

CHAPTER 14**Enforcement of Judgments****SECTIONS**

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§ 1401. Money judgments.

Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered. The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment, as provided in sections 1405 through 1415 of this chapter.

Source: TT Code 1966 § 282; TT Code 1970, 8 TTC 1; COM PL 6-97 § 5; TT Code 1980, 8 TTC 1.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Case annotations: An intervenor must make a three part showing to qualify for intervention as a matter of right: an interest, impairment of that interest, and inadequacy of representation by existing parties. A tax lien holder and a judgment creditor with an unsatisfied writ of execution may intervene as a matter of right where an assignee is compromising a debtor's accounts receivable. *California Pac. Assocs. v. Alexander*, 7 FSM R. 198, 200 (Pon. 1995).

Payments totaling the principal amount of a judgment have been paid do not fully satisfy the judgment when the judgment expressly provides for 9% interest and for attorney's fees incurred in enforcing the judgment. Even if it did not so state, the judgment creditor would be entitled to statutory interest of 9% under 6 F.S.M.C. 1401. Until such time as all interest and a reasonable attorney's fee is paid, the judgment remains unsatisfied. *Mobil Oil Micronesia, Inc. v. Benjamin*, 10 FSM R. 100, 103 (Kos. 2001).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. *Davis v. Kutta*, 8 FSM R. 338, 341 n.2 (Chk. 1998).

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. *J.C. Tenorio Enters., Inc. v. Sado*, 6 FSM R. 430, 431-32 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. *J.C. Tenorio Enters., Inc. v. Sado*, 6 FSM R. 430, 432 (Pon. 1994).

§ 1402. Judgments affecting land.

A judgment adjudicating an interest in land shall, after the time for appeal therefrom has expired without notice of appeal being filed or after any appeal duly taken has been finally determined or after an order has been entered that an appeal shall not stay the judgment, operate the release, or transfer any interest in land in accordance with the terms of the judgment, when a copy thereof, certified by the Clerk of Courts, or any Judge of the Court, is recorded in the Office of the Clerk of Courts, in the case of unregistered land, or in the District registrar's office, in the case of registered land, for the District in which the land lies.

Source: TT Code 1966 § 283; TT Code 1970, 8 TTC 2; COM PL 4C-34 § 1; TT Code 1980, 8 TTC 2.

§ 1403. Other judgments—Enforcement by contempt proceedings.

(1) Judgment for any form of relief other than the payment of money or the adjudication of an interest in land, after the time for appeal therefrom has expired without notice of appeal being filed or after any appeal duly taken has been finally determined or after an order has been entered that an appeal shall not stay the judgment, may be enforced by contempt proceedings; provided, that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice.

(2) Upon a finding of contempt, the person against whom the judgment has been rendered may be fined or

imprisoned at the discretion of the Court until he or she complies with the judgment or is released by the Court or has been imprisoned for six months, whichever happens first.

Source: TT Code 1966 § 284; TT Code 1970, 8 TTC 3; COM PL 4C-34 § 1; TT Code 1980, 8 TTC 3.

§ 1404. Other methods of enforcement.

Enforcement of judgment may also be effected, if the Trial Division of the High Court deems justice requires and so orders by the appointment of a receiver, or receivers, by taking possession of property and disposing of it in accordance with the orders of the Court, or by a civil action on the judgment, or in any other manner known to American common law or common in courts in the United States.

Source: TT Code 1966 § 285; TT Code 1970, 8 TTC 4; TT Code 1980, 8 TTC 4.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Case annotations: The courts must apply three guidelines in determining whether a decision should be given retroactive effect. First, the decision, to be applied non-retroactively, must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed. Second, the court must weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. Finally, the court must weigh the inequity imposed by retroactive application. *Innocenti v. Wainit*, 2 FSM R. 173, 185-86 (App. 1986).

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced "in any. . . manner known to American common law or common in courts in the United States." *FSM Social Sec. Admin. v. Lelu Town*, 13 FSM R. 60, 61 (Kos. 2004).

