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HEADNOTES

Civil Rights – Acts Violating; Constitutional Law – Due Process – Notice and Hearing

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

Civil Rights – Acts Violating; Constitutional Law – Equal Protection

A complaint alleging that a public utility tortiously breached its duty to him and violated his due process civil rights when its linemen disconnected his electrical power without notice, causing food spoilage and personal hardship and inconvenience, and that when its linemen, without warning, eventually reconnected his electrical power, it tortiously caused a sudden power surge resulting in damaged equipment, does not state a claim for an equal protection civil rights cause of action. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

Jurisdiction – Pendent

The FSM Supreme Court may exercise pendent jurisdiction over the state law causes of action that arise from the same nucleus of operative fact and are such that they would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

Jurisdiction – Pendent

When tort claims arising from the power re-connection do not arise from a nucleus of operative fact common to the plaintiff's due process claims arising from the power disconnection, pendent jurisdiction is unavailable and those tort claims will be dismissed without prejudice to any future state court litigation. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on Defendant's Motion to Dismiss the Complaint for Failure to State a Claim upon Which Relief Can Be Granted and Lack of Jurisdiction Pursuant to FSM Civ. R. 12(b)(1) (2) and (6), filed March 20, 2015; plaintiff Drake Wainit's Response Opposing Motion to Dismiss, filed April 30, 2015; and Defendant's Request for Court to Issue Order Granting its Motion to Dismiss, filed June 16, 2015. The motion to dismiss is denied in part and granted in part. The reasons follow.

In his complaint, the plaintiff, Drake Wainit, alleges that the defendant, the Chuuk Public Utility Corporation ("CPUC"), tortiously breached its duty to him and violated his due process civil rights when its linemen disconnected his electrical power without notice, causing food spoilage and personal hardship and inconvenience. Wainit further alleges that afterward, when CPUC's linemen, without warning, eventually reconnected his electrical power, it caused a sudden power surge that resulted in his electrical appliances, fixtures, and equipment in his warehouse exploding. Wainit asserts that this court's jurisdiction is based on his claim that CPUC deprived him of his right to "equal access to public utility" and his right to due process of notice and an opportunity to be heard before his power was disconnected, thus violating his civil rights under the FSM Constitution and 11 F.S.M.C. 701.

CPUC, asserting that it is not a state actor, moves to dismiss Wainit's complaint because it fails

to state a due process claim since its disconnection of Wainit was accidental and not willful; because it fails to state an equal protection claim; and because negligence is a state law claim that should be litigated in state court. CPUC therefore concludes that this court lacks subject-matter jurisdiction over this case.

Wainit responds that the court has pendent jurisdiction over his negligence tort claims because they arise from a common nucleus of operative fact with his civil rights claims.

The court is not convinced that CPUC is not a state actor. It is a public corporation created by Chuuk statute with varying degrees of state funding and control. At any rate, it is a public utility. A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected. See Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 14-15, 98 S. Ct. 1554, 1563, 56 L. Ed. 2d 30, 42-43 (1978); DiMassimo v. City of Clearwater, 805 F.2d 1536, 1539 (11th Cir. 1986); Pilchen v. City of Auburn, 728 F. Supp. 2d 192, 199 (N.D.N.Y. 2010); Ludwig v. City of Jamestown, 518 F. Supp. 2d 484, 497-98 (W.D.N.Y. 2007). The complaint's allegations, however, do not state a claim for an equal protection civil rights cause of action. The court would have subject-matter jurisdiction over this case if, taking the facts as alleged and viewing them in the light most favorable to the plaintiff, the factual allegations constituted a violation of Wainit's civil rights, in particular his civil right to "due process" to protection of the law.

The FSM Supreme Court may exercise pendent jurisdiction over the state law causes of action that arise from the same nucleus of operative fact and are such that they would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Esa v. Elimo, 14 FSM R. 216, 220 (Chk. 2006). The court, however, does not consider that the tort claims arising from the power re-connection to arise from a nucleus of operative fact common to Wainit's claims arising from the power disconnection. Pendent jurisdiction is thus unavailable. The court will therefore grant CPUC's motion to dismiss Wainit's claims arising from CPUC's re-connection of his electrical power.

Accordingly, Wainit may proceed on his due process claim and damages caused by the CPUC's power disconnection. CPUC shall answer that part of Wainit's complaint. The claims arising from CPUC's power re-connection and Wainit's equal protection claim are dismissed. The dismissal of the claims arising from CPUC's power re-connection are without prejudice to any future litigation in the Chuuk State Supreme Court.

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