

FSM SUPREME COURT TRIAL DIVISION

HERBERTSON SANTOS,)	CIVIL ACTION NO. 2018-022
)	
Plaintiff,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA)	
and FSM DEPARTMENT OF JUSTICE,)	
)	
Defendants.)	
_____)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Beauleen Carl-Worswick
Associate Justice

Trial: October 3, 2019
Decided: January 8, 2021

APPEARANCES:

For the Plaintiff: Danally Daniel, Esq.
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For the Defendants: Craig D. Reffner, Esq.
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HEADNOTES

Contracts – Breach

The plaintiff has the burden of proving each element of a breach of contract claim by a preponderance of the evidence. The plaintiff must show that there is 1) a valid contract, 2) a material breach, and 3) damages resulting from the breach. Santos v. FSM, 23 FSM R. 117, 122 (Pon. 2021).

Contracts – Formation; Contracts – Necessity of Writing

A written contract is not required to make the contract valid but can be used to provide evidence of the existence of a contract. A promise made on sufficient consideration, even if not in writing, is valid and enforceable. Santos v. FSM, 23 FSM R. 117, 122 (Pon. 2021).

Contracts – Necessity of Writing

An oral contract or a parol contract is a contract or modification of a contract that is not in writing or is only partially in writing. Santos v. FSM, 23 FSM R. 117, 122 n.3 (Pon. 2021).

Contracts – Formation

A contract is a promise between two parties for the future performance of mutual obligations. In order for the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Santos v. FSM, 23 FSM R. 117, 122 (Pon. 2021).

Contracts – Formation

An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. An offer must be definite in form and must be communicated to the offeree. Santos v. FSM, 23 FSM R. 117, 122 (Pon. 2021).

Contracts – Formation

Acceptance is an offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed. Santos v. FSM, 23 FSM R. 117, 122 (Pon. 2021).

Contracts – Definite Terms

A contract's terms must be clear and definite. Santos v. FSM, 23 FSM R. 117, 123 (Pon. 2021).

Contracts – Consideration

Consideration is something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act. Consideration, or a substitute such as promissory estoppel, is necessary for an agreement to be enforceable. Santos v. FSM, 23 FSM R. 117, 123 (Pon. 2021).

Contracts – Consideration

Consideration is that which the performance is exchanged for. Santos v. FSM, 23 FSM R. 117, 123 (Pon. 2021).

Contracts – Breach

When one party fails to perform their promise, there is a breach of contract. The material breach of a contract justifies the injured party's halt of performance under the contract. Santos v. FSM, 23 FSM R. 117, 123 (Pon. 2021).

Contracts – Breach

For a breach to be material, it must relate to a matter of vital importance or go to the contract's essence. A breach is material when the breach deprives the injured party of the contract's benefit. Santos v. FSM, 23 FSM R. 117, 123 (Pon. 2021).

Contracts – Breach

The defendants' refusal to pay the plaintiff for the work he performed is a material breach of their contract because it is a matter that goes to the essence of the contract and it deprives the plaintiff of the benefit of the contract. Santos v. FSM, 23 FSM R. 117, 123 (Pon. 2021).

Contracts – Modification

When the contract terms restricting alcohol consumption were not communicated to the recruits until they were in Yap; and, when the terms that were communicated were modified to only require that the recruits refrain from consuming alcohol once the Yap games began, the plaintiff was bound by only by the

modified version that was communicated to him and the other recruits. Santos v. FSM, 23 FSM R. 117, 124 (Pon. 2021).

Contracts – Definite Terms

For a contract term to be binding, there must be mutual assent or a meeting of the minds. Santos v. FSM, 23 FSM R. 117, 124 (Pon. 2021).

Contracts – Damages

A trial court has wide discretion in determining the amount of damages in a contract case, but the court cannot award damages when there was no evidence at trial that would make those amounts sufficiently certain for a court to award those damages. Santos v. FSM, 23 FSM R. 117, 124 (Pon. 2021).

