SOVEREIGN IMMUNITY

The Trust Territory Government is not immune from suit in the Truk State Court because the High Court has overturned the doctrine of sovereign immunity accepted by that court in the past. Suda v. Trust Territory, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. FSM Dev. Bank v. Yap Shipping Coop., 3 FSM R. 84, 86 (Yap 1987).

No clause in the FSM Constitution is equivalent to the eleventh amendment of the United States Constitution, which generally bars citizens from using United States federal courts to seek monetary damages against states. Edwards v. Pohnpei, 3 FSM R. 350, 361 (Pon. 1988).

Courts lack authority to establish sovereign immunity to general tort claims through judicial action. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

Since the Constitution's Professional Services Clause is a promise that the national government will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly accept a contention that 6 F.S.M.C. 702(4), which creates a $20,000 ceiling of governmental liability, shields the government against a claim that FSM government negligence prevented a person from receiving necessary health care. Leeruw v. FSM, 4 FSM R. 350, 362 (Yap 1990).

The Federated States of Micronesia, as a sovereign nation, may bestow immunity upon civilian employees of another nation in order to obtain benefits for this nation's citizens. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

The Compact of Free Association provides to the United States immunity from the jurisdiction of the FSM Supreme Court for claims arising from the activities of United States agencies or from the acts or omissions of the employees of such agencies. Samuel v. United States, 5 FSM R. 108, 111 (Pon. 1991).

The FSM Supreme Court has jurisdiction over a suit against the national government by the states alleging that under the Constitution the states are entitled to 50% of all revenues from the EEZ because the FSM has waived its sovereign immunity in cases to recover illegally collected taxes and for claims arising out of improper administration of FSM statutory law. Chuuk v. Secretary of Finance, 7 FSM R. 563, 568 (Pon. 1996).

The government has no sovereign immunity from suits seeking to prevent the improper administration of FSM statutes and regulations. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Courts lack the authority to establish sovereign immunity to general tort claims through judicial action. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

The purpose of 6 F.S.M.C. 701 *et seq.* is to permit and define certain specific causes of action against the FSM. The statute creates specified causes of action, not sovereign immunity. Louis v. Kutta, 8 FSM R. 312, 321 n.6 (Chk. 1998).

Creation of a doctrine of sovereign immunity of the FSM from garnishment should be left to the specific, unambiguous, and explicit action of Congress. The court will not create such a doctrine by judicial action. Louis v. Kutta, 8 FSM R. 312, 321 (Chk. 1998).

The question of proper service is different from the question of the validity of an immunity defense. The issue of sovereign immunity does not involve a jurisdictional defect in the same sense as does improper service of process. Rather, the sovereign immunity defense technically comes into consideration only after jurisdiction is acquired and simply provides a ground for relinquishing jurisdiction previously acquired. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 n.2 (Kos. 2000).

The determination of whether Tonga and its agents are immune from suit is a decision that is better made by the FSM government's executive branch because the FSM Constitution expressly delegates the power to conduct foreign affairs to the President and because whether a party claiming immunity from suit has the status of a foreign sovereign is a matter for the executive branch's determination and is outside the competence of the courts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

International organizations, their property, and their assets wherever located, and by whomsoever held, are accorded the same immunity from suit and every form of judicial process by the Federated States of Micronesia government that it accords to foreign governments, but the nature of the immunity the FSM affords foreign governments is still an open question. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 n.5 (Kos. 2000).

Proceedings in a suit against a foreign government may be postponed in order to give the FSM Department of Foreign Affairs the opportunity to decide whether the court should recognize the foreign government's sovereign state immunity from suit. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373-74 (Kos. 2000).

When other trial division cases recognize the principle of sovereign immunity and the trial court decision appealed from only observed that in the absence of a specific expression by the legislature, sovereign immunity would not prevent the court from garnishing property held by the FSM for a state, when the constitutionality of the FSM's sovereign immunity statute was not before the court, and when the FSM served only as a mere garnishee in a situation which Congress has prevented from recurring by the enactment of 6 F.S.M.C. 707, the trial court decision will not effect future litigation involving the FSM and the FSM's appeal is thus moot. FSM v. Louis, 9 FSM R. 474, 483-84 (App. 2000).

