FSM SUPREME COURT APPELLATE DIVISION

ALEX NARRUHN,	)	APPEAL CASE NO. C4-2009
	)	Civil Action No. 2008-1113
Appellant,	)	
	)	
vs.	)	
	)	
STATE OF CHUUK,	)	
	)	
Appellee.	)	
	)	

OPINION

Argued: June 21, 2010
Decided: November 30, 2010

BEFORE:

Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Benjamin F. Rodriguez, Designated Justice, FSM Supreme Court*
Hon. Cyprian J. Manmaw, Designated Justice, FSM Supreme Court**

*Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei
**Chief Justice, State Court of Yap, Colonia, Yap

APPEARANCES:

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HEADNOTES

Appellate Review – Standard of Review – Civil Cases

When only three of the seven issues raised by the appellant are ripe for appeal because the trial court made no determination on the other four issues and explicitly did not consider any argument on those issues and made no ruling on those issues below, the appellate court will not address those four. Narruhn v. Chuuk, 17 FSM Intrm. 289, 293 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Federalism – Abstention and Certification

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM Intrm. 289, 293 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Federalism – Abstention and Certification

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; when it is based on an erroneous conclusion of law; or when the record contains no evidence upon which the court could rationally have based its decision. Such abuses must be unusual and exceptional; an appeals court will not substitute its judgment for that of the trial judge. Narruhn v. Chuuk, 17 FSM Intrm. 289, 293 (App. 2010).

Appellate Review – Standard of Review – Civil Cases

On appeal, issues of law are reviewed *de novo*. Narruhn v. Chuuk, 17 FSM Intrm. 289, 293 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Federalism – Abstention and Certification

An appellant must show that there was an abuse of discretion for an appellate panel to reverse a trial court's order of abstention. Narruhn v. Chuuk, 17 FSM Intrm. 289, 294 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Federalism – Abstention and Certification

When a trial court's abstention order is well-reasoned and reaches no arbitrary or fanciful conclusions because the trial court provided a careful analysis of the questions before it and citation to the legal precedents on which it relied and no erroneous conclusions of law are apparent and the record contains sufficient evidence on which it could have rationally based its decision, there is no basis under the abuse of discretion standard by which to reverse the trial court. The trial court's decision to abstain was not an abuse of discretion. Narruhn v. Chuuk, 17 FSM Intrm. 289, 296 (App. 2010).

Appellate Review – Standard of Review – Civil Cases

The abuse of discretion standard sets a high bar for reversal. Narruhn v. Chuuk, 17 FSM Intrm. 289, 297 (App. 2010).

Federalism – Abstention and Certification

When there are no clear due process rights to be preserved before the national trial court, the appellate court will not remand the matter to the trial court for modification that the trial court retain some jurisdiction over the case or to resume jurisdiction if the state court fails to act within a year. Narruhn v. Chuuk, 17 FSM Intrm. 289, 297 (App. 2010).

Civil Procedure – Default and Default Judgments

Under the FSM Rules of Civil Procedure, a default may be entered when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and a default judgment may be entered by the clerk or the court if certain requirements are met. Narruhn v. Chuuk, 17 FSM Intrm. 289, 298 (App. 2010).

Civil Procedure – Default and Default Judgments; Judgments

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Instead, defaults and default judgments are procedural mechanisms which enable courts to avoid delay by an unresponsive party and to deter parties from using delay as a litigation strategy. Narruhn v. Chuuk, 17 FSM Intrm. 289, 298 (App. 2010).

Civil Procedure – Default and Default Judgments

A default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In that instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights. The default judgment remedy serves as such a protection. Furthermore, the possibility of a default is a deterrent to those parties who choose delay as part of their litigative strategy. Narruhn v. Chuuk, 17 FSM Intrm. 289, 299 n.3 (App. 2010).

Civil Procedure – Default and Default Judgments

In entering a default judgment, the court's power is used to enter and enforce judgments regardless of the merits of the case, purely as a penalty for delays in filing or other procedural error. Narruhn v. Chuuk, 17 FSM Intrm. 289, 299 (App. 2010).

Civil Procedure – Default and Default Judgments

An entry of default simply requires that all material allegations of the plaintiff's complaint be taken as true, so that judgment by default can be properly rendered without proof of the plaintiff's claim. Narruhn v. Chuuk, 17 FSM Intrm. 289, 299 (App. 2010).