At common law, garnishment did not exist as a remedy where the judgment debtor was a municipality because it is generally held that the funds or credits of a municipality or other public body exercising governmental functions, acquired by it in its governmental capacity, may not be reached by its creditors by garnishment served upon the debtor or depository of the municipality. *FSM Social Sec. Admin. v. Lelu Town*, 13 FSM R. 60, 62 (Kos. 2004).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government where the underlying cause of action is based on a violation of the national civil rights statute. The rationale for those writs was the Supremacy Article of the FSM Constitution, which must control regardless of a state constitutional provision, or national law, to the contrary. It has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. *FSM Social Sec. Admin. v. Lelu Town*, 13 FSM R. 60, 62 (Kos. 2004).

Although preserving the integrity of the FSM social security system is a matter of concern to all FSM citizens, when Social Security has offered no argument why the court should depart from the general rule that municipal entities are immune from garnishment, a motion for issuance of a writ of garnishment directed toward the assets of a municipality will be denied. *FSM Social Sec. Admin. v. Lelu Town*, 13

FSM R. 60, 62 (Kos. 2004).

When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change the analysis because the FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and the court would be derelict in our duty to allow it to do so. The trial court's action case was thus appropriate and within the bounds of its authority. *Chuuk v. Davis*, 13 FSM R. 178, 186 (App. 2005).

When, only after repeated attempts to satisfy those judgments by less drastic measures, writs of garnishment were issued in a civil rights case after over six and a half years had elapsed since judgment and in another civil rights case, in which a writ of garnishment was issued at the same time, after over two years since judgment, but when in the present case, it has only been about four months since the first payment on the consent judgment was due, and since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and given further opportunity to meet its obligation in some other manner before the plaintiffs can resort to a writ of garnishment. *Tipingeni v. Chuuk*, 14 FSM R. 539, 543 (Chk. 2007).

Default Judgments

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. *Lonno v. Trust Territory (III)*, 1 FSM R. 279, 280 (Kos. 1984).

In the interest of the finality of legal proceedings, the court will not set aside a default judgment in a case in which the defendant had access to legal advice yet failed to make a timely defense of the case and presented no meritorious defense, although the plaintiff could not be prejudiced if the default judgment were set aside. *Truk Transp. Co. v. Trans Pac. Import Ltd.*, 3 FSM R. 440, 444 (Truk 1988).

Where the defendant had satisfied a default judgment and the judgment was later set aside, the court will order the amount received by the plaintiff paid into an account under the control of the court pending final disposition of the case on the merits, where it appears that the plaintiff's health and place of residence are uncertain, and where the passage of time renders the plaintiff's ability to produce the amount more uncertain, should the outcome of the case require this. *Morris v. Truk*, 3 FSM R. 454, 458 (Truk 1988).

The clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. *Bank of the FSM v. Bartolome*, 4 FSM R. 182, 184 (Pon. 1990).

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. *Berman v. FSM Supreme Court*, 6 FSM R. 109, 112-13 (Pon. 1993).

Entry of a default judgment is a two step process. There must first be an entry of default before a default judgment can be entered. A default judgment can then be entered, by the clerk if it is for a sum certain; otherwise it must be entered by the court. *Poll v. Paul*, 6 FSM R. 324, 325 (Pon. 1994).

An improperly filed amended complaint cannot serve as the basis for a default judgment. *Berman v. FSM Supreme Court (II)*, 7 FSM R. 11, 16 (App. 1995).

Relief from Judgment

Rule 60(b)(6) of the FSM Rules of Civil Procedure permits the court to relieve a party from judgment for any reason justifying the relief. *Bank of the FSM v. Bartolome*, 4 FSM R. 182, 184 (Pon. 1990).

