

FSM SUPREME COURT TRIAL DIVISION

IN RE CONTEMPT OF KAZUHIRO FUJITA)	CIVIL ACTION NO. 1996-060
and YOSILYN CARL, as the administrator of)	
the Estate of Linda Carl,)	
Respondents,)	
_____)	
FEDERATED STATES OF MICRONESIA)	
DEVELOPMENT BANK,)	
Plaintiff,)	
vs.)	
YOSILYN CARL, as the administrator of the)	
Estate of Linda Carl, the ESTATE OF LINDA)	
CARL, and the ESTATE OF YOSHIRO CARL,)	
thru its administrator, Fred Carl,)	
Defendants,)	
KAZUHIRO FUJITA,)	
Garnishee.)	
_____)	

ORDER RE: CONTEMPT PROCEEDING; ORDER DISPOSING OF PENDING MOTIONS; NOTICE OF
SHOW CAUSE HEARING

Dennis L. Belcourt
Associate Justice

Hearing: September 15, 2021
Decided: September 17, 2021

APPEARANCES:

For the Plaintiff:	Nora E. Sigras, Esq. P.O. Box M Kolonias, Pohnpei FM 96941
For the Defendants: (Y. Carl & Estate of L. Carl)	Yoslyn G. Sigras, Esq. P.O. Box 3018 Kolonias, Pohnpei FM 96941
For the Defendant: (Estate of Yoshiro Carl)	Vincent Kallop, Esq. Micronesia Legal Services Corporation P.O. Box 129 Kolonias, Pohnpei FM 96941

For the Garnishee:

Kazuhiro Fujita, *pro se*
P.O. Box 1975
Kolonia, Pohnpei FM 96941

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HEADNOTES

Contempt – Civil

When a garnishee has previously been found in contempt because he failed to pay the amount due and purge his contempt and he has the current, present-day ability to pay this amount, and he fails to do so, he may be remanded for incarceration in jail until such time as he pays the amount at issue. In re Contempt of Fujita, 23 FSM R. 420, 422 (Pon. 2021).

Attachment and Execution – Garnishment; Contempt – Civil

When parties are ordered to show cause why they should not be adjudged in contempt of court for the failure to pay court-ordered fees and costs, proof of the charge will require a determination of what current ability they have to make payment, as well as the efforts, if any, they may have taken to pay. In re Contempt of Fujita, 23 FSM R. 420, 422 (Pon. 2021).

Attorney and Client – Appearance; Attorney and Client – Disqualification of Counsel; Contempt – Civil

When an alleged contemnor's counsel was disqualified from concurrently representing him in the matter, he is deemed to be appearing *pro se*, and is encouraged to seek legal representation without any further delay. In re Contempt of Fujita, 23 FSM R. 420, 423 (Pon. 2021).

Courts – Recusal – Procedure

A party may request that a justice participating in a case disqualify himself or herself for various reasons. To do so, the moving party must file a motion for disqualification with a supporting affidavit. A motion to disqualify that fails to include any affidavit may be denied without prejudice, and a renewed motion for disqualification filed provided that it complies with the FSM Code's requirements. In re Contempt of Fujita, 23 FSM R. 420, 423 (Pon. 2021).

Civil Procedure; Civil Procedure – Filings

A case caption may be changed to conform to the pleadings and the current state of the case, including the need to reflect the correct spelling of a party's name, as well as for a party's death. In re Contempt of Fujita, 23 FSM R. 420, 424 (Pon. 2021).

Civil Procedure; Civil Procedure – Motions; Contempt – Civil

A motion to correct a case caption to reflect the correct name of an estate administrator will be granted, but a motion to correct the case caption to delete reference to the contempt proceeding that the case has now become, will be denied. In re Contempt of Fujita, 23 FSM R. 420, 425 (Pon. 2021).