Civil Procedure – Default and Default Judgments

FSM law does not favor the entry of default judgments; courts ordinarily favor resolving cases on their merits rather than on procedural grounds. Narruhn v. Chuuk, 17 FSM Intrm. 289, 299 (App. 2010).

Constitutional Law – Due Process; Judgments; Property

The Barrett decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution. The FSM Supreme Court has not to date, made such a determination. Narruhn v. Chuuk, 17 FSM Intrm. 289, 299 (App. 2010).

Courts

The FSM Supreme Court trial division has no authority to tell the Chuuk State Supreme Court whether and how it should enforce its own ruling when the case in which the ruling was made is not currently before the FSM Supreme Court. Narruhn v. Chuuk, 17 FSM Intrm. 289, 300 (App. 2010).

Judgments

Dicta are expressions in the court's opinion which go beyond the facts before the court and therefore are individual views of the author of the opinion and are not binding in subsequent cases. Narruhn v. Chuuk, 17 FSM Intrm. 289, 300 n.4 (App. 2010).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice

Appellant Alex Narruhn appeals the Order of Abstention issued by the trial court on September 14, 2009. For the reasons that follow, we affirm the trial court's ruling.

I. FACTS

The facts are set forth in detail in the trial court's September 14, 2009, Order of Abstention reported at Narruhn v. Chuuk, 16 FSM Intrm. 558 (Chk. 2009). A summary follows.

On September 15, 1993, the Chuuk State Supreme Court (CSSC) entered judgment in favor of Narruhn and against Appellee State of Chuuk ("Chuuk State") in the sum of $40,000 on a personal injury claim in Alex Narruhn v. Chuuk State Government, CA No. 28-93. Appellant's App. at 8. Since that time, Chuuk State has paid only $6,720 on the judgment, all of which went to interest. *Id.* at 2.

Narruhn attempted to enforce the judgment in the Chuuk State Supreme Court by filing motions for orders in aid of judgment and motions for orders to show cause why Chuuk State should not be held in contempt for failing to comply with the court's orders. *Id.* at 10-17. On July 5, 2002, the CSSC issued an order requiring Chuuk State to take numerous steps to pay the judgment and to establish a plan for payment of all outstanding judgments against it. *Id.* Among other things, the court ordered Chuuk State to list all judgments against it and to pay each judgment in full in chronological order before proceeding to the next judgment. *Id.*

Narruhn claims that Chuuk State has not complied with the requirements of the July 5, 2002 order and that the CSSC has not taken any steps to enforce its order, despite Narruhn's requests that it do so. Appellant's App. at 1-6. Narruhn also alleges that the CSSC has failed to reassign the case after the passing of the presiding justice in 2003. *Id.* at 2-3. Narruhn's records indicate that the CSSC has not issued any orders in the case since 2003. *Id.* at 34-36. Narruhn made requests to the CSSC for further proceedings on the following dates: September 20, 2003; December 23, 2003; April 14, 2004; September 1, 2004; and February 2, 2005. *Id.* By the time Narruhn filed his underlying complaint with the FSM Supreme Court, the judgment balance in this case was $88,078.24, including the original $40,000 and $48,078.24 in interest as of December 8, 2008, plus $9.86 per day thereafter. *Id.* at 4-5.

Narruhn filed his complaint against Chuuk State in the FSM Supreme Court Trial Division on December 8, 2008. Appellant's App. at 1-17. On January 30, 2009, Chuuk State filed a motion to dismiss under FSM Civ. R. 12(b)(1), claiming a lack of subject matter jurisdiction. Appellant's App. at 18-24. On March 23, 2009, the trial court issued an Order for Further Briefing, requesting additional memoranda on the following points: (1) whether a state court judgment against Chuuk State is property under Chuuk State law; (2) whether the FSM Supreme Court should abstain in enforcing satisfaction of the state court judgment; and (3) whether, under 6 F.S.M.C. 801, Narruhn would be barred from attempting to collect on the judgment if it is not satisfied within 20 years. Appellant's App. at 74-76. Following filings by both parties, the trial court issued its Order of Abstention on September 14, 2009. Narruhn v. Chuuk, 16 FSM Intrm. 558 (Chk. 2009). The trial court found that although the case may involve a question under the FSM Constitution, the constitutional question could not be answered without first resolving a purely state law question. *Id.* at 562. The trial court reasoned that it would be more proper for the Chuuk State Supreme Court to resolve the underlying state law question. *Id.* at 564. On September 28, 2009, Narruhn filed his notice of appeal. Appellant's App. at 137-38.

