

CHOICE OF LAW

Where the plaintiff is a Pohnpei resident, one of the defendants, a party to the contract at issue, is a corporation having its principal place of business in Pohnpei, and where the contract at issue governs work to be conducted in Pohnpei, and the injury which has brought the clause under consideration occurred in Pohnpei, the indemnification clause should be interpreted, and the issues of tort liability determined, in accordance with the law of Pohnpei. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 137 (Pon. 1985).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there, of course, has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

An FSM Supreme Court decision applying state law in a case before it is final and res judicata; but if in a subsequent case a state court decides the same issue differently, the state decision in that subsequent case is controlling precedent and the national courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Since general contract law falls within powers of the state, state law will be used to resolve contract disputes. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 9 (Pon. 1989).

Procedural matters in litigation before the FSM Supreme Court are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

Generally, in cases requiring the interpretation or construction of contracts, the national courts would be called on to apply state law. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

State law is to be applied in domestic relations cases. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

The FSM Supreme Court should apply FSM law to determine a claim brought in an FSM court pursuant to FSM statutory authorization by an FSM citizen asserting that FSM officials failed to fulfill the commitments of the FSM national government, and this is so even when key events at issue happened outside of the FSM. Leeruw v. FSM, 4 FSM R. 350, 357 (Yap 1990).

Although the death, and all key events giving rise to the wrongful death claim, occurred in

Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

In a diversity of citizenship case the FSM Supreme Court will normally apply state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

Since state law generally controls the resolution of tort issues the duty of the FSM Supreme Court in a diversity case involving tort law is to try to apply the law the same way the highest state court would. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

Even when a national court places itself in the shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of the national courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 601 (Pon. 1994).

Because tort law is primarily state law a negligence action will be governed by the substantive state law and the FSM Supreme Court's duty is to try to apply the law the same way the highest state court would. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 64-65 (Chk. 1997).

Because the primary lawmaking powers for the field of torts lie with the states, not the national government, the FSM Supreme Court's duty in an invasion of privacy case on Pohnpei is to try to apply the law the same way the highest state court in Pohnpei would. This involves an initial determination of whether it is contrary to, or consistent with, Pohnpei state law to recognize a right of privacy and an action for that right's violation. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 251-52 (Pon. 1998).

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles, and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 253 (Pon. 1998).

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294-95 (Pon. 1998).

The national courts of the FSM have frequently been obliged to decide state law issues without the benefit of prior state court decisions. In such instances, the national courts strive to apply the law in the same way the highest state court would. Subsequently, should the state's highest court decide the issue differently in a different case, then prospectively that case will serve as controlling precedent for the national court on that state law issue. Island Dev. Co. v. Yap, 9 FSM R. 18, 22 (Yap 1999).

The states' role in tort law is predominant. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158 (App. 1999).

The FSM Supreme Court's function and goal in diversity cases where state law provides the

rule of decision is to apply the law the same way the highest state court would, and that if there is a decision of the highest state court it is controlling and the FSM Supreme Court will apply it. But if there is no such state court decision the FSM Supreme Court must still exercise its jurisdiction and try to decide the case according to how it thinks the highest state court would. In the future, the highest state court could decide the issue differently and future decisions of the FSM Supreme Court would then apply that decision. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158 (App. 1999).

State law generally determines tort issues, and the FSM Supreme Court in diversity cases must attempt to apply the law in the manner that the highest state court would. Amayo v. MJ Co., 10 FSM R. 244, 253-54 (Pon. 2001).

That a contract was formed in another jurisdiction does not deprive a court of jurisdiction over a dispute over or enforcement of that contract. It may, however, involve a choice of law problem – contract questions may need to be resolved by resort to the substantive law of the jurisdiction in which the contract was formed, but not necessarily by resort to that jurisdiction=s courts. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537-38 (Chk. S. Ct. Tr. 2002).

When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Pohnpei Cnty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

When a consolidated case is before the FSM Supreme Court trial division under its diversity jurisdiction – because of the parties' diverse citizenship – state law will usually provide the rules of decision. This is especially true in real property cases. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

When the FSM Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, the court's goal should be to apply the law the same way the highest state court would. But a state court trial division case that was not decided by the highest state court may be deemed not to be controlling, if it appears that the highest state court would decide the question differently. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 508 (App. 2005).

