

Helicopter Aerial Survey Pty., Ltd. v. Villamater
23 FSM R. 186 (Pon. 2021)

FSM SUPREME COURT TRIAL DIVISION

HELICOPTER AERIAL SURVEY PTY., LTD.)	CIVIL ACTION NO. 2008-027
d/b/a/ TROPIC HELICOPTERS)	
)	
Plaintiff,)	
)	
vs.)	
)	
BENEDICTO ROBERTO M. VILLAMATER)	
a/k/a/ BOBBY VILLAMATER,)	
)	
Defendant.)	
_____)	

ORDER DENYING MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT; ORDER
ENTERING FINAL JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Hearing: November 16, 2018
Decided: February 26, 2021

APPEARANCE:

For the Plaintiff:	Erick B. Divinagracia, Esq. Ramp & Mida Law Firm P.O. Box 1480 Kolonias, Pohnpei FM 96941
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HEADNOTES

Contracts – Damages

A trial court has wide discretion in determining the amount of damages in a contract case. Helicopter Aerial Survey Pty., Ltd. v. Villamater, 23 FSM R. 186, 189 (Pon. 2021).

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. The plaintiff may be compensated for the injuries flowing from the breach either by awarding compensation for lost profits, or by awarding compensation for the expenditures made in reliance on the contract. The right to recover expenditures made in reliance on the contract is limited because if the plaintiff would have suffered the same losses even if the defendant had performed under the contract, then the plaintiff cannot recover them, since recovery would put the plaintiff in a better position than he would have been in had the defendant performed. Helicopter Aerial Survey Pty., Ltd. v. Villamater, 23 FSM R. 186, 189 (Pon. 2021).

Contracts – Damages

In order to be recoverable, contract damages must be a proximate consequence of the defendant's

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breach. A proximate consequence is one that flows from the act complained of, unbroken by any independent cause. Thus, when the loss would have occurred even if the defendant had not breached the contract, reliance damages are not recoverable. Helicopter Aerial Survey Pty., Ltd. v. Villamater, 23 FSM R. 186, 189 (Pon. 2021).

Contracts – Damages

An injured party may be compensated for the injuries flowing from a contract breach either by awarding compensation for lost profits (expectancy damages), or by awarding compensation for the expenditures made in reliance on the contract (reliance damages). That is, if an injured party cannot be compensated for the value it had expected to receive from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. Causation is an essential element of damages in a breach of contract action; and, as in tort, a plaintiff must prove that a defendant's breach directly and proximately caused his or her damages. Helicopter Aerial Survey Pty., Ltd. v. Villamater, 23 FSM R. 186, 189 (Pon. 2021).

Attorney's Fees – Court-Awarded

Attorney's fees are only awarded to the prevailing party only if authorized by contract or by statute. Helicopter Aerial Survey Pty., Ltd. v. Villamater, 23 FSM R. 186, 189 (Pon. 2021).

Contracts – Damages

When the plaintiff's only evidence of its damages were the expenditures it made following the defendant helicopter pilot's departure and none of these expenditures are provided for under the parties' employment contract, but instead, the damages claim is provided for in a contract between the plaintiff and a purse seine vessel where the defendant was sent to serve as a helicopter pilot. Since the defendant was not a party to this agreement, he is under no contractual obligation to pay the purse seine vessel's claim. Nor is the defendant liable for the plaintiff's expenditures for a helicopter mechanic's salary when the mechanic allegedly had no work because there was no pilot after the defendant left, because there was no contractual provision in the parties' employment agreement that would have made the defendant contractually liable for the payment of such expenditures and because such expenditures were not the proximately caused by the defendant's departure and since the plaintiff would have incurred these expenditures, and the expenses for hiring a replacement pilot, anyway. Helicopter Aerial Survey Pty., Ltd. v. Villamater, 23 FSM R. 186, 190 (Pon. 2021).

Contracts – Breach; Contracts – Damages

When a contract breach causes no loss, or if the loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss. Helicopter Aerial Survey Pty., Ltd. v. Villamater, 23 FSM R. 186, 190 (Pon. 2021).