II. Issues

Narruhn raises the following issues on appeal:

1) Did the trial court abuse its discretion in abstaining from this case?

2) Does Narruhn have a property right in the judgment?

3) Is it a violation of 11 F.S.M.C. 701 *et seq.* and the constitutional right of due process to deprive Narruhn of the ability to enforce his judgment against Chuuk State?

4) Does abstention by the trial court deprive Narruhn of any meaningful relief in order to enforce his judgment and actually receive payment from Chuuk State?

5) Once a judgment lawfully issues against a sovereign state, what is the power of the court to enforce such a judgment, if the state makes no reasonable effort to pay the judgment in a reasonable time?

6) Did the trial court err as a matter of law?

7) If the judgment is not paid within 20 years, what is the effect of 6 TTC 301 and 302, and does it bar enforcement?

Appellant's Br. at 1.

Although Narruhn raises seven issues on appeal, only issues 1, 4, and 6 are ripe for appeal at this time. *See* Sipos v. Crabtree, 13 FSM Intrm. 355, 366 (Pon. 2005) (a matter must be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction); Hartman v. Bank of Guam, 10 FSM Intrm. 89, 95 (App. 2001) (an issue raised for the first time on appeal is waived). The trial court made no determination on issues 2, 3, 5, and 7, and explicitly abstained from considering any argument on those issues. Since the trial court made no ruling on those issues below, this Court will not address them on appeal.

III. Standards of Review

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the sound discretion of the trial court. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995). This is reviewed on an abuse of discretion standard. *Id.* A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; when it is based on an erroneous conclusion of law; or when the record contains no evidence upon which the court could rationally have based its decision. FSM Dev. Bank v. Adams, 14 FSM Intrm. 234, 246 (App. 2006) (citing Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992)). Such abuses must be unusual and exceptional; an appeals court will not substitute its judgment for that of the trial judge. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM Intrm. 49, 64 (App. 2008). On appeal, issues of law are reviewed *de novo.* Tulensru v. Wakuk, 10 FSM Intrm. 128, 132 (App. 2001).

IV. Discussion

A. *Issue One: Was the trial court's decision to abstain an abuse of discretion?*
Issue Four: Does full abstention by the trial court deprive Narruhn of any meaningful relief?

The primary question that Narruhn asks this Court to consider is whether the trial court's decision to abstain in this case was an abuse of discretion. Narruhn argues that the trial court's abstention was improper because national courts have a responsibility to ensure that cases are heard and relief granted. Appellant's Br. at 12. He contends that while there is precedent for abstention when state law issues arise in the national courts, the Court should not simply "foist off" this difficult question, because the FSM Supreme Court has a larger function than "simply abstaining from cases that are too difficult or problematic to handle." *Id.* at 10; 12 (citing Pryor v. Moses, 4 FSM Intrm. 138, 141 (Pon. 1989)).

Narruhn further asks this panel to consider the possible delay, harm, or injustice that would result from the trial court's abstention. *Id.* at 14. He argues that the Chuuk State Supreme Court's history

of inaction in this case shows that further attempts to bring this case before that court would be fruitless. *Id.* at 9-10. Accordingly, Narruhn contends that it is not fair, equitable, or within the trial court's mandate to abstain fully under the circumstances, as the trial court's abstention will, in effect, leave him with no meaningful relief. *Id.* at 13-14.

If the Court chooses not to reverse the trial court's abstention, Narruhn asks it, in the alternative, to limit the scope of the abstention to ensure that the trial court will retain partial jurisdiction over this matter. Appellant's Br. at 28.

i. *Review of Case Law*

The FSM Supreme Court Appellate Division has not performed a substantive review of the doctrine of abstention as it applies in the FSM since it first considered the question in Gimnang v. Yap, 5 FSM Intrm. 13 (App. 1991). The legal principles elucidated in Gimnang continue to provide the definitive source of FSM law on the doctrine of abstention.

