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Chuuk Health Care Plan v. Waite  
20 FSM R. 282 (Chk. 2016)

FSM SUPREME COURT TRIAL DIVISION

CHUUK STATE HEALTH CARE PLAN, ) CIVIL ACTION NO. 2015-1006  
)  
Plaintiff, )  
)  
vs. )  
)  
MARK WAITE, individually and as Chief )  
Executive Officer of CPUC, and CHUUK )  
PUBLIC UTILITY CORPORATION, )  
)  
Defendants. )  
\_\_\_\_\_ )

ORDER DISMISSING CASE

Beauleen Carl-Worswick  
Associate Justice

Decided: January 5, 2016

APPEARANCES:

For the Plaintiff: Johnny Meippen, Esq.  
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Weno, Chuuk FM 96942

For the Defendant: Erick B. Divinagracia, Esq.  
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Kolonia, Pohnpei FM 96941

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HEADNOTES

Evidence – Judicial Notice

The court may take judicial notice of its files in related cases. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 n.1 (Chk. 2016).

Agency; Civil Procedure – Parties; Insurance

While it may be true that an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency, when the principal's liability is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability, the employee agent is not a proper party to the litigation. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

Civil Procedure – Res Judicata

The res judicata doctrine bars the relitigation by parties or their privies of all matters that were

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or could have been raised in a prior action that was concluded by a final decision on the merits and has been affirmed on appeal or for which time for appeal has expired. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Res Judicata

Res judicata can be raised in a motion to dismiss made before an answer has been filed when the prior action's preclusive effect can be determined from the face of the complaint. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284-85 (Chk. 2016).

Civil Procedure – Res Judicata; Insurance; Jurisdiction – Diversity

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

Civil Procedure – Collateral Estoppel

Collateral estoppel, also called issue preclusion, is a defense that bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one, and defensive collateral estoppel is an estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.3 (Chk. 2016).

Civil Procedure – Res Judicata; Judgments

A judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.4 (Chk. 2016).

Civil Procedure – Sanctions

No Rule 11 sanctions will be imposed when the court cannot say that the plaintiff's attempt was not a good faith argument for the extension, modification, or reversal of existing law, although that would not hold true if there are any future such attempts of the same nature. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

This comes before the court on the Defendants' Motion to Dismiss the Complaint for Lack of Jurisdiction, filed June 13, 2015, and the Chuuk Health Care Plan's Opposition to Motion to Dismiss, filed July 7, 2015. The motion is granted. This case is dismissed for the lack of subject-matter jurisdiction.

The plaintiff, Chuuk Health Care Plan ("the Plan"), filed this case to collect the health insurance premiums due it for one Chuuk Public Utility Corporation ("CPUC") employee, its Chief Executive Officer, Mark Waite, both of whom were named as defendants. The Plan invokes the FSM Supreme Court's diversity jurisdiction by including Waite, a foreign citizen, as a defendant. From Waite, the Plan

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seeks his (the employee's) share of the health insurance premium, and from CPUC it seeks the employer's share of the premium.

I. MOTION TO DISMISS

The defendants, relying on a previous case, Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409 (Chk. 2012), assert that the court lacks diversity jurisdiction because Waite is not a proper party, and they further contend that the action is barred by res judicata or collateral estoppel. The Plan asserts that this case is distinguishable from the previous case.

The court in that previous case, in which the Plan sought to collect unpaid insurance premiums from CPUC, denied the Plan's motion to amend its complaint to add CPUC's foreign citizen employees (including Waite,<sup>1</sup> the named defendant in this case) as defendants because they were not real parties in interest. *Id.* at 411. It then dismissed the case for lack of subject-matter jurisdiction. *Id.* The court held that foreign citizen employees (and any other employees) were not real parties in interest because "[u]nder the Chuuk Health Care Act of 1994, it is the employer who is liable to the Health Care Plan for all health insurance premiums, Chk. S.L. No. 2-94-06, § 5-4, including the employee's contribution, *id.* § 5-4(2). Liability is not imposed on the employee." Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. at 411. Since the plaintiff Plan and CPUC, the only proper defendant, were both Chuuk state government instrumentalities, *id.* at 410, there was thus no diversity jurisdiction in that case, *id.* at 411. That decision was not appealed and the time to appeal has run.

The Plan contends that despite this previous final decision, the court may maintain subject-matter jurisdiction in this case because Waite is the CPUC CEO, and therefore, as CPUC's agent, he has the responsibility to see that CPUC performs its statutory duty to make the premium payments for him. The Plan further contends and that it, as plaintiff, may sue the agent and principal in the same action. It relies on Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998), for the proposition that jurisdiction is proper because an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency.

While that may be true, the principal's liability here is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability. Chk. S.L. No. 2-94-06, § 5-4; Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. at 411.

Since Waite has no liability to the Plan for the non-payment of any of his insurance premiums,<sup>2</sup> the only proper party defendant would be CPUC. Waite cannot be a party to this case and the FSM Supreme Court therefore lacks subject-matter jurisdiction since the court would have no jurisdiction if CPUC were the only defendant.

Furthermore, the previous case's final decision acts as a bar to this case. The doctrine of res judicata bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final decision on the merits, which has been affirmed on appeal or for which time for appeal has expired. Iriarte v. Etscheit, 8 FSM R. 231, 236-37 (App. 1998). Res judicata can be raised in a motion to dismiss made before an answer has been filed when the prior

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<sup>1</sup> The court may take judicial notice of its files in related cases. See Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

<sup>2</sup> Whether he has any liability to his employer for the non-payment is a different matter.

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action's preclusive effect can be determined from the face of the complaint. Saito v. Siro, 19 FSM R. 650, 653 (Chk. S. Ct. Tr. 2015).

That is the case here. Here, the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Plan to collect unpaid health insurance premiums thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. at 411. The same parties are present – CPUC was the named defendant and Waite was a would-be defendant named in the motion to amend the pleadings.<sup>3</sup> The time to appeal has expired. Res judicata bars this action.

This case is therefore dismissed without prejudice to any action in the Chuuk State Supreme Court.<sup>4</sup>

II. MOTION FOR RULE 11 SANCTIONS

The defendants also move the court to award them sanctions under Rule 11 for the Plan's filing this action since this case was obviously barred by the court's previous decision in Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409 (Chk. 2012). That motion is denied. While the Plan was rather creative in this case by seeking only the unpaid insurance premiums for one of CPUC's employees while the previous case sought the unpaid premiums for all CPUC employees, the court cannot say that, in this instance, the Plan's attempt was not a good faith argument for the extension, modification, or reversal of existing law, although that will not hold true if there are any future such attempts of this nature. Therefore no sanctions will be imposed on the Plan or awarded to the defendant.

III. CONCLUSION

Accordingly, this case is dismissed for the lack of subject-matter jurisdiction and the defendants' motion for Rule 11 sanctions is denied.

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<sup>3</sup> If res judicata were considered not to apply because Waite was technically never made a party in the previous case – his joinder was denied – then the collateral estoppel doctrine would apply. Collateral estoppel, also called issue preclusion, is a defense which bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007). Defensive collateral estoppel is an estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant. *Id.* The issue of whether the Plan's joinder of CPUC' non-citizen employees, including its chief executive officer, would create diversity jurisdiction in this court has already been decided against the Plan. The Plan is precluded from relitigating that issue in this case.

<sup>4</sup> A judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).