Appellate Review – Stay – Civil Cases – Money Judgments

When an appeal is taken, the appellant, by giving a supersedeas bond, may obtain a stay in a trial court action. A trial court abuses its discretion by issuing a stay without requiring or considering a bond. In re Contempt of Fujita, 23 FSM R. 420, 425 (Pon. 2021).

Appellate Review – Stay – Civil Cases – Money Judgments

When payment orders totaling \$7,108.79 have been appealed, that amount must be posted with the court in the form of a cash bond that the court clerk will hold pending the appeal's outcome. The request for a stay of the case's adjudication is granted upon posting of this amount. In re Contempt of Fujita, 23 FSM R. 420, 425 (Pon. 2021).

* * * *

COURT'S OPINION

DENNIS L. BELCOURT, Associate Justice:

I. NOTICE OF SHOW-CAUSE HEARING: OCTOBER 15, 2021, AT 1:00 O'CLOCK P.M.

This matter came before the Court on September 15, 2021, for a status conference. The FSM Development Bank was represented by Nora Sigrah, Esq., who was accompanied by the Bank's representative for this litigation, Anna Mendiola, the President of the Bank. Yosilyn Carl, as the administrator of the estate of Linda Carl, was represented by Yoslyn Sigrah, Esq. Fred Carl, as the administrator of the estate of Yoshiro Carl, was represented by Vincent Kallop, Esq., of the Micronesian Legal Services Corporation. Kazuhiro Fujita appeared *pro se*. A translator was present to provide English-Japanese translation for Mr. Fujita.

There are only two (2) issues remaining for adjudication in this case: 1) a contempt-of-court finding against Kazuhiro Fujita for failing to remit some \$4,500 in funds that were subject to a garnishment order to the FSM Development Bank; and 2) a request by the FSM Development Bank for both Kazuhiro Fujita and Yosilyn Carl, as the administrator of the estate of Linda Carl, to appear and show cause why they should not be adjudged in contempt of court for failing to pay \$2,608.97 in fees and costs to the FSM Development Bank, as ordered by the Court. Any other efforts to enforce the \$45,137.79 judgment entered in this case on February 11, 1999, are now being addressed in the case of Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 2019-003, which resulted in the entry of a separate judgment on December 30, 2019, in the amount of \$50,215.98. That case is on appeal as Carl v. FSM Development Bank, Appeal No. P2-2020.

A. *Kazuhiro Fujita: Contempt of Court for Violation of Writ of Garnishment*

At the September 15, 2021 proceeding, it was confirmed that Mr. Fujita had failed to pay the \$4,500 in rental arrears to the FSM Development Bank that would purge his contempt-of-court finding at issue here. See Mid-Pac Constr. Co. v. Senda, 6 FSM R. 135, 136 (Pon. 1993) (a garnishee who deliberately disobeys a court order may be held in contempt of court).

At the October 15, 2021 hearing, the Court will entertain evidence and arguments related to Mr. Fujita's contempt of court arising from his failure to comply with an order of garnishment, including his current, present-day ability to pay \$4,500 to the FSM Development Bank. See Hadley v. Bank of Hawaii, 7 FSM R. 449, 453 (App. 1996) (in order to hold a debtor in contempt for failure to comply with an order in aid of judgment it is not enough that the debtor's noncompliance was found to be willful; there must also be a recital, or a finding somewhere in the record, that the debtor was able to comply). In the event that Mr. Fujita is able to pay this amount, and he fails to do so, he may be remanded to the FSM National Police for incarceration in the Pohnpei State jail until such time as he pays the \$4,500 at issue in this case.

B. *Kazuhiro Fujita and Yosilyn Carl: Contempt of Court for Violation of a Court Order to Pay \$2,608.79 in Fees and Costs*

The September 15, 2021 proceeding also confirmed that neither Mr. Fujita nor Ms. Carl had paid the \$2,608.79 in fees and costs, previously assessed against them in the Court's Order of April 21, 2021, to the FSM Development Bank. Accordingly, pursuant to 4 F.S.M.C. 119(2)(a), both Kazuhiro Fujita and Yosilyn Carl are each hereby charged with civil contempt of court for failing to pay \$2,608.79 in fees and costs assessed against them to the Development Bank. They shall therefore both appear before the Court on October 15, 2021, at 1:00 o'clock p.m., and show cause why they should not each be adjudged in contempt of court. Proof of the charge will require a determination of what current ability they have to make this

payment, as well as the efforts, if any, they may have taken to purge such a contempt finding, prior to any period of incarceration.

