

sanction that a court may impose on an attorney. This "reprimand" and the finding that it was based upon, were made without the due process of law that the State Court acknowledged that it should give in an attorney sanction matter. As such, it should be vacated.

IV. CONCLUSION

The April 14, 2010 statement, whether it is a factual finding, a legal conclusion, or merely dicta, cannot be used as a basis for any action against Sasaki George or to prevent him from maintaining in any future proceeding that he never represented the Heirs of Konlulu George, that he only represented Timothy George personally and not as a representative of the Heirs of Konlulu George, and that his representation in the Yemelil land title determination has not been unethical. To the extent that the April 14, 2010 statement is a finding of fact, a conclusion of law, and a reprimand, it is accordingly vacated.

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FSM SUPREME COURT TRIAL DIVISION

CHUUK HEALTH CARE PLAN,)	CIVIL ACTION NO. 2010-1036
)	
Plaintiff,)	
)	
vs.)	
)	
PACIFIC INTERNATIONAL, INC.,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

Martin G. Yinug
Chief Justice

Decided: August 24, 2011

APPEARANCES:

For the Plaintiff: Johnny Meippen, Esq.
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For the Defendant: Sabino S. Asor, Esq.
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HEADNOTES

Constitutional Law – Supremacy Clause; Federalism – National/State Power; Statutes

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 617, 619 (Chk. 2011).

Statutes – Construction; Transition of Authority

The term "Trust Territory" in statutes carried over from the Trust Territory Code should generally be read as meaning "Federated States of Micronesia" when the power involved is a national power. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 617, 619 n.1 (Chk. 2011).

Domicile and Residence; Statutes – Construction

When, by its own terms, the 51 F.S.M.C. 112(7) definition of a "nonresident worker" applies only to FSM Code Title 51, chapter 1, and not even to the rest of the FSM Code, it certainly does not apply to the Chuuk Health Care Act, which contains its own definition for the term "resident." Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 617, 619-20 (Chk. 2011).

Insurance

Every Chuuk resident is enrolled in the Chuuk Health Care Act and is eligible to receive benefits under it, except for unemployed noncitizens residing in the State who are not dependents of enrollees. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 617, 620 (Chk. 2011).

Domicile and Residence; Insurance

Under the Chuuk Health Care Act, a "resident" is any Chuuk citizen for whom Chuuk is his principal residence, or any noncitizen who has established an ongoing physical presence in Chuuk and whose presence is sanctioned by law and is not merely transitory in nature. The non-citizen workers' ongoing physical presence in Chuuk is clearly sanctioned by law when the non-citizen employees apply annually for labor certification and for entry permits in order to maintain their employment in Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 617, 620 (Chk. 2011).

Domicile and Residence

The law sometimes equates "legal residence" with domicil, while using "actual residence" to refer to one's present physical location. Even though the term "legal residence" is sometimes used as the equivalent of domicil, a person may have more than one legal residence. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 617, 620 (Chk. 2011).

Domicile and Residence; Insurance

Even though a contractor's non-citizen employees cannot be domiciled in Chuuk, they might have a legal residence here, but, even if they are not considered to have a legal residence here, they do have an actual residence in Chuuk that is legally sanctioned, and they are thus, by statute, enrolled in and eligible for Chuuk Health Care Plan benefits and their employer is therefore liable, as a matter of law, to the Plan for the employees' and the employer's contributions of the health insurance premiums for its non-citizen as well as citizen employees on Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 617, 620 (Chk. 2011).

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This comes before the court on the Defendant's Limited Motion to Dismiss, filed June 30, 2011, and the Plaintiff's Response to Defendant's Limited Motion to Dismiss, filed July 15, 2011. The parties seek a judicial determination of the one issue left unresolved by the court's June 7, 2011 Memorandum and Order Granting Partial Summary Judgment, Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM Intrm. 535 (Chk. 2011), and by the parties' subsequent stipulations and the court's resulting July 7, 2011 order. That unresolved issue is whether the Chuuk Health Care Act of 1994, Chk. S.L. No. 2-94-06, applies to the foreign-citizen employees of Pacific International, Incorporated ("PII") as well as to its FSM-citizen employees and thus whether PII is liable for health insurance premiums for its non-citizen employees.

