

Ruo Municipality v. Shigeto's Store
17 FSM Intrm. 195 (Chk. S. Ct. Tr. 2010)

CHUUK STATE SUPREME COURT TRIAL DIVISION

RUO MUNICIPALITY,)	CSSC-CA. NO. 135-2008
)	
Plaintiff,)	
)	
vs.)	
)	
SHIGETO'S STORE,)	
)	
Defendant/Third Party Plaintiff,)	
)	
vs.)	
)	
CHUUK STATE and PIISEMWAR MUNICIPALITY,)	
)	
Third Party Defendants.)	
_____)	

DECISION

Midasy O. Aisek
Associate Justice

Trial: June 24, 2010
Decided: July 26, 2010

APPEARANCES:

For the Plaintiff:	George Hauk P.O. Box 1405 Weno, Chuuk FM 96942
For the Defendant:	Stephen V. Finnen, Esq. P.O. Box 1450 Kolonias, Pohnpei FM 96941
For the Third-Party Defendant: (Chuuk)	Charleston Bravo Assistant Attorney General Office of the Chuuk Attorney General P.O. Box 1050 Weno, Chuuk FM 96942

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HEADNOTES

Debtors' and Creditors' Rights - Setoff

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

Ruo Municipality v. Shigeto's Store
17 FSM Intrm. 195 (Chk. S. Ct. Tr. 2010)

Municipality v. Shigeto's Store, 17 FSM Intrm. 195, 197 (Chk. S. Ct. Tr. 2010).

Debtors' and Creditors' Rights – Setoff

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

Debtors' and Creditors' Rights – Setoff

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 Intrm. 195, 197 (Chk. S. Ct. Tr. 2010).

Debtors' and Creditors' Rights – Setoff

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 Intrm. 195, 197 (Chk. S. Ct. Tr. 2010).

Contracts – Damages

While it may be true that funds which are not timely obligated are returned to the General Fund, when Ruo municipality paid the funds before they lapsed but did not receive the goods owed for that obligation, the damage is to the municipality, not the state, and the damages to the municipality can be paid into the municipality's separate account. Ruo Municipality v. Shigeto's Store, 17 FSM Intrm. 195, 197 (Chk. S. Ct. Tr. 2010).

Contracts; Debtors' and Creditors' Rights – Setoff

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 Intrm. 195, 197-98 (Chk. S. Ct. Tr. 2010).

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COURT'S OPINION

MIDAS O. AISEK, Associate Justice:

On June 24, 2010, trial was held. The parties stipulated that the defendant Shigeto's Store had entered contracts with the plaintiff Ruo municipality for the sale of outboard motor engines. Shigeto's Store had also entered a contract for the sale of outboard motor engines with third-party defendant Piisemwar municipality. Shigeto's Store stipulated that it did not deliver three of twelve engines under its contract with Ruo municipality, and did not dispute Ruo municipality's claim of \$8,331.00 plus interest, for the alleged breach of the contract. Shigeto's Store, however, claimed that Piisemwar municipality still owed \$9,258.00 plus interest under its contract with Shigeto's Store for the sale of engines, which amount should be set-off against the amount it owed under its contract with Ruo municipality. In support of this contention, Shigeto's Store argued that third-party defendant Chuuk

Ruo Municipality v. Shigeto's Store
17 FSM Intrm. 195 (Chk. S. Ct. Tr. 2010)

State was the common denominator in the two transactions and, as a result, could balance the accounts of the two municipalities, leaving a total sum remaining due to Shigeto's Store in the amount of \$927.00.

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. Mongkeya v. RV Constr., 11 FSM Intrm. 234, 235-36 (Kos. S. Ct. Tr. 2002) (set-off between owner and contractor in construction dispute); Ikanur v. Director of Educ., 7 FSM Intrm. 275, 277 (Chk. S. Ct. Tr. 1995) (improvements on property constitute set-off in trespass action); Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 469 (Pon. 2004) (set-off of insurance premium against amount owed to an insurer); cf. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM Intrm. 403, 420 (Yap 2006) (no set-off for cleanup action since there was duty to mitigate). The doctrine only applies, however, when liabilities are mutual. See generally 80 C.J.S. *Set off and Counterclaim* §§3-4 (1953, Supp. 1998), see especially id. § 3, n.45; see also 20 AM. JUR. 2D *Counterclaim, Recoupment, and Setoff* § 54 (1965, Supp. 2000) (only such demands may be set off as constitute valid and enforceable obligations so that one against whom a set-off is claimed must be under the legal obligation to pay the amount of the set-off to the defendant).

In this case, 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.

Shigeto's Store does not urge the court to deviate from the principle that set-off should be applied only between parties with mutual liability, but argues that Ruo municipality and Piisemwar municipality are in effect the same party, since they are both funded through Chuuk State and any damages paid by Shigeto's must be considered lapsed funds under the Financial Management Act, which funds must be returned the State General Fund.

This argument assumes that the State and municipalities are non-distinct entities and that the funds at issue in this case qualify as lapsed funds under the Financial Management Act. If one follows this argument to its conclusion, the effect of determining respective liabilities of two municipalities would be to make the municipalities jointly and severally liable for each others' debts regardless of their respective budgets and appropriations. This cannot be. Each municipality has a separate account in the State treasury. Each municipality is authorized to obligate funds from its municipal account. The municipality, not the State, obligates those funds and once the funds are obligated the obligation is owed to the municipality, not the State.

With respect to the argument that damages must be paid back into the General Fund as lapsed funds, no compelling reason was given why damages to the municipality cannot be paid into a separate account for the municipality. While it may be true that funds which are not timely obligated are returned to the General Fund, that is not an issue here. Ruo municipality paid the funds before they lapsed. Then, it did not receive the goods owed for that obligation. The damage is to the Municipality, not the State.

Therefore, the amount Piisemwar municipality owes to Shigeto's cannot be set-off against the amount Shigeto's owes Ruo municipality. Judgment will be entered for Ruo municipality and against Shigeto's Store in the amount of \$8,331.00 plus 9% interest.

With respect to Shigeto's claim against Piisemwar municipality and the State, Shigeto's

contracted with Piisemwar municipality for the purchase of motors. The State was not a party to that contract and Shigeto's Store has not raised any other basis for liability other than set-off between its contracts it had with Ruo and Piisemwar municipalities. Therefore, judgment will enter for Shigeto's Store and against Piisemwar municipality in the amount of \$9,258.00 plus 9% interest.

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FSM SUPREME COURT TRIAL DIVISION

CIVIL ACTION NO. 2009 3002

THE PEOPLE OF THE MUNICIPALITY OF TOMIL,)
YAP, by and through CHIEF STEVEN MAR, CHIEF)
AI FX GILTAMNGIN, and CHIEF ROBERT FITHING,)

Plaintiffs,)

vs.)

M/C JUMBO ROCK CARRIER III and M/T PAGBILAO)
I, *in rem*, their engines, masts, bowsprits, boats,)
anchors, chains, cables, rigging, apparel, furniture,)
and all necessaries thereunto pertaining;)

and)

IDHI PORTS & SHIPPING, INC.,)

In Personam Defendant.)
_____)

ORDER GRANTING ATTORNEYS' FEES AND COSTS

Dennis K. Yamase
Associate Justice

Decided: August 2, 2010

APPEARANCES:

For the Plaintiffs: Daniel J. Berman, Esq.
Berman O'Connor & Mann
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Joseph C. Razzano, Esq. (pro hac vice)
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