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Chuuk v. FSM
20 FSM R. 373 (Chk. 2016)

FSM SUPREME COURT TRIAL DIVISION

STATE OF CHUUK,

Plaintiff,

vs.

FEDERATED STATES OF MICRONESIA,

Defendant.

CIVIL ACTION NO. 2015-1012

ORDER DENYING DISMISSAL; SCHEDULING ORDER

Ready E. Johnny
Associate Justice

Decided: May 19, 2016

APPEARANCES:

For the Plaintiff:

Sabino S. Asor, Esq.
Chuuk Attorney General
Office of the Attorney General
P.O. Box 1050
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For the Defendant:

David C. Angyal, Esq.
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FSM Department of Justice
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Palikir, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Motions – Unopposed

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even then, the court still needs good grounds before it can grant the unopposed motion. Thus, even if the court were to consider a renewed motion unopposed because, although the plaintiff filed an opposition to the original motion, it did not file an opposition to the renewed motion, the court would still need to determine if good grounds exist to grant it. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Sovereign Immunity; Taxation

Since 6 F.S.M.C. 702(2) specifically waives the FSM's sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of FSM laws, the FSM has waived its sovereign immunity for a suit by a state alleging that the FSM failed to comply with the FSM Constitution's mandate that not less than 50% of the national tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Constitutional Law – Case or Dispute – Political Question

Under the political question doctrine, when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of governmental powers provided for by the Constitution. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Constitutional Law – Case or Dispute – Political Question

Among the formulations describing a political question is a case where there is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. Chuuk v. FSM, 20 FSM R. 373, 375-76 (Chk. 2016).

Constitutional Law – Case or Dispute – Political Question; Taxation

Since the national government, and therefore Congress, has no discretion but must remit the first 50% of the national tax collected to the state treasury of the state it was collected in, a dispute about that first 50% would not be a nonjusticiable political question, although a dispute over a percentage higher than 50% would be a nonjusticiable political question textually committed to a discretionary Congressional decision. Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

Constitutional Law – Case or Dispute – Political Question

The matter does not present a nonjusticiable political question when it is not apparent why the constitutional mandate that 50% of national tax revenues be paid into the treasury of the state where collected would not be self-executing (except if Congress wants a higher percentage remitted to the states). Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

Civil Procedure – Joinder, Misjoinder, and Severance

Although only Congress has the power to determine the percentage of the states' revenue share and only Congress has the power to appropriate public funds or to authorize withdrawals from general and special funds, Congress is not an indispensable party to a suit by a state seeking only the constitutionally mandated 50% of revenue because the state is not asking for a percentage higher the constitutionally mandated 50%. Chuuk v. FSM, 20 FSM R. 373, 376-77 (Chk. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Joinder, Misjoinder, and Severance; Civil Procedure – Pleadings

Those parts of the amended complaint's prayer for relief that seek relief for the State of Pohnpei, which is not a party, can be dismissed or stricken as surplusage. Chuuk v. FSM, 20 FSM R. 373, 377 (Chk. 2016).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

By this order, the court denies dismissal and sets a schedule for further proceedings.

I. PROCEDURAL BACKGROUND

On January 12, 2016, the Federated States of Micronesia filed its Renewed Motion to Dismiss

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this case. The plaintiff, State of Chuuk, did not file an opposition apparently relying on its earlier opposition to the FSM's original motion to dismiss, which was denied without prejudice because it had moved to dismiss Chuuk's original complaint and Chuuk's amended complaint was the operative pleading before the court.

By rule, the failure to oppose a motion is generally deemed a consent to the motion, FSM Civ. R. 6(d), but even then, the court still needs good grounds before it can grant the unopposed motion. Isamu Nakasone Store v. David, 20 FSM R. 53, 56 (Pon. 2015); *see also* Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011). Thus, even if the court were to consider the renewed motion unopposed, the court would still need to determine if good grounds exist to grant it.

Chuuk, in its amended complaint, seeks a judgment that it is entitled to 50% of the Title 54, chapter 3 corporate income tax collected in the State of Chuuk and an injunction prohibiting the FSM from obligating all of those tax revenues collected during fiscal year 2016 without paying Chuuk and Pohnpei their half shares, and that the Department of Finance be required to provide an accounting of the Title 54, chapter 3 tax revenue for fiscal year 2016 and thereafter.

II. MOTION TO DISMISS

The FSM moves to dismiss Chuuk's complaint because of its sovereign immunity, because the case involves a political question, and because Chuuk has failed to join a necessary and indispensable party, the FSM Congress.

A. Sovereign Immunity

The FSM contends that it has not waived its sovereign immunity for this type of case. It asserts that Chuuk's claim against it is not one of types of claims found in its limited waiver of sovereign immunity found in 6 F.S.M.C. 702, and therefore the court has no jurisdiction over it.

This contention must be rejected. The amended complaint alleges that Chuuk is entitled to damages and an injunction because of the FSM's failure to comply with the FSM Constitution's mandate that "[n]ot less than 50% of the [national tax] revenues shall be paid into the treasury of the state where collected." FSM Const. art. IX, § 5.

