Request for Court to Consider Mr. Caldwell's Former Testimony

The Government requests in page 4 of its opposition brief that the Court take a look at the testimony of Adam Caldwell taken at the probable cause hearing. The Government had rested prior to the request, and it did not, in its brief or elsewhere, identify how Mr. Caldwell's former testimony would prove that the Jaylo David communicating with witnesses Musrasrik and Solomon on requests for government assistance was the Jaylo David who made the threat. Further, the testimony would likely be inadmissible hearsay.[4] The Government's request is denied as untimely and lacking in merit.

CONCLUSION

The Government failed to make a prima facie case, sufficient for a reasonably-minded trier of fact to base a finding that Mr. Edmund is guilty beyond a reasonable doubt, Mr. Edmund is therefore acquitted of all counts.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

POHNPEI ARTS & CRAFTS, INC., Appellant, vs. LEON PANUELO, JR., Administrator, FSM Social Security Administration; JACK HARRIS, Chairman, Board of Trustees, FSM Social Security Administration; FSM SOCIAL SECURITY ADMINISTRATION; MICHAEL J. SIPOS; and KENSTER SALVADOR, Appellees.	)	APPEAL CASE NO. P11-2017

OPINION

Argued: September 21, 2021
Decided: July 19, 2022

BEFORE:

Hon. Dennis L. Belcourt, Associate Justice, FSM Supreme Court
Hon. Chang B. William, Specially Assigned Justice, FSM Supreme Court*
Hon. Mayceleen JD Anson, Specially Assigned Justice, FSM Supreme Court*

*Chief Justice, Kosrae State Court, Tofol, Kosrae
*Associate Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

[4] As former testimony sought to be admitted at the trial stage of the proceeding, Mr. Caldwell's pretrial testimony is inadmissible hearsay absent a showing that Mr. Caldwell was unavailable to testify, FSM Evid. R. 804(b), or absent another applicable exception. The Government has made no such showing and not identified another applicable exception.

APPEARANCES:

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For the Appellees: Michael J. Sipos, Esq.
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* * * *

HEADNOTES

Appellate Review – Standard – Civil Cases – De Novo; Civil Procedure – Summary Judgment

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c); that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 614 (App. 2022).

Civil Procedure – Dismissal – Before Responsive Pleading

On a Rule 12(b)(6) motion to dismiss, only the well-pled or well-pleaded facts are to be accepted as true, and, no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. The court need not accept as true allegations that contradict facts which may be judicially noticed; for example, the court may consider matters of public record including pleadings, orders and other papers filed with the court, and the court does not have to credit invective, bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 615 n.4 (App. 2022).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Summary Judgment

When, on a Rule 12(b)(6) motion to dismiss, the trial court considers matters outside the pleading and does not exclude those matters, the trial court should consider the Rule 12(b)(6) motion to dismiss to be converted to a Rule 56 motion for summary judgment. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 615 (App. 2022).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Summary Judgment

Rule 12(b)(6) motions (even if converted to Rule 56 summary judgment motions) are, even if argued orally, always decided without an evidentiary hearing because Rule 12(b)(6) motions to dismiss (or Rule 56 summary judgment motions) raise only issues of law, not of fact. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 615 (App. 2022).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Summary Judgment

When the defendant, with its motion to dismiss submitted exhibits constituting evidence outside the pleadings, as did the plaintiff with its opposition, and when the trial court did not see any reason to exclude the exhibits, the Rule 12(b)(6) motion to dismiss may be converted to a Rule 56 motion for summary judgment. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 615 (App. 2022).

Civil Procedure – Collateral Estoppel; Judgments

The collateral estoppel doctrine provides that a right, question, or fact which is distinctly put in issue and directly determined as a ground of recovery by a court of competent jurisdiction cannot be disputed in

a subsequent action between the same parties, even if the subsequent action is on a different cause of action. The prior judgment is not, however, conclusive as to matters which might have been, but were not, litigated and determined in the prior action. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 615 (App. 2022).

Civil Procedure – Collateral Estoppel; Judgments

Collateral estoppel is a judgment's binding effect as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 615 (App. 2022).

Civil Procedure – Collateral Estoppel; Judgments

When an issue of fact or law is actually litigated and determined by a valid and final judgment and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 615 (App. 2022).

Constitutional Law – Case or Dispute – Standing

When a nonparty made a post-seizure appearance in a civil action and was mounting its challenge to the Social Security levy based on its claim of ownership of such property, it had standing to object to the levy of execution. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 616 (App. 2022).

Civil Procedure – Collateral Estoppel; Judgments

When the trial court ultimately determined that a non-party did not have a right to the property that it was claiming to own and seeking to have returned and the same trial court order also ordered sale of the seized property finally determining the non-party.'s rights and was a final order from which the non-party could have taken an appeal, but the non-party failed to obtain relief from the order from the trial court in that civil action or by appeal, it is now collaterally estopped from arguing it had a right to the seized assets. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 616 (App. 2022).