Civil Procedure – Defaults and Default Judgments; Civil Procedure – Summary Judgment

When summary judgment has been granted and a hearing on damages held, a request for a default judgment will be denied because the appropriate remedy is to simply issue a final judgment with an award of damages that the plaintiff is entitled to. Helicopter Aerial Survey Pty., Ltd. v. Villamater, 23 FSM R. 186, 191 (Pon. 2021).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

This matter comes before the Court on the Plaintiff's February 4, 2021 pleading captioned as a

renewed request for entry of default by the clerk of court, and entry of default judgment. The record in his case shows that some time ago, after he answered the Complaint, the Defendant ceased appearing in this case. Indeed, and by all accounts, the Defendant's current whereabouts are unknown to the Plaintiff. Nonetheless, the Plaintiff's current pleading shows that the Plaintiff has attempted to serve its February 4, 2021 pleading on the Defendant by having it hand delivered to him by a courier service at his last known address in the Philippines. See FSM Civ. R. 5 (service of pleadings and other documents to be done by hand delivery or first-class mail). Thus far, there has been no further filing to show that the Defendant, in fact, received a copy of the Plaintiff's most recent filing in this case.

That aside, and for the reasons set forth below, the Court hereby denies the Plaintiff's February 4, 2021 motion for an entry of default as well as a default judgment. Based upon the hearing on damages that was previously held on November 16, 2018, the Court enters a final judgment in this case awarding the plaintiff \$1 in nominal damages. The Court's reasoning is set forth below.

A. *Background*

Previously, on July 5, 2012, the Court issued an Order granting the Plaintiff's request for summary judgment on the issue of the Defendant's liability. At issue in the case, was the Plaintiff's claim that the Defendant breached his contract as a helicopter pilot who was stationed to work aboard a purse seine fishing vessel. The record showed that the Plaintiff had entered into a written contract with a third party, who owned or managed a purse seine fishing vessel, and who needed the services of a helicopter pilot. The Plaintiff, in turn, hired the Defendant, who was deployed to work on the purse seine vessel in question. The contract between the Plaintiff and the Defendant was apparently an oral contract arising from a series of e-mails. The Defendant was not a party to the written agreement between the Plaintiff and the owner or operator of the purse seine fishing vessel in question. Based upon all of the evidence presented, including the Defendant's Answer to the Complaint as well as his opposition pleading to the Plaintiff's motion for summary judgment, the Court, on July 5, 2012, granted the Plaintiff's motion for summary judgment on the issue of the Defendant's liability.

Thereafter, on November 16, 2018, the Court held a hearing on the issue of damages. The Defendant failed to appear at this proceeding. The Plaintiff appeared through its representative, Janet Manongsung, who testified that she was the office manager for the Plaintiff. Just like the affidavit that the Plaintiff previously presented in this case from Arlyn Permelona, who was also an employee of the Plaintiff, Ms. Manongsong, testified that the Plaintiff made \$48,985.68 in expenditures, all of which were purportedly incurred following the Defendant's departure from his employment with the Plaintiff. According to the Plaintiff, all of these expenditures constitute its damages as a result of the Defendant's breach of the parties' employment contract.

The Plaintiff's purported damages fall into three categories. First, the Plaintiff purportedly paid the owner or operator of the purse seine fishing vessel where the Defendant was employed to work a total of \$42,000 in liquidated damages, which were assessed at the rate of \$1,000 per day for the 42-day period that there was no helicopter pilot deployed aboard the vessel. Second, the Plaintiff purportedly paid a mechanic \$4,970.96 for the time period that there was no helicopter pilot aboard the fishing vessel because the Defendant had departed the vessel, which resulted in there being no ongoing helicopter activity. Third, and lastly, the Plaintiff apparently expended \$2,014.72 in expenses related to hiring and dispatching a new helicopter pilot to fishing vessel in question to assume the duties that the Defendant once held.