A motion for relief of a partial summary judgment under Civil Rule 59(e) is subject to a strict time limit of 10 days which cannot be enlarged by the court. Such a motion filed 10 months later is untimely. This very strict deadline cannot be avoided by an unsupported assertion that a copy of the judgment was not served. *Kihara Real Estate, Inc. v. Estate of Nanpei (II)*, 6 FSM R. 354, 355-56 (Pon. 1994).

While Civil Rule 60(a) may be used to correct clerical errors in a judgment such as those of transcription, copying, or calculation it cannot be used to obtain relief for acts deliberately done. Therefore where the court deliberately intended to enter in a judgment the amount prayed for in a party's motion and that amount is based on a special master's report not before the court, the party cannot obtain relief under Rule 60(a) for errors in the special master's report. *Senda v. Mid-Pacific Constr. Co.*, 6 FSM R. 440, 444-45 (App. 1994).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3) the court must consider whether it was made within a reasonable time even when it is made within the one year time limit. *Senda v. Mid-Pacific Constr. Co.*, 6 FSM R. 440, 445-46 (App. 1994).

Relief from judgment cannot be granted when judgment was granted on two separate grounds and relief is only sought from one of the grounds. However, if meritorious, the record may be corrected to show that one of the grounds ought to be stricken. *Setik v. FSM*, 6 FSM R. 446, 448 (Chk. 1994).

Failure of counsel to exercise due diligence in searching for "newly discovered" evidence is sufficient and independent grounds for denial of a motion for relief from judgment under FSM Civil Rule 60(b)(2). *Nena v. Kosrae (III)*, 6 FSM R. 564, 567 (App. 1994).

The purpose of Civil Rule 60(b) is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice should be done. *Mid-Pacific Constr. Co. v. Senda*, 7 FSM R. 129, 133 (Pon. 1995).

Civil Rule 60(b) does not afford relief to a party where the errors complained of were calculated by that party, submitted to the court by that party, and judicially noticed upon that party's request, because it is apparent that that party seeks relief from the insufficient preparation, the carelessness, and the neglect of its own counsel. *Mid-Pacific Constr. Co. v. Senda*, 7 FSM R. 129, 135 (Pon. 1995).

A party may be estopped from seeking Rule 60(b)(1) relief from acts voluntarily undertaken by that party. *Mid-Pacific Constr. Co. v. Senda*, 7 FSM R. 129, 135 (Pon. 1995).

Even where a request for Rule 60(b) relief is filed within the stated one-year time limit, a court still must examine whether the filing was made within a "reasonable time." In determining this issue, the court reviews all of the facts and circumstances surrounding the case and may require the party seeking Rule 60 relief to offer a sufficient explanation for not having taken appropriate action in a more timely manner. *Mid-Pacific Constr. Co. v. Senda*, 7 FSM R. 129, 136 (Pon. 1995).

§ 1405. Writs of attachment.

(1) Writs of attachment may be issued only by the Trial Division of the High Court for special cause shown, supported by statement under oath. Such writs when so issued shall authorize and require the chief of police, any policeman, or other person named therein, to attach and safely keep so much of the personal property of the person against whom the writ is issued as will be sufficient to satisfy the demand set forth in the action, including interest and costs. The chief of police, policeman, or other person named in the writ shall not attach any personal property which is exempt from attachment, nor any kinds or types of personal property which the Court may specify in the writ.

(2) Debts payable to the defendant may be similarly attached by special order issued by the Trial Division of the High Court, which shall exempt from the attachment so much of any salary or wages as the Court deems necessary for the support of the person against whom the order is issued or his dependents.

Source: TT Code 1966 § 280; TT Code 1970, 8 TTC 51; TT Code 1980, 8 TTC 51.

Editor's note: Changes were made in the phraseology of the 1966 edition of the Trust Territory Code. In subsection (1) the phrase "supported by statement of the High Court for special cause shown," is deleted to correct an error in the 1982 edition of the FSM Code. See errata below.

Errata: In 6 F.S.M.C. 1405(1), delete "supported by statement by High Court for special cause shown, ".