Contracts – Breach; Contracts – Damages

In a breach of contract case the non-breaching party is entitled to damages that will put the party in the position he or she would have been in if not for the breach. Santos v. FSM, 23 FSM R. 117, 124 (Pon. 2021).

Contracts – Damages

When the plaintiff failed to put forth compelling evidence at trial that would make those amounts that he claims he is owed sufficiently certain for the court to award him those damages, and when the record shows that the other recruits were paid twice, first for \$834 and second for \$550, the court will only award the plaintiff, who was already paid \$834, what was paid to the other recruits, the remaining \$550. Santos v. FSM, 23 FSM R. 117, 124 (Pon. 2021).

Constitutional Law – Involuntary Servitude

While the term "servitude" means the state of a person who is subjected, voluntarily or otherwise, to another person as his servant, only involuntary servitude is prohibited, and the determination of what constitutes "involuntary servitude" shall be made in the context of well established Micronesian customs because there may be duties which the individual owes according to the customs of his community which may not constitute either slavery or involuntary servitude. Santos v. FSM, 23 FSM R. 117, 124 (Pon. 2021).

Constitutional Law – Involuntary Servitude

Peonage, which is prohibited by the FSM Constitution, is a condition of enforced servitude by which the servitor is compelled to labor in liquidation of some debt or obligation, either real or pretended, against his will. Santos v. FSM, 23 FSM R. 117, 124 n.6 (Pon. 2021).

Constitutional Law – Involuntary Servitude

The prohibition of involuntary servitude has particular meaning within the FSM's historical context of forced labor by former foreign administering authorities. Santos v. FSM, 23 FSM R. 117, 125 (Pon. 2021).

Constitutional Law – Involuntary Servitude

For a plaintiff to support his constitutional claim of slavery or involuntary servitude, he must at least show that he was compelled or forced against his will to provide services for the defendants' benefit. Santos v. FSM, 23 FSM R. 117, 125 (Pon. 2021).

Contracts – Damages; Remedies – Quantum Meruit

The unjust enrichment doctrine cannot be applied when there is an enforceable contract between the parties. Santos v. FSM, 23 FSM R. 117, 125 (Pon. 2021).

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

This matter came before the Court for trial on October 3, 2019. Danally Daniel, Esq. of the Micronesian Legal Services Corporation appeared on behalf of Plaintiff Herbertson Santos ("Plaintiff Herbertson"), who was also present before the Court. Assistant Attorney General Craig D. Reffner, Esq. represented the Defendants, Federated States of Micronesia and the FSM Department of Justice (herein collectively referred to as the "Defendants"). Mr. Reffner was assisted by Assistant Attorney General Robert B. LaManna. The Court provided translation for the witnesses when needed.

As a preliminary matter, Mr. Reffner disclosed to the Court that he would not be working for the FSM Department of Justice ("FSM DOJ") sometime in the future and that he would later be working at the FSM Supreme Court. Mr. Reffner also indicated that this was communicated to the opposing counsel and that no objections were raised as to his representation.

I. BACKGROUND

Plaintiff Herbertson brought three causes of action against the Defendants: 1) Breach of Contract; 2) Involuntary Servitude in violation of FSM Const. art. IV, § 10; and 3) Unjust Enrichment.

The Court heard testimony from Plaintiff Herbertson himself; Johnny Santos, former Chief of FSM National Police ("Chief Santos"); Nickson Abraham, Kitti Municipal police officer; Brenson Penias, Captain at the FSM National Police; Rihne Abraham, Administrative Officer of the FSM DOJ; and, Joses Gallen, former Secretary of the FSM DOJ ("Secretary Gallen").¹

Before presenting its case the defense moved the Court to dismiss the case under FSM Civil Rule 41(b), which permits defendants, after the plaintiff has presented its evidence, to "move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." The Court denied the motion and the defense proceeded to present its case. Both parties presented their closing arguments at the closing of the trial.