Civil Procedure – Collateral Estoppel; Judgments

Collateral estoppel (called "defensive collateral estoppel") may be asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant. Pohnpei Arts & Crafts, Inc. v. Panuelo, 23 FSM R. 610, 616 (App. 2022).

* * * *

COURT'S OPINION

DENNIS L. BELCOURT, Associate Justice:

This appeal arises from an order granting summary judgment entered on October 9, 2017 in Civil Action No. 2016-024 in the FSM Supreme Court trial division. We affirm the trial court's decision. Our reasons follow.

I. BACKGROUND

At the trial level, Appellant Pohnpei Arts and Crafts, Inc. ("PAC, Inc.") filed a complaint for damages on October 31, 2016. In its complaint, PAC, Inc. sought relief under five causes of action (titled "counts"), described parenthetically as follows: Count 1: Unauthorized Taking of Property Belonging to Another; Count 2: Process of Levying Writ Violated Title 6, Chapter 14, 11 F.S.M.C. 604 and others; Count 3: Violation of Due Process; Count 4: Gross Negligence; and Count 5: Tortious Interference with Business Relations, Loss of Business Opportunities and Profits. A review of the allegations indicates that the complaint was solely concerned with the levy of execution on property PAC Inc. claims to belong to it, which took place on

January 12 and 13, 2016. Appellant's Br. at 3.

On November 21, 2016, Defendants (collectively "FSMSSA") filed a motion to dismiss the complaint for failure to state a claim upon which relief may be granted and for lack of subject matter jurisdiction. In its motion to dismiss, FSMSSA made the following claims: that the Court had already decided the merits of the claims at issue, so therefore, the complaint does not state a claim upon which relief may be granted; that the business in operation remains Reyes' sole proprietorship as a matter of law and its assets are subject to the FSMSSA's tax lien; that the Social Security Administration has the right to determine the actual employer of employees for purposes of implementing this act and need not rely on the characterization provided; and that PAC, Inc. lacked standing to sue.

The following was attached to FSMSSA's motion to dismiss: Exhibit "A", the Foreign Investment Permit No. 07-09 for Pohnpei Arts & Crafts/Roselyn M. Reyes; Exhibit "B," an order entered on September 23, 2016 in Civil Action No. 2012-015; Exhibit "C," the notice of appearance (of PAC, Inc.'s Counsel) and motion for return of seized properties filed in Civil Action No. 2012-015 on May 4, 2016; Exhibit "D," FSM Social Security's motion to strike and opposition to motion for return of seized properties filed in Civil Action No. 2012-015 on May 20, 2016; Exhibit "E," FSM Social Security's request for ruling on third motion to compel discovery and for award of attorney fees against Roslyn Reyes and Counsel pursuant to Rule 37(a)(4) and (b)(2)(E), and others,[1] Exhibit "F," affidavit of Michael J. Sipos dated November 21, 2016; and Exhibit "G," FSMSSA's reply to supplement on motion for emergency hearing re writ of execution, evidentiary objections to affidavit of Ramon Reyes, non-opposition to request for post-levy hearing filed in Civil Action No. 2012-015 on January 20, 2016.

On February 8, 2017, PAC, Inc. filed its opposition to the motion to dismiss. PAC, Inc., stated that its complaint is sufficient under FSM Civil Rule 8(a) as it provided adequate notice of its claims to enable the Defendants to answer the pleading. PAC, Inc. asserted that the claims in the present case were not adjudicated in Civil Action No. 2012-015 and that the defendants in this case were different from those in Civil Action No. 2012-015. PAC, Inc. contended that it does have legal standing to challenge the Defendants' actions because PAC, Inc. is a legal corporation and that the Defendants removed property belonging to it. PAC, Inc. maintained that this case is not about Roslyn Reyes but about the illegal conduct of the Defendants in removing its belongings.

Additionally, PAC, Inc. attached to its opposition the following: a certificate of incorporation for Pohnpei Arts & Crafts, Inc. issued by the Pohnpei Registrar of Corporation and approved by the Governor of Pohnpei; a business license issued by the Kolonia Town Government for Pohnpei Arts & Crafts Company; and a FSM Social Security Administration Employer Identification Number for Pohnpei Arts & Crafts, Inc.

The trial court, having found that there was no reason to exclude FSMSSA's exhibits, treated the motion to dismiss as a motion for summary judgment[2] and issued its order granting summary judgment in favor of FSMSSA on October 9, 2017. [Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366 (Pon. 2017).] The trial court decided that PAC, Inc. was a corporation and that it had the legal ability to own personal property.[3] The trial court noted that PAC, Inc. made a post-seizure appearance in Civil Action No.