A suit over an incident involving a foreign vessel, will not be dismissed when the vessel was engaged in commercial activity, and not in sovereign acts. Kosrae v. Kingdom of Tonga, 9 FSM R. 522, 523 (Kos. 2000).

National government sovereign immunity is waived for claims for injunction arising out of alleged improper administration of FSM statutory laws, or any regulations issued pursuant to such statutory laws. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

The FSM has waived sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of Federated States of Micronesia statutory laws, or any regulations issued pursuant to those laws. FSM v. Udot Municipality, 12 FSM R. 29, 53 (App. 2003).

When the claims advanced fall within the FSM's statutory waiver of sovereign immunity, the court need not decide whether defendant allottees are part of the national government and cloaked with sovereign immunity. FSM v. Udot Municipality, 12 FSM R. 29, 54 (App. 2003).

On a motion to dismiss brought by the FSM Development Bank, the bank's claim of sovereign immunity will be considered first since, if the bank prevails on this ground, the merits of the bank's other claims need not be considered. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 (Chk. 2005).

Generally, sue-and-be-sued clauses in statutes creating or empowering a governmental corporation or agency are waivers of immunity, and waivers by Congress of governmental immunity in case of such instrumentalities should be liberally construed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

The sue-and-be-sued language in 30 F.S.M.C. 105(3) is a general waiver of sovereign immunity so that when Congress launched the FSM Development Bank into the commercial world and endowed it with the power "to sue and be sued," the bank was as amenable to a civil suit as a private enterprise would be under like circumstances. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

Even under national law, sovereigns, any sovereign, have sovereign immunity. But sovereigns are generally considered to have waived that immunity when the sovereign has acted as a participant in commerce instead of as a sovereign. It would seem unfair if a state, as a competitor in a commercial enterprise, could not be held liable and assessed the same damages that another commercial competitor, who committed the same acts, would be assessed. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 n.5 (App. 2006).

When whether 6 F.S.M.C. 702(2), which does not limit the FSM's liability to a certain dollar amount, or 6 F.S.M.C. 702(4), which limits recovery on an individual claim in that subsection to $20,000, applies, must await the presentation of facts not yet in evidence and requires that certain facts be proven and certain rulings of law made before it can be resolved, the claims against the FSM of over $20,000 will not be dismissed for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

Chapter six of Title Six is the Trust Territory of the Pacific Islands sovereign immunity statute. If it ever had any application to the FSM, it would have been supplanted or repealed by implication when the FSM Congress enacted a sovereign immunity statute, FSM Pub. L. No. 1-141, specifically applicable to the FSM national government. It remained part of the FSM Code because, at the time the FSM laws were codified, the Trust Territory government retained vestigial functions and authority in the FSM. By its terms, chapter six relates only to the Trust Territory government's liability and not to the liability of any of the FSM constitutional governments. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

Although the FSM Constitution's framers initially intended that there be no sovereign immunity in the FSM, they decided that that policy was too absolute and that the Constitution should remain silent on the subject so that the FSM Congress could decide which actions should be permitted against the government. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

From the wording of the chapter seven policy statement, 6 F.S.M.C. 701, it is clear that Congress's intent was that chapter seven contained the FSM national government's entire assertion of, and limited waiver of, its sovereign immunity, and that Title Six, chapter six does not grant any, and has no effect on, the FSM national government's sovereign immunity. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

The FSM has waived its sovereign immunity for suits seeking to prevent the improper administration of FSM statutes and for injunctions to prevent that improper administration. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

Sovereign immunity should not be confused with official immunity for public officers. Government officials who are performing their official duties are generally shielded from civil damages, and the court has previously recognized that some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

The FSM cannot raise a sovereign immunity defense when it has statutorily waived its sovereign immunity for damages arising out of the improper administration of FSM statutory laws and when a sound basis for the FSM's waiver of sovereign immunity may be the waiver for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM because the Memorandum of Understanding between Chuuk and the FSM provides that the FSM handles, processes, and pays the Chuuk Special Education Program payroll. Since that express contract obligates the FSM to make all properly obligated withholdings from the employees' pay, the Chuuk Health Care Plan is, by statute, an intended third-party beneficiary of the contract between the FSM and Chuuk so that the Plan's claim is therefore a claim based on Chuuk's contract with the FSM. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 497 (Chk. 2013).

