

FSM SUPREME COURT TRIAL DIVISION

THE PEOPLE OF THE MUNICIPALITY OF TOMIL,	)	CIVIL ACTION NO. 2011-3001
YAP, by and through CHIEF STEVEN MAR, CHIEF	)	
ALEX GILTAMNGIN, and CHIEF ROBERT FITHING,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
M/V MELL SENTOSA, <i>in rem</i> , its engines, masts,	)	
bowsprits, boats, anchors, chains, cables, rigging,	)	
apparel, furniture and all necessaries thereunto	)	
pertaining;	)	
	)	
<i>In Rem</i> Defendant,	)	
	)	
and	)	
	)	
HARTMANN REEDEREI, MARIANA EXPRESS LINES	)	
PTE. LTD., and HARTMANN SCHIFFARTS GMBH	)	
& CO. KG,	)	
	)	
<i>In Personam</i> Defendants.	)	
	)	

ORDER DENYING REQUESTS FOR ENTRIES OF DEFAULT

Dennis K. Yamase  
Associate Justice

Decided: April 1, 2011

APPEARANCE:

For the Plaintiffs:	Daniel J. Berman, Esq. 111 Chalan Santo Papa, Suite 503 Hagatna, Guam 96910
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HEADNOTES

Admiralty; Civil Procedure – Default and Default Judgments

The Civil Rule 55(a) twenty-day time limit does not apply in an admiralty case where the court is able to exercise personal jurisdiction over the *in personam* defendants under the long-arm statute. People of Tomil *ex rel.* Mar v. M/V Mell Sentosa, 17 FSM Intrm. 478, 479 (Yap 2011).

Admiralty; Civil Procedure – Default and Default Judgments

The applicable time frame before a default can be entered in an admiralty case is the thirty-day time period to answer or otherwise defend found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty

and Maritime Rule B(2)(b). People of Tomil *ex rel.* Mar v. M/V Mell Sentosa, 17 FSM Intrm. 478, 479 (Yap 2011).

Civil Procedure; Separation of Powers – Judicial Powers; Separation of Powers – Legislative Powers; Statutes

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil *ex rel.* Mar v. M/V Mell Sentosa, 17 FSM Intrm. 478, 479 (Yap 2011).

Admiralty; Civil Procedure – Default and Default Judgments

When, because the thirty-day time period applies, the defendants still have time within which to respond to the plaintiffs' complaint, the plaintiffs' requests for entries of default will be denied, and since no default will be entered, the plaintiffs' motion for a default judgment must also be denied. People of Tomil *ex rel.* Mar v. M/V Mell Sentosa, 17 FSM Intrm. 478, 479-80 (Yap 2011).

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COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

On March 31, 2011, the plaintiffs filed requests, with supporting affidavit, to enter defaults against *in personam* defendants Mariana Express Lines Pte. Ltd., and Hartmann Schiffarts GmbH & Co. KG. The plaintiffs assert that they are entitled to entries of default under Civil Procedure Rule 55(a) because their Complaint and a summons for each of these two defendants was, on March 9, 2011, served on Willy Banusa of CTSI, as agent for defendants Mariana Express Lines Pte. Ltd. and for Hartmann Schiffarts GmbH & Co. KG and because twenty days have passed since then and neither defendant has answered or otherwise defended this action. The plaintiffs have also contemporaneously filed a motion for a default judgment (with damages to be proven at a later hearing) to be entered against the same two defendants on the ground that their defaults have been entered.

The Civil Rule 55(a) twenty-day time limit does not apply in this case. This is an admiralty case. The court is able to exercise personal jurisdiction over the two named *in personam* defendants under the long-arm statute, 4 F.S.M.C. 204(1)(c). The applicable time frame in an admiralty case is the thirty-day time period to answer or otherwise defend before a default can be entered found in 4 F.S.M.C. 204(3) ("No default shall be entered until the expiration of at least 30 days after service.")<sup>1</sup> and in Supplemental Admiralty and Maritime Rule B(2)(b) ("The defendant shall serve an answer within 30 days after process has been executed . . ."). People of Gilman *ex rel.* Tamagken v. M/V Easternline 1, 17 FSM Intrm. 81, 83 & n.2 (Yap 2010).

The plaintiffs' requests for entries of default are thus premature. Defendants Mariana Express Lines Pte. Ltd., and Hartmann Schiffarts GmbH & Co. KG still have time within which to respond to the

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<sup>1</sup> The statute takes precedence over the procedural rules. This is because while the chief justice has the power to promulgate procedural rules, FSM Const. art. XI, § 9(c), the rules may be amended by statute, FSM Const. art. XI, § 9(f). Since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. FSM v. Kana Maru No. 1, 14 FSM Intrm. 365, 367 n.1 (Chk. 2006); FSM v. Wainit, 12 FSM Intrm. 376, 383 (Chk. 2004); *see also* Jano v. King, 5 FSM Intrm. 326, 331 (App. 1992).

plaintiffs' complaint. The requests for entries of default are therefore denied. Since no default has been entered, the plaintiffs' motion for a default judgment must also be denied.

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FSM SUPREME COURT TRIAL DIVISION

AMANTO MARSOLO, in his official capacity as the Mayor )	CIVIL ACTION NO. 2011-1000
of Tolensom Municipality, TOLENSOM MUNICIPALITY, )	
WESLEY W. SIMINA, in his official capacity as Governor )	
of Chuuk State, and STATE OF CHUUK, )	
)	
Plaintiffs, )	
)	
vs. )	
)	
KISAUO ESA, LORENZO FARAWAY, MARCELINO ELIAS )	
ROSE NAKANAGA, individually and in her official )	
capacity as the Acting Secretary of the FSM Department )	
of Finance & Administration, MANNY MORI, in his official )	
capacity as President of the FSM, MAKETO ROBERT, )	
individually and in his official capacity as the Secretary of )	
the Department of Justice, LEONITO BACALANDO, JR., )	
individually and in his official capacity as Assistant )	
Attorney General of the Department of Justice, FABIAN )	
NIMEA, individually and in his official capacity as the )	
Director of the Office of Statistics, Budget and Economic )	
Management, FSM NATIONAL GOVERNMENT, FSM )	
DEPARTMENT OF FINANCE AND ADMINISTRATION, )	
FSM DEPARTMENT OF JUSTICE, and FSM OFFICE OF )	
STATISTICS, BUDGET AND ECONOMIC MANAGEMENT, )	
)	
Defendants. )	
_____ )	
KISAUO ESA, in his official capacity as Mayor of )	
Tolensom, and TOLENSOM MUNICIPALITY, )	
)	
Counterclaimants, )	
)	
vs. )	
)	
WESLEY W. SIMINA, in his official capacity as Chuuk )	
State Governor, CHUUK STATE, AMANTO MARSOLO, as )	
an individual, and FEDERATED STATES OF MICRONESIA, )	
)	
Counterdefendants and Cross-defendant. )	
_____ )	

ORDER DISQUALIFYING CHUUK ATTORNEY GENERAL FROM REPRESENTING TWO PLAINTIFFS

Dennis K. Yamase  
Associate Justice