DEBTORS' AND CREDITORS' RIGHTS

With respect to liens, first in time is not always first in right. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

A prior statutory lien will not necessarily be given priority over all liens which arise subsequently. Rather, the effect to be given to a statutory lien must be determined through interpretation of the statute which provides for the lien. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

In an insolvency proceeding, a broad range of issues must be decided for which there is little or no guidance by way of statute or precedent, and the court is acting as an equitable court and must apply equitable principles to the circumstances of each case to reach a fair result. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 296 (Pon. 1988).

In absence of statute pertaining to rights of employees of insolvent companies to receive preference against other creditors of employer, an appropriate source of guidance is the common law as it existed in absence of statute. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 300 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM R. 292, 301 (Pon. 1988).

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 national government lien rights under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 303 (Pon. 1988).

Without more, continuing guaranties given to a creditor do not establish any lien rights for the creditor against property of the debtor whose obligations are covered by the guaranty. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 304 (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).

Where it becomes apparent that claims of 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).

An employee's preference for wage claims is determined by reference to the equities among the parties rather than exclusively by specific dates upon which particular liens were established. In re Island Hardware, 3 FSM R. 332, 341 (Pon. 1988).

Unless a statute or common law principle expressly says otherwise, disclosure is a prerequisite for making a lien effective against other creditors. In re Island Hardware, 3 FSM R. 332, 342 (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).

The fact that stock issued by a corporation and formerly owned by a judgment debtor has been sold to a third party at a judicial sale of the debtor's assets does not make the corporation a party to the litigation concerning distribution of the assets of the insolvent debtor for purposes of determining whether the shares were validly issued and outstanding shares of the corporation. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

A lawsuit to enforce a mortgage is an attempt to enforce a type of lien against a delinquent debtor. Such a case bears a relationship to the power to regulate "bankruptcy and insolvency," which the Constitution, in article IX, section 2(g), places in the national Congress. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

Under circumstances where there is no bankruptcy legislation or comprehensive system for establishing and recognizing liens in the FSM, the court acts essentially as a court of equity when deciding insolvency cases. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 581 (Pon. 1988).

Creditors with judgments more than 10 days old are entitled to writs of execution upon request. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 582 (Pon. 1988).

In an insolvency proceeding, holders of writs of execution should be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs, subject to the rights of the creditors entitled to superior treatment by virtue of statutory lien priority or extraordinary equitable relief. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 582 (Pon. 1988).

In an insolvency proceeding, claimants without liens and not entitled to special equitable treatment, who comply with a court order or with the instructions of a court appointed receiver, trustee or other custodian to substantiate their claims against the debtor's estate after the proceedings have been consolidated, shall receive payment on a pro rata basis with other creditors in the same class. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 583 (Pon. 1988).

In an insolvency proceeding, judgment creditors with judgments issued on or before the consolidation of the case but without writs of execution as of that time are prioritized on a pro rata basis, after satisfaction of claims of lienholders, those with special equitable claims and holders of writs of execution. In re Pacific Distrib. Co., 3 FSM R. 575, 583 (Pon. 1988).

The final class of creditors entitled to distribution in an insolvency proceeding shall consist of all the debtor's remaining creditors who either reduced their claims to judgment after the consolidation date or who substantiate their claims according to the receiver's instructions. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 585 (Pon. 1988).

Where the rights of a corporation have been assigned to its creditors in previous litigation, the creditors' rights as against the shareholders or subscribers of stock in the corporation are derived from the rights of the corporation itself, and the creditors will be able to enforce the shareholders' liability only to the extent that the corporation could have enforced it before the

assignment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 161 (Pon. 1989).

It is necessary for each creditor to establish that attorney's fees to be charged to a debtor pursuant to an agreement in a promissory note are reasonable in relation to the amount of the debt as well as to the services rendered. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

The statutory right of a judgment creditor to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-right rule according to the dates of the individual parties' writs. In re Island Hardware, Inc., 5 FSM R. 170, 173 (App. 1991).

The trial court did not abuse its discretion when it ruled that judgment creditor who had accepted assignment of debtor's accounts receivable should not otherwise participate in distribution of assets of insolvent debtor. In re Island Hardware, Inc., 5 FSM R. 170, 174 (App. 1991).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor has no standing to vindicate the rights of any of the creditors against other creditors. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM R. 140, 142 (Pon. 1993).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor cannot challenge the arrangement for attorney's fees made between the creditors, counsel, and the court for collection of the insolvent corporation's accounts receivable. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM R. 140, 142 (Pon. 1993).

In collection cases creditors must establish that the attorney's fees to be charged are reasonable in relation to the amount of the debt as well as to the services rendered. Generally, plaintiff's attorney's fees in a debt collection case, barring bad faith on the defendant's part, will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

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 Federation of Coop. Ass'ns, 6 FSM R. 592, 593 (Pon. 1994).

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).

Where a creditor accepts a premium payment for insurance that he has agreed to procure, where he makes a diligent effort to fulfill his agreement to do so, promptly notifies the debtor of his inability to procure insurance, he would not be held liable to the debtor, as he would have fulfilled his contract to attempt to procure insurance which is not a contract of insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Both contract and tort theories can be pursued by a debtor who alleges that a creditor has failed to procure credit insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Judgment creditors will be paid in their priority order except for those who release their claims in writing. Payment of a released judgment may be returned to the judgment debtor. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 373-75 (Pon. 1996).

Appointment of a receiver is not appropriate when what little evidence that has been presented on the financial strength of the defendant company is long out of date, there is no reliable measure of the value of defendant's current assets and liabilities, no finding of insolvency, and plaintiffs have not demonstrated that the available legal remedy – the reduction of their claims to judgment, followed by a demand for payment, will be insufficient to provide the relief to which they may later prove themselves entitled. Lavides v. Weilbacher, 7 FSM R. 400, 402-03 (Pon. 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).

A cooperative may be dissolved administratively by the FSM Registrar of Corporations and trustees appointed to wind up the cooperative's affairs. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

All violations of the FSM Regulations under which the FSM Registrar of Corporations may appoint trustees in dissolution for winding up an association's affairs are enjoinable. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

When a judgment-debtor has unilaterally increased his indebtedness to non-judgment creditors while not increasing his payments to his judgment-creditor, it is the judgment-debtor who should bear the burden of this improvidence, and not the judgment-creditor. The court will therefore order the allotment amounts for the new voluntary debts to be allotted to the judgment-creditor's debt instead. Bank of Guam v. Tuuth, 9 FSM R. 467, 469-70 (Yap 2000).

As between a judgment creditor and a creditor who has not instituted legal action, the judgment creditor should enjoy a priority. Bank of Guam v. Tuuth, 9 FSM R. 467, 470 (Yap 2000).

The national government is not subject to writ of garnishment or other judicial process to apply funds or other assets it owes to a state to satisfy the state's obligation to a third person. FSM v. Louis, 9 FSM R. 474, 479 (App. 2000).

The only purpose of statutes authorizing orders in aid of judgment is to force the payment of a judgment and to provide means to collect a money judgment, which is the same as proceedings for attachment, garnishment or execution. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Historically, orders in aid of judgment and orders in aid of execution serve the same purpose and the terms are used interchangeably. Their purpose is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

When Chuuk has ultimate access to money on a monthly basis that greatly exceeds the amount of the civil rights judgment, Chuuk must pay the judgment. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

A court shall determine the fastest manner in which the debtor can reasonably pay a judgment. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

When a judgment was entered over four years ago, and the bulk of it remains outstanding and the debtor has the means to pay, the judgment should be paid forthwith. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

When loan collateral is in the lender's possession and the borrower has made a reasonable request that the lender liquidate the collateral to preserve its value, the lender should do so; but there is no duty in law requiring the lender to take possession of the collateral and foreclose on property at the borrowers' request when that property is not in the lender's possession, unless there is a provision in the mortgage requiring it. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

A debtor who knew of an order, since he stipulated to it, and who had some ability to pay, as evidenced by the payments that he did make, cannot be found in contempt for failing to meet the payments under the stipulated order when there was insufficient evidence presented to establish any income sufficient to confer on the debtor the ability to pay under the order because having some ability to pay is different from having the ability to make the payments specified in the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

An attorney's fee must be reasonable, and the court must make such a finding. Except in

unusual circumstances, an attorney's fee in debt collection cases will be limited to a reasonable amount not to exceed 15% of the amount due on the loan at the time of default. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

The rationale for limiting attorney's fees in collection cases, whether the attorney's fees result from a loan agreement or a stipulated judgment, to a reasonable percentage of the amount collected is so that a debtor is not ultimately faced with an obligation far in excess of that originally anticipated, and to provide certainty to debtors and creditors alike. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

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).