The Court understands that Ms. Carl is currently in Kosrae State. As such, she may appear at the October 15, 2021 proceeding at issue here by video from the Court's Kosrae State facility.

The Court now turns to the various other issues in this case, as set forth below:

II. LEGAL REPRESENTATION OF KAZUHIRO FUJITA

Shortly before the September 15, 2021 hearing began, Yoslyn Sigrah, Esq., filed a notice of appearance of counsel in this case on behalf of Mr. Fujita. Previously, however, May 12, 2021, the Court issued an Order disqualifying Ms. Sigrah from concurrently representing both Ms. Carl and Mr. Fujita in this case. Ms. Sigrah apparently continued her representation of Ms. Carl in this case.

As the Court explained to Ms. Sigrah, her submission of an notice of appearance as Mr. Fujita's legal counsel was insufficient to allow her to represent Mr. Fujita. Instead, Ms. Sigrah would have to file a motion for the Court to reconsider its May 12, 2021 determination that Ms. Sigrah was disqualified from concurrently representing Ms. Carl and Mr. Fujita in this matter. Until such a submission is made and the Court vacates its May 12, 2021 Order, or until Mr. Fujita obtains other counsel, Mr. Fujita is deemed to be appearing *pro se* in this case. If Ms. Sigrah intends to represent Mr. Fujita for the October 15, 2021 proceeding, file the appropriate motion with this Court within ten (10) days from the date this Order is received. In the meantime, Mr. Fujita is encouraged to seek legal representation in this case, without any further delay, as it concerns a contempt-of-court finding that has been made against him.

III. PENDING MOTIONS

In addition, and shortly before the September 15, 2021 hearing in this case, Ms. Carl, as the administrator of the estate of Linda Carl, filed three (3) motions with this Court, which are addressed below. Although the FSM Development Bank is afforded ten (10) days to file an opposition to these motions, see FSM Civ. R. 6, the Court is disposing of these motions, without the filing of any further pleadings, as follows:

A. *Disqualification*

Linda Carl, as the administrator of the estate of Linda Carl, seeks to have me disqualified from this case as I am currently also sitting as a member of an appellate panel in the case of Carl v. FSM Development Bank, Appeal No. P2-2020, which is scheduled for oral arguments on September 22, 2021. This appeal is being taken from the judgment entered in the case of: Federated States of Micronesia Development Bank v. Yosilyn Carl et al., Civil Action No. 2019-003.

Under 4 F.S.M.C. 124, a party may request that a justice participating in a case disqualify himself or herself for various reasons. To do so, the moving party must file a motion for disqualification, which includes a supporting affidavit. 4 F.S.M.C. 124(6). Here, Ms. Carl has failed to include any affidavit in support of her motion for disqualification. As such, the motion to disqualify me from further participating in the above-captioned case is hereby denied. This denial is without prejudice. Ms. Carl may therefore file a renewed motion for disqualification provided that it complies with the requirements of the FSM Code governing the recusal of justices of this Court.

