IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

BERNIE HITTO and HANDY EMIL,

Plaintiffs-Appellees,

vs.

JERAKOJ J. BEJANG, AUN JAMES; and HERING DREBON, GEORGE INOK,

Defendants/Counterclaimants-Appellants.

Supreme Court No. 2017-05

OPINION

FILED
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REPUBLIC OF THE MARSHALL ISLANDS

BEFORE: PLASMAN, Acting Chief Justice; SEABRIGHT,* SEEBORG,** Associate Justices

PLASMAN, Acting C.J., with whom SEABRIGHT, A.J. and SEEBORG, A.J. concur:

I. INTRODUCTION

This appeal arises out of post-judgment proceedings in a case involving land rights in Kwajalein Atoll and the consequent distribution of money held in trust during the pendency of the case. Specifically, Defendants/Counterclaimants-Appellants (hereafter "Appellants") appealed the High Court's decision of October 23, 2017 denying their request for an award of post-judgment interest on their portion of the money distributed from the trust account. The decision of the High Court is affirmed.

* The Honorable J. Michael Seabright, Chief United States District Court Judge, District of Hawaii, sitting by designation of the Cabinet.

** The Honorable Richard Seeborg, United States District Court Judge, Northern District of California, sitting by designation of the Cabinet.

II. PROCEDURAL BACKGROUND

The underlying case began in the courts in 1980, disputing land rights on certain parcels in Kwajalein Atoll. These lands were leased by the United States for use as part of its base located in Kwajalein, and the lease money was subject to a preliminary injunction to hold the funds in trust during the pendency of the action. After a lengthy battle that shuttled between the trial and appellate courts, judgment was entered on May 22, 2015. That decision was affirmed by this court on July 28, 2017. Subsequently in response to post-judgment motions, the High Court responded in two orders on October 23, 2017: an Order Partially Lifting Preliminary Injunction and Approving Partial Distribution of Trust Funds, and an Order Denying Defendants/Counterclaimants' Motion for Post-Judgment Interest. Appellants filed their notice of appeal with regard to the second order on November 21, 2017.

III. THE MAY 22, 2015 HIGH COURT JUDGMENT WAS NOT A "JUDGMENT FOR THE PAYMENT OF MONEY" FOR THE PURPOSES OF 30 MIRC CH.1 § 102, ENFORCEMENT OF JUDGMENTS ACT

Section 102 of the Enforcement of Judgments Act provides for the award of post-judgment interest. The May 22, 2015 High Court judgment did not fall under the provisions of Section 102 of the Enforcement of Judgments Act because the judgment did not identify a "judgment debtor" and because the judgment did not include a quantification of the amounts to be paid to the prevailing parties.

A. The May 22, 2015 Judgment Did Not Identify A "Judgment Debtor"

30 MIRC § 102, "Money Judgments," of the Enforcement of Judgments Act states:

> 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 the money may be a writ of execution or an order in aid of judgment, as provided in Part II of this Chapter.

Appellants contend the 2015 Judgment was such a judgment for payment of money because it directed that the money held in trust pursuant to court order be distributed in accordance with the determination of land rights of the disputed wetos. They argue "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." (Appellants Reply Brief, at p. 2)

While Appellants focus on the mandatory language regarding the imposition and rate of interest, Appellants ignore the portion of the statute that the judgment "shall be a lien upon the personal property of the judgment debtor."[1] In this case, the Appellees are not judgment debtors. The dispute was about money held in trust from a third party to be paid to the appropriate landowners. In the event funds were not available for distribution, the judgment would not be a lien against the Appellees in this case. There was no determination or judgment that the Appellees owed money to the Appellants. For the purposes of Section 102, the 2015 Judgment was not a judgment for the payment of money. Appellees were not required to pay any money to the Appellants. Appellees do not "owe" Appellants money pursuant to the judgment.