Gimnang v. Yap arose from a lawsuit brought by a Yapese businessman in protest against an excise tax imposed by Yap State upon imports. 5 FSM Intrm. at 15. The trial court held that the Yap State excise tax violated the FSM Constitution, but chose to abstain on the appellant's claim for recovery of back taxes in favor of the case being heard by the Yap State Court. *Id.* at 16. On appeal, the Gimnang court held that national courts have inherent power to certify issues to the state court, or to abstain in part or in full from exercising jurisdiction in a particular case in favor of the state court. Gimnang, 5 FSM Intrm. at 19. The court emphasized that the powers of certification and abstention must be exercised carefully and sparingly to avoid a "presumptuous arrogation of policy-making powers by this Court in violation of basic principles of separation of powers, and as an abdication of this Court's responsibility to uphold the rights of parties under the law, including their constitutional right to seek the protection of this Court." *Id.* at 20.

While stating that the FSM Supreme Court has a "solemn obligation" to consider the interests of litigants who wish to invoke the constitutional jurisdiction of national courts, the court provided the following guidelines to assist courts in determining whether abstention is proper. *Id.* The court held that abstention may be appropriate when unsettled questions of state law exist, as resolution of such unsettled questions by the state court may be dispositive. *Id.* at 21. The trial court may also choose to abstain in areas of the law where identifiable, particularly strong, state interests exist; in cases involving lawsuits against the state for monetary damages; or where the state is attempting to establish a coherent administrative policy in a complex field in which there is substantial public concern. *Id.* (citations omitted).

Since Gimnang was decided in 1991, the FSM Supreme Court Trial Division has revisited the question of abstention in a variety of circumstances. *See, for example*, Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A (Pon. 1991); Stinnett v. Weno, 6 FSM Intrm. 478 (Chk. 1994); Conrad v. Kolonia Town, 7 FSM Intrm. 97 (Pon. 1995); Island Dev. Co. v. Yap, 9 FSM Intrm. 18 (Yap 1999); Naoro v. Walter, 11 FSM Intrm. 619 (Chk. 2003); Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM Intrm. 152 (Pon. 2006). We find that Gimnang and the cases citing it provide the standards by which a trial court's decision to abstain should be assessed in the FSM.

ii. *Analysis*

Narruhn must show that there was an abuse of discretion for this panel to reverse the trial court's Order of Abstention. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995).

In its Order of Abstention, the trial court provided a thorough analysis of both the legal questions before it and the legal precedent upon which it relied on in choosing to abstain from hearing this case. The question before the trial court was whether Chuuk State took Narruhn's property without due process of law by failing to pay on Narruhn's state court judgment. Narruhn, 16 FSM Intrm. at 562. While Narruhn claims that this case falls under FSM Const. art. IV, § 3, the trial court found that Narruhn's alleged takings claim could not arise without favorable resolution of the underlying question of whether a state court judgment is property under Chuuk State law. Narruhn, 16 FSM Intrm. at 562. The trial court proceeded to consider whether, under applicable law, it would be appropriate to abstain from the case to permit resolution of the state law issue by the Chuuk State Supreme Court.

The trial court, citing Gimnang v. Yap, 5 FSM Intrm. at 21 and Island Dev. Co. v. Yap, 9 FSM Intrm. 18, 21-22 (Yap 1999), identified the following considerations under which the likelihood of abstention is increased: when the state is a party; when the subject matter of the requested abstention is one involving local concerns that lie solidly within a state's sphere of interest; when the state has developed an administrative approach to deal with the specified issues; and when the issue presented is a "clean" legal issue, as opposed to a factual one. Narruhn, 16 FSM Intrm. at 562. After applying these considerations to the facts, the trial court determined that abstention was justifiable to allow the CSSC to set its own precedent on whether a state court judgment is property under Chuuk State law. *Id.* at 564. The trial court found that the fact that Chuuk State was a party; that the subject matter involved local concerns that lie solidly within Chuuk State's sphere of influence; and that the issue before it was a "clean" legal issue, as opposed to a factual one, all favored abstention. *Id.* at 562. The trial court also found that Narruhn presented a solely monetary claim against Chuuk State, further supporting abstention. *Id.* Finally, the trial court noted that Chuuk State has developed an administrative approach and policies to address its judgment debts. *Id.*

Narruhn cites to Naoro v. Walter, 11 FSM Intrm. 619, 621 (Chk. 2003) and Gimnang v. Yap, 5 FSM Intrm. at 25, as support for the proposition that a court may not abstain from exercising its constitutional jurisdiction when it is faced with a substantial issue under the national Constitution. However, as noted by the trial court, the national constitutional question to which Narruhn refers (whether Chuuk State violated Narruhn's due process rights by failing to pay on the state court judgment) may not be answered without resolving a preliminary state law question (whether a state court judgment is a property right for which Narruhn is entitled to due process). The trial court found that Narruhn did not present to it an unassailable claim under the national Constitution. Narruhn, 16 FSM Intrm. at 562-63. Instead, he made an argument that could possibly lead to protection under the national Constitution if – and only if – the state law question were resolved in his favor. *Id.* at 563.

