FSM SUPREME COURT TRIAL DIVISION

PANDINUS SUZUKI,	)	CIVIL ACTION NO. 2021-1001
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CHUUK STATE GOVERNMENT,	)	
	)	
Defendant.	)	
_____	)	

ORDER DISMISSING CASE

Larry Wentworth
Associate Justice

Decided: May 13, 2021

APPEARANCE:

For the Plaintiff: Marstella E. Jack, Esq.
P.O. Box 2210
Kolonia, Pohnpei FM 96941

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HEADNOTES

Common Law; Judgments; Sovereign Immunity

A judgment against a sovereign state is neither a common law vested property right nor a government benefit entitlement. A judgment against a sovereign state cannot be a common law vested property interest because at common law, there was no right to sue the sovereign, so no claim against a sovereign state can be a common law claim. Suzuki v. Chuuk, 23 FSM R. 301, 307 (Chk. 2021).

Common Law; Sovereign Immunity

Sovereigns were completely immune from a common law suit. The right to sue a sovereign is statutory, created by statutes that waive the enacting sovereign's immunity to the extent provided for in the statute. Suzuki v. Chuuk, 23 FSM R. 301, 307 (Chk. 2021).

Constitutional Law – Taking of Property; Judgments

A judgment against a state is not a government benefit entitlement. Government benefit entitlements are created through the legislative process, and can be abolished by the same process. Government benefit entitlements are not created by court adjudications. Suzuki v. Chuuk, 23 FSM R. 301, 307 (Chk. 2021).

Civil Rights – Acts Violating; Constitutional Law – Due Process; Judgments – Void; Property

State court judgments are not property. A state's failure to pay a judgment against it does not violate a judgment-holder's due process or civil rights. Since the judgment-holder has no civil rights claim against the state, the FSM Supreme Court lacks subject matter jurisdiction and any judgment that it might enter for the state court judgment-holder would thus be void. Suzuki v. Chuuk, 23 FSM R. 301, 307 (Chk. 2021).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

This case is plaintiff Pandinus Suzuki's second attempt to have the FSM Supreme Court enforce (to collect for him) two, 28-year-old Chuuk State Supreme Court money judgments that he has against the State of Chuuk. The court rejected Suzuki's previous attempt and dismissed it for lack of jurisdiction. Suzuki v. Chuuk, 22 FSM R. 491 (Chk. 2020). The court asked Suzuki to explain why this case should not also be dismissed. Suzuki filed his brief on April 13, 2021. The court concludes that Suzuki's arguments are unavailing, and therefore, as explained below, dismisses this case.

I. SUZUKI'S CLAIM

Suzuki holds two Chuuk State Supreme Court judgments, both entered in 1993, against the State of Chuuk, totaling $480,000. Suzuki alleges that only $14,870 on one of those judgments was ever paid. Suzuki asserts that Chuuk's failure to pay these judgments for 28 years constitutes, under the FSM Constitution, a deprivation, or a taking, of his property without due process of law. He asks the court to grant him judgment and award him the $480,000 principal plus accrued interest at 9% per annum, for a total, by his reckoning, of $14,040,000. (Since $480,000 at 9% for 28 years would only equal $1,209,600, this sum is ridiculously large. Suzuki must have misplaced the decimal point.)

II. LEGAL BACKGROUND

In Narruhn v. Chuuk, 16 FSM R. 558 (Chk. 2009), the plaintiff brought an action in the FSM Supreme Court, alleging a civil rights violation – that Chuuk had taken his property without due process of law – because Chuuk had not paid a Chuuk State Supreme Court judgment he had against it. The FSM Supreme Court abstained because whether a Chuuk State Supreme Court judgment against the state was property was solely a matter of Chuuk state law which, at that time, no court had ever ruled upon and because the Chuuk State Supreme Court should first have the opportunity to decide that unsettled state law issue. *Id.* at 564. The plaintiff appealed. The appellate division affirmed the trial court's abstention and ruled that no precedent held that a state court judgment against a state (or any other judgment) was a property right. Narruhn v. Chuuk, 17 FSM R. 289, 398-99 (App. 2010).