II. FINDINGS OF FACT

The Court finds that the testimony and evidence presented during trial established the following facts:

1. In July of 2018 the Micro Games were held in the State of Yap ("Yap games"). The FSM DOJ recruited several sworn-in state and municipal officers to assist in the Yap games. Among those recruited to provide assistance were Kitti Municipal police officers Nickson Abraham and Rotik Immanuel; and, Plaintiff Herbertson, who was the prosecutor for the Kitti Municipal Government.
2. Prior to the Yap games, Secretary Gallen instructed the FSM National Police, specifically Chief Santos, to brief the recruits on their task. Secretary Gallen gave, among others, the following instructions: a) a strict policy against the consumption of alcohol - that the officers and recruits were not to consume alcohol at any time, whether on or off duty while attending to the Yap games; b) that the officers and recruits would be transported on one of the FSM patrol boats (herein the "vessel") to Yap and were also restricted from drinking alcohol on the vessel; and c) that each recruit would

¹ At the time of the trial, Joses Gallen was serving as a consultant to the FSM DOJ. As of the date of this order, he has been reappointed as the Secretary of the FSM DOJ.

be paid for services provided. There was no written contract signed between the recruits and the Defendants.

3. Prior to departure, Chief Santos met with the recruits and explained to them their work details, the conditions and the payment for their services. Chief Santos, however, did not mention anything about Secretary Gallen's restrictions on alcohol consumption. The recruits departed from Pohnpei on or about July 2, 2018 for Yap, on the vessel, and arrived in Yap about a week after departure. Chief Santos also departed with the recruits and was assigned as the head of security for the Yap games.
4. While in Yap, Chief Santos allowed the recruits to have few drinks and have some fun if they wished to while off duty and prior to the opening of the Yap games. Chief Santos also instructed the recruits that alcohol consumption would be prohibited once the games began. Many of the recruits, including Chief Santos and Plaintiff Herbertson, did occasionally consume alcohol when off duty prior to the commencement of the Micro games.
5. In one instance, Chief Santos was drinking at a bar and later got into a car accident. As a result, Chief Santos was relieved of his duties and FSM National Police Captain Brenson Penias ("Mr. Penias") took over as the head of security. Mr. Penias reported the incident to the FSM DOJ and was instructed to conduct an investigation. During his investigation, Mr. Penias discovered that several other recruits, including Plaintiff Herbertson, were drinking at the same bar where Chief Santos had been drinking prior to the accident. As instructed, Mr. Penias submitted a list of the recruits who completed the security services to the FSM DOJ. On that list, Mr. Penias marked the names of the recruits who were drinking alcohol the night Chief Santos got into a car accident.
6. After the incident with Chief Santos's accident, Plaintiff Herbertson continued to perform his duties as a security officer for the Yap Games. Plaintiff Herbertson was never pulled off from work or told by the Defendants to stop working. Plaintiff Herbertson continued to work as a security officer until the Yap games ended and they returned to Pohnpei.
7. Payments for the services provided by the recruits were made on two occasions. First, about two weeks after arriving in Yap, all the recruits including Plaintiff Herbertson each received a check in the amount of \$834.00. Second, sometime after arriving back in Pohnpei, each of the recruits received a second check in the amount of \$550.00. Plaintiff Herbertson and other recruits whose names appeared in Mr. Penias' list as drinking alcohol the night Chief Santos got into the car accident did not receive the second check.

III. CONCLUSIONS OF LAW

A. *Breach of Contract*

Plaintiff Herbertson's first cause of action against the Defendants is for breach of contract. Plaintiff Herbertson alleged in his Complaint that the Defendants verbally promised to pay the recruits an amount of \$69.50 per day and that they would be paid prior to departing for Yap. The records show that the recruits were paid twice, first in the amount of \$834.00 and second in the amount of 550.00, for a total amount of \$1,384.00.² The first payment was disbursed when the recruits were in Yap and the second payment was paid out upon arrival back in Pohnpei. Plaintiff Herbertson did not receive the second check and claims that the Defendants' refusal to pay him the second installment of the compensation for his services is a breach

² During trial, Secretary Gallen testified that the amount of the daily payment for the recruits was based on the Travel Authorization budget approved by the FSM Congress, but he could not recall the exact amount.

of contract.

