this Appeal are questions of first impression and important both to them and future litigants.

B. Sections 102 and 103 must be read together

The High Court could not have determined who was entitled to the money in the Fund at the Bank of Guam and provide for the "payment of money" without first determining who was entitled to the land, i.e. "adjudicating an interest" in land.

Appellees look at sections 102 and 103 of the Enforcement of Judgments Act, 30 MIRC 1, in isolation and set up straw men. Conceivably, one could have scenarios that only involved money or only involved title to land. For example:

"A" borrows $100 from "B" and does not pay it back. B sues and obtains a judgment for $100. This is a pure judgment for payment of money.

---

[1] Appellants note Appellees pointing out minor amendments to 30 MIRC 1 not included in the Opening Brief and counsel apologizes to the Court and opposing counsel for this oversight. However, the amendments do not change the substance of Appellants' argument.

"C" and "D" both claim to be the Alab of weto "X" on Outer Island "Y". C sues D seeking a determination that he is the rightful Alab. No money is sought. The Court's judgment adjudicates only an interest in land.

The real world is not so simple. Marshall Islands land cases – especially Kwajalein land cases – involve both money and land. They are inextricably tied together. Determining the holder of the land interest automatically determines who is entitled to any money derived from the land. The money does follow the land.

C. The High Court justices did enter judgments as to money

Appellees' claim that the judgment was only as to land but, as pointed out in the Opening Brief, Justice Tuttle's judgment explicitly stated "Funds being held in trust in that account may be distributed according to the judgment above, subject to a thirty-one day stay." JUDGMENT, p.37.

The actual amount due naturally flowed from this judgment. In his 23 October 2017 Distribution Order, Justice Winchester found:

"7. Each of the wetos is entitled to one-third of the balance."

He noted in footnote 2, "Counsel agree that the three wetos are approximately the same size, and that the distribution of the funds in equal thirds is appropriate."

Again, the Iowa Supreme Court case of *Moser v. Thorp Sales Corp.*, 334 N.W.2d 715 (1983) is most directly on point. It involved funds being held by the Clerk of Court pending resolution of the underlying land issues. The Iowa Supreme Court at 719 found:

> The trial court's determination that the Mosers were entitled to those principal amounts from the Fund were the equivalent of money judgments in Mosers' favor, and the trial court properly determined that those amounts should bear interest at the rate applicable to judgment rather than an enhanced rate of interest.

II. Equity as well as Law requires the payment of Post-Judgment Interest

A. Equity favors the wronged Appellants

Appellees argue that it is inequitable to pay Appellants post-judgment interest because Appellants "have already received well in excess of $1M following this case," page 13 Answering Brief.

What Appellants received was not some unearned prize. They received *their* money. They received their money after being deprived of it for 37 years since the beginning of this litigation in 1980. Two generations came and went being deprived of their lease payments from their land, those payments intended by the United States as a substitute for the sustenance they would have otherwise derived from their land.

Appellants were at all times recognized by the Iroijlaplap as the rightful landowners as well as by the Trust Territory government. Nevertheless, Plaintiffs sued in 1980 and various TRO's prevented Appellants from receiving their money.

Appellants would have received their funds in 2015, 31 days after the 23 May 2015 judgment, but Plaintiffs 'doubled-down' by filing an appeal in Supreme Court 2015-04. Section 103 operates, in effect, as an automatic stay so funds were not released until after the Supreme Court determined 2015-04 and Justice Winchester entered his Distribution Order in 2017.

Plaintiffs did not raise a single appealable, *legal* issue in their appeal.

As discussed in *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 290 (9th Cir. 1995), costs of the loss of the use of a money judgment should not be borne by the injured [party] but the "[party] whose initial wrongful conduct invoked the judicial process and who has the use of the money judgment throughout the period of the delay." Failure to award

post judgment interest would create an incentive for [parties] to exploit the time value of money by frivolously appealing or other delaying payment, *Air Separation* at 290.

This is exactly what Plaintiffs did with their frivolous appeal in SCt. 2015-04.

B. Law requires post-judgment interest

The statute per the 2009 amendments reads:

> "A judgment for the payment of money shall be 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 entered."
>
> 30 MIRC §102.

Per the *Moser* court, the High Court's determination that Appellants were the land interest holders of two of the three wetos and they were entitled to two-thirds of funds were money judgments in their favor. A lien against Plaintiffs interest in the remaining funds arose by operation of law as well as the obligation to pay post-judgment interest at nine percent (9%) a year from the date entered.

CONCLUSION

Defendants/Counterclaimants-Appellants respectfully request that:

1) the Order of High Court denying post-judgment interest be vacated and that post-judgment interest be awarded to Appellants;

2) Interest from the date of judgment (22 May 2015) to date of disbursement (30 November 2017) be allowed pursuant to Supreme Court Rule 37 to be calculated based on two-thirds of the total payments held by the Clerk of Courts for these three wetos on date of judgment;

3) Interest be allowed on the unpaid interest since the date of fund disbursement, i.e. 30 November 2017 to date; and

4) This matter be remanded to the High Court with instructions for the calculation of such amounts.

Respectfully submitted,

Digitally signed by James McCaffrey
DN: cn=James McCaffrey, o=McCaffrey Firm, ou, email=James@McCaffreyFirm.com, c=MH
Date: 2019.05.16 14:32:36 +12'00'

James McCaffrey
Attorney for Def./Counterclaimants-Appellants

CERTIFICATE OF SERVICE

I hereby certify that an exact duplicate of this document was duly served upon the below-named person(s) on the date below written by sending him a copy by

(**x**) by Email to the address listed opposite his name

Scott H. Stege, Esq.
P.O. Box 403
Majuro, MH 96960

(692) 625-3207 Fax
Attorney for Plaintiffs
scottstege@gmail.com

Dated: 16 May 2019
Majuro Atoll

By: /s/ *James McCaffrey*
James McCaffrey
Attorney for Appellants