Shortly thereafter, a different plaintiff (same counsel) brought that issue before the Chuuk State Supreme Court, which then decided that a court judgment did not constitute property and that the state's non-payment of a judgment against it did not constitute a civil rights violation. Kama v. Chuuk, 18 FSM R. 326, 331-34 (Chk. S. Ct. Tr. 2012), That decision was appealed. The Chuuk State Supreme Court appellate division affirmed. Kama v. Chuuk, 20 FSM R. 522 (Chk. S. Ct. App. 2016). That court carefully explained why a judgment is not a vested property right and why Chuuk's failure to timely satisfy a judgment did not constitute a taking of property in violation of due process. That explanation follows:

A. *Property Rights in Judgments*

> Kama contends that a judgment against the state is a vested property interest and thus a long delay in paying a judgment is an unconstitutional taking of property. The trial court held that: "Based on the research of existing legislation, there has been no showing of a specific desire to ascribe a property right to judgments, and therefore, absent a specific Chuuk State legislation creating a specific property right, such a right cannot be ascribed to judgments." Kama v. Chuuk, 18 FSM Intrm. 326, 332 (Chk. S. Ct. Tr. 2012).

Kama contends that this cannot be correct – a judgment must be a vested property interest that, if it remains unpaid, would constitute a taking of property without just compensation and, if some persons are paid and he is not, then that would violate his constitutional right to equal protection. Kama does not cite any authority that directly holds that judgments are a vested property right but presumes that it must be true. Kama does not assert that any specific legislation or act of the Chuuk Legislature creates the property rights he claims. Nor does he point to any specific case law to support that result.

In 1883, the United States Supreme Court held that a judgment against a government entity was not property that can be taken when it was not paid by any certain time but that the property right created by a judgment against a government entity was not a right to payment at a particular time but merely the recognition of a continuing debt of that government entity. Louisiana ex rel. Folsom v. Mayor of New Orleans, 109 U.S. 285, 289, 3 S. Ct. 211, 214, 27 L. Ed. 936, 938 (1883). That ruling is still good law. In Evans v. City of Chicago, 689 F.2d 1286, 1297-98 (7th Cir. 1982), the court, distinguishing Evans from Folsom, held that the delay in payment of judgments against the City of Chicago was a deprivation of a property interest because a state statute made final judgments against municipalities a vested property interest that must be paid within one year and that if the municipality did not or could not pay the judgment within that time then the municipality was required to issue bonds and levy special taxes in order to pay the judgments against it.

There is no Chuuk statute making judgments against the state (or a municipality) a vested property interest. Also, there are no statutes, as there was in Evans, requiring that judgments be paid within a certain time, or providing the means to effect payment if the governmental entity does not have the funds available.[1]

The court in Minton v. St. Bernard Parish School Board, 803 F.2d 129, 132 (5th Cir. 1986) noted Folsom's continuing validity, and held that "the School Board's failure to appropriate funds to pay the [judgment] debt to the Mintons does not constitute a taking in violation of the due process clause" because "the property right created by a judgment against a government entity is . . . merely the recognition of a continuing debt of that government entity."[2]

Thus, it is not the underlying factual basis for a judgment that must be a property right; the judgment itself must be property before constitutional guarantees against the taking of

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[1] The Chuuk Governor did issue an Executive Order that notes that no law currently defines whether a judgment against the state or one of its agencies is property within the meaning of the word in Article III, section 2 of the Chuuk Constitution or Article IV, section 3 of the FSM Constitution and decrees that state court judgments against the state are not property as the phrase is used in those constitutional provisions. Chk. Exec. Order No. 02-2011 (May 21, 2011). Needless to say, the Chuuk Legislature could, if it chose to, enact a statute defining judgments as that type of property, effectively overruling that executive order. It has not chosen to enact such legislation.

[2] The Minton court did hold that the Mintons' allegation that the School Board paid judgments obtained by local residents and did not pay judgments obtained by non-residents did state an equal protection claim but explicitly noted that it would not rule on whether, if proven, the Mintons were entitled only to declaratory relief or to additional relief. Minton, 803 F.2d at 135.

property come into play. For the reasons given above and further explained in the next section, the judgment itself is not property of that sort. Accordingly, we affirm the trial court ruling that a money judgment against the state is not property such that its non-payment constitutes a taking.[3] We also affirm the trial court ruling that a money judgment against the state is a recognition of the state government's continuing debt or obligation.