Finding that the facts and circumstances in this case favored abstention, the trial court then considered Narruhn's concerns regarding whether full abstention by the trial court would deny him any meaningful relief. Narruhn argued that the CSSC's seven year failure to reassign this case to a new judge after the death of the presiding justice in 2003 or to make any effort to enforce the judgment against Chuuk State supports his argument that the CSSC will not act to resolve this case, justifying or requiring action by the national trial court. Appellant's Br. at 13-14.

The trial court evaluated Narruhn's arguments and found them to be unpersuasive. It characterized Narruhn's belief that the CSSC would fail to act as speculation. Appellant's App. at 129. It held that the CSSC was competent to adjudicate a civil rights claim against the State made under 11 F.S.M.C. 701(3), as well as Narruhn's claims under Chuuk's constitutional provision, Chk. Const. art. III, § 2. Narruhn, 16 FSM Intrm. at 564. The trial court further held that there was no reason to believe that the CSSC would neglect to take action or decide a newly-filed civil rights case. *Id.*

Narruhn argues that there has been excessive delay at the state court level and that the only way

to ensure that he will obtain meaningful relief is for the trial court to retain jurisdiction over the case. Appellant's Br. at 14. He argues that, in this case, the benefits of abstention are substantially outweighed by delay, harm, or injustice. *Id.* In support, he cites to Pryor v. Moses, 4 FSM Intrm. 138 (Pon. 1989), which states:

> [T]here is a presumption that national courts should abstain from deciding an issue in suits against a state for monetary damages . . . unless the opposing party establishes that the benefits of abstention in terms of federalism and judicial harmony, and respect for state sovereignty, would be substantially outweighed by delay, harm, or injustice. . . . [T]he risk of costly and duplicative litigation may favor abstention in some instances, which the danger of excessive delay, injustice or infringement on national interests could require this Court to exercise jurisdiction even where it is normally deferential.

Id. at 141, 142-43 (citation omitted).

Narruhn points out that Chuuk State has not satisfied the state court judgment against him in the past 17 years that it has been pending, and that the CSSC has not taken any action to enforce the judgment for seven years. Appellant's Br. at 14. Narruhn contends that this delay is "excessive" and, without action by the national trial court, will deny him meaningful relief. *Id.*

Following our review of the record, we find that the trial court's Order of Abstention is well-reasoned and reaches no arbitrary or fanciful conclusions. Adams, 14 FSM Intrm. at 246. The trial court has provided a careful analysis of the questions before the court and citation to the legal precedents upon which it relied. No erroneous conclusions of law are apparent. *Id.* The record contains sufficient evidence upon which the court could rationally have based its decision. *Id.* This Court can find no basis under the abuse of discretion standard by which to reverse the trial court's decision. Accordingly, in light of the trial court's determinations and the FSM's history of supportive case law, this Court finds that the trial court's decision to abstain in this matter was not an abuse of discretion.

The Court similarly finds Narruhn's argument that abstention by the trial court will deny him any meaningful relief to be unpersuasive. Narruhn still has several years remaining before the (possible) expiration of his state court judgment.[1] [2] As the trial court noted, Narruhn has the opportunity to pursue his case as a new civil rights cause of action before the CSSC. Narruhn, 16 FSM Intrm. at 564. Chuuk State recently set up a debt commission that may begin paying out on outstanding judgments against the state. *Id.* at 131. Finally, in the event that the CSSC continues to take no action, Narruhn may be able to petition for a writ of mandamus from the CSSC Appellate Division commanding further appropriate action in CSSC No. 28-93. *See* Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 383, 74 S. Ct. 145, 148, 98 L. Ed. 106, 111-12 (1953) (mandamus may be issued in response to abuses of judicial power).

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[1] The appellate panel notes that following occasional efforts to request further proceedings between 2003 and 2006, Narruhn took no action in the underlying state court matter during the approximately two and a half years between July 2006 and December 2008, when Narruhn filed the instant lawsuit. Regardless of Chuuk State's actions or inactions in this case, Narruhn himself has had remedies available to him that he has not pursued.