Since the Federated States of Micronesia has waived its sovereign immunity only to the extent of the first $20,000 in damages, when a plaintiff's actual damages exceed that amount, judgment shall be entered in her favor for $20,000. Lee v. FSM, 19 FSM R. 80, 83, 86 (Pon. 2013).

The court will not recharacterize damages as a part of the uninjured spouse's loss-of-consortium claim and alter the nature of the damages claim solely to circumvent the FSM's statutory limited waiver of its sovereign immunity that prevents the injured spouse from being awarded the full amount of the damages she suffered. The court will comply with Congress's policy choice and its intent in enacting the limited waiver. Lee v. FSM, 19 FSM R. 80, 85 (Pon. 2013).

Since 6 F.S.M.C. 702(2) specifically waives the FSM's sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of FSM laws, the FSM has waived its sovereign immunity for a suit by a state alleging that the FSM failed to comply with the FSM Constitution's mandate that not less than 50% of the national tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of consent to the appropriation. When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. Kama v. Chuuk, 20 FSM R. 522, 531-32 (Chk. S. Ct. App. 2016).

A sovereign's judicial power does not extend to lawsuits against the sovereign unless the sovereign has waived its immunity to suit and then only to the extent that it has waived its immunity. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Chuuk

The court will not judicially create the right of sovereign immunity from suit for Chuuk State. This is a legislative function. Epiti v. Chuuk, 5 FSM R. 162, 166-67 (Chk. S. Ct. Tr. 1991).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

The State of Chuuk is immune from civil suits for damages arising out of malicious prosecution. Kaminaga v. Chuuk, 7 FSM R. 272, 274-75 (Chk. S. Ct. Tr. 1995).

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).

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).

When state law clearly provides that no action shall be brought against the state for any actions or omissions of the Chuuk Coconut Authority and that the Authority's debts or obligations shall not be debts or obligations of the Legislature or state government, and neither will be responsible for the same, the state and the governor will be dismissed as defendants from a suit against the Authority because as a matter of law no action lies against the state and no liability attaches. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. This principle has been modified somewhat by the enactment section 6 of the Chuuk State Sovereign Immunity Act of 2000, but that Act did not become law until January 25, 2001, and it

does not apply to damage claims before that time. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

Although a compelling state interest exists in protecting the state from garnishment and execution of its funds as governments cannot effectively administrate essential public services with litigants constantly raiding their coffers, but since Congress has created a statutorily-based action for civil rights violations as these violations are particularly egregious in that they infringe upon what we commonly recognize as unalienable human rights, what must be struck is an adequate balance between protecting a government's ability to maintain sufficient funds to operate and the ability to hold the government accountable for violating its citizens' most basic rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

None of the FSM Code statutory exemptions to garnishment and execution provide an exception to execution or garnishment when the debtor is a state government. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM R. 229, 234-35 (App. 2009).

A cause of action against the State of Chuuk accrues or arises and the limitations period starts running from the date on which the event triggering the cause of action occurred. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Since sovereign immunity implicates a court's subject matter jurisdiction, the defense of sovereign immunity can be raised at any time, either by a party or by the court. The law is well established that counsel for the State or one of its agencies may not by failure to plead the defense, waive the defense of governmental immunity in the absence of express statutory authorization. Eot Municipality v. Elimo, 20 FSM R. 7, 10-11 (Chk. 2015).

Even when there is no provision in the state's constitution or its statutes expressing the immunity of the state from liability for interest payments not assented to, such immunity is an attribute of sovereignty and is implied by law for the state's benefit. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

Statutes, 6 F.S.M.C. 1401; 8 TTC 1, that read: "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered" are statutes of general application to money judgments and not statutes that specifically address judgments against sovereign defendants. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

Logically, when the Commonwealth of the Northern Marianas also has an identically-worded statute derived from the same source as the FSM Code and Chuuk state law – the Trust Territory Code, the statutes would be interpreted and applied against their respective sovereigns in the same manner. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

In the absence of an express statutory waiver of immunity against post-judgment interest, the Chuuk government is not liable for such interest even though there is a statute of general

application imposing 9% post-judgment interest on money judgments, but Chuuk is liable for the 5% interest it agreed to on a loan. Eot Municipality v. Elimo, 20 FSM R. 7, 11-12 (Chk. 2015).