[1] Some of the requests in that exhibit are unreadable.

[2] In addition to Civil Rule 12(b), the trial court cited Palasko v. Pohnpei, 20 FSM R. 90, 93 (Pon. 2015); Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015); Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009); Annes v. Primo, 14 FSM R. 196, 200 (Pon. 2006); Berman v. Santos, 7 FSM R. 231, 235 (Pon. 1995). Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 369 (Pon. 2017).

[3] The trial court determined that the property taken from PAC, Inc. was personal property, and that even if PAC, Inc.'s did not have the legal ability to operate a business in Pohnpei it does not mean that it cannot own personal property on Pohnpei.

2012-015 on May 4, 2016 at which time it sought the return of the same property that it now seeks return of in this case claiming that some of the seized property was exempt and that PAC, Inc.'s due process rights were violated. The trial court found that that trial court in Civil Action No. 2012-015 had determined that PAC, Inc. did not have the right to the property that it claimed to own and sought returned to it.

As PAC, Inc.'s right to the property it is seeking returned has already been adjudicated in Civil Action No. 2012-015, wherein FSMSSA was the adverse party and PAC, Inc.'s claims were found deficient, the trial court concluded that collateral estoppel bars PAC, Inc.'s claims against FSMSSA in this case. Additionally, the trial court decided that because PAC, Inc.'s other claims are dependent on it succeeding on its claim against FSM Social Security, as a matter of law, PAC, Inc. cannot succeed on those derivative claims too. Thus, the trial court determined that, even though the second action differs from the first, the other FSMSSA defendants, those not included in the first case, are also entitled, as a matter of law, to summary judgment in their favor.

PAC, Inc. timely appealed that order to the FSM Supreme Court appellate division on October 23, 2017.

II. Issue on Appeal

On appeal, PAC, Inc. raised the issue that the order granting summary judgment in favor of FSMSSA entered on October 9, 2017 was erroneous, contrary to law, and not based on substantial evidence.

III. Standard of Review

Where the trial court decides a motion as a matter of law it is for us to review the issue of law *de novo*. Weno v. Stinnett, 9 FSM R. 200, 206 (App. 1999). The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

IV. Discussion

Parties' contentions

PAC, Inc. argued on appeal that a threshold issue exists as to whether the trial court's analysis was made under FSM Civil Rule 56(c) or under FSM Civil Rule 12(b)(6). PAC, Inc. contended that it appears to be that the trial court expanded FSMSSA's motion to dismiss to a motion for summary judgment. PAC, Inc. claimed that a motion to dismiss under Civil Rule 12(b) is different than one under Rule 56(c), and that the parties' submissions and arguments were made under Civil Rule 12(b). PAC, Inc. concluded that it was grave error for the trial court to review, at the same time, a motion to dismiss and a motion for summary judgment. PAC, Inc. maintained that there were no depositions, answers to interrogatories, admissions, and affidavits, and there were many genuine issues of material fact and FSMSSA knew this that was why they did not file a motion for summary judgment. Additionally, PAC, Inc. argued that FSMSSA's motion to dismiss fails because FSMSSA received adequate notice from PAC, Inc.'s pleading in accordance with Civil Rule 8(a) thereby enabling FSMSSA to prepare its defense. Furthermore, PAC, Inc. argued that it was legally and factually impossible to litigate actions complained of in 2016 that included all of the defendants in this present case. Therefore, PAC, Inc. reasoned that collateral estoppel does not apply to the matter at hand.

On appeal, FSMSSA, in its responsive brief, argued that the facts were undisputed in Civil Action No. 2012-015 surrounding the levy of execution at issue which led that court to determine that PAC, Inc. had no interest in the property that was being seized under the writ of execution and no basis to allege that it could

have possibly sustained any damages. FSMSSA maintained that the trial court did not err in its ruling that the preclusive collateral estoppel effect barred PAC, Inc.'s complaint. FSMSSA claimed that there is no other conclusion that can be properly reached under these facts since the Social Security lien under 53 F.S.M.C. 607 attached to all of Roselyn Reyes' property and that FSMSSA could have levied execution against such property even if it was transferred to another person. FSMSSA contended that it was proper for the trial court to treat its motion to dismiss as a motion for summary judgment since matters outside the pleadings were submitted by both sides. FSMSSA averred that Civil Rule 12 provides for this, as do the controlling authorities cited by the trial court. FSMSSA states that it was proper for the court to make its ruling after taking judicial notice of the filings in Civil Action No. 2012-015. FSMSSA cited Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009)[4] to support its argument. FSMSSA asserted that the trial court was correct to take judicial notice of the filings in Civil Action No. 2012-015 since those filings demonstrated that the complaint in this trial case consisted of unsupported conclusions, half-truths, and others that are directly at odds with the undisputed evidence in Civil Action No. 2012-015 where those matters were fully considered and decided adversely to PAC, Inc.