[2] Further, it is not clear under either Chuuk State or FSM law that Narruhn's judgment expires in 20 years, as he contends. This question, too, may be directed to the Chuuk State Supreme Court.

This Court is mindful of the fact that the trial court's abstention will likely cause additional delay for Narruhn, who will need to, at a minimum, re-file this litigation before the CSSC. However, the abuse of discretion standard sets a high bar for reversal, a standard that this panel does not find has been met. The trial court found that abstention was appropriate in this case, and this appellate panel will not substitute its judgment for that of the trial judge. M/V Kyowa Violet, 16 FSM Intrm. at 64.

Narruhn requests that, at the very least, this Court require the trial court to retain some jurisdiction over the case. Appellant's Br. at 27-28. He requests that we require the FSM Supreme Court to resume jurisdiction over the case if the CSSC fails to act within one year. *Id.* at 28. In support, Narruhn cites to Gimnang v. Yap, 5 FSM Intrm. 13 (App. 1991), in which the Court remanded the case to the trial court for modification of its order of abstention to assure that the trial court would retain jurisdiction over the due process aspects of the case. *Id.* at 27-28.

The facts in Gimnang are not analogous to those in the instant case. In Gimnang, the issues before the trial court were whether the Yap State excise tax was an unconstitutional import tax, and, if so, the extent to which Yap State be required to refund the improper taxes paid. Gimnang, 5 FSM Intrm. at 15-16. The trial court determined that the excise tax was an import tax in violation of the FSM Constitution. *Id.* However, the trial court did not rule on the plaintiff's claim for recovery of the improperly paid taxes, and instead abstained to permit the Yap State Court to determine the issue. *Id.* The FSM Supreme Court Appellate Division affirmed the trial court's decision. *Id.* at 16. However, the court found that due process considerations under the national Constitution proscribed Yap State from improperly taking property (taxes) from its citizens and then depriving its citizens of any possibility of recovery. *Id.* at 25. Accordingly, regardless of the decision made by the Yap State Court, the court found that Gimnang had a due process claim under the FSM Constitution. *Id.* To preserve this claim, the court required the trial court to clarify its order of abstention to ensure Gimnang's access to the national court to determine his due process rights, if necessary. *Id.* at 28.

Unlike Gimnang, it is not clear in the instant case that Narruhn has any due process rights under the FSM Constitution. In fact, the question of whether a state court judgment constitutes property under Chuuk State law is the very question that the trial court has abstained from considering. Since there are no clear due process rights to be preserved before the national trial court, this tribunal can see no reason to remand this matter to the trial court for modification.

B. *Issue Six: Did the trial court err as a matter of law?*

i. Does FSM law consider a state court judgment to be a property right to which the due process clause of the FSM Constitution applies?

In abstaining from deciding this matter, the trial court found that the question of whether a state court judgment constitutes a property right under Chuuk State law was a matter of first impression in both Chuuk State and in the FSM generally. Narruhn, 16 FSM Intrm. at 562. Accordingly, because the question is one which requires the interpretation of state law, the trial court abstained, finding that it would be more appropriate for the Chuuk State Supreme Court to decide this issue. *Id.* at 564. On appeal, Narruhn contends that the judgment he obtained from the CSSC does constitute a property right under FSM law, and that the trial court erred as a matter of law when it failed to consider the applicable legal precedent. Appellant's Reply Br. at 11-12.

Narruhn provided the trial court with no Chuuk legal precedent to support his contention that a Chuuk state court judgment is a property right for which Narruhn is entitled to due process under the FSM Constitution. The only FSM legal support Narruhn provides for this claim comes from a FSM Supreme Court appellate decision, Barrett v. Chuuk, 16 FSM Intrm. 229 (App. 2009).

Narruhn argues that the question of whether a state court judgment is a property right has already been determined by the Barrett court. Appellant's Reply Br. at 11. Further, he contends that because neither the CSSC nor the Chuuk State Legislature have overruled the FSM Supreme Court's holding in Barrett, the decision is still good law and should be applied to the instant case. *Id.* at 11-12. Narruhn claims that the trial court erred as a matter of law by considering the language in Barrett regarding whether a trial court judgment is property under national law to be *dicta*. *Id.* at 12. This Court's review of Barrett shows that Narruhn's arguments are misplaced. Tulensru v. Wakuk, 10 FSM Intrm. 128, 132 (App. 2001).