United States law supports this conclusion. In the United States, the enforcement of money judgments in federal court is addressed at 28 U.S.C. § 1961(a) which states in relevant part: "Interest shall be allowed on any money judgment in a civil case recovered in a district court." There, as here, the term "money judgment" is not defined in statute. In *Miminco, LLC v. Democratic Republic of the Congo*, 79 F. Supp. 3d 213, 218 (2015), this provision was interpreted:

[1] Appellants, in their Opening Brief, apparently relied upon language in the relevant section as it existed prior to 2009, which did not include the "judgment debtor" language. Appellees pointed this out in their Answering Brief and Appellants acknowledged the error in their Reply Brief.

> By statute, post-judgment interest must be imposed on "any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961(a). "A money judgment consists of two elements: '(1) an identification of the parties for and against whom judgment is being entered, and (2) a definite and certain designation of the amount which plaintiff is owed by defendant.'" *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1101 (9th Cir. By 2011) (citation omitted).

In the present case, the 2015 Judgment did not designate an amount "which plaintiff is owed by defendant."

The term "money judgment" has also been construed in the context of United States bankruptcy laws. In *Penn, Terra Ltd. v. Dep't of Envtl. Res.*, 733 F.2d 267, 274-75 (3d Cir. 1984), the court discussed at length the interpretation of the term:

> In using the words "enforcement of a money judgment," Congress did not provide any definition for that term. Its meaning must therefore be gleaned from the commonly accepted usage and from whatever indications of congressional intent we find persuasive. "Where Congress uses terms that have accumulated settled meaning under either equity or common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329, 101 S. Ct. 2789, 2794, 69 L. Ed. 2d 672 (1981). In attempting to arrive at a working definition of "enforcement of a money judgment," therefore, we must look to legal custom and practice to determine what was traditionally understood to be a recovery for money damages. This empirical approach is mandated by the fact that, in using the term "enforcement of a money judgment," Congress left us with a term whose words, standing alone, do not convey the legislative intent, and indeed are merely a shorthand notation for common practice as it has gradually developed in our legal history.
>
> In common understanding, a money judgment is an order entered by the court or by the clerk, after a verdict has been rendered for plaintiff, which adjudges that the defendant shall pay a sum of money to the plaintiff. Essentially, it need consist of only two elements: (1) an identification of the parties for and against whom judgment is being entered, and (2) a definite and certain designation of the amount which plaintiff is owed by defendant. It

> need not, and generally does not, contain provisions for its enforcement. *See generally* 49 C.J.S. Judgments, §§ 71-82 (describing proper form of money judgment).

Again, there must be a designation of an amount "which plaintiff is owed by defendant." *See also In re Dow Corning Corp.*, 237 B.R. 380, 386 (Bankr. E.D. Mich. 1999) (in determining whether order pursuant to § 502(b) of Bankruptcy Code constituted "money judgment" from which post-judgment interest would run, court stated "[a]s one might expect, a 'money judgment' consists of three elements: it must be a judgment; entitling the plaintiff to a specified sum of money; and **such entitlement must be against an identifiable party**") (emphasis added); *Eaves v. Cty. of Cape May*, 239 F.3d 527, 533 (2001) (quoting *In Re Dow Corning Corp*.).

Based upon this analysis, the 2015 Judgment is not a "money judgment." The requirement that there be a party against whom payment may be demanded has not been met. Specifically, there is no designation of an amount which "plaintiff is owed by defendant." In this case, Justice Tuttle determined Appellants were the proper landowners for the disputed wetos. However, there was no determination that Appellees "owed" appellants any amount of money. The appropriate amount of money from the trust account was ordered to be distributed to appellants. The fund consisted of rent money due the proper landowners from the United States, through the Republic of the Marshall Islands ("RMI") government. It was not money from appellees. Appellees were not required to pay Appellants any money and did not have use of the money.

While the United States statute differs slightly from the RMI statute in speaking of a "money judgment" rather than a "judgment for the payment of money," the language of the RMI law suggests a similar construction is appropriate in this case. 30 MIRC § 102, "Money Judgments," provides in relevant part: "A judgment for the payment of money shall be a lien

upon the personal property of the judgment debtor . . . ." The statute specifically speaks to a burden placed on the "judgment debtor." There is no judgment debtor in the present case. While Appellants prevailed in the case and received the money from the trust fund representing the rent paid for their land by the United States through the RMI government, there was no finding of monetary liability on the part of Appellees to Appellants. Appellees are not judgment debtors to Appellants. The 2015 Judgment was not a judgment for the payment of money for the purposes of 30 MIRC § 102.