While the fact that as part of an assignment another agreed to assume all of a debtor's liabilities under a stipulated judgment may provide the debtor with recourse against the other, it does not affect the debtor's obligation to the creditor under the judgment and payment order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor has engaged in the unreasonable conduct that he has no further liability on the judgment, it is equitable to award an attorney's fee of 30% of the remaining amount due on the loan for work done to collect on the judgment, rather than the 15% allowed in Bank of Hawaii v. Jack. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor's unreasonable conduct occurred in opposing the collection of the remainder of a judgment after the bulk of it had been paid and the creditor is entitled to reasonable attorney's fees, it is equitable to award the creditor reasonable attorney's fees not to exceed 15% for work done in collecting the bulk of the judgment, and reasonable attorney's fees not to exceed 30% of the judgment's remainder, rather than attorney's fees not exceeding 15% of the total judgment. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103-04 (Kos. 2001).

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).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Payments should be applied first to interest, then principal. Davis v. Kutta, 10 FSM R. 224, 226 (Chk. 2001).

An agreement between two defendants who are jointly liable on the note, whereby one of them would assume full responsibility on the note (and thereby "releasing" the other from responsibility on the note), is not binding on the plaintiff, especially when the note's language clearly states that in the case of joint obligors, one of the obligors can only be released from liability via a signed writing, signed by an official of the plaintiff bank. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

An agreement between two defendants, jointly responsible on a loan, as to who will be responsible to pay back the loan is not binding on the creditor unless the creditor clearly assents to the agreement. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

When the parties' written agreement requires that a writing signed by a bank officer would be necessary to release one of the obligors from responsibility on the note, the presence of a bank employee at the defendants' divorce proceeding (regardless of whether that employee were an officer or agent), and his failure to object to the defendants' settlement agreement, without more, would not release one of the defendants from liability to the bank on the note. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them, and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A divorcing couple is free to enter into whatever agreement they choose as to who between the two of them will be responsible to repay a bank loan. However, such an agreement can have no effect on bank's right to seek repayment of the loan from either or both of them. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A promissory note is a term of art. There is a division of authority as to whether a document containing no express promise to pay constitutes a promissory note, but a writing that does not include such promise-to-pay language, but which is signed by the party to be charged is enforceable on its face as an acknowledgment of a debt. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

The general rule is that payments are applied to interest first, and then to principal. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

Unpaid interest and principal, consolidated into a new principal sum for purposes of a new loan is not a violation of a statute that prohibits interest compounding, since interest compounding results where interest is automatically compounded, and not where interest has become due, has not been paid, and becomes the subject of a new loan agreement. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 478 (Pon. 2001).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v.

VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

When an agreement provides for 18% interest per annum on the principal remaining after the debtor's last payment, no usury issue arises, and when the interest charged cannot be said to be arbitrary and capricious on any other basis, the interest portion of the agreement is binding. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

Previous insolvency cases involved juridical persons, either corporations or cooperatives, which after they were declared insolvent and the creditors paid to the extent they could be, were dissolved. Once a corporation's or a cooperative's assets are all paid out and the corporation or cooperative is dissolved, unpaid creditors are generally without further recourse to collect any unpaid sums. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

While the court may determine (and has in the absence of statute) the priority of its judgments as to a debtor, the court is reluctant to assume that it may order the discharge of a judgment against a debtor when, by statute, the judgment is to remain valid and enforceable for twenty years. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

The Constitution assigns Congress the authority to enact bankruptcy laws and thus to determine when a judgment against an insolvent person should be discharged without either full payment or the parties' agreement. In re Engichy, 11 FSM R. 520, 525-26 (Chk. 2003).

Even if the court can declare natural persons insolvent in the manner it can and has declared corporations and cooperatives insolvent, the court does not have the authority to "discharge" a natural person judgment-debtor's debts short of full satisfaction of the judgment. In re Engichy, 11 FSM R. 520, 526 (Chk. 2003).

There is no impediment to appointing a receiver in the absence of an insolvency declaration, especially when it is the judgment-debtors who ask that one be appointed. In re Engichy, 11 FSM R. 520, 526 (Chk. 2003).

In order to purge any possible contempt buy the judgment-debtors, the court may order the receiver to pay out of funds on deposit with the court the arrearages accrued on orders in aid of judgment before the judgments were consolidated. In re Engichy, 11 FSM R. 520, 526 (Chk. 2003).

Among judgment creditors, those with a writ of execution have priority over those who do not. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

One reason writ-holders are granted a higher priority is that the judgment creditor who has taken the effort and exhibited the diligence to move to the status of execution creditor deserves to be treated differently on that basis. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

A judgment-creditor who has obtained an order in aid of judgment should be accorded the same status as a judgment creditor who has obtained a writ of execution because both methods of enforcing a money judgment are provided for by statute and both methods show that the judgment creditor has taken the effort and exhibited diligence greater than that of a mere judgment-creditor. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

A judgment-creditor's statutory right to obtain immediate issuance of a writ of execution

implies as well a legislative intent that holders of writs be paid on the basis of a first-in-time, first-in-right rule according to the dates of each party's writ. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

Judgment-creditors with execution creditor status are to be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs. The pro rata payment basis is the rule for unsecured judgment-creditors who do not hold execution creditor status or a statutory lien priority. Because holders of orders in aid of judgment are accorded the status of execution creditors, those judgment-creditors will be paid in order according to the date of either their first writ of execution or their first order in aid of judgment. In re Engichy, 11 FSM R. 520, 528-29 (Chk. 2003).

If a creditor's judgment is secured by a mortgage, it would have priority over the other unsecured judgment-creditors for the proceeds from the sale of the mortgaged property. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

Assuming that the transfer of title to property by the judgment-debtors to a judgment-creditor was not a sham transaction with the judgment-debtors retaining ownership of it and the judgment-creditor merely selling it for them, but was a bona fide transfer of title, it was within the judgment-creditor's rights to take property instead of cash as payment on its judgment. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

When a judgment-creditor decides to take title to property as full payment for the outstanding judgment in lieu of a cash payment for the remainder of the judgment, the judgment is satisfied at that point, not at some later time when the judgment-creditor has managed to sell the property for cash. A judgment-creditor accepting title to property in lieu of cash as full satisfaction of its judgment takes the risk that its later sale of the property could amount to less (or the chance it could be more) than amount due on the judgment or that the sale might fall through. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

In the usual case, the payment of a money judgment against the state must abide a legislative appropriation. "The usual case" means the ordinary civil case for money damages. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003).

The court will not determine the state to be insolvent and appoint a receiver to manage its debts to insure the payment of its judgments because it is a much more drastic approach than garnishment and it is also a course upon which the court will not embark without the benefit of a substantially fuller record than that now before it. Estate of Mori v. Chuuk, 12 FSM R. 3, 11 (Chk. 2003).

That a promissory note's co-signer did not receive the loan proceeds, but the other signers did and they spent it, is not a defense to an action on the note or a ground for dismissal of the case against the co-signer. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (Chk. 2003).

Except for unusual circumstances, 15% is the upward limit for an attorney's fee to be deemed reasonable when it is awarded pursuant to a stipulation for the payment of attorney's fees in a debt collection case. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

That a corporation is insolvent does not mean that it lacks the capacity to sue or be sued. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

Even though the FSM does not have a bankruptcy code, the FSM Supreme Court has previously recognized the appointment of receivers or special masters to engage in collection efforts on behalf of insolvent corporate entities. A trustee's purpose in a bankruptcy proceeding is similar to the appointment of a receiver or collection agent to act on behalf of an insolvent corporation, and the fact of a corporation's insolvency does not affect the ability of a trustee, receiver, or collection agent to proceed on a corporation's behalf to recover assets in the corporation's name, and for the benefit of the corporation's creditors or shareholders. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

When the defendants contend that they cannot be liable on the guaranty because the guaranty secures the promissory note on which they are named as the promisors, but can only prevail on this argument if they are the primary obligors on the loan, but they are not, and never were even though certain writings failed to properly reflect that, and when those writings have been reformed, this contention is without merit. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

A debtor is not an indispensable party under Rule 19 in an action to enforce a guaranty of payment. A lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When, under the terms of a guaranty, the guarantors waived any right to require the bank to proceed against the borrower, to proceed against or exhaust any security held from the borrower, or to pursue any other remedy in its power whatsoever, the guarantors' contention that the bank could not proceed against them without also proceeding against the borrower is without merit. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

Guaranties and suretyships bear many similarities. A guaranty creates a secondary obligation under which the guarantor promises to be responsible for the debt of another. The guarantor is only secondarily liable, and then only on proof of the default by the principal debtor. A suretyship differs from a guarantee in that a surety's obligation to the creditor is primary and unconditional whereas a guarantor's obligation is secondary and conditioned on the principal's default. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

A court does not need to determine whether an instrument is a guaranty or a surety when the result would be the same. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 12 (Pon. 2004).

