

FSM SUPREME COURT TRIAL DIVISION

FUJI ENTERPRISES,) CIVIL ACTION NO. 2014-044
)
Plaintiff,)
)
vs.)
)
SALVADOR S. JACOB in his official capacity as)
the Assistant Secretary of Customs and Tax)
Administration, Government of the Federated)
States of Micronesia; SIHNA LAWRENCE, in her)
official capacity as the Secretary of Finance,)
Government of the Federated States of Micronesia;)
and FSM NATIONAL GOVERNMENT,)
)
Defendants.)
_____)

ORDER DENYING DISMISSAL AND ORDERING ANSWER

Ready E. Johnny
Associate Justice

Decided: December 30, 2015

APPEARANCES:

For the Plaintiff: Yoslyn G. Sigrah, Esq.
P.O. Box 3018
Kolonias, Pohnpei FM 96941

For the Defendants: David C. Angyal, Esq.
Assistant Attorney General
FSM Department of Justice
P.O. Box PS-105
Palikir, Pohnpei FM 96941

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HEADNOTES

Administrative Law – Judicial Review; Civil Procedure – Pleadings; Taxation

Judicial review of an adverse Secretary of Finance decision may be had by an aggrieved taxpayer filing a petition naming the Secretary or his successor in office as the defendant and setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the tax assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. It will not be dismissed merely because it was labeled a "Complaint" and not called a "Petition" because, regardless of what a party has chosen to call the papers they have filed, those papers are what they are based on their function or the relief they seek, and the court must treat them as such. Fuji Enterprises v. Jacob, 20 FSM R. 279, 280 (Pon. 2015).

Civil Procedure – Parties – Substitution of

By operation of Civil Procedure Rule 25(d)(1), when a public officer is a party to an action in an official capacity and during its pendency ceases to hold office, the officer's successor is automatically substituted as a party. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 n.1 (Pon. 2015).

Administrative Law – Judicial Review; Civil Procedure – Dismissal – Before Responsive Pleading; Taxation

When a complaint meets 54 F.S.M.C. 156(1)'s procedural requirements for judicial review of a tax assessment and when the relief that is prayed for is permitted by 6 F.S.M.C. 702(1) (claims for recovery of taxes and penalties) and possibly 6 F.S.M.C. 702(2), (4), and (5) (claims for damages from governmental actions), the court cannot say that it fails to state a claim for which the court can grant relief. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

Administrative Law – Judicial Review; Civil Procedure – Parties

The national government has decided, by statute, that it will defend its interests in an action for judicial review of a tax assessment through its Secretary of Finance, who will be the named defendant. The deletion of other parties as named defendants therefore seems proper. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on the Defendants' Motion to Dismiss, filed September 8, 2015, and the Plaintiff's Opposition to FSM Defendants' Motion to Dismiss, filed October 30, 2015. The motion is denied for the following reasons.

The defendants contend that the plaintiff's complaint should be dismissed because the plaintiff, Fuji Enterprises ("Fuji"), failed to follow the judicial review procedure set out in 54 F.S.M.C. 156 and because, even if the factual allegations are viewed in the light most favorable to Fuji, there is still no relief the court could grant Fuji.

The defendants assert that Fuji, as a taxpayer, did not follow the 54 F.S.M.C. 156 procedure to seek judicial review of an adverse Secretary of Finance decision. That statute provides that an aggrieved taxpayer may institute an action for judicial review "by filing a petition setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief." 54 F.S.M.C. 156(1). The statute further provides that "[t]he Secretary or his successor in office shall be the defendant in such proceedings." *Id.*

Fuji's complaint alleges that the amount of tax due was improperly or incorrectly calculated and that the methods used to collect that tax was either unconstitutional or illegal and prays that those funds be returned and asks for other damages.

Fuji's complaint will not be dismissed merely because it was labeled a "Complaint" and not called a "Petition." Regardless of what a party has chosen to call the papers they have filed, those papers are what they are based on their function or the relief they seek, and the court must treat them as such. See Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 n.6 (App. 2014); Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 435 (App. 2011); Neth v. Kosrae, 14 FSM R. 228, 231 (App. 2006); Jano

Fuji Enterprises v. Jacob
20 FSM R. 279 (Pon. 2015)

v. FSM, 12 FSM R. 633, 634 (App. 2004); Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625 n.1 (App. 2003); McIlrath v. Amaraich, 11 FSM R. 502, 505-06 (App. 2003); Mori v. Hasiyuchi, 19 FSM R. 222, 225-26 (Chk. 2013); FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.4 (Pon. 2008); Robert v. Simina, 14 FSM R. 257, 259 (Chk. 2006); McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006); Lee v. Han, 13 FSM R. 571, 575 & n.1 (Chk. 2005); Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998). Fuji's complaint recites what it alleges were errors and prays for various relief. And it names the then Secretary of Finance Kensley Ikosia¹ as a defendant. It therefore meets 54 F.S.M.C. 156(1)'s procedural requirements for judicial review.

Generally, the relief that Fuji prays for is permitted by 6 F.S.M.C. 702(1) (claims for recovery of taxes and penalties) and possibly 6 F.S.M.C. 702(2), (4), and (5) (claims for damages from governmental actions). The court therefore cannot say that it fails to state a claim for which the court can grant relief.

However, the complaint also named as defendants a subordinate (and therefore an agent) of the Secretary, Assistant Secretary of Customs and Tax Administration Salvador S. Jacob, and the Secretary's employer, the Federated States of Micronesia national government. This appears to be contrary to the statute which specifies the Secretary of Finance as the defendant. These two defendants' absence would not seem to affect whether and what relief Fuji may be able to obtain. It would therefore seem that their presence is superfluous. The national government has decided, by statute, that it will defend its interests in such actions through its Secretary of Finance. The deletion of these other two parties as named defendants therefore seems proper.

Accordingly, the defendants' motion to dismiss for failure to comply with 54 F.S.M.C. 156 and for the failure to state a claim on which relief can be granted is denied. Secretary Sihna Lawrence shall file and serve her answer no later than January 13, 2016. AND IT IS FURTHER ORDERED that, unless a current party, no later than January 13, 2016, has filed and served a memorandum on why they should remain as defendants, the Assistant Secretary of Customs and Tax Administration Salvador S. Jacob, and the Federated States of Micronesia national government will be deleted as named parties defendant.

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¹ By operation of Civil Procedure Rule 25(d)(1) ("[w]hen a public officer is a party to an action in an official capacity and during its pendency . . . ceases to hold office, . . . the officer's successor is automatically substituted as a party,"), his successor, the current Secretary of Finance, Sihna Lawrence, has been substituted for him.