B. *Separation of Powers of the Co-Equal Branches of Government*

Kama focuses his argument on the idea that since the judiciary is a co-equal branch of government, it ought to be able to enforce its judgments against the other co-equal branches and compel those branches to satisfy the court's money judgments. Kama contends that the restriction on levying writs against the sovereign State of Chuuk is unconstitutional and that the trial court holding deprives the judicial branch of its constitutional status as a co-equal branch of government and vests unconstitutional powers in the Chuuk Legislature. He argues that for the court to prove it is a co-equal branch of government it must give him the relief he seeks – the ability to attach, execute, or garnish Chuuk public funds.

Kama thus asserts that section 4 of the Chuuk Judiciary Act is unconstitutional because it prevents the court from enforcing its judgments against the state by the means of writs that would divert state funds to judgment creditors. That statute provides that

> [e]ach court shall have power to issue all writs for equitable and legal relief; except the power of attachment, execution and garnishment of public property and to issue other process, make rules and orders, and do all acts, consistent with law and with the rules established by the Chief Justice of the State Supreme Court, as may be necessary for the due administration of justice . . . .

Chk. S.L. No. 190-08, § 4.

We conclude that the powers that Kama asks the court to exercise and what he seeks is not for the judiciary to be a co-equal branch of government but for it to be the superior branch of government. The Legislature raises funds by enacting tax legislation and the executive collects those funds. Under the Chuuk Constitution's separation of powers scheme, the executive branch, the Governor, proposes the state's budget, Chk. Const. art. VIII, § 4, and how to spend the state's money, and the Legislature appropriates the funds that were or will be raised and directs the executive how to spend the appropriated funds, Chk. Const. art. VIII, § 2. Kama would have the court, supposedly as a co-equal, perform the powers of the other two branches of government and have the court usurp those branches' powers by appropriating and spending the state's money without any regard to the Chuuk Constitution's separation of powers. We note that

> [i]t is indisputable, as a matter of law, that th[e Chuuk State Supreme] Court cannot issue an order directing the payment of money by Chuuk State absent an appropriation therefor. To do so would be in violation of Article VIII, § 2 of the Chuuk State Constitution and the Chuuk State Judiciary Act, Chk. S.L. No. 190-08, § 4.

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[3] Tellingly, Kama has never sought as relief the return of the land encroached upon even as an alternative to payment.

Narruhn v. Chuuk, 11 FSM Intrm. 48, 53 (Chk. S. Ct. Tr. 2002) (footnotes omitted).

If Kama wants Chuuk law to define a court judgment against the state as a form of property that state law recognizes can be taken by the state's non-payment, Kama can ask the Chuuk Legislature to enact a statute that makes a judgment against the state that form of property. But if Kama wants Chuuk to furnish money to pay his judgment now, Kama must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it.

Any writs levied by the Chuuk State Supreme Court on Chuuk state funds will be levied on money that the Chuuk Legislature has already appropriated for another purpose. Funds appropriated for other purposes cannot be redirected to pay judgments. Chuuk statutory law sets this forth explicitly. "[I]n no event shall unappropriated funds or funds appropriated for another purpose be used to satisfy a money judgment under this [sovereign immunity] act." Chk. S.L. No. 5-01-39, § 17. Presumably, although he does not argue it, Kama also seeks to have this statute declared unconstitutional. This principle is inherent in the separation-of-powers scheme in the Chuuk Constitution. "No public funds may be paid out of the treasury of the State of Chuuk except as prescribed by statute." Chk. Const. art. VIII, § 2. Kama cannot ignore this constitutional provision nor can he even argue that it is unconstitutional. That is a legal and logical impossibility. A constitutional provision cannot be unconstitutional under the constitution it is a part of.

The judicial branch does not have the power to appropriate money. The judicial branch cannot enact statutes or prescribe by statute. The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to appropriate funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM Intrm. 16, 20 (Chk. S. Ct. Tr. 2011).

We have previously concluded that Chuuk State Law No. 190-08, § 4 "does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an 'attachment, execution and garnishment of public property.'" Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002). Kama dismisses that ruling as mere dicta and of no value as a precedent.