Failure to sue the borrower as well as, or instead of, the guarantors cannot be considered a "mistake" subject to relief from judgment under Rule 60(b)(1) because, as a general legal principle, a lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower and because the terms of the guaranty, under which the guarantors were found liable, permitted the bank, in the case of a loan default, to sue the guarantors without suing the borrower. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

As a general rule, in the absence of an agreement or stipulation to the contrary, a debt is payable at the place where the creditor resides, or at his place of business, if he has one, or wherever else he may be found; and ordinarily it is the duty of the debtor to seek the creditor for the purpose of making payment, provided the creditor is within the state of his residence when the payment is due. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

Where the obligor on a promissory note is to make his payments does not relate to a matter of vital importance or go to the contract's essence since the note provides a number of options for place of payment, and since the obligor was not deprived of the benefits he expected to receive under the contract – his use of the bank's money (the loan) for a specified period of time. He knew he had an obligation to pay the bank and he knew (or should have known) where to pay and if he did not know it was his duty to find out where. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

Since a partial payment constitutes an acknowledgment of the debt, it is implicitly treated as a new promise to pay, and a new promise to pay has the effect of starting any limitations period all over again. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

While a stipulated judgment does represent a private agreement and not a judicial determination, it is a judicial act, binding on the parties. Thus, contract defenses are not available to a judgment debtor in a proceeding to enforce a money judgment. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

Under Rule 69, post-judgment discovery is available only to judgment creditors. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

The right to post-judgment discovery is limited to judgment creditors, who are usually, but

not always, plaintiffs who succeeded in obtaining a money judgment. Rule 69 is meant to benefit a judgment creditor, not a judgment debtor. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73-74 (Pon. 2015).

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

A judgment debtor has no discovery rights under Rule 69, which makes sense because once a money judgment has been rendered, the only relevant factual inquiry is the debtor's ability to pay the judgment and the fastest manner in which the debtor can reasonably pay it. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 (Pon. 2015).

The execution statute, 6 F.S.M.C. 1407, requires issuance of a writ of execution upon request, subject to the Rule 62(a) limitation that no execution shall issue upon a judgment until the expiration of 10 days after the entry of that judgment. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 277 (Pon. 2015).

When the issuance of a writ of execution was not only based on statutory law, but the court had also afforded the judgment debtor and her counsel ample time to confer and respond to the motion for a writ of execution, the issuance of the writ was appropriate. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

When the primary performer, the borrower, stopped making loan repayments to the bank and defaulted, the guarantors were then bound to perform on the loan repayments once the borrower had ceased to. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Carl, 20 FSM R. 592, 593 (Pon. 2016).

When the debtor has not produced evidence to show that credit insurance was obtained when the loan was entered into, the court will not rule that the debt has been discharged although, if credit insurance had been obtained, the debtor would have had a valid claim of discharge of the debt. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

If a loan is in default and the promissory note contains an acceleration clause, the lender may choose to accelerate payment of the entire amount due and payable under the note. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172 (Pon. 2017).

A bank seeking attorney's fees as part of its loan collection lawsuit is not engaging in the unauthorized practice of law because the bank is not practicing law – its duly admitted attorney is, and there is no fee-splitting involved as an attorney fee award is solely the property of the client, not the attorney. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

When a promissory note contains a clause under which the bank, in the event of a default, is entitled to reasonable attorney's fees, expenses and costs of collection, the borrowers thus agreed to the imposition of reasonable attorney's fees and costs of collection if they defaulted on their payment obligation to the bank. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon.

2017).

In general, in debt collection cases, reasonable attorney's fees are limited to not more than 15% of the principal amount due. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 174 (Pon. 2017).

A borrower cannot make a bank liable for payment for further construction work (in effect, requiring the bank to make a further loan to the borrower) without the bank's consent. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 181 (Pon. 2017).

When a borrower's credit life insurance policy was for a four-year term and expired about eighteen years before the borrower's death, the claim for insurance coverage to cover the borrower's debt is invalid. FSM Dev. Bank v. Carl, 21 FSM R. 640, 642-43 (Pon. 2018).

FSM Development Bank loans that are determined to be no longer collectable are subject to write-off, but when the mortgaged parcel securing the loan is still generating income, in the form of monthly rent, the loan is still deemed to be capable of being paid off. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643-44 (Pon. 2018).

A borrower's death does not automatically make an FSM Development Bank loan subject to a write-off. Rather, the death is only one criteria to be considered. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 (Pon. 2018).

An administrator of a decedent's estate is liable to manage the estate, including the decedent's debts and liabilities – financial or pecuniary obligations. A decedent's debt passes down to her estate's administrator to manage and settle. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 & n.9 (Pon. 2018).

– Orders in Aid of Judgment

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).

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).

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

The statute authorizing issuance of an order in aid of judgment, 6 F.S.M.C. 1409, presents two issues: the debtor's ability to pay, and the most expeditious way that payment can be accomplished. Louis v. Kutta, 8 FSM R. 312, 316 (Chk. 1998).

A court has an interest in insuring that its orders are heeded, and this interest exists apart from any interest the parties may have in the litigation. A court may take whatever reasonable steps are appropriate to insure compliance with its orders. It need not rely on the parties themselves to prescribe the way in which its orders will be carried out, or its judgments executed. Louis v. Kutta, 8 FSM R. 312, 318 (Chk. 1998).

By statute, a court has wide latitude in crafting an order in aid of judgment and may even modify the order on its own motion. Louis v. Kutta, 8 FSM R. 312, 319 (Chk. 1998).

Under 11 F.S.M.C. 701, a private cause of action is provided to any person whose constitutional rights are violated. In order for the remedy provided by 11 F.S.M.C. 701(3) to be effective, it must be enforceable. Where the defendant in a civil rights action is a state, this means that the remedy should not be dependent upon subsequent state legislative action, such as appropriation of funds, which would thwart the Congressional mandate that 11 F.S.M.C. 701 is meant to implement. Accordingly, the FSM Supreme Court is not precluded from issuing an order in aid of judgment against a state in the absence of a state legislative appropriation. Davis v. Kutta, 8 FSM R. 338, 341 (Chk. 1998).

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. 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).

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 motion for an order in aid of judgment against the State of Chuuk to assign sufficient assets to pay a money judgment will be denied because the state may make payments subject only to legislative appropriation. Judah v. Chuuk, 9 FSM R. 41, 42 (Chk. S. Ct. Tr. 1999).

The only purpose of statutes authorizing orders in aid of judgment is to force the payment of a judgment and to provide means to collect a money judgment, which is the same as proceedings for attachment, garnishment or execution. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

The Trust Territory Code provisions for orders in aid of judgment are not available as against Chuuk because, when it barred the courts' power of attachment, execution and garnishment of public property, the clear legislative intent was to supersede or repeal all provisions of the Trust Territory Code, Title 8 insofar as they allowed seizure of Chuuk state property. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Historically, orders in aid of judgment and orders in aid of execution serve the same purpose and the terms are used interchangeably. Their purpose is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Proceedings in aid of a judgment are supplementary proceedings to enforce a judgment, the same as attachment, execution and garnishment, and as against Chuuk State public property, are prohibited by § 4 of the Chuuk Judiciary Act. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

The court may modify any order in aid of judgment as justice may require, at any time, upon the application of either party and notice to the other, or on the court's own motion. Davis v. Kutta, 10 FSM R. 224, 225 (Chk. 2001).

A court may grant a debtor's motion to modify an order in aid of judgment when the debtor's proposed commitment to pay is reasonable. Davis v. Kutta, 10 FSM R. 224, 225 (Chk. 2001).

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).

Although under FSM law once an application for an order in aid of judgment has been filed no writ of execution may issue except under an order in aid of judgment or by special order of the court, it is uncertain what effect, if any, this (or the Chuuk state law prohibiting attachment, execution, or garnishment of Chuuk public property) would have on courts in jurisdictions outside the Federated States of Micronesia. Walter v. Chuuk, 10 FSM R. 312, 317 (Chk. 2001).

The procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one is contained in section 55 of Title 8 of the Trust Territory Code, which, under the Chuuk Constitution's Transition Clause, is still applicable law in Chuuk. Section 55, by its terms, does not bar its application to a government judgment debtor. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to the state, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Any order in aid of judgment may, be modified by the trial court at any time upon application of either party and notice to the other, or on the court's own motion. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

It is generally within the Chuuk State Supreme Court's power to issue an order in aid of

judgment. This power derives from the court's power to issue all writs for equitable and legal relief. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

In deciding whether to issue an order in aid of judgment, the court is presented with two issues: 1) the debtor's ability to pay, and 2) the fastest manner in which the debtor can reasonably pay the judgment based upon the finding of ability to pay. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

As a matter of law, the court cannot issue an order directing the state to pay money absent an appropriation therefor. The inquiry, then, is how, when funds are available to pay judgments, the court can assist a judgment creditor in getting his judgment paid in the fastest manner. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

In addressing the question of how best to assure payment of a judgment in "the fastest manner," the court is mindful of the fact that it has wide latitude in crafting an order in aid of judgment. While the court cannot direct the Legislature to appropriate money to pay a judgment, it does have the authority to compel the Director of Treasury, and the Governor, through mandamus, to meet their non-discretionary duty to pay judgments in a fair and non-discriminatory manner. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

A judgment creditor needing continuing medical care resulting from a state employee's negligent or wilful conduct, may apply to the court for specific relief, and assuming funds have been appropriated for payment of the state's judgment debts which remain undisbursed and available, any such judgment creditor shall receive payment on his or her judgment regardless of the judgment's date of entry. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

The statutory remedy for violations of an order in aid of judgment is that if any debtor fails without good cause to comply with any order in aid of judgment, he may be adjudged in contempt as a civil matter. 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." Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

When the judgment-debtor's Social Security retirement benefits are received by him and have not been subjected to any sort of direct levy, allotment or garnishment or any execution, attachment, or assignment of these benefits and when these benefits may be commingled with any other income the debtor may have available to him, and from these funds he meets his living expenses and his other obligations, the trial court's order in aid of judgment does not require that the payment come from any particular source of income. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

There is no violation of the 53 F.S.M.C. 604 susceptibility of benefits rule, when there has been no execution, attachment, garnishment, or assignment of the judgment-debtor's Social Security retirement benefits and when the trial court's order in aid of judgment specifically found that the judgment-debtor would have sufficient funds for his and his dependents' basic support. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

While the trial court does not violate the Constitution's involuntary servitude provision when it orders a judgment-debtor to seek immediate employment, when the judgment-debtor has presented evidence that he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. Rodriguez v.