B. *Correction of Caption*

Next, Ms. Carl, as the administrator of the estate of Linda Carl, seeks to have the caption of this case corrected, claiming that the inclusion of any reference to a contempt proceeding against either Mr. Fujita or Ms. Carl in the masthead of the caption of the case is simply incorrect:

In re Contempt of Fujita
23 FSM R. 420 (Pon. 2021)

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION – STATE OF POHNPEI

IN RE CONTEMPT OF KAZUHIRO)	CIVIL ACTION NO. 1996-060
FUJITA and YOSILYN CARL, as the)	
administrator of the Estate of Linda Carl,)	
)	ORDER RE: CONTEMPT PROCEEDING;
Respondents,)	ORDER DISPOSING OF PENDING
_____)	MOTION
FEDERATED STATES OF MICRONESIA)	
DEVELOPMENT BANK,)	
)	
Plaintiff,)	
)	
v.)	
)	
YOSILYN CARL, as the administrator)	
of the estate of Linda Carl, the ESTATE OF)	
LINDA CARL, and the ESTATE OF)	
YOSHIRO CARL, thru its administrator)	
Fred Carl,)	
)	
Defendants,)	
)	
KAZUHIRO FUJITA,)	
)	
Garnishee.)	
_____)	

Ms. Carl’s contention about the caption in this case, however, is lacking in merit. A caption may be changed to conform to the pleadings and the current state of the case, see Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001) (errors in a case’s caption can always be amended to correct technical defects); In re Torres, 2020 MP 2, ¶ 1 n.1 (N. Mar. I. 2020) (court *sua sponte* amends caption to accurately reflect the procedural posture in this matter), including the need to reflect the correct spelling of a party’s name, see Estate of Mori v. Chuuk, 10 FSM R. 6, 9 (Chk. 2001) (caption may be changed to reflect the defendants’ name corrections in the plaintiff’s motion to amend complaint, and to reflect the plaintiff’s request in the opening statement at trial, that the caption be altered to conform to the pleadings), the substitution of a named party who holds a public office, see Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 646 (Pon. 2008) (if a public officer is a party to a proceeding, and he ceases to hold office, the name of his successor is automatically substituted as a party), as well as for the death of a party, see Sorech v. FSM Dev. Bank, 18 FSM R. 151, 155 (Pon. 2012) (since an action will be dismissed as to a deceased party if no motion for substitution is made within 90 days after the suggestion of death, see FSM Civ. R. 25(a), when the court has not received a motion for substitution, and the plaintiffs do not appear to intend to file such a motion, the court will dismiss the deceased party from the case and order that the caption in future filings reflect such dismissal). See also FSM Dev. Bank v. Salomon, 22 FSM R. 175, 186 (Pon. 2019) (when some claims and parties have been dismissed, henceforth, only the current plaintiff and defendants should appear in the case caption to reflect the case’s current posture); Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 19 (Pon. 2003) (absent an order dismissing it, a defendant is still a party despite its deletion from the case caption); Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001) (when the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court’s *in rem* and *in personam* jurisdiction, plaintiffs’ failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects).

Ms. Carl's motion does, however, show the need to correct the caption of this case, as the Court's Order of September 2, 2021, incorrectly references "Yosilyn Sigrah," as the administrator of the estate of Linda Carl, when, in fact, the administrator of the estate of Linda Carl is "Yosilyn Carl," as denominated in the caption of this Order, as set forth above. This is also different from the caption used in an earlier Order issued in this case, which at that time only concerned Mr. Fujita's contempt of court: In re Contempt of Fujita, 21 FSM R. 634 (Pon. 2018).

The caption set forth above reflects the current posture of this case. Accordingly, Ms. Carl's motion to correct the caption of this case to delete reference to the contempt proceeding is hereby denied.

C. *Stay Pending Appeal*

Ms. Carl, as the administrator of the estate of Linda Carl, has renewed her request that this Court issue a stay in this case pending her appeal of the Court's April 21, 2021 Order, which has been captioned as: Carl v. FSM Development Bank, Appeal No. P9-2021. Under Rule 62(d) of this Court's Rules of Civil Procedure, when an appeal is taken, the appellant, by giving a supersedeas bond, may obtain a stay in a trial court action. Like a preliminary injunction, a trial court abuses its discretion by issuing a stay without requiring or considering a bond. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014). See Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 162 (Chk. 2010) (the balance of possible injuries favors the movant when its possible injuries are numerous and, in some respects, onerous and when the only possible injury to the State is that it would, during the pendency of the case, be precluded from creating a new source of revenue and this harm would be almost completely alleviated by the requirement of a bond in the approximate amount of what sums it would have collected on the tax while the case is pending and when such security will be required); International Bridge Corp. v. Yap, 9 FSM R. 362, 366 (Yap 2000) (even before considering a bond, if a party requesting a stay has not demonstrated to the court's satisfaction that it is so likely to prevail, the court will exercise its discretion *not* to enter a stay) (emphasis added).