Case annotations: The statutes concerning writs of execution protect certain property of the debtor from execution but contain no suggestion that other creditors can obtain rights superior to that of the judgment creditor in property covered by a writ of execution. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 282, 285 (Pon. 1986).

While the statute authorizing execution against "the personal property of the person against whom the judgment has been rendered" contains no exceptions for third party creditors, neither does it purport to sweep away pre-existing property rights, including security interests, of such creditors, nor does the statute authorize the sale of property owned by others which happens to be in possession of the debtor at the time of execution. 6 F.S.M.C. 1407. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 285 (Pon. 1986).

A writ of attachment is a process by which property is seized and held to satisfy an established debt or prospective judgment and may only issue against the property of a defendant debtor. The property of a third party, to which the debtor has no possessory rights, may not be seized, held, and eventually sold to satisfy the obligations of the debtor. *Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping*, 7 FSM R. 37, 38 (Pon. 1995).

That a defendant debtor is a shareholder of a corporation that might receive a favorable settlement in the future and might pay a dividend to its shareholders does not entitle creditors to attach that corporation's assets. *Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping*, 7 FSM R. 37, 39 (Pon. 1995).

FSM Civil Rule 70 provides for five different remedies, one of which is a writ of attachment. Garnishment exists in the FSM through judicial interpretation of the FSM attachment statute, 6 F.S.M.C. 1405(2), and because attachment is an available remedy under Rule 70, it follows that garnishment is also. *Louis v. Kutta*, 8 FSM R. 312, 314 n.1 (Chk. 1998).

§ 1406. Release and modification.

The Trial Division of the High Court, upon application of either party or of its own motion, may make and, from time to time, modify such orders as it deems just for the release of property from attachment or for the sale thereof if perishable or if the owner of the property shall so request, and for the safekeeping of the proceeds of the sale.

Source: TT Code 1966 § 281; TT Code 1970, 8 TTC 52; TT Code 1980, 8 TTC 52.

§ 1407. Writs of execution.

Every court, at the request of the party recovering any civil judgment in that court for the payment of money, shall issue a writ of execution against the personal property of the party against whom the judgment has been rendered, except as provided in section 1415 of this chapter.

Source: TT Code 1966 § 286; TT Code 1970, 8 TTC 53; COM PL 4C_21 § 1; TT Code 1980, 8 TTC 53.

Case annotations: The statutes concerning writs of execution protect certain property of the debtor from execution but contain no suggestion that other creditors can obtain rights superior to that of the judgment creditor in property covered by a writ of execution. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 285 (Pon. 1986).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing nat'l gov't lien rights under 54 F.S.M.C. 153. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 303 (Pon. 1988).

An execution creditor holds a more powerful position than a mere judgment creditor. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 306 (Pon. 1988).

Writs of execution will not be granted on an automatic basis, but only when it has been shown that judgment creditors have seriously explored the possibility of satisfying the judgment through other means, in order to avoid bankruptcies or economic hardships. *In re Mid-*

Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Where it becomes apparent that claims or creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 306 (Pon. 1988).

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where the purchasers do not object to the motion, confirmation of the sale is effective and binding on the purchasers and is not violative of their rights of due process. *Sets v. Island Hardware*, 3 FSM R. 365, 368 (Pon. 1988).

Creditors with judgments more than 10 days old are entitled to writs of execution upon request. *In re Pacific Islands Distributing Co.*, 3 FSM R. 575, 584 (Pon. 1988).

Although technically attachment and garnishment are distinct processes, attachment applying to assets in the defendant's possession and garnishment involving assets in the possession of a third party, the statutory language regarding attachment would seem to apply to both cases. *Bank of Guam v. Elwise*, 4 FSM R. 150, 152 (Pon. 1989).

Although there is no provision for garnishment in Pohnpei state law nor any national statute explicitly providing for garnishment, garnishment of wages is an acceptable means for enforcing an unpaid judgment, pursuant to the FSM Supreme Court's statutory "general powers," its power to enforce judgments in any manner common in courts in the United States, and its power to issue writs of attachment. *Bank of Guam v. Elwise*, 4 FSM R. 150, 152 (Pon. 1989).