Since the Chuuk Sovereign Immunity Act permits suits against the state government for claims, whether liquidated or unliquidated, that are made upon an express or implied agreement with the State of Chuuk or with any of its political subdivisions, it does not bar a suit to recover funds that, by agreement, were to be passed on by the state government to the municipal governments. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Sovereign immunity does bar the imposition of interest as part of or on a judgment against the State of Chuuk. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

The judicial branch can, consistent with the state's waiver of sovereign immunity, declare the amount of the state's liability, but while the Chuuk State Supreme Court is empowered to declare the rights as between a judgment creditor and the government, it cannot enforce payment of the judgment absent legislative appropriation. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of consent to the appropriation. When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. Kama v. Chuuk, 20 FSM R. 522, 531-32 (Chk. S. Ct. App. 2016).

When Chuuk not only has not expressly waived its sovereign immunity to writs of attachment, execution, and garnishment, but has also gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs, that statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Kosrae

The phrase "may assume liability is incurred by the chartered State Government," Kos. Const. art. XVI, § 7, is ambiguous because there are no guidelines for when the state is supposed to consent to being sued and when it is not. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

Article VI, section 9 of the Kosrae State Constitution provides no basis for assuming that sovereign immunity is inherent in the Kosrae State Constitution because sovereign immunity was a creation of Trust Territory common law. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

Determinations as to whether claims of citizens against the previous Kosrae state chartered government may now be upheld against the constitutional state government are to be made by the judiciary on the basis of: 1) when the cause of action arose; 2) the identity of the officer or person whose action created the liability; and 3) the place where the original action creating the liability occurred. Seymour v. Kosrae, 3 FSM R. 539, 542-43 (Kos. S. Ct. Tr. 1988).

– Pohnpei

Customary and traditional practices within a state should be considered in determining whether the people of that state would expect their state government to be immune from court action. Panuelo v. Pohnpei (I), 2 FSM R. 150, 159 (Pon. 1986).

Neither the Pohnpei Constitution, laws, custom nor tradition, nor the common law, grant the Pohnpei State Government sovereign immunity from all unconsented suits against the state. Panuelo v. Pohnpei (I), 2 FSM R. 150, 161 (Pon. 1986).

The Pohnpei Government Liability Act immunizes the State of Pohnpei and its employees from suit unless the claim underlying the suit is specifically authorized by the Act or some other state law, and even with respect to those claims, the Act imposes a variety of restrictions and limitations on the maintenance of those suits. The Act's definition of State of Pohnpei includes all branches of government, any corporation, and other person or entity primarily acting as instrumentalities or agencies of the government, and all boards, commissions, public corporations, authorities, departments, divisions or offices of the government and this definition is more than broad enough to encompass the Pohnpei Port Authority. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 226 & n.2 (Pon. 2005).

Tort claims, tax claims, contract claims, breach of fundamental rights, claims for damages, injunctive relief or writ of mandamus arising from the alleged unconstitutionality or improper administration of Pohnpei statutes or regulations, any other civil action or claim against the state founded upon any law or any regulation, or upon any express or implied contract with the Pohnpei government or for liquidated or unliquidated damages in cases not sounding in tort, and actions for collection of judgments based on claims allowed against the State of Pohnpei can be sued upon within two years of the date on which they accrue. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 226-27 (Pon. 2005).

Since, by its own terms, the Pohnpei Government Liability Act statute of limitations is applicable only to those claims identified in Section 4 of that Act, which identifies a number of different claims, including claims based on violation of Pohnpei state law such as the Pohnpei Constitution, but does not expressly identify claims that are based upon national law or the National Constitution, the plaintiff's claim for declaratory judgment based on violation of the National Constitution and its claim for damages for civil rights violations under 11 F.S.M.C. 701(3) are not subject to the Act's statute of limitations and will not be dismissed on the ground that they are time barred by that statute of limitations. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 227-28 (Pon. 2005).

Pohnpei state government and its agencies are statutorily immune from punitive damages. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

– Yap

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).