Motion to Dismiss (Civil Rule 12(b)(6)) or Motion for Summary Judgment (Civil Rule 56(c))

When, on a Rule 12(b)(6) motion to dismiss, the trial court considers matters outside the pleading and does not exclude those matters, the trial court should consider the Rule 12(b)(6) motion to dismiss to be converted to a Rule 56 motion for summary judgment. Setik v. Perman, 22 FSM R. 105, 117 n.11 (App. 2018). Moreover, Rule 12(b)(6) motions (even if converted to Rule 56 summary judgment motions) are, even if argued orally, always decided without an evidentiary hearing because Rule 12(b)(6) motions to dismiss (or Rule 56 summary judgment motions) raise only issues of law, not of fact. *Id.* at 118.

In this case, FSMSSA with its motion to dismiss submitted exhibits constituting evidence outside the pleadings, as did Appellant PAC, Inc. with its opposition. The trial court did not see any reason to exclude the exhibits. Thus, the Rule 12(b)(6) motion to dismiss may be converted to a Rule 56 motion for summary judgment. We find no error with the trial court's decision with respect to this issue.

Collateral estoppel

The doctrine of collateral estoppel provides that a right, question, or fact which is distinctly put in issue and directly determined as a ground of recovery by a court of competent jurisdiction cannot be disputed in a subsequent action between the same parties, even if the subsequent action is on a different cause of action. The prior judgment is not, however, conclusive as to matters which might have been, but were not, litigated and determined in the prior action. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995) (*citing* Cromwell v. County of Sac, 94 U.S. 351, 24 L. Ed. 195 (1877)).

Collateral estoppel is a judgment's binding effect as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016). When the issue of fact or law is actually litigated and determined by a valid and final judgment and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. *Id.* at 74; Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 185 (Pon. 1993)

[4] On a Rule 12(b)(6) motion to dismiss, only the well-pled or well-pleaded facts are to be accepted as true, and, no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Furthermore, the court need not accept as true allegations that contradict facts which may be judicially noticed; for example, the court may consider matters of public record including pleadings, orders and other papers filed with the court. And the court does not have to credit invective, bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like. Arthur, 16 FSM R. at 593.

(citing Restatement (Second) of Judgments § 27).

The record before us before us shows that PAC, Inc., through counsel Yoslyn G. Sigrah, made a post-seizure appearance in Civil Action No. 2012-015 and by motion dated May 4, 2016 requested the return of the seized property, claiming that it belonged to it. To the extent that PAC, Inc., a nonparty to Civil Action No. 2012-015, was mounting its challenge to the levy based on its claim of ownership of such property, it had standing to object to the levy of execution. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012) (a court cannot issue a writ of execution to seize a non-party's assets).

However, it is also evident that the trial court in Civil Action No. 2012-015 ultimately determined, in an order dated September 23, 2016, that PAC, Inc. did not have a right to the property that it was claiming to own and seeking to have returned. Appellee's Supplemental App. at 231-36. Said order also ordered sale of the seized property finally determining PAC, Inc.'s rights and was a final order from which PAC, Inc. could have taken an appeal. Stephen v. Chuuk, 17 FSM R. 453, 459 (App. 2011) (Generally, an order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action). PAC, Inc. failed to obtain relief from the September 23, 2016 order from the trial court in Civil Action No. 2012-015 or by appeal. PAC, Inc. is now collaterally estopped from arguing it had a right to the seized assets.

Other Defendants

PAC, Inc. contends that collateral estoppel is not available to defendants not party to Civil Action No. 2012-015. PAC, Inc. is incorrect. Such a use of collateral estoppel is called "defensive collateral estoppel, i.e. "[e]stoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant." Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007) (citing BLACK'S LAW DICTIONARY 256 (7th ed. 1999)). This Court holds that the other defendants were entitled to assert defensive collateral estoppel as to the issue of PAC, Inc.'s right to the property seized. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.3 (Chk. 2016).

V. CONCLUSION

The issue of PCA, Inc.'s right to the seized property that forms the basis for the instant action had already been determined in Civil Action No. 2012-015, collaterally estopping PCA, Inc.'s claim herein. Further, the trial court properly allowed assertion of the collateral estoppel defense by defendants in this action that were not parties to Civil Action No. 2012-015. Finally, the trial court was procedurally correct in awarding summary judgment, as the parties had each submitted exhibits that were external to the pleadings, which the trial court properly considered.

Based upon all the reasons provided above, we affirm the trial court's decision.

* * * *