The plaintiff has the burden of proving each element of a breach of contract claim by a preponderance of the evidence. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001). For the plaintiff to succeed on his breach of contract claim, he must show that the Defendants breached the contract and that the breach was material. FSM v. GMP Hawaii Inc., 17 FSM R. 555, 570 (Pon. 2011). The plaintiff must show that there is a (1) valid contract, (2) a material breach, and (3) damages resulting from the breach. *Id.* at 570.

1. *Valid Contract*

A written contract is not required to make the contract valid but can be used to provide evidence of the existence of a contract. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996). Further, a promise made on sufficient consideration, even if not in writing, is valid and enforceable. Adams v. Island Homes Constr., Inc., 9 FSM R. 530a, 530d (Pon. 2000).

The evidence and testimony before the Court show that there was an oral agreement between the parties.³ Both parties contend that there is an existing contract. The Defendants' own defense shows that a valid contract existed between the parties. The Defendants argue that the Plaintiff breached the contract by consuming alcohol in Yap, therefore justifying their non-payment of the second payment installment. However, the Court need not rest its inquiry solely on the parties' representation. An examination of the elements of a valid and enforceable contract is necessary to make that determination.

A contract is a promise between two parties for the future performance of mutual obligations. In order for the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005); Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014); Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

i. *Offer and Acceptance*

"An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." 17A AM. JUR. 2D *Contracts* § 43 (1991). Further, an offer must be definite in form and must be communicated to the offeree. Reg v. Falan, 14 FSM R. 426, 431 (Yap 2006). Acceptance is "[a]n offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed." BLACK'S LAW DICTIONARY 12 (8th ed. 2004).

Here, the Defendants made an offer to Plaintiff Herbertson by promising to pay him a certain amount in exchange for him providing security detail services for the Yap games. The offer was communicated to Plaintiff Herbertson through Chief Santos, who was an authorized agent or a representative of the Defendants. Chief Santos held a meeting with the recruits, including Plaintiff Herbertson, and briefed them about the details of their services as recruits. Here, the actions of the Defendants are a clear manifestation of a willingness to enter into a bargain and it was made in a way to make Plaintiff Herbertson understand that his assent was invited and would create a contract.

The Plaintiff accepted the offer by promising to provide the security detail services. In fact, Plaintiff Herbertson performed and completed his duties under the contract for the entire period of the Yap games.

³ An oral contract or a parol contract is defined as a contract or modification of a contract that is not in writing or is only partially in writing. BLACK'S LAW DICTIONARY 347 (8th ed. 2004).

The Defendants' offer and Plaintiff Herbertson's acceptance of that offer constitutes mutual assent.

ii. *Term and Consideration*

The terms of a contract must be clear and definite. Livaie, 13 FSM R. at 143. In the instant case, the terms of the offer were definite and clear: The Defendants offered and promised to compensate Plaintiff Herbertson and other recruits to provide security detail services for the Micro Games in Yap. Defendants also required that Plaintiff Herbertson and the other recruits refrain from consuming alcohol once the Yap games commenced.⁴

Consideration is defined as, "[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act. Consideration, or a substitute such as promissory estoppel, is necessary for an agreement to be enforceable." BLACK'S LAW DICTIONARY 324 (8th ed. 2004). Consideration is that which the performance is exchanged for. O'Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999). Here, the Defendants promised to pay Plaintiff Herbertson if he were to provide security detail services for the Yap games. That offer of payment influenced and induced Plaintiff Herbertson to accept the offer and he relied on that promise.