Bank of the FSM, 11 FSM R. 367, 386 (App. 2003).

A major purpose for granting consolidation of judgments is to establish the payment priority for the consolidated judgments and to implement an orderly payment plan involving one, instead of multiple, orders in aid of judgments. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

A judgment-creditor's right to the issuance of a writ of execution is provided for by statute, as is the right to obtain an order in aid of judgment. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

An FSM judgment-debtor can, if he so chooses, prevent the issuance of a writ of execution because any party, either the judgment-creditor or the judgment-debtor may apply for an order in aid of judgment and once a party has applied for an order in aid of judgment, the judgment-creditor is statutorily barred from obtaining a writ of execution except as part of an order in aid of judgment or by special order of the court for cause shown. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

A judgment-creditor who has obtained an order in aid of judgment should be accorded the same status as a judgment creditor who has obtained a writ of execution because both methods of enforcing a money judgment are provided for by statute and both methods show that the judgment creditor has taken the effort and exhibited diligence greater than that of a mere judgment-creditor. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

Judgment-creditors with execution creditor status are to be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs. The pro rata payment basis is the rule for unsecured judgment-creditors who do not hold execution creditor status or a statutory lien priority. Because holders of orders in aid of judgment are accorded the status of execution creditors, those judgment-creditors will be paid in order according to the date of either their first writ of execution or their first order in aid of judgment. In re Engichy, 11 FSM R. 520, 528-29 (Chk. 2003).

While the Chuuk Financial Control Commission is precluded from paying any court ordered judgments unless specifically appropriated by law, it must, in a timely manner, develop in consultation with the Governor and Attorney General subsequent legislation for appropriation or other purposes for consideration by the Chuuk Legislature to address court judgments. That the Commission has disclaimed this responsibility imparted is in material part a basis for the court's ruling that ordering Chuuk to pay the judgment through taking the first step in that direction by proposing a payment plan is not a workable means of obtaining a satisfaction of the judgment, and the parlous state of Chuuk's finances is more reason, not less, why it should have been forthcoming with a plan for payment. Estate of Mori v. Chuuk, 11 FSM R. 535, 540 (Chk. 2003).

On motion for an order in aid of judgment, the court must determine both the question of the judgment debtor's ability to pay and the fastest manner in which payment can reasonably be made. Estate of Mori v. Chuuk, 11 FSM R. 535, 542 (Chk. 2003).

Courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. This statutory prohibition has been held to prohibit the issuance of an order in aid of judgment against Chuuk. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

A stipulated judgment, even after court approval, cannot confer jurisdiction on a court to issue an order in aid of judgment against Chuuk in direct contravention of a statute. Regardless of the stipulated judgment's language, the court simply cannot violate the statute and issue an order in aid of judgment against Chuuk. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

When no appropriation has been made, general or otherwise, for the payment of judgments, even if the court were to issue an order in aid of judgment, and even if the state government were to identify funds from some other source for payment of the judgment, the Chuuk Financial Control Commission would be precluded from approving the payment pursuant to the order in aid of judgment since it is precluded from paying any court ordered judgements unless specifically appropriated by law. Ben v. Chuuk, 11 FSM R. 649, 652 (Chk. S. Ct. Tr. 2003).

Under a Chuuk State Supreme Court decision, if money was appropriated to pay court judgments, the oldest judgment must be paid in full before any payment could be made on the next oldest judgment. Ben v. Chuuk, 11 FSM R. 649, 652 (Chk. S. Ct. Tr. 2003).

An order in aid of judgment only requires future payment according to its terms, which invariably will not be immediate payment in full, and which may later be modified. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

An order in aid of judgment, unlike a writ of execution, may only be obtained after application and notice to the other party and a hearing instead of the prompt issuance possible for a writ of execution. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

A judgment-creditor (or its attorney) must evaluate which method (writ of execution or order in aid of judgment) is most likely to best satisfy its judgment unless the judgment-debtor has already foreclosed that choice by applying for an order in aid of judgment. In re Engichy, 12 FSM R. 58, 66-67 (Chk. 2003).

An order in aid of judgment generally deals not only with funds and assets currently in a judgment-debtor's possession but also with funds that are expected to come into the judgment-debtor's possession in the future. In re Engichy, 12 FSM R. 58, 72 (Chk. 2003).

When the court has found the defendants in civil contempt, it may order them imprisoned until such time as they comply with the orders issued to date and/or pay an amount necessary to compensate the court and plaintiff for the wasted time and expense involved in having held and set over pretrial conferences that the defendants never timely rescheduled nor attended; but if, in the court's opinion, imprisonment is a less suitable punishment than a ruling that by its nature will move this litigation to its conclusion, and when the defendant's only asserted defense to having defaulted on the underlying promissory note was his unemployment and inability to pay and he is now employed, the court may order the defendants to settle the case and file a stipulated judgment or the court will strike defendants' answer and enter a default judgment against the defendants, grant a motion for order in aid of judgment, the plaintiff files one, hold a hearing thereon, make findings as to the defendants' ability to pay, and if warranted, order the defendants' wages garnished for such amount as the court deems appropriate in light of those findings. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 171-72 (Pon. 2003).

When a person has entered the plaintiff's parcel on at least two occasions and harvested crops in violation of the court's decision that the plaintiff is the fee simple owner of the parcel, an

injunction will issue against that person and the defendants which prohibits further trespass and taking of crops from the parcel, and the defendants will be given a reasonable time to remove a local hut that they have constructed on parcel. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

The trial court will not extend the right to a writ of garnishment against the state beyond that affirmed by the appellate division in Chuuk v. Davis and will therefore deny a judgment-creditor's request to seize local revenues by the only means logical, a writ of garnishment directed to the FSM national government, when his damages are strictly economic in nature. The suggested alternative, a more drastic step of an order seizing and auctioning the state legislative officers' new vehicles will also be denied. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

The trial court can issue an order in aid of judgment requiring the state executive branch to submit, within thirty days of entry of this order, an appropriation request to the Legislature for funds to satisfy the judgment. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

Civil Rule 6(d) provides that all motions shall contain certification by the movant that a reasonable effort has been made to obtain the opposing party's agreement or acquiescence and that no such agreement has been forthcoming, but a motion for an order in aid of judgment, which is what the court must consider a motion for a writ of garnishment to be, is governed by statute, and that statute does not require that a movant first seek the opposing party's agreement or acquiescence before moving for an order in aid of judgment. The procedural rules are not meant to alter that statutory scheme. Tipingeni v. Chuuk, 14 FSM R. 539, 542 (Chk. 2007).

A judgment-creditor's motion that asks for a court order to assist it in obtaining, or to facilitate, the payment of a money judgment, is a motion for an order in aid of judgment regardless of what the movant has called it because a thing is what it is regardless of what someone chooses to call it. Chuuk v. Andrew, 15 FSM R. 39, 42 & n.1 (Chk. S. Ct. App. 2007).

The procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one, is contained in section 55 of Title 8 of the Trust Territory Code, which requires the court, after notice to the opposite party, to hold a hearing on the question of the debtor's ability to pay and to determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

When no hearing was held before the court issued its December 14, 2001 order in aid of judgment and no finding was made on the debtor's ability to pay in December 2001, the December 14, 2001 order was issued in violation of the State's right to due process and the order constitutes an abuse of the trial court's discretion. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

When the State has not made the appropriation act a part of the record, the appellate court is unable to determine whether the $20,000 ordered payment to a judgment-creditor violated the terms of that statute or whether it was only contrary to the Executive branch's hoped-for distribution of the appropriated funds. Chuuk v. Andrew, 15 FSM R. 39, 42-43 (Chk. S. Ct. App.

2007).