Subsection 702(2) of Title 6 specifically waives the FSM's sovereign immunity for "[c]laims for damages, injunction, or mandamus arising out of alleged improper administration" of FSM laws. This case thus falls within the FSM's waiver of sovereign immunity found in 6 F.S.M.C. 702(2).

B. Political Question

The FSM further contends that the court lacks jurisdiction under the political question doctrine. Under that doctrine, when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of governmental powers provided for by the Constitution. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16-17 (App. 2006).

Among the formulations describing a political question is a case where there "is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; . . . or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; . . . or the potentiality of embarrassment from multifarious pronouncements by various

departments on one question."

Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993) (quoting Baker v. Carr, 369 U.S. 186, 217, 82 S. Ct. 691, 710, 7 L. Ed. 2d 663, 686 (1962)).

The FSM contends that the constitutional mandate that "[n]ot less than 50% of the [national tax] revenues shall be paid into the treasury of the state where collected," FSM Const. art. IX, § 5, is matter that is textually committed to Congress because only Congress can determine what percentage (50% or higher) of the revenue should be allotted to the states and only Congress can determine the timing of the distribution of those funds to the states. The FSM further contends that since there are no judicially discoverable and manageable standards to determine where, between 50% up to 100% the states' shares should be set, it is impossible to decide where the percentage should be set without an initial determination involving clearly nonjudicial discretion. Thus, in the FSM's view, this dispute is a nonjusticiable political question.

The FSM is, however, unable to explain why congressional action would be necessary for a state to have a right to the constitutionally mandated 50% of a tax collected in the state, which is all that Chuuk asks. When it comes to the first 50% of the national tax collected, the national government, and therefore Congress, has no discretion. It must remit that 50% to the state treasuries of the states it was collected in. If Chuuk sought to compel a percentage higher than 50%, the FSM would be correct that it (at least the higher percentage) would be a nonjusticiable political question textually committed to a Congressional decision in which Congress may exercise its discretion. But that is not the relief sought. Chuuk only seeks what it claims it would be entitled to without any Congressional action.

The FSM also asserts that the court cannot undertake an independent resolution of the question without expressing a lack of respect that is due a coordinate branch of government, Congress, because the court will be preempting Congress's power to appropriate funds, thus harming the cordial relationship between Congress and the court. The FSM further argues that there is an unusual need to unquestioningly adhere to the political decision already made because the extra revenue that the Title 54, chapter 3 major corporation tax scheme generates is badly needed in the light of the fiscal prospects in the post-2023 Compact era. It contends that the potential for embarrassment from multifarious pronouncements by various government departments that could cause major corporations already registered here and the revenue stream they generate to depart for other jurisdictions.

The narrow question asked by Chuuk is whether the Title 54, chapter 3 major corporation income tax is subject to the constitutional mandate that 50% of national tax revenues be paid into the treasury of the state where collected. The FSM asserts that this provision is not self-executing, but it is not apparent why it would not be self-executing, except when Congress wants a higher percentage remitted to the states. And it is not apparent why the potential for embarrassment or the uncertain fiscal prospects after 2023 would override or preclude a decision on the application of a clear, non-discretionary constitutional provision.

Accordingly, the court concludes that this case does not present a nonjusticiable political question and cannot be dismissed on that ground.

C. Failure to Join Indispensable Party

The FSM also contends that the case should be dismissed because Chuuk has not joined Congress as a party. The FSM contends that Congress is a necessary and indispensable party because only Congress has the power to determine the percentage of the states' revenue share and only

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Congress has the power to appropriate public funds or to authorize withdrawals from general and special funds. The FSM also adds that Chuuk seeks to argue or seeks relief on Pohnpei's behalf but Pohnpei is not a party to this action.

The FSM has a point about the portions of the amended complaint that seem to also seek relief for the State of Pohnpei, which is not a party. Those parts of the amended complaint's prayer for relief that seek relief for Pohnpei can thus be dismissed or stricken as surplusage.

The court cannot, however, see why Congress would be an indispensable party when Chuuk is not asking for a percentage higher the constitutionally mandated 50%.

III. CONCLUSION

The FSM's motion is dismissed accordingly denied, but the portion of the prayer for relief seeking relief for the State of Pohnpei is stricken. Since the FSM has already filed its answer, the following schedule is now therefore set: 1) all discovery shall be requested by July 29, 2016; 2) all discovery shall be completed by August 23, 2016; and 3) all pretrial motions shall be filed and served no later than September 13, 2016.

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FSM SUPREME COURT APPELLATE DIVISION

SINTER ALEXANDER,

Appellant,

vs.

HASER HAINRICK, in his official capacity as
FSM Public Auditor, OFFICE OF THE FSM
PUBLIC AUDITOR, and FEDERATED STATES
OF MICRONESIA,

Appellees.

APPEAL CASE NO. P11-2014

OPINION

Argued: May 5, 2016
Decided: May 20, 2016

BEFORE:

Hon. Beauleen Carl-Worswick, Associate Justice, FSM Supreme Court
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court*
Hon. Benjamin F. Rodriguez, Specially Assigned Justice, FSM Supreme Court**

*Chief Justice, Chuuk State Supreme Court, Weno, Chuuk
**Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei