

FSM SUPREME COURT TRIAL DIVISION

THE STATE OF POHNPEI,

Plaintiff,

vs.

M/V PING DA 7, *in rem*, its engines, masts,
bowsprits, boats, anchors, chains, cables,
rigging, apparel, furniture, and all necessities
thereunto pertaining,

In Rem Defendant,

NEW SHIPPING CO., LTD., FRANK CHAN,
CAPTAIN LI DING HAI, HONG KONG RUN JIU
SHIPPING LIMITED OF HONG KONG CHINA,
YU ZHUYI, and JIANG HAI PING,

In Personam Defendants.

CIVIL ACTION NO. 2013-040

ORDER TO ENTER DEFAULT JUDGMENT

Ready E. Johnny
Acting Chief Justice

Decided: February 4, 2015

APPEARANCE:

For the Plaintiff:

Daniel J. Berman, Esq.
111 Chalan Santo Papa, Suite 503
Hagatna, Guam 96910

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HEADNOTES

Civil Procedure – Default and Default Judgments

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The party making the request is not entitled to a default judgment as of right, but if a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 2 (Pon. 2015).

Civil Procedure – Default and Default Judgments

Although liability is not deemed established simply because of a default, it is not always necessary to present testimony on the liability issue, but the court, in its discretion, may require proof of facts that must be established in order to determine liability. Thus, although a defendant has

defaulted, the plaintiffs are still required to prove damages before a default judgment can be entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 2 (Pon. 2015).

Admiralty – Salvage

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

Admiralty – Salvage

Salvage operations undertaken within the FSM which have had a useful result create the right to reward. The criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

Admiralty – Salvage; Civil Procedure – Default and Default Judgments

When a plaintiff has not furnished any evidence that it has suffered any damages conducting salvage operations to a useful and beneficial result, no salvage damages can be awarded even though the defendants are in default. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

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COURT'S OPINION

READY E. JOHNNY, Acting Chief Justice:

On January 21, 2015, the plaintiff, State of Pohnpei, filed Plaintiff's Motion for Entry of Default Judgment. Pohnpei notes that defaults have been entered against defendants New Shipping Co., Ltd., Frank Chan, Captain Li Ding Hai, Hong Kong Run Jiu Shipping Limited of Hong Kong, China, Yu Zhuyi, and Jiang Hai Ping. It asks that a default judgment be entered against the defendants, presumably jointly and severally, for \$13,419,000 for coral reef damage and for \$4,000,000 for salvage/removal.

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. The party making the request is not entitled to a default judgment as of right. George v. Albert, 17 FSM R. 25, 31-32 (App. 2010). If a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true. *Id.* at 32. Although liability is not deemed established simply because of the default, it is not always necessary to present testimony on the liability issue, but the court, in its discretion, may require proof of facts that must be established in order to determine liability. *Id.* Thus, although a defendant has defaulted, the plaintiffs are still required to prove damages before a default judgment can be entered. Lee v. FSM, 19 FSM R. 80, 82-83 (Pon. 2013).

The claim for coral reef damage is supported by affidavit and other evidence showing that the vessel, the *M/V Ping Da 7*, has damaged 22,365 square meters of coral reef where it has grounded in the North Point area of Pohnpei's fringing reef and asserts, based on other unnamed (but reported) court awards that the reef is valued at \$600 per square meter. This is sufficient evidence that Pohnpei has suffered \$13,419,000 in damages because of the *M/V Ping Da 7*'s grounding and that the defaulting defendants are liable for it.

Pohnpei also seeks \$4 million as salvage damages because that is its estimate, based on bids by potential salvors, of its total cost in removing the *M/V Ping Da 7* from Pohnpei's fringing reef. Based on this allegation, the court must conclude that the *M/V Ping Da 7* has not yet been salvaged but

remains on the reef. Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013). "Salvage operations undertaken within the Federated States of Micronesia which have had a useful result shall create the right to reward." 19 F.S.M.C. 918(1). The criteria for fixing a salvage reward amount includes "the measure of success obtained by the salvor." 19 F.S.M.C. 919(1)(c). Pohnpei has not furnished any evidence that it has suffered any damages conducting salvage operations to a useful and beneficial result. Accordingly, no salvage damages can be awarded.

There being no just cause for delay, NOW THEREFORE IT IS HEREBY ORDERED that the clerk shall enter a default judgment, FSM Civ. R. 54(b), for the plaintiff against the defaulting defendants, jointly and severally, for \$13,419,000.

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FSM SUPREME COURT TRIAL DIVISION

MOYLAN'S INSURANCE UNDERWRITERS)
(FSM), INC.,)
)
Plaintiff,)
)
vs.)
)
JAYLEEN GALLEN,)
)
Defendant.)
_____)

CIVIL ACTION NO. 2014-017

ORDER DENYING MOTION TO SET ASIDE JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Decided: March 4, 2015

APPEARANCES:

For the Plaintiff: Fredrick L. Ramp, Esq.
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For the Defendant: Salomon M. Saimon, Esq.
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