The trial court must not issue any orders in aid of judgment against the State without affording the State notice and an opportunity to be heard and a finding that the State has the physical and legal ability to pay. Chuuk v. Andrew, 15 FSM R. 39, 43 (Chk. S. Ct. App. 2007).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to a governmental body, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

The procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one is contained in section 55 of Title 8 of the Trust Territory Code, which is still applicable law in Chuuk. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

The statute requires that an order in aid of judgment hearing can only be held after an application for an order in aid of judgment and notice of that application has been given to the opposing party. Since an application for an order in aid of judgment must be made an adequate time for notice before the motion hearing, it must be made in writing. The Civil Rules provide that adequate time for service of the notice is not later than 5 days before the time specified for the hearing. Therefore, in order to obtain an order in aid of judgment, a party must serve a written motion on the opposing party at least five days before the specified hearing date. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

The trial court cannot issue an order in aid of judgment without first making a finding about the debtor's ability to pay. In the case of a governmental debtor, this finding must include the debtor's legal ability to pay (*e.g.*, whether money has been appropriated that can legally be applied to that debt). Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

Any order in aid of judgment 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. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

A trial judge's calculated and repeated disregard of governing rules of orders in aid of judgment would also support the issuance of a writ of prohibition that the trial judge issue no further orders in aid of judgment without complying with the statute and without first ruling on the pending motion to stay. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

After obtaining a judgment, the judgment holder is entitled by statute to seek an order in aid of judgment to force payment and determine the best means to effectuate such payment. The purpose of an order in aid of judgment is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

Once a party has applied for an order in aid of judgment, 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. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

A plaintiff's motion for a temporary restraining order filed after judgment had already been entered against the defendant and after the plaintiff had already requested an order in aid of judgment will be denied since the plaintiff has an available remedy in its motion for an order in aid of judgment and since it seeks to restrain funds in the hands of a third party without a specific determination as to the defendant's right to any part of those funds. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

An order in aid of judgment is not appropriate when the prevailing party seeks an order evicting an alleged successor-in-interest and non-party because an order in aid of judgment is only appropriate when seeking satisfaction of a money judgment and the matter does not involve a money judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

Once either party has moved for an order in aid of judgment, the court, after notice to the opposite party, must 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 its finding. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 637 (Pon. 2008).

Payment by cash on hand is always the fastest way in which the debtor can reasonably pay a judgment. The next fastest way to pay is through the sale of highly liquid assets that can readily be reduced to cash. Unlike stock in closely-held corporations for which there is no readily identifiable market for their shares or easily ascertained value, stock, which is traded daily on major stock exchanges and the prices reported, is almost as liquid as cash. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 638-39 (Pon. 2008).

The court can, as an act of grace to prevent undue hardship, permit withholding from payment to the judgment-creditor any sums that might be due in taxes because of the order in aid of judgment since the court may make provision for tax payments to non-parties in its court judgments when a judgment causes a party to incur tax liability. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137-38 (Pon. 2008).

The presence of the debtors' property in a Guam brokerage account does not affect the validity of an order in aid of judgment. While generally a court does not have jurisdiction over property in another jurisdiction because it cannot enforce its orders there, the court does have jurisdiction over the judgment-debtor's person. Thus, if the court were to order a debtor to sell property in another country and to pay or deposit the proceeds with some person or the court, and, if the judgment-debtor did not obey that order, the court could then impose sanctions on the debtor, such as, civil contempt of court to coerce the judgment-debtor's compliance or criminal contempt of court to punish the judgment-debtor's disobedience. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 (Pon. 2008).

Process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

By statute, contempt proceedings to enforce judgments and orders in aid of judgment are

meant to be civil matters. Further, by statute, orders in aid of judgment require hearings in which the court determines the judgment debtor's ability to pay. Since a judgment debtor is present at such hearings, no order in aid of judgment can logically issue without the court's determination of the debtor's ability to pay and the debtor's knowledge of the order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

In the context of failure to comply with an order in aid of judgment, there are four points in time when there may be a question of ability to pay: 1) when the order in aid was issued; 2) when the debtor misses a payment; 3) when the motion is submitted; and 4) when the hearing is held. Because the court assesses ability to pay when the order in aid is issued, the first point is irrelevant and because civil contempt is not used to punish past misconduct, ability to pay at the second point is similarly irrelevant, unless the moving party wishes to request criminal contempt proceedings, in which case the court may refer the matter to the appropriate government prosecutor. The remaining times are when the motion is submitted, and when the hearing is held. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

Traditionally, the movant has the burden to show that the debtor has the ability to comply with the court order; once this burden has been met, 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 due diligence. Thus, it is the moving party's burden not only to submit a proper motion for a show cause hearing, but also, at the hearing, to prove by a preponderance that the judgment debtor has the ability to pay. If the movant cannot provide evidentiary support, or certify his information and belief that such support is likely after a reasonable opportunity for further investigation or discovery, the court must deny the motion, but if the court does set a hearing and order parties to appear, and if at the hearing the moving party presents such evidence, only then will the burden shift to the debtor to show that he does not in fact have the ability to pay. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226-27 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

Under the FSM national law regarding enforcement of judgments, the exemption for necessities for trade or occupation is defined as tools, implements, utensils, two work animals, and equipment necessary to enable the person to carry on his usual occupation. By a plain reading of the statute's language, a rental house, and by extension, the land on which it stands, is not such a necessity. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323 (Kos. 2011).

Under FSM law, land or an interest in land owned solely by a judgment debtor in his own right may be ordered sold or transferred under an order in aid of judgment, provided the court deems that justice so requires and finds that the debtor will have sufficient land remaining after the sale to support himself and his dependents. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323-24 (Kos. 2011).

When the judgment-creditor, by its offer to subdivide a parcel so as to ensure that the debtor's daughter and son-in-law can continue to live in the house on the parcel's back portion, has gone out of its way to accommodate not only the letter but the spirit of the law, the court concludes that a fee simple interest in land may be attached and executed under national law and that the creditor's proposal would leave the debtor with sufficient land to support her and her dependents. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When a creditor is seeking a judicial power of sale that would subdivide a parcel, Kos. S.C. § 11.404(1)'s subdivision language is inapplicable because it applies to private powers of sale. FSM Dev. Ban k v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When seeking to enforce a judgment against the State of Chuuk, the full set of factors a trial court should consider are: 1) the nature of the judgment, such as whether the judgment is in tort or contract, whether the judgment is full or partial, and whether or not the judgment includes a civil rights component; 2) whether or not the debtor has acted in good or bad faith in its attempts to satisfy the judgment; 3) the length of time the judgment has gone unsatisfied; 4) the ability of the debtor to pay; and 5) the balance of interests. Such factors are best weighed by the trial court. Stephen v. Chuuk, 17 FSM R. 453, 461 (App. 2011).

Statutorily, a motion for an order in aid of judgment requires a hearing at which the trial court assesses the debtor's ability to pay the judgment. Stephen v. Chuuk, 17 FSM R. 453, 461 n.4 (App. 2011).

When a trial court has the power to fashion an alternative remedy, but a party neither files a request for such alternative nor urges it at a hearing for the remedy the party actually requested and when the trial court has not foreclosed the possibility of the alternative remedy, the trial court has not abused its discretion by not fashioning its own relief. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

Upon remand, and as part of the factors for considering orders in aid of judgment, the trial court should spell out the nature of the judgment, so as to provide clarity and avoid obfuscation of issues. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

When Chuuk's deficiencies in addressing its judgment debt stem not so much from bad faith as it does from general fiscal ineptitude and from the lack of a sense of urgency or of a judgment's importance, the court will not doubt that Chuuk has made good faith efforts to address its debt problems and to reduce its overall debt. Stephen v. Chuuk, 18 FSM R. 22, 25-26 (Chk. 2011).

The court will not make six and a half years after a civil rights judgment the magic date after which the judgment-holder can begin to seek the judgment's collection through extraordinary measures. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

When Chuuk has a limited ability to make some payment on the judgment but does not have the ability to pay the judgment in full at one time; when, if the court were to garnish the funds held in Chuuk's current account with the FSM for the full amount, it is unlikely that the garnished funds would satisfy the judgment but it is certain that such a garnishment would seriously hinder Chuuk's ability to function since the Chuuk Legislature, having estimated the amount that would be available from this source, has appropriated such sums for various vital uses, the court characterized the judgment's size as unwieldy as there is a strong public interest in Chuuk having sufficient fiscal resources to maintain a minimum level of basic and essential

public services such that the public's health, safety, and welfare are not jeopardized and it would be an onerous burden on Chuuk's governmental operations to evict Chuuk from part of its warehouse. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

Since the trial court can, on application, endeavor to find a workable way in which to eventually pay the judgment as quickly as reasonably possible and issue writs for less than the full judgment amount, the court will issue a writ of garnishment for compensation for the taking of the plaintiff's retained property during two years, and if no further payments are made on the judgment within the next six months, the plaintiff may then apply for another writ of garnishment. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

The parties are free to stipulate how any payment on a judgment should be applied – what part of the judgment it should be applied to – but that in the absence of such an agreement, the court would usually presume any payment to be a general payment on the judgment as a whole. Stephen v. Chuuk, 18 FSM R. 22, 27 (Chk. 2011).