The requirements and procedures for issuing a writ of garnishment should be the same as those applied to attachment proceedings. *Bank of Guam v. Elwise*, 4 FSM R. 150, 152 (Pon. 1989).

FSM Supreme Court's power to issue writs of garnishment is clearly discretionary. *Bank of Guam v. Elwise*, 4 FSM R. 150, 152 (Pon. 1989).

Where garnishment is warranted, then anything beyond what is reasonably necessary for the defendant to support himself and his dependents can be garnished. *Bank of Guam v. Elwise*, 4 FSM R. 150, 153 (Pon. 1989).

Among execution creditors the claims of those whose writs are dated earliest have priority to an insolvent's assets over those whose writs are dated later. Individual writ-holders are to be paid on the basis of first-in-time, first-in-right rule according to the dates of their writs. *Western Sales Trading Co. v. Ponape Fed'n of Coop. Ass'ns*, 6 FSM R. 592, 593 (Pon. 1994).

While the statute authorizing execution against "the personal property of the person against whom the judgment has been rendered" contains no exceptions for third party creditors, neither does it purport to sweep away pre-existing property rights, including security interests, of such creditors, nor does the statute authorize the sale of property owned by others which happens to be in possession of the debtor at the time of execution. 6 F.S.M.C. 1407. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 285 (Pon. 1986).

A writ of execution may issue without seriously exploring other possible means of satisfying the judgment. *House of Travel v. Neth*, 7 FSM R. 228, 229 (Pon. 1994).

Execution may be had against a judgment debtor's non-exempt personal property, not against his interests in land. *House of Travel v. Neth*, 7 FSM R. 228, 229 (Pon. 1994).

Personal property is property other than land or interests in land. *House of Travel v. Neth*, 7 FSM R. 228, 229 (Pon. 1994).

Property may not be taken by government, even in aid of a judgment, without due process of law. In executing the writ, due process of law may be assured by directing the executing officer to comply strictly with the statutory provisions for levying a writ of execution. *House of Travel v. Neth*, 7 FSM R. 228, 229-30 (Pon. 1994).

The attempt to execute a judgment on the judgment debtor's bank accounts constitutes a garnishment, since it is a debt owed by a third party to the judgment debtor. This remedy is recognized in the FSM, and should go forward as a separate proceeding. The writ of execution will issue upon the court's receipt of a simplified form of writ that conforms with 6 F.S.M.C. 1407. *Amayo v. MJ Co.*, 10 FSM R. 371, 386 (Pon. 2001).

§ 1408. Levying execution.

Every chief of police, policeman, or other person duly authorized receiving a writ of execution issued by any court, shall levy or cause a chief of police or policeman to levy execution as follows:

(1) *Demand of payment—Seizure of property.* He shall demand of the person against whom the execution is issued, if he may be found within the municipality where the levy is being attempted, that the person pay the execution or exhibit sufficient property subject to execution. If such person has property of a kind exempt from execution but to an amount exceeding the exemption, he may select the portion of this property provided by law which he desires to retain under the exemption, providing he makes this selection known promptly to the person making the levy. Otherwise, the person making the levy shall make the selection. If the person against whom the execution is issued does not pay the execution in full, including interest and costs and expenses thereof, the person making the levy shall take into his possession property of the person against whom the execution is issued, not exempt from execution, sufficient in his opinion to cover the amount of the execution. He shall take first any property under attachment in the action in which the execution was issued; next, property, if any, indicated by the person against whom the execution was issued. He may, if he thinks best, remove the property to a safe place, or place a caretaker in charge of it. He shall make a list of the property levied upon.

(2) *Notice of sale.* The person making the levy shall, after levy, give public notice of the sale at least seven days in advance of the time and place of sale, by notifying the magistrate of the municipality or municipalities in which the levy was made, by posting a written notice of the sale in a conspicuous place at or near the municipal office in the municipality in which the sale is to be held, and must notify the person against whom the execution is issued, if he can be found within the municipality or municipalities where the levy was made, or notify any agent who had custody of

the property levied upon at the time of levy.

(3) *Sale—Procedure—Disposition of proceeds.* The person making the levy on the day and at the place set for the sale, unless payment has been made of the amount of the judgment and interest and the costs and expenses in connection with the levy, shall sell the property levied upon at public auction to the highest bidder. He shall deduct from the proceeds of the sale sufficient money for the full payment of his fees and expenses, and shall then pay the person in whose favor the execution was issued, or his counsel, such balance as remains up to the amount due on the execution. If there are any proceeds of the sale left after the deduction and payment directed above, such remaining proceeds shall be paid over to the person against whom the execution was issued. The person making the levy shall then return the writ to the court with a report of his doings thereon, showing the amounts collected and paid out thereon.

Editor's note: The word "properly" has been revised to "property" to correct a typographical error made in the 1982 edition of this code.

(4) *Postponement of sale.* Whenever a request in writing signed by the debtor and creditor for a postponement of the sale to an agreed date and hour is given to the person conducting the sale under execution, such person shall thereupon by public declaration postpone the sale to the day and hour so fixed in such request and at the place originally fixed by the person for the sale. In the case of postponements, notice of each thereof must be given by public declaration by the person conducting the sale at the time and place last appointed for the sale. No other notice of postponed sale need be given.

(5) *Completion of sale by person other than one making levy.* If a chief of police, policeman, or other person duly authorized starts to levy execution and for any reason is prevented from or fails to complete the matter, any chief of police, policeman, or other person duly authorized may complete the levy, sale, and payment of proceeds as provided in this section.

Source: TT Code 1966 § 287; TT Code 1970, 8 TTC 54; COM PL 4C-21 § 2; TT Code 1980, 8 TTC 54.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Case annotations: The current practice that where a judgment creditor who holds a national court judgment wants national police officers to execute on the judgment, he must bear the transportation and per diem costs of bringing national police personnel to Yap to execute on the writ since Yap has no resident national law enforcement officer. While this involves substantial up-front costs to the judgment creditor, those costs are recoverable from the judgment debtor under 6 F.S.M.C. 1408. *Parkinson v. Island Dev. Co.*, 11 FSM R. 451, 453 (Yap 2003).

The court is reluctant to opine on 6 F.S.M.C. 1408's constitutionality when the judgment creditor has an enforcement remedy, if not an ideal one, notwithstanding any constitutional adjudication which this court might render on the division of powers issue that Yap raised regarding a writ of execution directed to the Yap chief of police. *Parkinson v. Island Dev. Co.*, 11 FSM R. 451, 453 (Yap 2003).

§ 1409. Orders in aid of judgment—Application.

At any time after a finding for the payment of money by one party to another and before any judgment based

thereon has been satisfied in full, either party may apply to the Court for an order in aid of judgment. Thereupon the Court, after notice to the opposite party, shall hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. In making this determination the Court shall allow the debtor to retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents, including fulfillment of any obligations he may have to any clan, lineage, or other similar group, in return for which obligations he, or his dependents, receive any necessary part of the food, goods, shelter, or services required for their living.

Source: TT Code 1966 § 289; TT Code 1970, 8 TTC 55; TT Code 1980, 8 TTC 55.

Cross-reference: The FSM Supreme Court website can be found at <http://www.fsmsupremecourt.fm/>.

Case annotation: When the drawdown amounts that Chuuk receives from the FSM national government are greater by more than an order of magnitude than the judgment amount remaining and when, looking to the case's more than six and a half year post-judgment history, the anti-garnishment statute deprives the judgment creditor of the only reasonably expeditious means of obtaining satisfaction of her judgment. Thus the fastest manner in which the debtor can reasonably pay the judgment under 6 F.S.M.C. 1409 is by an order of garnishment directed to the national government. *Davis v. Kutta*, 11 FSM R. 545, 549 (Chk. 2003).

Under 6 F.S.M.C. 1409, an individual judgment debtor is allowed to "retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents," but if the debtor has some limited ability to pay, the court can order some payment. *Davis v. Kutta*, 8 FSM R. 338, 342 (Chk. 1998).

Under 6 F.S.M.C. 1409, the court makes two inquiries: the judgment debtor's ability to pay, and the fastest manner to accomplish payment. *Davis v. Kutta*, 8 FSM R. 338, 343 (Chk. 1998).

Because the court must consider the debtor's ability to pay, an order which takes this factor properly into consideration will not result, in and of itself, in the financial undoing of a debtor. *Davis v. Kutta*, 8 FSM R. 338, 344 (Chk. 1998).

A judgment debtor's request to the court for a hearing, pursuant to 6 F.S.M.C. 1409 to determine its ability to pay the debt and the fastest means to pay and satisfy the judgment constitutes a motion for an order in aid of judgment. *Walter v. Chuuk*, 10 FSM R. 312, 316 (Chk. 2001).

Either party may apply for an order in aid of judgment. Once it has, the court must, after notice to the opposite party, hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. *Walter v. Chuuk*, 10 FSM R. 312, 316-17 (Chk. 2001).

§ 1410. Orders in aid of judgment—Hearings.

(1) At the hearing provided by section 1409 of this chapter, the debtor may be examined orally before the Court, or the Court may refer the examination to a single judge of the Court or to a master to take evidence and report his findings. In either case any evidence properly bearing on the question may be introduced by either party or by the Court, the single judge or master in the same manner as at the trial of a civil action. Upon having heard the evidence or having received the report of the single judge or master, the Court shall make such order in aid of judgment as is just for the payment of any judgment based on the finding.

(2) This order in aid of judgment may provide for the transfer of particular assets at a price determined by the Court, or for the sale of particular assets and payment of the net proceeds to the creditor, or for payments, in specified installments on particular dates or at specified intervals, or for any other method of payment which the Court deems just.

Source: TT Code 1966 § 290; TT Code 1970, 8 TTC 56; COM PL 4C-21 § 3; TT Code 1980, 8 TTC 56.

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Case annotation: Under 6 F.S.M.C. 1410(2), an order in aid of judgment may provide for the sale of particular assets, such as unencumbered property that is not necessary for the debtor to meet his family and customary obligations, and payment of the net proceeds to the creditor. *Davis v. Kutta*, 8 FSM R. 338, 343 (Chk. 1998).

§ 1411. Orders in aid of judgment—Modification of orders.

Any order in aid of judgment made under this chapter may be modified by the Court as justice may require, at any time, upon application of either party and notice to the other, or on the Court's own motion.

Source: TT Code 1966 § 291; TT Code 1970, 8 TTC 57; TT Code 1980, 8 TTC 57.

§ 1412. Orders in aid of judgment—Punishment of violations.

If any debtor fails without good cause to comply with any order in aid of judgment made under this chapter, he may be adjudged in contempt as a civil matter, after notice to show cause why he should not be so adjudged and an opportunity to be heard thereon, and upon such adjudication shall be committed to jail until he complies with the order or is released by the Court or serves a period fixed by the Court of not more than six months in jail, whichever happens first.

Source: TT Code 1966 § 292; TT Code 1970, 8 TTC 58; TT Code 1980, 8 TTC 58.

Case annotations: The constitutional provision prohibiting imprisonment for debt does not restrict the manner in which 6 F.S.M.C. 1412 is applied, although that statute includes imprisonment as one possible sanction for violating an order in aid of judgment. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 381 (App. 2003).