Regardless, the general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. *See, e.g.*, Davis v. McDuffie, 185 Fed. App'x 7, 8 (5th Cir. 2012) (no writ of execution allowed against a state when sovereign immunity is not expressly and unequivocally waived); Diaz v. Department of Educ., 823 F. Supp. 2d 68, 77 (D.P.R. 2011) (government entities are not subject to writs of attachment); Wescott v. City of Omaha, 1988 WL 383125, at 2 (D. Nebr. 1988) (sovereign immunity statute bars writs of execution against government subdivisions); Owens v. Lewis, 1980 WL 1689, at 2 (M.D. Tenn. 1980) (writ of execution cannot be issued against Internal Revenue Service when sovereign immunity has not been waived by statute); Johnson v. Johnson, 332 F. Supp. 510, 511 (E.D. Pa. 1977) (sovereign immunity bars garnishment of government funds in the absence of legislation permitting such action); Grunley Constr. Co. v. District of Columbia, 704 A.2d 288, 290 (D.C. 1997) ("sue and be sued" clause in enabling legislation did not constitute waiver of sovereign immunity permitting a writ of attachment against the government); State ex rel. Dep't of Highways v. Olsen, 334 P.2d 847, 848 (Nev. 1959) (writ of "execution cannot properly be levied against the State in the absence of statute granting such right").

The judicial branch can, consistent with the state's waiver of sovereign immunity, declare the amount of the state's liability. While the Chuuk State Supreme Court is empowered to declare the rights as between a judgment creditor and the government, it cannot enforce payment of the judgment absent legislative appropriation. U.S. state courts are in almost unanimous agreement that they cannot compel the legislature to appropriate funds either directly or indirectly to satisfy a judgment. 72 AM. JUR. 2D *States, Territories, and Dependencies* § 73 (1974). Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of consent to the appropriation. Baltzer v. North Carolina, 161 U.S. 240, 245-46, 16 S. Ct. 500, 502, 40 L. Ed. 684, 687 (1896). When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. *Id.* at 243, 16 S. Ct. at 501, 40 L. Ed. at 686.

For a money judgment against the state to be paid there must be an appropriation by the Legislature and the courts have no power to compel an appropriation. *See, e.g.*, Newman Marchive P'ship, Inc. v. City of Shreveport, 979 So. 2d 1262, 1265 (La. 2008) (court is constitutionally prohibited from invading legislature's province and forcing the state to pay its debts); Baudoin v. Acadia Parish Police Jury, 702 So. 2d 715, 717-18 (La. 1997) (for a money judgment to be paid there must first be an appropriation); Smith v. North Carolina, 222 S.E.2d 412, 418 (N.C. 1976) ("any judgment against the state will be uncollectible unless the legislature appropriates funds which can be used to pay the obligation"); Amantia v. Cantwell, 213 A.2d 251, 254 (N.J. 1965) (government employees granted declaratory judgment that statute entitled them to differential pay but court denied request for mandate directing payment because power to appropriate money rested with the Legislature); Ace Flying Serv., Inc. v. Colorado Dep't of Agriculture, 314 P.2d 278, 280 (Colo. 1957) (whether an appropriation will be made "is a legislative question, and over purely legislative questions the courts have no supervision or control"); Campbell Bldg. Co. v. State Road Comm'n, 70 P.2d 857, 862 (Utah 1937) (while the state court judgment was valid, the state "may refuse to pay and leave a claimant without any remedy" although "the obligation remains" and the legislature cannot destroy or impair that); State v. Woodruff, 150 So. 760, 766 (Miss. 1933) (money judgment against the state "although entered by its highest court, is not enforceable except by a legislative appropriation"); Myers v. English, 9 Cal. 341, 349 (Cal. 1858) (courts have "no power to avoid the effects of [the Legislature's] *non-action*" and "when the Legislature fails to make an appropriation [courts] cannot remedy that evil" (emphasis in original)); County of San Diego v. State, 164 Cal. App. 4th 580, 612-13 (Cal. Ct. App. 2008) (when the legislature fails to make an appropriation, courts have no ability to remedy the legislature's inaction) (reaffirming Myers); Commonwealth Dep't of Highways v. Circuit Court, 365 S.W.2d 106, 108 (Ky. Ct. App. 1963) (court's power "ends when the judgment is rendered . . . and execution cannot issue on a judgment against the state").