Funds received from U.S. military retirement and U.S. Social Security benefits are not the type of property that qualify as exemptions under 6 F.S.M.C. 1414 because the U.S. statutes have no force and effect outside of U.S. territory. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

A writ of execution levied on an account in the Bank of Guam, Pohnpei branch, was directed toward funds held in a local bank, authorized to conduct banking transactions under FSM law, and did not assign, garnish, attach, execute, or levy on U.S. Social Security or military retirement benefits, but executed on funds on deposit in the FSM. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

Since the statutory exemptions on judicial enforcement of judgments pertaining to U.S. Social Security and U.S. military retirement benefits are provided for by U.S. statutes and the judicial enforcement of FSM judgments is governed by FSM statutes, a judgment-debtor whose income is U.S. Social Security and U.S. military retirement benefits and who has the ability to pay will be ordered to make monthly payments toward the satisfaction of the judgment. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

Interests in land are not subject to a writ of execution, but any interest in land 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 FSM law. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Since homes and lands are not personal property, a writ of execution cannot be used to force their sale or rental to satisfy a judgment. A judgment-creditor must proceed through an order in aid of judgment to reach such assets. An evidentiary hearing under 6 F.S.M.C. 1410(1) is a necessary step of that process. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

If a judgment creditor seeks to attach and sell any land personally owned by a judgment debtor in his own right, the judgment creditor must seek an order in aid of judgment and at the 6 F.S.M.C. 1410(1) order in aid of judgment hearing must produce sufficient evidence that the

court can deem that justice so requires and can find as a fact that after the sale, the judgment debtor will have sufficient land remaining to support himself and any those persons directly dependent on him. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

The trial court did not err in denying the defendants' motion to raise the minimum bid price when the motion was filed after the sale was held and the defendants were appealing the sale price but not the sale itself and the sale was conducted 56 days after the amended order in aid of judgment setting a minimum sale price was entered. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500-01 (App. 2013).

Since the trial court retains jurisdiction to enforce a judgment even though it has been appealed, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce or modify existing orders in aid of the existing judgment will proceed as scheduled because Congress has, by statute, has authorized judgment holders to use these methods to enforce valid money judgments. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

The procedure for issuing an order in aid of judgment is governed by statute. The court, after notice to the opposite party, must 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. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

The trial court cannot issue an order in aid of judgment without first making a finding about the debtor's ability to pay, which, in the case of a governmental debtor, must include the debtor's legal ability to pay, that is, whether money has been appropriated that can legally be applied to that debt. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

In the usual case, the payment of a money judgment against a state must abide a legislative appropriation since due respect must be given to the constitutional separation of powers. Alexander v. Pohnpei, 19 FSM R. 133, 135-36 (Pon. 2013).

The usual first step for an order in aid of judgment against a state when there are no appropriated funds available for that purpose is to order the state executive to submit an appropriation bill, 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 be given further opportunity to meet its obligation in some other manner before a plaintiff can resort to a writ of garnishment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

Since the payment of judgments is not a representation expense in the course of the Pohnpei Governor's official public relations, the court cannot issue an order in aid of judgment to use those funds to pay a judgment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

A request to order the Pohnpei Governor to reprogram funds or to use his representation funds to pay a judgment will be denied. The judgment holder must await the outcome of the legislative process. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

The FSM social security non-assignment of benefits statute, 53 F.S.M.C. 604, does not bar legal process such as orders in aid of judgment from reaching FSM social security benefits. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

There is no true conflict between the U.S. statues 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).

A trial court did not abuse its discretion in applying only FSM, and not U.S., statutory law in determining whether property is exempt from legal process in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

A $300 payment on a 1998 judgment could not have reduced the principal by $300, and considering the age of the judgment and how little has been paid, it likely did not reduce the principal at all. Therefore the part of the trial court order in aid of judgment reducing the judgment principal by $300 is reversed. George v. Sigrah, 19 FSM R. 210, 219-20 (App. 2013).

The purpose of an order-in-aid-of-judgment hearing is for the trial court to examine the question of the judgment debtor's ability to pay and determine the fastest way in which the judgment debtor can reasonably satisfy the judgment. A writ of execution (or garnishment or attachment) can issue as part of an order in aid of judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

When the $50 monthly payments barely cover the monthly interest plus some of the accrued interest, if some of the rental payments to the judgment debtor can be garnished while complying with Kosrae Code § 6.2409(1) that allows debtors to retain property and income to provide reasonable living requirements, the trial court must do so unless there is an even faster way to satisfy the judgment. This is for the trial court to determine at a hearing where the parties present the necessary evidence for a determination. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

A judgment creditor has discovery tools available to him under Kosrae Civil Procedure Rule 69(a) under which a judgment creditor may obtain discovery from any person, including the judgment debtor. George v. Sigrah, 19 FSM R. 210, 220 n.6 (App. 2013).

Often at an order-in-aid-of-judgment hearing, the judgment debtor, having been subpoenaed as a witness by the judgment creditor, will be called to testify, about his or her finances, assets, income, and ability to pay. Based on this evidence and other evidence the judgment creditor has introduced through other witness testimony or documentary exhibits, as well as any evidence similarly introduced by the judgment debtor, the trial judge makes his findings about the fastest way in which the judgment debtor can reasonably satisfy the judgment and fashions his order in aid of judgment accordingly. Argument of counsel is not evidence on which the court can base its factual findings. George v. Sigrah, 19 FSM R. 210, 220-21 (App. 2013).

When the order-in-aid-of-judgment hearing is on the judgment creditor's motion, his counsel should have the opportunity to present his evidence and his witnesses first and the judgment debtor's counsel should present his side next with the judgment editor's counsel having any last

words. Any future order-in-aid-of-judgment hearing should follow this procedure. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

When the previous sale of the RS Plaza Building still left a substantial outstanding balance, 6 F.S.M.C. 1409 allows for a successive request for an order in aid of judgment because the judgment has not been satisfied in full. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A writ of garnishment directing rent payments to the judgment creditor from the debtor corporation's commercial tenant, constitutes a proper exercise of the court's authority under the order-in-aid-judgment statute. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

When a meritorious defense has not been portrayed, the defendants' requests to set aside or vacate the default judgment, order(s) in aid of judgment, and writ of garnishment will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A writ of ne exeat would require the defendant to surrender her passport and prevent her from leaving the FSM until she complies with all court orders and pays tax arrearages in full. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

The writ ne exeat republica is an obscure writ that is ancient, and infrequently used, and is an extraordinary writ which should issue only in exceptional cases. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment-creditor from acting to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Notwithstanding a notice of appeal's general effect, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment and may act in aid of the appeal. Because the mere filing of a notice of appeal does not affect the judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Post-judgment discovery from any person is expressly available. The judgment creditor or a successor in interest when that interest appears of record, may, in aid of the judgment or execution, obtain discovery from any person, including the judgment debtor. The judgment creditor is allowed discovery to find out about assets on which execution can issue or about assets that have been fraudulently transferred or are otherwise beyond the reach of execution. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

The Chuuk State Supreme Court cannot issue an order directing the payment of money by Chuuk State absent an appropriation therefor. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

If a judgment creditor wants Chuuk to furnish money to pay his judgment now, he must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it. Kama v. Chuuk, 20 FSM R. 522, 530-31 (Chk. S. Ct. App. 2016).

Since the principle that funds appropriated for other purposes cannot be redirected to pay judgments is inherent in the separation-of-powers scheme in the Chuuk Constitution, the Chuuk State Supreme Court cannot levy any writs on Chuuk state funds because those writs would be levied on money that the Chuuk Legislature has already appropriated for another purpose. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Chuuk State Law No. 190-08, § 4 does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an attachment, execution, or garnishment of public property. The general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

For a money judgment against the state to be paid there must be an appropriation by the Legislature and the courts have no power to compel an appropriation. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

Under Rule 69, the judgment creditor, in aid of the judgment or execution, may obtain discovery from any person, including the judgment debtor. Rule 69 was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for securing information relating to the judgment-debtor's assets. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594-95 (Pon. 2016).

As required by 6 F.S.M.C. 1409, the court will schedule a hearing on the motions for an order to show cause for the failure to comply with an order in aid of judgment and for an order in aid of judgment. FSM Dev. Bank v. Carl, 20 FSM R. 592, 595 (Pon. 2016).

When the land whose title transfer is sought was owned only by one defendant, that defendant is the only defendant with standing to oppose the title transfer. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 611 n.1 (Pon. 2016).

Since an order in aid of judgment may provide for the sale of the judgment debtor's particular assets and the payment of that sale's net proceeds to the judgment creditor, a judgment creditor does not have to first acquire title to a particular asset before it is sold for the creditor's benefit. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Since a statute provides for the sale of a judgment debtor's particular non-exempt assets with the net proceeds to be paid to the judgment creditor and since such an order may be made only after a hearing on a motion for an order in aid of judgment, when such a hearing was held and the judgment debtor appeared at that hearing and agreed to the land's sale, the court may issue an order in aid of judgment that contained an order of sale for that parcel. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

When no stay pending appeal had been granted, the trial court had the jurisdiction to not only deny the defendants' Rule 60(b) motion for relief from judgment, but it also had the jurisdiction to enforce the money judgment by mortgage foreclosure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

The trial court's issuance of an order transferring title six days after the bank filed its motion

and notice of payment was not reversible error when an earlier order in aid of judgment required that a court order transferring title to the parcel had to be issued no later than ten days after notice is given of delivery of a cashier's check in the full amount and when the appellants do not contend that there were any procedural defects in the sale on which they could base a challenge to its outcome. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

In hearings for an order in aid of judgment, the judgment debtor, having been subpoenaed as a witness by the judgment creditor, will testify about his or her finances, assets, income, and his ability to pay, and based on this evidence and other evidence the judgment creditor has introduced through other witness testimony or documentary exhibits, as well as any evidence similarly introduced by the judgment debtor, the trial judge will make findings about the fastest way in which the judgment debtor can reasonably satisfy the judgment and will fashion an order in aid of judgment accordingly. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

When a plaintiff seeks an order in aid of judgment, the court must inquire into the defendant's ability to pay, and when the information the plaintiff seeks pertains to the defendant's income, finances, and could reasonably uncover assets not previously disclosed, the court will deny the defendant's motion to quash the plaintiff's subpoena and subpoena duces tecum. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

When a subpoena duces tecum seeks documents that are reasonable and unoppressive and can address the defendant's ability to reasonably satisfy the judgment, the defendant has not provided good cause for the court to issue a protective order. Bank of the FSM v. Ohwa Christian High Sch., 21 FSM R. 645, 648 (Pon. 2018).

The court is reluctant to order the sale of land in a collection case until other methods of satisfying the money judgment have been tried and are unsuccessful because of the central importance of land in Micronesian culture, and this seems to be the general practice, even by creditors, although no law specifically mandates it. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

The court is subject to the statutory command that the court, in aid of a money judgment, must determine the fastest manner in which the debtor can reasonably pay a judgment. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 n.7 (Pon. 2020).

Since the court must make a reasonable effort to take every step reasonable and necessary to avoid unnecessarily reducing the availability of article XIII, section 1 health care services, the court will note that the FSM Development Bank is legally entitled to an order of sale for the mortgaged medical equipment and to an order enforcing the borrowers' assignments of income and exclusive possession of the medical clinic premises, but the court will not issue such orders contemporaneously with the judgment. The court will hesitate to issue such orders until all reasonable means of satisfying the judgment by other methods have been explored and exhausted, and will thus give special consideration to health care services and assure that their availability is not unreasonably or unnecessarily diminished by any action it takes. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481-82 (Pon. 2020).

The court is required by law to hold a hearing on an application for an order in aid of judgment if either party requests one. FSM Dev. Bank v. Talley, 22 FSM R. 587, 595 (Kos. 2020).

Collection proceedings against a judgment debtor will not be stayed because the debtor has filed a notice of appeal and has also filed an independent action for relief from the judgment. The usual method to stay the collection of a money judgment is for the defendant to give a supersedeas bond, and when the judgment debtor did not obtain, and did not offer to obtain, a supersedeas bond, and has not stated any basis upon which the court could exercise its discretion to stay the money judgment against him in absence of a bond, he is not entitled to a stay under FSM Civil Rule 62(d). FSM Dev. Bank v. Talley, 22 FSM R. 608, 610 (Kos. 2020).

In the absence of a stay, the court has the ability, and the inclination, to protect a judgment-debtor during an appeal by requiring that all sums the judgment-debtor is ordered to pay, be paid into the court's registry where the money would be held awaiting the outcome of the judgment debtor's appeal, with the money delivered to whichever party the appellate court deems proper. FSM Dev. Bank v. Talley, 22 FSM R. 608, 610-11 (Kos. 2020).

A motion for an order in aid of judgment may be heard by video-conferencing. FSM Dev. Bank v. Talley, 22 FSM R. 608, 611 (Kos. 2020).

The statute authorizing issuance of an order in aid of judgment, 6 F.S.M.C. 1409, presents two issues: the debtor's ability to pay, and the most expeditious way that payment can be accomplished. 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 debtor's financial undoing. FSM Dev. Bank v. Talley, 22 FSM R. 608, 612 (Kos. 2020).

The court is unable to determine a judgment debtor's ability to pay and the fastest way for the debtor to pay when, although the judgment creditor establishes that the debtor had substantial income, there is no evidence of the debtor's legitimate financial obligations, such as the amount needed to support dependents. The court cannot determine if that amount it should order the debtor to pay is greater than or less than the biweekly sum the creditor asked for. When the court cannot establish with any certainty an appropriate amount, the court has no choice but to deny the motion for an order in aid of judgment, without prejudice to any future order in aid of judgment. FSM Dev. Bank v. Talley, 22 FSM R. 608, 612 (Kos. 2020).

– Secured Transactions

Because courts generally were concerned that third parties, especially other potential creditors, might rely to their detriment on assets which are in the possession of the borrower but, unknown to the other parties, are subject to a secret lien, there exists in the law a strong general policy against non-possessory and secret liens. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 279 (Pon. 1986).

The common law of the United States today concerning secured transactions is the Uniform Commercial Code (UCC), a comprehensive statute covering commercial transactions. Absence in the Federated States of Micronesia of any filing requirement to notify others of a security interest, and of a designated place for filing, which provisions are at the heart of the UCC statutory scheme, virtually precludes any judicial attempt to draw heavily on UCC principles in fashioning an approach to secured transactions. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 287 (Pon. 1986).

In considering the law concerning secured transactions, the FSM Supreme Court must look for guidance of the pre-UCC common law and may only declare the existence of such security interests as have been found by other courts to exist in the absence of statutes. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 288 (Pon. 1986).

When a party agrees to create a security interest to secure his debt but then refuses to do what is necessary to vest the other party with statutory or common law lien rights in the property, courts can find that the other party has an equitable lien in property even if statutory or common law lien requirements have not been made. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 290 (Pon. 1986).

Non-possessory equitable liens will not be found to exist against another who had neither actual notice nor reason to know of the existence of the security claim. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 290 (Pon. 1986).

In absence of an authorized statute, a claim of a chattel mortgage will not be upheld as an equitable lien against third parties who had neither actual notice nor reason to know of the existence of the security claim unless there has been some method of notice so that other interested persons could have a reasonable opportunity to become aware of the security interest. In re Island Hardware, 3 FSM R. 332, 340 (Pon. 1988).

A "general security agreement," without more does not establish a lien under common law or pursuant to any statute in the Federated States of Micronesia. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

Unless a statute or common law principle expressly says otherwise, disclosure is a prerequisite for making a lien effective against other creditors. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

Secured transactions within the Federated States of Micronesia remain subject to the policies applied elsewhere prior to the adoption of the Uniform Commercial Code. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

In the absence of a statute authorizing the recording of security interests, security agreements should be authenticated by a controller, accountant, bookkeeper, or other employee with firsthand, personal knowledge of the secured party's books and records. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

A secured interest will not be given priority status when there is no recording statute, thus making it a secret lien, and where there is no transfer of dominion to the lender, and the lender appears to claim a floating interest. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 664 (Pon. 1996).

It has long been recognized in the FSM, that secret liens are not enforceable against third parties. Banks in the past have attempted to assert a priority right for unpaid loan balances where the loan was used to purchase chattel property. The court has denied them and refused to uphold the asserted liens against third parties. This is controlling law in the FSM. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was

a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

Because there are no statutory schemes in the FSM to record liens and mortgages on chattel property and provide notice thereof because no Micronesian legislature has established any, except that for vessels, chattel mortgages are therefore secret liens which cannot be enforced against third parties who had neither notice nor reason to know of the security interest claim. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

When the FSM Supreme Court's concern in inquiring into a Guam bankruptcy case was not to determine whether the principles of comity should be applied, but rather whether any order the court might issue would subject a party to liability for contempt in the other court because the party was required by two courts to obey contradictory orders and when that concern has been assuaged, the court will take no position on whether, and under what circumstances, it might recognize U.S. bankruptcy law or proceedings and whether or when comity would apply in such a case. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Generally, a secured interest will not be given priority status when there is no recording statute, thus making it a secret lien. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

A promissory note and a security agreement are enforceable contractual agreements between the parties. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

Whenever a bank lends money, it always assumes a risk that the borrower will not repay it. The bank tries to manage or lessen its risk by requiring certain information about the borrower and the money's intended use and by evaluating that information before any money is lent. Even if satisfied that the borrower is creditworthy, a bank may also lessen its risk by attaching certain conditions to the loan and by acquiring a security interest in the borrower's collateral. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

If a security interest has been perfected under Title 33, chapter 10 of the FSM Code, the secured party will, by virtue of a judgment, be entitled to foreclose as a post-judgment remedy. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 288 (Chk. 2009).

If a security interest has been perfected, the secured party will, by virtue of a judgment, be entitled to foreclose. This is a post-judgment remedy and the secured party may also have other post-judgment remedies available to it. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 339 (Chk. 2009).

A pre-judgment possession hearing should be an expedited proceeding because the statute provides that a secured party is entitled to an expedited hearing upon application for a pre-judgment order granting the secured party possession of the collateral. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

A motion to dismiss that was a matter of first impression, had to be carefully considered and denied before the court could proceed with a pre-judgment possession hearing. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

The court will deny an attorney's motion to withdraw for financial reasons when substitute counsel certainly cannot be found in time for the pre-judgment possession hearing or the depositions and the pre-judgment possession cannot and will not be delayed because it is statutorily an expedited proceeding. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571-72 (Kos. 2013).