I. PARTIES' VIEWS

PII questions whether the Chuuk Health Care Plan is applicable to its non-citizen or alien workers who the national government classifies as non-resident workers. PII notes that the Chuuk Health Care Act of 1994 applies only to Chuuk residents and relies on 51 F.S.M.C. 112(7), a national statute that classifies non-FSM citizens not admitted to the FSM for permanent residence as a "nonresident workers." PII asserts that its non-citizen employees are not legal residents of Chuuk since they are not domiciled in Chuuk and legal residence is usually equated with domicile. PII contends that either the Chuuk statute must be read to apply only to legal residents (domiciliaries) or, that if the Chuuk statute is not read that way, then the national statute's definition of non-citizen employees, as nonresidents, must override the Chuuk statute because a valid national statute controls over a state statute. PII notes that its non-citizen workers must apply for annual alien labor permits and thus cannot be considered permanent residents of Chuuk. PII urges that its non-citizen employees have a reasonable basis to expect to be exempt from the Health Care Act's health insurance premium contributions.

The Chuuk Health Care Plan contends that PII's non-citizen employees are considered residents of Chuuk for the purposes of the mandatory enrollment provision of Section 3-1 regardless of what they are classified as under Title 51 of the FSM Code. In its view, Title 51 does not apply.

II. ANALYSIS

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 43 (Pon. 2004). However, FSM Code Title 51 does not conflict with the Chuuk Health Care Act because they legislate on different subjects. The Chuuk Health Care Act provides medical coverage for persons present in the State. FSM Code Title 51 regulates the importation of foreign labor. They do not conflict. Moreover, the relevant FSM Code Title 51 provision states that: "For the purposes of this chapter . . . (7) '*Nonresident worker*' means any person who is capable of performing services or labor and who is not a citizen of the Trust Territory or an immigrant alien admitted to the Trust Territory for permanent residence under the provisions of title 50 of this code" 51 F.S.M.C. 112.¹ By its own terms, the 51 F.S.M.C.

¹ The term "Trust Territory" in statutes carried over from the Trust Territory court should generally be read as meaning "Federated States of Micronesia" when the power involved is a national power. *Cf.* FSM v. Kansou, 14 FSM Intrm. 136, 138 n.1 (Chk. 2006) (when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will generally be read in its place); FSM v. Oliver, 3 FSM Intrm. 469, 475 (Pon. 1988) (where their functions are different,

620
Chuuk Health Care Plan v. Pacific Int'l, Inc.
17 FSM Intrm. 617 (Chk. 2011)

112(7) definition of a "nonresident worker" applies only to FSM Code Title 51, chapter 1, and not even to the rest of the FSM Code. It certainly does not apply to the Chuuk Health Care Act, which contains its own definition for the term "resident."

The Chuuk Health Care Act provides that "[e]very resident of Chuuk shall be enrolled in and shall be eligible to receive benefits as provided under this Act, except that unemployed noncitizen [sic] residing in the State who are not dependents of enrollees are not eligible, except as provided in Section 3-2 of the Act." Chk. S.L. No. 2-94-06, § 3-1. Under the Act, "'Resident' means any citizen of Chuuk for whom Chuuk is his principal residence, or any noncitizen who has established an ongoing physical presence in Chuuk and whose presence is sanctioned by law and is not merely transitory in nature." *Id.* § 1-4(15).

The ongoing physical presence of PII non-citizen workers in Chuuk is clearly sanctioned by law since, as PII notes, its non-citizen employees apply annually for labor certification and for entry permits in order to maintain their employment in Chuuk. Their presence certainly is not merely transitory in nature as might be, for instance, an employee PII brought to Chuuk for just one week or two to consult or to solve some particular construction problem before he left.

PII asserts that its non-citizen employees cannot be legal residents of Chuuk since as non-FSM citizens and holders of entry permits for a limited time they cannot be considered to be domiciled in Chuuk. "The law sometimes equates 'legal residence' with domicile, while using 'actual residence' to refer to one's present physical location. Even though the term 'legal residence' is sometimes used as the equivalent of domicile, a person may have more than one legal residence" 25 AM. JUR. 2D *Domicil* § 3, at 9 (rev. ed. 1996). Thus, even though PII's non-citizen employees cannot be domiciled in Chuuk, they might have a legal residence here, but, even if they are not considered to have a legal residence here, they do have an actual residence in Chuuk that is legally sanctioned. They are thus, by statute, enrolled in and eligible for Chuuk Health Care Plan benefits. PII is therefore liable, as a matter of law, to the Plan for the employees' and the employer's contributions of the health insurance premiums for its non-citizen as well as citizen employees on Chuuk.

III. CONCLUSION

Accordingly, the limited motion to dismiss is denied and the Chuuk Health Care Plan is entitled to summary judgment that Pacific International, Inc., as an employer, ought to remit to the Chuuk Health Care Plan the employees' and the employer's health insurance premium contributions for its non-citizen employees as well as its citizen employees.

* * * *

district administrator should not always be read as state governor). Since Title 51 involves the national power of immigration control, "Trust Territory" means "Federated States of Micronesia."