The constitutional prohibition prohibiting imprisonment for debt is a restriction on the courts against the enforcement of judgments of a certain character, but does not restrict a court's power to enforce its lawful orders by imprisonment for contempt. Even when the violation of the order is for failure to make payments for the recovery of a judgment enforceable by an order in aid of judgment, if the order is one which the court could lawfully make, the imprisonment is not for failure to pay the debt, but failure to obey a lawful court order. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 382 (App. 2003).

A person sent to jail after being adjudged in civil contempt can get out of jail anytime he or she chooses merely by complying with the court order and thereby purging himself or herself of the contempt because 6 F.S.M.C. 1412 provides that upon an adjudication of civil contempt, the contemnor shall be committed to jail until he complies with the order. The purpose of a civil contempt adjudication is to secure compliance with a lawful court order when the contemnor has the ability to do so. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 382 (App. 2003).

Criminal contempt is not a specified remedy in 6 F.S.M.C. 1412, but is an available remedy under the general FSM contempt statute, 4 F.S.M.C. 119, under which the court may punish any intentional disobedience to a lawful court order. *Davis v. Kutta*, 10 FSM R. 125, 127 (Chk. 2001).

FSM law allows imprisonment of a debtor for "not more than six months" if he is "adjudged in contempt as a civil matter" for failure "without good cause to comply with any order in aid of judgment." 6 F.S.M.C. 1412. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause" within the meaning of the statute. *Hadley v. Bank of Hawaii*, 7 FSM R. 449, 452 (App. 1996).

Generally, a person who seeks to satisfy the court that his failure to obey an order or decree was due entirely to his inability to render obedience, without fault on his part, must prove such inability. The FSM Supreme Court places the burden on the movant to show that the debtor has the ability to comply. Once this burden has been met and the debtor has been held in contempt, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. *Hadley v. Bank of Hawaii*, 7 FSM R. 449, 452-53 (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. *Hadley v. Bank of Hawaii*, 7 FSM R. 449, 453 (App. 1996).

§ 1413. Orders in aid of judgment—Stay of execution.

(1) After an application for an order in aid of judgment has been filed in any action, no writ of execution shall be issued therein except under an order in aid of judgment as provided in this chapter, or by special order of the court for cause shown.

(2) If a writ of execution is outstanding, a judgment creditor applying for an order in aid of judgment shall file the writ of execution with his application, and a judgment debtor applying for an order in aid of judgment may request a stay of execution which may be granted by the Court on such terms, if any, as it deems just.

Source: TT Code 1966 § 293; TT Code 1970, 8 TTC 59; TT Code 1980, 8 TTC 59.

§ 1414. Orders in aid of judgment—Application to community or District court.

A judgment creditor who has obtained an execution may, instead of applying to the court in which the action was tried, apply for an order in aid of judgment to the District court or community court within whose jurisdiction the judgment debtor lives or has his usual place of business or employment. The court so applied to shall then proceed with notice to the opposite party, hearing, determination, and the issuance of such order in aid of judgment as it deems just, as provided in this chapter.

Source: TT Code 1966 § 294; TT Code 1970, 8 TTC 60; TT Code 1980, 8 TTC 60.

§ 1415. Exemptions.

The following described property shall be exempt from attachment and execution:

(1) *Personal and household goods.* All necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding, and provisions for household use sufficient for four months.

(2) *Necessities for trade or occupation.* All tools, implements, utensils, two work animals, and equipment necessary to enable the person against whom the attachment or execution is issued to carry on his usual occupation.

(3) *Land and interests in land.* All interests in land, but any interest owned solely by a judgment debtor, in

his own right, may be ordered sold or transferred under an order in aid of judgment if the court making the order deems that justice so requires and finds as a fact that after the sale or transfer, the debtor will have sufficient land remaining to support himself and those persons directly dependent on him according to recognized local custom and the law of the Trust Territory. No person not an indigenous inhabitant of the Trust Territory may acquire any interest in such land by sale, transfer, or otherwise, except with the prior approval of the High Commissioner.

Source: TT Code 1966 § 288; TT Code 1970, 8 TTC 61; TT Code 1980, 8 TTC 61.