Since a secured party under a prior transaction may file a notice of the property interest created by the prior transaction within sixty days of the Secured Transactions Act's effective date in the same manner as provided for a notice of a security interest and since the Act became effective on October 2, 2006, a November 29, 2006 filing of a notice of security interest in a prior transaction created a perfected security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 594-95 (Kos. 2013).

The Secured Transactions Act is an existing, applicable FSM statute that covers the pre-judgment seizure of property by a secured party. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

When the secured party's application contains a statement under oath verifying the existence of the attached security agreement and identifies two events of the debtor's default; when it has perfected its security interest by properly filing it with the FSM Secured Transactions Filing Office; and when the debtor has defaulted on the loan payments, the secured party has, under 33 F.S.M.C. 1052, a right to take lawful possession of the collateral. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

When an FSM secured transactions statute mirrors and appears to have been drawn from a U.S. statute, U.S. caselaw construing the U.S. statute may be consulted for guidance in construing the FSM statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 & n.6 (Kos. 2013).

Since the Secured Transactions Act does not apply to the transfer of an interest in real property except as provided with respect to fixtures, crops, timber to be cut, or minerals to be extracted, a lender cannot have perfected a security interest in a factory building unless it had obtained a mortgage on the factory building (and presumably the land underneath it or an easement) and recorded that mortgage. The lender is therefore not entitled to pre-judgment possession of the factory building since it does not have a perfected security interest in it under the Act. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

Fixtures are goods that are fixed to real property, or are intended to become fixed to real property in a manner that causes a property right to arise in the goods under the prevailing law. Goods are all things that are movable when a security interest attaches and the term includes fixtures. Readily removable factory machines, office machines, and domestic appliances are not fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

When a security agreement covers fixtures, the secured party may, if it chooses, proceed

under the Secured Transactions Act and obtain a 33 F.S.M.C. 1053(3) order for pre-judgment possession of the fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

A general description of the collateral is sufficient. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

When, except for the factory building, the vehicles, and the inventory, the rest of the listed items on the filing would fit the general description as water bottling machines and equipment needed to produce bottled water and thus be collateral subject to the bank's security interest even if the attachment to the agreement was an illegitimate expansion of the bank's security interests, the bank is therefore entitled, after the debtor has defaulted, to immediate possession of those chattels in which it has a perfected security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

An assignment executed between a bank and a borrower that provides that, in the event of a default, the bank is the sole and exclusive party entitled to possession of the subject property/premises and to operate the subject business and to receive all income therefrom is a right to possession and operation that, although a security interest, is not a security interest that can be, or was, perfected under Title 33, chapter 10, because it involves real property – the factory building – and the incorporeal right to operate the business from that building. On its face, this is an executory contract for which there was an offer, acceptance, definite terms, and consideration. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

While 33 F.S.M.C. 1053 gives a secured party the right to pre-judgment possession of collateral – chattels – in which the secured party has perfected a security interest, it does not authorize the court to issue a pre-judgment order enforcing specific performance of a contract designed to give a lender further security in the event of a default or to issue an order granting the lender pre-judgment possession of property in which it does not have a perfected security interest and in which it could not perfect a security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

The right to a debtor's income is an intangible property right in which a lender could have perfected a security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

The Secured Transactions Act generally recognizes an obligor's liability for any deficiency. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

Besides pre-judgment possession of the collateral, under the Secured Transactions Act, the creditor also has the remedies of writ of attachment and release and modification and may seek a foreclosure action against a debtor's secured or unsecured property whether or not it has taken possession of the collateral. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

In order for a secured party's seizure of collateral to be a waiver of the secured party's right to a deficiency judgment, that waiver ordinarily would have to be expressly provided for in the mortgage documents or in a statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM

R. 590, 599 (Kos. 2013).

A secured party's possession of the debtor's collateral will not constitute a waiver by the secured party of its right to proceed and obtain a judgment for any deficiency. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

When, although the factory building is real property to which the secured party does not have a right to pre-judgment possession, the secured party must be afforded access to the building so that it may take possession of the chattels to which it does have a right of pre-judgment possession. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

A claim by the Marshall Islands Social Security Administration against a debtor in the FSM is not a secured debt – a claim in which the creditor has a security interest in collateral. It is an unsecured claim. In re Mix, 18 FSM R. 600, 603 (Pon. 2013).

When the defaulting borrowers had executed a chattel mortgage to help secure a loan, and when the bank registered and thereby perfected its security interests in the chattels, the bank is entitled to a judgment on its claim to foreclose its chattel mortgage.

When the borrowers' assignment of income and of exclusive possession was used to secure their indebtedness to the bank and the assignments allowed the borrowers to retain their income and possession of the business premises so long as the loan it secured did not go into default, the bank is entitled to a judgment on its claim to enforce the assignments once the borrowers have defaulted. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

When the borrowers' assignment of income and of exclusive possession was used to secure their indebtedness to the bank and the assignments allowed the borrowers to retain their income and possession of the business premises so long as the loan it secured did not go into default, the bank is entitled to a judgment on its claim to enforce the assignments once the borrowers have defaulted. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

When the FSM Development Bank has a statutory right to reduce its claim to judgment and to foreclose its perfected security interest in the borrowers' medical equipment and also has the contractual right to do the same, the Constitution's Professional Services Clause does not make that contract illegal. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

Since the court must make a reasonable effort to take every step reasonable and necessary to avoid unnecessarily reducing the availability of article XIII, section 1 health care services, the court will note that the FSM Development Bank is legally entitled to an order of sale for the mortgaged medical equipment and to an order enforcing the borrowers' assignments of income and exclusive possession of the medical clinic premises, but the court will not issue such orders contemporaneously with the judgment. The court will hesitate to issue such orders until all reasonable means of satisfying the judgment by other methods have been explored and exhausted, and will thus give special consideration to health care services and assure that their availability is not unreasonably or unnecessarily diminished by any action it takes. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481-82 (Pon. 2020).

– Setoff

The general rule is that where a creditor has failed to both procure credit insurance paid for by the debtor and to notify the debtor of his failure to procure the insurance requested, prior to loss, the debtor may plead such failure as a defense or setoff. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM R. 484, 507 (Pon. 1998).

A statute that requires the creditor to give written notice to the debtor of the creditor's intention to foreclose prior to foreclosing on the property, is inapplicable to setoffs because foreclosures and setoffs are very different things. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

A setoff is a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor, or the counterbalancing sum owed by the creditor. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

Banks generally have a common law right to a setoff against depositors. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

When a bank has a contractual right to setoff because the promissory note contains a provision granting the bank a right to setoff and in that provision, the borrowers authorize the bank's use of setoff, and the borrowers are on notice that if payments are not made that the bank may exercise a setoff against the borrower's bank deposits. And when the note provides that the bank may forgo or delay enforcing any of its rights or remedies without losing them, the bank was within its rights to setoff sums in the borrowers' bank accounts against the monthly payments as each became due and remained unpaid instead of declaring the loan in default and accelerating payment of the entire amount. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

A setoff is a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor, or the counterbalancing sum owed by the creditor. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A promissory note will not bear any interest past the date it is setoff against an opposing claim. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Setoff implies that both the plaintiff and defendant have independent causes of action maintainable against the other, while mitigation (of damages) does not involve facts which constitute a cause of action in favor of the defendant, but facts that show that the plaintiff is not entitled to as large an amount as the plaintiff's showing would otherwise justify. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

The doctrine of set-off, as recognized in the FSM, applies between parties when the party being sued has no defense to an action but has a cause of action against the party suing him that arises out of the same right and the party being sued asks the court to determine the parties' mutual liability. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

The setoff doctrine only applies when liabilities are mutual. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Since Ruo municipality and Piisemwar municipality are distinct parties, each responsible for its own obligations and liabilities, Ruo municipality is under no obligation to answer to Shigeto's Store's claim against Piisemwar municipality. Therefore, the respective liabilities of these parties cannot be set-off against each other. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Two municipalities cannot be jointly and severally liable for each others' debts because each municipality has a separate account in the State treasury, because each municipality is authorized to obligate funds from its municipal account, and because the municipality, not the state, obligates those funds and once the funds are obligated, the municipality, not the state, owes the obligation. Therefore, the amount Piisemwar municipality owes to Shigeto's cannot be set-off against the amount Shigeto's owes Ruo municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

When Shigeto's contracted with Piisemwar municipality for the purchase of motors and the state was not a party to that contract and when Shigeto's Store has not raised any other basis for liability other than set-off between the contracts it had with Ruo and Piisemwar municipalities, judgment will enter for Shigeto's Store and against only Piisemwar municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197-98 (Chk. S. Ct. Tr. 2010).

When there was evidence of the terminated employee receiving approval of an advance leave request of 60 hours, but there was no evidence of how much of this advance leave was actually used, how much had already been paid back, and how much was still outstanding, the court will deny the government's request to offset the employee's pay to cover for the advance leave still owed since there is a lack of evidence on this matter. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

A setoff is a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor, or the counterbalancing sum owed by the creditor. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 181 n.12 (Pon. 2017).

Yap has specifically extended its sovereign immunity waiver to include set-offs. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 n.6 (Yap 2017).