Having examined the elements of a valid, enforceable contract, and reviewing the facts and records herein, the Court finds that a valid oral contract exist between the parties.

2. *Material Breach & Damages*

i. *Material Breach*

"When one party fails to perform their promise, there is a breach of contract." Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 123 (Pon. 1993). "The material breach of a contract justifies the injured party's halt of performance under the contract." GMP Hawaii, Inc., 17 FSM R. at 570. In addition, for a breach to be material, it must relate "to a matter of vital importance or goes to the contract's essence." Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013). Furthermore, a breach is material when the breach deprives the injured party of the contract's benefit. *Id.*

In this case, the Defendants failed to pay Plaintiff Herbertson the remaining payment that each of the recruits providing security services for the Yap games were entitled to. In fact the Defendants admitted during trial that they refused to pay Plaintiff Herbertson the \$550.00 that each of his fellow recruits received. The Defendants' refusal to pay Plaintiff Herbertson is a material breach of the contract because it is a matter that goes to the essence of the contract and it deprives Plaintiff Herbertson of the benefit of the contract.

The Defendants argued in their defense that Plaintiff Herbertson violated Secretary Gallen's policy against alcohol consumption thereby excusing their obligation to pay.⁵ However, the Defendants' defense

⁴ Secretary Gallen gave a strict policy against alcohol drinking for Chief Santos to communicate to the recruits but he has failed to do so. Instead, Chief Santos, as head of security, allowed the recruits to drink and have some fun before the games began.

⁵ At trial, Secretary Gallen testified that one other reason for not paying was because the Plaintiff was a prosecutor and not an officer, which was a requirement for the recruits. However, this is irrelevant because Plaintiff Santos entered into the contract with the Defendants and he fully executed his obligations under the terms of the contract.

must fail because at trial Chief Santos testified that he did not communicate Secretary Gallen's policy restrictions on alcohol consumption to the recruits until they were in Yap; and, when he communicated Secretary Gallen's policy to the recruits, he modified the policy and only required that they refrain from consuming alcohol once the Yap games began. Thus, Plaintiff Herbertson was bound by only Chief Santos' modified version of Secretary Gallen's policy that was communicated to him and the recruits. For a term to be binding, there must be mutual assent or a meeting of the minds on all essential elements or terms. 17A AM. JUR. 2D *Contracts* § 26 (1991). For this reason, the Court finds it unjust to bind Plaintiff Herbertson to a term of a contract that was never communicated to him; therefore, the Defendants' defense must fail.

ii. *Damages*

"The trial court has wide discretion in determining the amount of damages in a contract case." Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 505 (Pon. 1994). A court cannot award damages when there was no evidence at trial that would make those amounts sufficiently certain for a court to award those damages. Helgenberger v. Chung, 21 FSM R. 404, 407 (Pon. 2017). "In a breach of contract case the non-breaching party is entitled to damages that will put the party in the position he or she would have been in if not for the breach." Kihara Real Estate, Inc. (III), 6 FSM R. at 505.

In his Complaint Plaintiff Herbertson claims that the Defendants verbally promised to pay him an amount of \$69.50 per day. The Plaintiff also claims that he was paid \$853.00 two weeks after arriving in Yap and that he is owed \$954.00 for the remaining time he provided security services. The Plaintiff claims that, based on the Defendants' promise, he is owed a total amount of \$1,807.00 for the entire contract.

However, the Plaintiff failed to put forth compelling evidence at trial that would make those amounts sufficiently certain for this Court to award him his damages or the \$954.00 that he claims the Defendants owe him. The record showed that the recruits were paid twice, first in the amount of \$834.00 and second in the amount of \$550.00, for a total amount of \$1,384.00. Therefore, the Court will only award Plaintiff Herbertson what was paid to the other recruits, which is the remaining \$550.00.