Kama nevertheless asserts that the Chuuk Judiciary Act section 4 provision barring writs directed to public property conflicts with the rest of section 4, which he sees as the true expression of the Chuuk Constitution's vesting of the state's judicial power in the Chuuk State Supreme Court. What Kama overlooks is that a sovereign's judicial power does not extend to lawsuits against the sovereign unless the sovereign has waived its immunity to suit and then only to the extent that it has waived its immunity. Here, not only has Chuuk not expressly waived its sovereign immunity to writs of attachment, execution, and garnishment, it has gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs. Chk. S.L. No. 190-08, § 4. That statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Accordingly, we affirm the trial court.

Kama v. Chuuk, 20 FSM R. 522, 528-32 (Chk. S. Ct. App. 2016). The Kama court concluded "that a judgment against the state is not a property interest but an existing, continuing liability against the state [and] . . . that a failure to timely satisfy a judgment does not constitute a taking in violation of due process or equal protection" and, further, it upheld the constitutionality of Chuuk State Law No. 190-08, § 4. Kama, 20 FSM R. at 534.

III. SUZUKI'S NEW CONTENTIONS

Suzuki now contends that his state court judgments are not only property under the due process clause but also that those judgments are property interests that have "vested" and are therefore property that can be, or is, "taken" when Chuuk did not timely pay the judgments. Suzuki argues that the Kama court might have been incorrect about a judgment not representing vested property. To support these contentions, Suzuki cites various United States cases, in which U.S. courts held that certain statutory government benefits, such as welfare benefits, public housing benefits, and veterans' benefits became entitlements and therefore vested property rights. Suzuki further asserts that common law claims become vested property interests at the time of the occurrence of the injury, or when the claim is filed, or, at the very least, when judgment is rendered, and that his judgments against Chuuk were for common law claims.

Suzuki is mistaken. A judgment against a sovereign state is neither a common law vested property right nor a government benefit entitlement. A judgment against a sovereign state cannot be a common law vested property interest. That is because "at common law, there was no right to sue the sovereign," Glover v. State, Dep't of Transp., Alaska Marine Highway Sys., 175 P.3d 1240, 1256 (Alaska 2008), so no claim against a sovereign state can be a common law claim. Sovereigns were completely immune from a common law suit. The right to sue a sovereign is statutory, created by statutes that waive the enacting sovereign's immunity to the extent provided for in the statute.

A judgment against a state is also not a government benefit entitlement. Government benefit entitlements are created through the legislative process, *see, e.g.*, Mathews v. Eldridge, 424 U.S. 319, 332, 96 S. Ct. 893, 901, 47 L. Ed. 2d 18, 32 (1976), and can be abolished by the same process, *see, e.g.*, Logan v. Zimmerman Brush Co., 455 U.S. 422, 432-33, 102 S. Ct, 1148, 1156, 71 L. Ed. 2d 265, 276 (1982); United States R.R. Ret. Bd. v. Fritz, 449 U.S. 166, 174, 101 S. Ct. 453, 459, 66 L. Ed. 2d 368, 375 (1980); Richardson v. Belcher, 404 U.S. 78, 80-81, 92 S. Ct. 254, 257, 30 L. Ed. 2d 231, 234 (1971). Government benefit entitlements are not created by court adjudications. *E.g.*, Eason v. Treasurer of State, 371 S.W.3d 886, 890 (Mo. Ct. App. 2012).

Suzuki has therefore not been able to show that the Kama court's reasoned and detailed explanation, quoted at great length above, was incorrect in any way. In Suzuki's previous attempt to collect his 1993 state court judgments against Chuuk, the court ruled that state court judgments are not property, and that the state's failure to pay his judgments against it did not violate Suzuki's due process or civil rights, and since Suzuki did not have a civil rights claim against Chuuk, the court lacked subject matter jurisdiction and any judgment that the court might enter in Suzuki's favor would thus be void. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020). Nothing has changed.

IV. CONCLUSION

Accordingly, this case is dismissed.

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