A case that came before the court based on the court's exclusive jurisdiction over cases when the national government is a party and where the plaintiff's asserted claims primarily arose under national law, is not a diversity case where state law provides the rules of decision. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

State law controls in the resolution of contract and tort issues. When the FSM Supreme Court, in the exercise of its diversity jurisdiction decides a matter of state law, its goal is to apply the law the same way the highest state court would. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

While the interplay between national and state power does mean that, in land cases, the court must apply state law, or certify unsettled questions to the state courts, when the national court has maintained jurisdiction, national rules of procedure prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

When the FSM Supreme Court decides a matter of state law its goal is to apply the law the same way the highest state court would. If there is a decision of the highest state court it is controlling. If there is no controlling state law, then the court would decide the case according to how it thinks the highest state court would. Should the state's highest court later decide the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

When a breach of contract cause of action arose on Pohnpei, Pohnpei's statute of limitations should be used. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

There are no grounds to use a foreign statute of limitations period to bar on a laches ground a cause of action arising on Pohnpei under Pohnpei state law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

A state law requiring a lawsuit to contain a statement in a form approved by the Pohnpei Attorney General informing the state employee sued of his rights and responsibilities under Title 58, chapter 2 of the Pohnpei Code is a matter of procedure, and even when the rule of decision in a case before the FSM Supreme Court is governed by state law, procedural matters are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Dismissal will therefore not be required in a suit in the FSM Supreme Court when such a statement was not included. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

When the FSM Supreme Court decides matters of tort and contract law, it will apply, in the same way the highest state court would, the state's substantive law, which includes its common law as well as its statutory law. Peniknos v. Nakasone, 18 FSM R. 470, 479 & n.5 (Pon. 2012).

When the FSM Supreme Court is deciding matters of tort and contract law, it will apply in the same way the highest state court would the state's substantive state law, which includes the state's common law as well as its statutory law. Ihara v. Vitt, 18 FSM R. 516, 524 & n.3 (Pon. 2013).

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another, and it is not a rule of law, but one of practice, convenience, and expediency. Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasions on which it may be justly demanded. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

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. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Comity analysis involves the balancing of three interests and a threshold question. The threshold question in a comity analysis is whether there is in fact a true conflict between domestic and foreign law. When there is a conflict, a court performs a tripartite analysis that considers the interests of the domestic sovereign, the interests of the foreign sovereign, and the mutual interests of all nations in a smoothly functioning international legal regime. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

There is no true conflict between the U.S. statutes exempting U.S. military retirement benefits and U.S. social security benefits and the FSM exempt property statute because the U.S. statutes provide exemptions from judgments rendered and enforced in the U.S., and the FSM statute provides what property is exempt from judgments rendered and enforced in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

When national law merely provides the forum, the national courts must strive to apply the law in the same way the highest state court would. Zacchini v. Hainrick, 19 FSM R. 403, 411 n.2 (Pon. 2014).

When national law merely provides the forum, the national courts must strive to apply the law in the same way the highest state court would. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

When presented with an issue of first impression and the absence of FSM case law on point, the court will examine relevant U.S. decisions for guidance and may look to authorities from other jurisdictions in the common law tradition. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

The FSM Supreme Court need not dwell on apparent conflicts between two lines of cases in the U.S., but should search for reconciling principles which will serve as a guide to FSM courts. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

Since tort law is primarily state law, a tort action will be governed by the substantive law of the state where the injury occurred. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

When there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the FSM Supreme Court's jurisdiction, even though state law will furnish the rules of decision. O'Sonis v. O'Sonis, 22 FSM R. 268, 269 (Chk. 2019).

Pohnpei state law provides that the rules of the common law, as expressed in the restatements of the law, shall be the rules of decision in the courts of the state of Pohnpei in applicable cases, in the absence of written law applicable to the state of Pohnpei or applicable local customary law. Panuelo v. FSM, 22 FSM R. 498, 506 (Pon. 2020).

A decision of the highest state court about a state law matter is controlling and the FSM Supreme Court will apply it. A state court trial division decision may be deemed not to be controlling if it appears that the highest state court would decide the question differently. If there is no controlling state case law, then the court should decide the case according to how it thinks the highest state court would, and if the state's highest court later decides the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Panuelo v. FSM, 22 FSM R. 498, 506-07 n.3 (Pon. 2020).