B. The 2015 Judgment Did Not Identify A Quantifiable Amount of Money to Be Paid to Appellants

As noted above, in order to qualify as a "money judgment" or "judgment for money," a judgment must include a "definite and certain designation of the amount which plaintiff is owed." *Penn, Terra Ltd.*, 733 F.2d at 275 (citing 49 C.J.S. Judgments, §§ 71-82) (emphases omitted). The 2015 Judgment did not include a quantification of the amount to be paid to the prevailing parties. Appellants argue in their Opening Brief, Section III at page 7 that because the funds were divided into equal shares, the amount due was "certain." However, the determination that each weto was entitled to a third of the balance in the fund was not made until Justice Winchester's October 23, 2017 Distribution Order, which stated "[e]ach of the wetos is entitled to one-third of the balance." That determination was based upon counsel's agreement that the three wetos were approximately the same size, referenced in Justice Winchester's October 23 Order at footnote 2 (cited by Appellants in their Opening Brief). Appellants suggest the calculation was "ministerial in nature" (Opening Brief, Section II, page 6) and thus the amount due was certain at the time of the 2015 Judgment. However, the determination that the wetos were of approximately the same size and that the area would serve as the basis for allocation was not made until Justice Winchester's October 23 Order. Appellees remark on this at page 12 of

their Answering Brief, noting that the division of funds was divided in a manner not provided in Justice Tuttle's Judgment. Because the 2015 Judgment did not identify a specific amount to be paid to Appellants, it did not constitute a "judgment for the payment of money" for the purposes of 30 MIRC § 102.

Appellants argue equity favors their position, that it is not fair for them to be denied the use of the money following the entry of judgment. *Air Separation, Inc. v. Underwriters at Lloyd's of London,* 45 F.3d 288 (1995), cited by Appellants, speaks to this issue. "Costs of the loss of use of a money judgment should not be borne by the injured plaintiff, but by the 'defendant whose initial wrongful conduct invoked the judicial process and who has had the use of the money judgment throughout the period of delay.'" *Id.* at 290 (internal cite omitted.) Post judgment interest is predicated not just upon the denial of use of the money to the prevailing party, but also upon the use of the money by the losing party. In the present case, neither Appellants nor Appellees had use of the money during the period of the appeal.

The equities in the determination of post-judgment interest were addressed in *Eaves,* where the Third Circuit considered the lower court's award of post-judgment interest on attorney's fees dated from the date of the judgment on the jury's verdict (which awarded attorney's fees in an amount to be determined) as opposed to the later date when the amount of attorney's fees was quantified. 239 F.3d at 529-541. In holding interest ran from the later date, when the amount was quantified, the appellate court stated: "Even though denial of interest from verdict to judgment may result in the plaintiff bearing the burden of the loss of the use of the money from verdict to judgment, the allocation of the costs accruing from litigation is a matter for the legislature, not the courts." *Id*. at 536 (quoting *Kaiser Aluminum & Chem. Corp. v. Bonjorno,* 494 U.S. 827, 834-35 (1990)). Similarly, in the present case, if the policy to award

post judgment interest is to apply to a judgment which falls outside of the existing statute for enforcement of a judgment for money, it is a decision for the Nitijela, not the courts, to make.

IV. CONCLUSION

The 2015 Judgment is not a "judgment for payment of money" for the purposes of 31 MIRC § 102, "Money Judgments." The 2015 Judgment does not identify a judgment debtor and does not quantify the amounts to be paid pursuant to the judgment.

In light of the forgoing, the October 23, 2017 Order Denying Defendants/Counterclaimants' Motion for Post-Judgment Interest of the High Court is AFFIRMED.

DATED: September 4, 2019 */s/ James Plasman*
James Plasman, Acting Chief Justice

DATED: September 4, 2019 */s/ J. Michael Seabright*
J. Michael Seabright, Associate Justice

DATED: September 4, 2019 */s/ Richard Seeborg*
Richard Seeborg, Associate Justice