

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA
SOCIAL SECURITY ADMINISTRATION,

Plaintiffs,

vs.

ROSLYN REYES, individually and d.b.a
Pohnpei Arts and Crafts,

Defendant.

CIVIL ACTION NO. 2012-015

ORDER DENYING MOTION TO RECONSIDER ISSUANCE OF WRIT OF EXECUTION

Beauleen Carl-Worswick
Associate Justice

Decided: December 29, 2015

APPEARANCES:

For the Plaintiff: Michael J. Sipos, Esq.
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For the Defendant: Marstella E. Jack, Esq.
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HEADNOTES

Attachment and Execution; Debtors' and Creditors' Rights

The execution statute, 6 F.S.M.C. 1407, requires issuance of a writ of execution upon request, subject to the Rule 62(a) limitation that no execution shall issue upon a judgment until the expiration of 10 days after the entry of that judgment. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 277 (Pon. 2015).

Attachment and Execution; Debtors' and Creditors' Rights

When the issuance of a writ of execution was not only based on statutory law, but the court had also afforded the judgment debtor and her counsel ample time to confer and respond to the motion for a writ of execution, the issuance of the writ was appropriate. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

Attachment and Execution; Debtors' and Creditors' Rights - Tax Liens

A writ of execution applies to all the judgment debtor's business assets and personal property under 53 F.S.M.C. 607. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

Business Organizations; Debtors' and Creditors' Rights – Tax Liens

When the tax lien on a sole proprietorship's property was effectuated under 53 F.S.M.C. 607, well before the business transformed and became incorporated, the court will not create an avenue where an individual operating as a business avoids debt by simply morphing into an entity with the same name, albeit a different structure and characteristics. For the court to allow this would be detrimental to statutorily created entities attempting to collect taxes owed. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

A Writ of Execution was issued on December 7, 2015 against the defendant, Roslyn Reyes, individually and d/b/a Pohnpei Arts and Craft (herein "Reyes"). On December 11, 2015, Reyes filed a Motion to Reconsider Issuance of Writ of Execution, and the defendant, FSM Social Security Administration (herein "FSMSSA"), entered an Opposition to Motion to Reconsider Issuance of Writ of Execution on December 13, 2015. No response to the opposition was filed by Reyes.

II. MOTION TO RECONSIDER

Issuance of Writ of Execution

The writ of execution was entered pursuant to 6 F.S.M.C. 1407. This section states: "Every court, at the request of the party recovering any civil judgment in that court for the payment of money, shall issue a writ of execution against the personal property of the party against whom the judgment has been rendered, except as provided in section 1415 of this chapter."

Reyes points to In re Mid-Pacific Constr. Co., 3 FSM Intrm. 292 (Pon. 1988), where the court held that writs of execution will not be granted on an automatic basis, but only when it has been shown that judgment creditors have seriously explored the possibility of satisfying the judgment through other means, in order to avoid bankruptcies or economic hardships. *Id.* at 306.

However, the FSMSSA correctly points out that the court overruled its previous holding when it ruled that

Upon review, it now appears that the execution statute, 6 F.S.M.C. 1407, does not contemplate such a condition, but instead requires issuance of the writ upon request:

Every court, at the request of the party recovering any civil judgment in that court for payment of money, shall issue a writ of execution against the [non-exempt] personal property of the party against whom the judgment has been rendered . . .

6 F.S.M.C. 1407. This right to obtain prompt issuance of a writ of execution is subject to the limitation that "no execution shall issue upon a judgment until the expiration of 10 days after the entry [of that judgment]." FSM Civ. R. 62(a).

The statutory right of a judgment creditor to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs. The Court therefore shall apply such a rule, but may in the future stay the enforcement of such writs in order to achieve the goals referred to in Mid-Pac.

In re Pacific Islands Distrib. Co., 3 FSM Intrm. 575, 582 (Pon. 1988).

During a hearing held on September 24, 2015, counsel for the defendant requested in open court, that instead of issuing the writ, the court should allow her thirty (30) days to contact Reyes, who was believed to be in California. A period of over two (2) months passed before the issuance of the Writ without any filings made by Reyes.

The issuance of the writ was not only based on statutory law, but the court had afforded Reyes and her counsel ample time to confer and respond to the motion for a writ of execution. Accordingly, the issuance of the writ was appropriate in this matter pursuant to 6 F.S.M.C. 1407 and applicable case laws.

Pohnpei Arts & Crafts

Reyes argues that the writ is issued against a non-party because Pohnpei Arts & Crafts is now a corporation and Reyes is no longer the owner, but a shareholder. FSMSSA argues that the business remains a sole proprietorship, and even if it is not a sole proprietorship, the writ of execution still applies to all business assets and the debtor's personal property because of the statutory lien imposed under 53 F.S.M.C. 607, which states:

All taxes, including penalties and interest accrued thereon, imposed or authorized under this subtitle shall be a lien upon any property of the employer, having priority over all claims and liens including liens for other taxes, and may be collected by levy upon such property in the same manner as the levy of an execution.

Here, an Order entered on August 18, 2014 consolidated three cases involving the same parties into the current action. The Order further granted a Joint Motion to Further Amend Order in Aid of Judgment to Apply to Judgment in Consolidated Actions. Reyes submitted a copy of a Certificate of Incorporation for Pohnpei Arts & Crafts dated June 2015 in its current motion to reconsider. Based on these facts, the lien on the property of Pohnpei Arts & Crafts was effectuated well before the business transformed and became incorporated under 53 F.S.M.C. 607.

Further, the court will not create an avenue where an individual operating as a business avoids debt by simply morphing into an entity with the same name, albeit a different structure and characteristics. For the court to allow this type of action will be detrimental to statutorily created entities attempting to collect taxes owed.

III. CONCLUSION

THEREFORE, the defendant's Motion to Reconsider Issuance of Writ of Execution is HEREBY DENIED.

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