B. *Involuntary Servitude*

Plaintiff Herbertson's second cause of action is for involuntary servitude. Plaintiff Herbertson alleges that the Defendants' failure to pay him for his services is tantamount to slavery and involuntary servitude, which is a violation of his constitutional right under FSM Constitution article IV, § 10. Under FSM Constitution article IV, § 10, slavery and involuntary servitude are prohibited except to punish crime.

The words "involuntary servitude" are subject to various definitions as the constitutional provision is not clear and does not permit only one possible result. The court may consult the journal of the constitutional convention to ascertain the intent of the framers in drafting this language. Rodriguez v. Bank of FSM, 11 FSM R. 367, 384 (App. 2003) (citing SCREP No. 23, II J. of Micro. Con. Con. 803-04). The journal of the constitutional convention provides some insight into the intent of the framers on this provision and reports that, "[w]hile the term 'servitude' means the state of a person who is subjected, voluntarily or otherwise, to another person as his servant, only involuntary servitude is prohibited under this Section." *Id.* at 384.⁶ "However, the determination of what constitutes 'involuntary servitude' . . . shall be made in the context of well established Micronesian customs. There may be duties which the individual owes according to the customs of his community which may not constitute either slavery or involuntary servitude." Rodriguez, 11

⁶ The journal identifies peonage as an example of that which is prohibited under this section. Peonage is defined as "a condition of enforced servitude by which the servitor is compelled to labor in liquidation of some debt or obligation, either real or pretended, against his will." SCREP No. 23 II J. of Micro. Con. Con. 793, 803.

FSM R. at 385. "[W]hile Article IV, Section 10 of the Constitution may have had its source in the Trust Territory Bill of Rights and the Constitution of the United States, it has particular meaning within the FSM's historical context of forced labor by former foreign administering authorities. Some still-living citizens of this nation have experienced firsthand the evils of slavery and involuntary servitude. Article IV, Section 10 was meant to ban those types of atrocities forever." Rodriguez, 11 FSM R. at 384.⁷

This matter is properly before the court as a breach of contract case. For the plaintiff to support his constitutional claim of slavery or involuntary servitude, he must at least show that he was compelled or forced against his will to provide security detail services at the Yap games for the benefit of the Defendants. At trial, Plaintiff Herbertson, however, failed to either present any argument or provide any evidence that will support his constitutional claim of slavery or involuntary servitude. Further, the record and testimony did not support any inference or a contention that Plaintiff Herbertson was forced into the type of slavery or involuntary servitude that Article IV, Section 10 of the FSM Constitution contemplates to ban. Accordingly, Plaintiff Herbertson's second cause of action for involuntary servitude is hereby dismissed.

C. *Unjust Enrichment*

Plaintiff Herbertson's third cause of action is unjust enrichment. The unjust enrichment doctrine cannot be applied when there is an enforceable contract between the parties. Gallen v. Moylan's Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 386 (App. 2017). Since there is a legally enforceable contract between Plaintiff Herbertson and the Defendants, recovery under unjust enrichment doctrine is not available. Accordingly, Plaintiff Herbertson's third cause of action for unjust enrichment is hereby dismissed.

IV. JUDGMENT

For the reasons set forth above, the Court finds in favor of Plaintiff Herbertson Santos and against the Defendants on his first cause of action for breach of contract as set forth in the Complaint.

ACCORDINGLY, it is ADJUDGED, ORDERED and DECREED that Plaintiff Herbertson Santos is awarded a judgment in the amount of \$550.00 for his breach of contract claim, the remaining compensation owed to him for providing security detail services during the 2018 Micro Games in Yap.

Plaintiff Herbertson Santos's second and third causes of action for involuntary servitude and unjust enrichment are HEREBY DISMISSED. Judgment shall be entered in favor of the Plaintiff and against the Defendants as set forth above.

* * * *

⁷ Under United States law, involuntary servitude has been described generally as follows: The essence of involuntary servitude is that a worker is compelled by law or force to labor against his will for the benefit of another. Rodriguez, 11 FSM R. at 385.