In this case, the amount potentially at issue in for Mr. Fujita alone is \$4,500. Indeed, if this amount is paid to the FSM Development Bank, then Mr. Fujita will have purged the contempt finding made against him. Similarly, the amount of fees and costs assessed against Mr. Fujita and Ms. Carl, jointly and severally, totals \$2,608.79. The upcoming show cause hearing is a civil contempt matter, and an order that might issue adjudging Mr. Fujita or Ms. Carl in contempt would be coercive in nature, requiring them to pay money, but only such money as the Court finds they have the current ability to pay, respectively. See Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011). If said amount, as yet undetermined, is paid to the FSM Development Bank, then neither Mr. Fujita nor Ms. Carl will be adjudged in contempt of court.

In order for the Court to issue a stay under Rule 62(d) at this time, a total of \$7,108.79 must be posted with the Court in the form of a cash bond that the Court Clerk will hold pending the outcome of the appeal captioned as Carl v. FSM Development Bank, Appeal No. P9-2021. The request for a stay of the adjudication of this case is hereby granted upon posting of this amount.

IV. CONCLUSION

In conclusion, and for the reasons stated above, a hearing will be held on October 15, 2021, at 1:00 o'clock p.m., at which time the Court will entertain evidence and arguments related to Mr. Fujita's contempt-of-court finding, including his current, present-day ability to pay \$4,500 to the FSM Development Bank. In the event that Mr. Fujita is able to pay this amount, and he fails to do so, he may be remanded to the FSM National Police for incarceration in the Pohnpei State jail until such time as he pays the \$4,500 at issue in this case. In addition, the Court will hear evidence and argument why they should not be adjudged in contempt of court for having failed to pay \$2,608.79 in fees and costs awarded to the FSM Development Bank. In the event that they are deemed to be in contempt of court, having failed to pay while they have the current ability to pay, they will be given an opportunity to purge the contempt to avoid incarceration.

In addition, if Ms. Yoslyn Sigrah intends to continue in her efforts to represent Mr. Fujita in this matter, she must, in order for the October 15, 2021 proceeding to be held without further delay, file the appropriate motion with this Court within ten (10) days from the date this Order is received. In the meantime, the Court considers Mr. Fujita to be a *pro se* litigant in this case. The Court encourages Mr. Fujita to seek legal representation in this case, without any further delay, as it concerns a contempt-of-court finding that has been made against him.

As discussed in more detail above, Ms. Carl's request that I disqualify myself from this case is denied, without prejudice, as is Ms. Carl's request that the caption of this case be corrected. Ms. Carl's request for a stay is granted on the condition that she post a cash bond with the Court in the amount of \$7,108.79.

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FSM SUPREME COURT APPELLATE DIVISION

BERYSIN SALOMON and NANCY SALOMON,)	APPEAL CASE NO. P3-2020
)	(con. Appeal No. P3-2021)
Appellants-Defendants,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA)	
DEVELOPMENT BANK,)	
)	
Appellee-Plaintiff.)	
_____)	
BERYSIN SALOMON and NANCY SALOMON,)	APPEAL CASE NO. P3-2021
)	
Appellants-Defendants,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA)	
DEVELOPMENT BANK,)	
)	
Appellee-Plaintiff.)	
_____)	

ORDER RE: ENLARGEMENT OF TIME

Dennis L. Belcourt
Associate Justice

Decided: September 22, 2021

APPEARANCES:

For the Appellants: Yoslyn G. Sigrah, Esq.
P.O. Box 3018
Kolonias, Pohnpei FM 96941