These are almost the same expenditures that the Plaintiff alleges it made in the Complaint, and for which it sought as the damages it purportedly incurred arising from the Defendant's breach of his employment contract. The only difference is that the amount sought in the Complaint is for \$51,000, which included \$37,000 for the liquidated damages that were paid by the Plaintiff to the owner of the fishing vessel,

\$4,000 in salary payments to the mechanic who was purportedly on board the fishing vessel, but idle from work due to the Defendant's departure which resulted in there being no helicopter activity and \$10,000 in expenses to recruit and transport a new helicopter pilot to assume his station aboard the purse seine fishing vessel in question.

B. *Calculation of Damages*

As this Court has explained, a 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). 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. *Id.* at 505. The plaintiff may be compensated for the injuries flowing from the breach either by awarding compensation for lost profits, or by awarding compensation for the expenditures made in reliance on the contract. *Id.* at 505. The right to recover expenditures made in reliance on the contract, however, has limitations. *Id.* If the plaintiff would have suffered the same losses even if the defendant had performed under the contract, then the plaintiff cannot recover them, since recovery would put the plaintiff in a better position than he would have been in had the defendant performed. *Id.*

In order to be recoverable, contract damages must be a proximate consequence of the defendant's breach. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 506 (Pon. 1994). See Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006) (when the personnel manual provides for an employee's involuntary dismissal two weeks after the director has recommended it, and when the employee was not afforded the two weeks of pay that he should have received had the procedure been followed, in this regard, the contract has been breached and the plaintiff is due his expectation damages under the contract, the amount he would have been paid for those two weeks). A proximate consequence is one that flows from the act complained of, unbroken by any independent cause. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 506 (Pon. 1994). Thus, where the loss would have occurred even if the defendant had not breached the contract reliance damages are not recoverable. *Id.* at 506. See FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011) (even if a contract breach causes no loss or if the amount of loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss).

As this Court has explained, an injured party may be compensated for the injuries flowing from a contract breach either by awarding compensation for lost profits (expectancy damages), or by awarding compensation for the expenditures made in reliance on the contract (reliance damages). FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011). That is, if an injured party cannot be compensated for the value it had expected to receive from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. *Id.* at 592. Causation is an essential element of damages in a breach of contract action; and, as in tort, a plaintiff must prove that a defendant's breach directly and proximately caused his or her damages. *Id.* at 573.

Lastly, attorney's fees are only awarded to the prevailing party only if authorized by contract or by statute. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006). See Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005) (attorney's fees will not be awarded in a default judgment when nowhere in the pleadings does it allege or indicate that any contract between the parties makes the defendant liable for attorney's fees). See *also* Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004) (attorney's fees that are awarded on the basis of contract become part of the plaintiffs' damages in its case. When the one party's wrongful act has involved him in litigation with another, and the other must pursue a legal remedy, then the attorney's fees so incurred should be treated as damages that flow from the original wrongful act); Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008)

(generally, parties must bear their own attorney's fees unless otherwise authorized by law or by contract between the parties. Thus, when the sales contract provides that the buyer will pay the seller's attorney's fees and costs if an attorney is hired to collect the debt, the court will determine and award the seller its reasonable attorney's fees, which, except in unusual circumstances involving bad faith and vexatious litigation, will not exceed 15% of the outstanding principal and interest).

In this case, the Court finds that none of the purported damages claimed by the Plaintiff are the proximate cause of the Defendant's breach of the parties' employment contract. To begin, it should be noted that the Plaintiff did not present any type of income or profit that it may have lost as a result of the Defendant terminating his employment. *Kihara Real Estate, Inc. v. Estate of Nanpei (III)*, 6 FSM R. 502, 505 (Pon. 1994) (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). Instead, the Plaintiff only presented as evidence of its damages the expenditures it made following the Defendant's departure. None of these expenditures, however, are provided for under the terms of the parties' employment contract at issue here. Instead, the claim for \$42,000 in liquidated damages is provided for between the Plaintiff and the owner or operator of the purse seine fishing vessel where the Defendant was dispatched to serve as a helicopter pilot. Since the Defendant was not a party to this agreement, he is under no contractual obligation to pay any such claim by the owner or operator of the purse seine vessel. See *FSM v. GMP Hawaii, Inc.*, 17 FSM R. 555, 573 n.5 (Pon. 2011) (function of a liquidated damages provision is for the parties to agree in advance to a damages amount that will be assessed in the event of a certain contract breach where, for both parties, it may ease the calculation of risks and reduce the cost of proof; where it might be the only compensation possible to the injured party for a loss that cannot be proven with sufficient certainty; and where it would save litigation time and expense).