The facts in Barrett bear some resemblance to those in the instant case. Barrett arises from a judgment entered by the FSM Trial Division in 1993 in favor of appellant Barrett and against Chuuk State. Barrett, 16 FSM Intrm. at 231. As in this case, Chuuk State failed to pay on the judgment against it for several years. *Id.* In October 2004, Barrett filed a civil rights action against Chuuk State, claiming deprivation of property without due process based on Chuuk State's failure to pay on the judgment. *Id.* Default judgment was entered against Chuuk State in September 2005, awarding to Barrett a total of $36,756.87, including attorney fees. *Id.* Barrett petitioned the trial court in 2007 for a writ of execution directed against either Chuuk State or the FSM Government to be levied upon the funding held for Chuuk by the FSM. *Id.* The trial court declined to issue such a writ. *Id.* Barrett appealed the case, resulting in the 2009 opinion to which Narruhn now cites. *Id.*

After considering the issues raised on appeal, the Barrett court, in its 2009 appeal decision, remanded the case to the trial division. Barrett, 16 FSM Intrm. at 236. It determined that the trial court improperly relied upon 6 F.S.M.C. 707 and Chk. S. L. No. 190-08 to avoid entering a writ of garnishment or execution against Chuuk State. *Id.* Of particular relevance for the instant case, the court also found that the underlying default judgment was entered against Chuuk State pursuant to 11 F.S.M.C. 701 for depriving Barrett of property without due process of law. Barrett, 16 FSM Intrm. at 235. It stated:

> Judgment was entered against Chuuk pursuant to Chapter 7 of Title 11 of the FSM Code, entitled "Civil Rights." Furthermore, judgment was entered against Chuuk for depriving Barrett of property without due process of law, one of the most basic rights afforded to citizens under the Constitution. Under these circumstances, we find that the judgment underlying this appeal is a civil rights judgment.

Id.

Narruhn contends that this language in the Barrett decision provides clear support for his claim that failure to pay on a judgment constitutes a property right which requires due process under 11 F.S.M.C. 701 and the FSM Constitution. Appellant's Reply Br. at 11.

To discover the flaw in Narruhn's argument, we need look no further into Barrett than the introductory paragraphs. Barrett, 16 FSM Intrm. at 231. There, the court states that Barrett obtained a default judgment against Chuuk State in the underlying civil action. *Id.* Under the FSM Rules of Civil Procedure, a default may be entered when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend. FSM Civ. R. 55(a). A default judgment may be entered by the clerk or the court if certain requirements are met. FSM Civ. R. 55(b).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Instead, defaults and default judgments are procedural mechanisms which enable courts to avoid delay by an unresponsive party and to deter parties from using delay as a litigation strategy. *See* H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe, 432 F.2d 689

(D.C. Cir. 1970).[3] In entering a default judgment, "the court's power is used to enter and enforce judgments regardless of the merits of the case, purely as a penalty for delays in filing or other procedural error." Cessna Finance Corp. v. Bielenberg Masonry Contracting, Inc. 715 F.2d 1442, 1444 (10th Cir. 1983). An entry of default simply requires that all material allegations of the plaintiff's complaint be *taken as true*, so that judgment by default can be properly rendered *without proof of the plaintiff's claim*. Primo v. Refalopei, 7 FSM Intrm. 423, 427 (Pon. 1996) (emphasis added). FSM law does not favor the entry of default judgments; courts ordinarily favor resolving cases on their merits rather than on procedural grounds. Medabalmi v. Island Imports Co., 10 FSM Intrm. 32, 35 (Chk. 2001).

There is no evidence in the record that the appellate court in Barrett considered the merits of the underlying case before making its determination that the judgment was a civil rights judgment. In fact, it made no legal findings on the question at all, and relied solely on the record, which showed that default judgment was entered in Barrett's favor on his claim of deprivation of property without due process under 11 F.S.M.C. 701. Barrett, 16 FSM Intrm. at 231, 235. The fundamental legal question – whether a court judgment (state or national) constitutes a property right under the FSM Constitution – was never addressed on the merits by the trial court in Barrett and was not considered by the court on appeal. Accordingly, we find, contrary to Narruhn's contention, that Barrett does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution. The FSM Supreme Court has not to date, made such a determination and declines to do so here.

