

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA)	CIVIL ACTION NO. 2012-015
SOCIAL SECURITY ADMINISTRATION,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
ROSLYN REYES, individually and d.b.a)	
Pohnpei Arts and Crafts,)	
)	
Defendant.)	
_____)	

ORDER

Beauleen Carl-Worswick
Associate Justice

Decided: August 7, 2015

APPEARANCES:

For the Plaintiff: Michael J. Sipos, Esq.
P.O. Box 2069
Kolonias, Pohnpei FM 96941

For the Defendant: Marstella E. Jack, Esq.
P.O. Box 2210
Kolonias, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Discovery

When a defendant has not provided sufficient answers to the plaintiff's discovery request made on May 29, 2014 as ordered by the court on October 23, 2014, the plaintiff's second motion to compel will be granted. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 129 (Pon. 2015).

Civil Procedure – Discovery; Civil Procedure – Sanctions

When a defendant has not provided sufficient answers to the plaintiff's discovery request as ordered by the court, the defendant and her counsel may be jointly and severally liable for the plaintiff's expenses incurred in bringing a second motion to compel is granted. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 129 (Pon. 2015).

Contempt – Criminal; Social Security

Even when the court is reluctant to refer the dispute for prosecution on contempt and social security tax evasion charges, Social Security itself may direct the matter to the FSM Department of Justice's attention for investigation and further action, including possible prosecution. FSM Social Sec.

Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

A writ of ne exeat would require the defendant to surrender her passport and prevent her from leaving the FSM until she complies with all court orders and pays tax arrearages in full. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

Debtors' and Creditors' Rights – Orders in Aid of Judgment

The writ ne exeat republica is an obscure writ that is ancient, and infrequently used, and is an extraordinary writ which should issue only in exceptional cases. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

The following motions were filed on January 21, 2015 by the plaintiff, Federated States Micronesia Social Security Administration (FSMSSA): 1) Second Motion to Compel Discovery and for Award of Attorney Fees against Roslyn Reyes and Counsel pursuant to FSM Civil Rule 37(a)(4) and (b)(2)(E); 2) Motion for Order Referring Defendant for Criminal Contempt Proceedings Under 4 F.S.M.C. 119 and Issuance of Monetary Sanctions Pursuant to FSM Civil Rule 37(b)(2)(D) and (E); 3) Motion for Issuance of Writ of Ne Exeat Subject to Full Payment of Taxes Owed and Coming Into Compliance with Court payment Order Obligations. No response has been filed by the defendant, Roslyn Reyes (Reyes), individually and d.b.a Pohnpei Arts and Crafts.

II. DISCUSSION

Second Motion to Compel Discovery

An Order entered on October 23, 2014 granted FSMSSA's Motion to Compel Discovery requiring Reyes to comply with discovery requests made by FSMSSA on May 29, 2014. The Order instructed Reyes to respond to the discovery requests' by October 31, 2014, and further stated that failure to do so may result in sanctions, including attorney fees, pursuant FSM Civil Rule 37.

The current motion states that Reyes filed discovery responses on October 31, 2014, however, FSMSSA indicates specific examples where responses were incomplete, nonresponsive, and/or evasive, contrary to FSM Civil Rule 37(a)(3). No response was filed by Reyes.

Because Reyes has not provided sufficient answers to FSMSSA's discovery request made on May 29, 2014 as ordered by the court on October 23, 2014, FSMSSA's Second Motion to Compel is granted. As requested by FSMSSA, the defendant and counsel shall be jointly and severally liable for the expenses incurred in bringing this motion.

Pursuant to FSM Civil Rule 37(a)(4) and (b)(2)(E), FSMSSA shall submit its reasonable expenses in the October 23, 2014 and January 21, 2015 motions to compel before the court.

Referral for Criminal Contempt Proceedings

Pursuant to 4 F.S.M.C. 119, the FSMSSA requests that this matter be referred to the FSM Department of Justice for prosecution on criminal contempt proceedings and tax evasion charges.

At this juncture of the litigation, the court is reluctant to refer this dispute for prosecution. However, the FSMSSA itself may direct this matter to the attention of the FSM Department of Justice for investigation and further action, including possible prosecution.

Motion for Issuance of Writ of Ne Exeat Republica

The FSMSSA also requests an issuance of a Writ of Ne Exeat Republica subject to full payment of taxes owing and coming into compliance with court ordered payment obligations. The Writ would require Reyes to surrender her passport and prevent her from leaving the FSM until she complies with all court orders and pays tax arrearages in full.

"The writ ne exeat republica is an obscure writ that is ancient, [and] infrequently used." United States v. Barrett, 112 A.F.T.R.2d 2013-5697, 2013 WL 5458609, at 1 (D. Colo. 2013) (quotations omitted) (citation omitted). Ne Exeat is "an extraordinary writ which should issue only in exceptional cases." United States v. Shaheen, 445 F.2d 6, 10 (7th Cir. 1971).

Similar to referring this matter to the FSM Department of Justice, the court is disinclined to issue a Writ of Ne Exeat Republica against Reyes at this point of the litigation. The court will allow Reyes to comply with discovery requests and update her payments against the judgment in this matter before reconsidering referral to the Department of Justice and/or the issuance of a Writ of Ne Exeat Republica.

III. CONCLUSION

THEREFORE, the plaintiff's Second Motion to Compel Discovery is HEREBY GRANTED. The plaintiff shall submit to the court its reasonable expenses in bringing both motions to compel and file it with the court by August 28, 2015.

The defendant is HEREBY ORDERED to comply with all discovery requests made by the plaintiff also by August 28, 2015. Failure to do so may subject the defendant to further sanctions by the court, including a reconsideration of referring this matter to the FSM Department of Justice and the issuance of a Writ of Ne Exeat Republica.

A Status Conference is hereby scheduled for September 24, 2015, at 9:30 a.m. at the FSM Supreme Court in Palikir, Pohnpei. The parties shall be prepared to provide an update to the court on the progress of moving this matter forward. The defendant shall appear personally during this scheduled conference.

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