Similarly, the Plaintiff's claim for \$4,970.96 in damages, which it purportedly for the expenditures it made towards a mechanic's salary when the mechanic allegedly had no work to do because there was no helicopter pilot aboard the fishing vessel following the Defendant's departure, is equally specious. Again, there was no contractual provision provided for in the parties' employment agreement that would have made the Defendant contractually liable for the payment of such expenditures. Moreover, this Court cannot, based upon the evidence presented by the Plaintiff, conclude that such expenditures are the proximate cause of the Defendant's departure. By all accounts, even if the Defendant had not terminated the parties' employment agreement, the Plaintiff would have nonetheless incurred these expenditures. See *Kihara Real Estate, Inc. v. Estate of Nanpei (III)*, 6 FSM R. 502, 506 (Pon. 1994) (if the plaintiff would have suffered the same losses even if the defendant had performed under the contract, then the plaintiff cannot recover them, since recovery would put the plaintiff in a better position than he would have been in had the defendant performed). This is especially true with regard to the Plaintiff's claim for \$2,014.72 in damages arising from the expenses it incurred in hiring and dispatching a replacement helicopter pilot to fishing vessel where the Defendant was stationed.

In cases like this, when a contract breach causes no loss or if the amount of loss is not proved with sufficient certainty, the injured party can recover as nominal damages a small sum, commonly six cents or a dollar, fixed without regard to the amount of loss. See *FSM v. GMP Hawaii, Inc.*, 17 FSM R. 555, 573 (Pon. 2011). Accordingly, the Court, having already granted summary judgment on the issue of liability in favor of the Plaintiff, and against the Defendant, hereby award the Plaintiff a total of \$1 in nominal damages. Since there is no provision in the parties' employment contract for attorney's fees, none are awarded. The Clerk of Court shall hereby enter judgment accordingly.

C. Disposition of Pending Renewed Motion for Entry of Default and Default Judgment

As noted above, the Court previously issued an Order granting the Plaintiff's request for summary judgment. As such, and given the fact that the Defendant answered the Complaint in this case, issuing an

entry of default against the Defendant would be an unprecedented step that is not warranted under the Court's rules of civil procedure. Accordingly, the Plaintiff's request for an entry of default by the Clerk of Court is denied.

Although the record shows that the Defendant stopped appearing in this case, including the November 16, 2018 hearing on damages, the appropriate remedy for that course of conduct is to simply issue a final judgment, with an award of damages that the Plaintiff is entitled to. As noted above, in this case, the Plaintiff is entitled to an award of \$1 in nominal damages. Since this is not a default judgment, and since the award of damages in this case is not a sum certain, but instead, an amount that must be determined by the Court based upon the presentation of evidence, the Plaintiff's request for a default judgment in the amount of \$48,985.68 by the Clerk of Court is hereby denied.

D. *Conclusion*

In conclusion, and for the reasons stated above, the Court hereby enters a final judgment in this case in favor of the Plaintiff, and against the Defendant, in the amount of \$1. Neither party is awarded any attorney's fees or costs. The Clerk of Court shall enter judgment in this case accordingly.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2019-003
)	
Plaintiff,)	
)	
vs.)	
)	
YOSILYN CARL, as Administrator of the)	
Estate of Linda Carl, and the ESTATE OF)	
YOSHIRO CARL,)	
)	
Defendants.)	
_____)	

ORDER DENYING STAY

Larry Wentworth
Associate Justice

Decided: March 15, 2021

APPEARANCES:

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