Since Barrett does not provide legal precedent for Narruhn's argument that a state court judgment is a property right that gives rise to a due process claim, and because Narruhn has provided the Court with no other FSM authority to support this proposition, the Court affirms the trial court's ruling that the question is one of first impression. The trial court committed no error by abstaining from this matter to permit its resolution by the Chuuk State Supreme Court.

ii. Did the trial court improperly set aside the Chuuk State Supreme Court's July 5, 2002, order in aid of judgment in CSSC No. 28-93?

Narruhn argues that the trial court "went out of its way to eliminate any hope of appellant collecting on this judgment" by affirmatively setting aside the CSSC's July 5, 2002, order in aid of judgment in the original case before the CSSC No. 28-93. Appellant's Br. at 25. After reviewing the trial court's Order of Abstention, the Court finds that the trial court's language was *dicta* without controlling effect over the July 5, 2002, order in CSSC No. 28-93.

In support of his argument, Narruhn cites the trial court's Order of Abstention:

> Narruhn asserts that his claims in the present case might involve injunctive relief to enforce the July 5, 2002 state court order in aid of judgment. That order purported to set up a systematic scheme for the payment of the Narruhn judgment and all other judgments against the State of Chuuk (including FSM Supreme Court judgments). That

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[3] "[A] default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In that instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights. The default judgment remedy serves as such a protection. Furthermore, the possibility of a default is a deterrent to those parties who choose delay as part of their litigative strategy." H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe, 432 F.2d 689, 691 (D.C. Cir. 1970).

> order in aid appears contrary to (dicta in) a prior Chuuk appellate decision, Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002) in which the state appellate court doubted that an order in aid of judgment in one case could include what are really orders in aid of judgments in all other similarly unpaid court judgments. The Narruhn July 5, 2002 order in aid of judgment may also violate constitutional due process since the rights of judgment-creditors in other cases against the state are affected (and adjudicated) without prior notice to them or an opportunity to be heard. The Narruhn court was policy-making and legislating (and realized it was legislating since it stated that its order continued until further court order "or until legislation is adopted which supersedes or negates the effect of this Order") by setting up a pervasive scheme for the payment of all Chuuk state judgments. *See* Narruhn, 11 FSM Intrm. at 55. Unless that order had been made in a class action brought on behalf of all judgment-creditors with unsatisfied judgments against the State of Chuuk, it would seem to violate the separation-of-powers principle enshrined in the Chuuk Constitution. State policy-making and legislating are functions of the political branches of state government. Thus, this ground is not an adequate basis to deny abstention or to even retain partial jurisdiction.

Narruhn, 16 FSM Intrm. at 563.

While the trial court did raise some concerns about the validity of the CSSC's July 5, 2002 order, the Court is unable to identify any finding that affirmatively sets aside that order. Instead, following its review of the record, this Court finds that the portions of the trial court's Order of Abstention referring to the validity of the CSSC's July 5, 2002, order in aid of judgment were *dicta*.[4] The trial court cited to *dicta* in a prior Chuuk appellate decision, Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002). The trial court also stated, "The Narruhn July 5, 2002 order in aid of judgment *may* also violate constitutional due process . . . ." Narruhn, 16 FSM Intrm. at 563 (emphasis added). Further, and more importantly, the FSM Supreme Court Trial Division has no authority to tell the Chuuk State Supreme Court whether and how it should enforce its own ruling when the case in which the ruling was made is not currently before the FSM Supreme Court. This Court does not consider the trial court to have done so, and recognizes that the trial court's language in its Order of Abstention was mere *dicta*, without controlling effect. *See* Ting Hong Oceanic Enterprises v. FSM, 7 FSM Intrm. 481, 484 (App. 1996) (*dicta* does not create a precedent and is not binding). Accordingly, this Court finds nothing in the trial court's Order of Abstention that sets aside or invalidates the Chuuk State Supreme Court's July 5, 2002, order in aid of judgment.[5] The CSSC's July 5, 2002 order in aid of judgment remains valid and actionable at this time.

V. Conclusion

Based on the foregoing, we affirm the Order of Abstention entered by the FSM Supreme Court Trial Division on September 14, 2009. Each party shall pay its own costs.

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[4] Black's Law Dictionary defines "dicta" as "[e]xpressions in the court's opinion which go beyond the facts before the court and therefore are individual views of the author of the opinion and are not binding in subsequent cases." *Id.* at 408 (5th ed. 1979).

[5] Of course, Chuuk State may raise these issues before the Chuuk State Supreme Court in the future if it chooses, at which time that court may consider the appropriate course of action.