

12 FSM Intrm. at 636.

Accordingly, this matter is determined based on the record of the administrative hearing, other documents as submitted by the parties, and the oral arguments as presented before the court, therefore a *de novo* trial is unwarranted.

Finally, another issue raised in the filings and during oral arguments is the adoption of the child when the wage earner had surpassed fifty-five (55) years of age, pursuant to 53 F.S.M.C. 603(4). Because this court is limited to issues determined on the record at the administrative level under 53 F.S.M.C. 708, the court will not make a determination on this issue.

V. CONCLUSION

The court finds that there are no triable issues in this matter. The defendant's Motion for Summary Judgment is HEREBY GRANTED, and the plaintiff's Complaint is HEREBY DISMISSED. The Clerk shall enter judgment in favor of the defendant.

* * * *

FSM SUPREME COURT TRIAL DIVISION

EOT MUNICIPALITY, ETTAL MUNICIPALITY,)	CIVIL ACTION NO. 2012-1024
LUKINPOCH MUNICIPALITY, MOCH MUNICIPALITY,)	
NOMWIN MUNICIPALITY, PAREM MUNICIPALITY,)	
RUO MUNICIPALITY, SATOWAN MUNICIPALITY,)	
and UDOT MUNICIPALITY,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
JOHNSON ELIMO, in his capacity as Governor of)	
Chuuk State, CHUUK STATE, and FEDERATED)	
STATES OF MICRONESIA,)	
)	
Defendants.)	
<hr/>		
FEDERATED STATES OF MICRONESIA,)	
)	
Cross-Claimant/)	
Counter-Cross-Defendant,)	
)	
vs.)	
)	
STATE OF CHUUK,)	
)	
Cross-Defendant/)	
Counter-Cross-Claimant.)	
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Eot Municipality v. Elimo
20 FSM R. 482 (Chk. 2016)

Beauleen Carl-Worswick
Associate Justice

Hearing: March 28, 2016
Decided: June 28, 2016

APPEARANCES:

For the Plaintiffs: Stephen V. Finnen, Esq.
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HEADNOTES

Civil Procedure – Admissions

Under the rules, the matter is admitted unless, within 30 days after service of the request for admission, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. Thus, a party intending to admit all of a set of requests for admission directed to it, does not have to respond to those requests because its non-response will be deemed an admission. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

Civil Procedure – Admissions

If a party to whom requests for admission are directed does not answer the requests within 30 days after service, the matter that is the subject of the requests is deemed admitted, and it is irrelevant if the request sought admission of so-called ultimate facts since Rule 36(a) neither expressly nor implicitly excepts such facts from its requirements. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

Civil Procedure – Admissions

Any matter admitted under Rule 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Eot Municipality v. Elimo, 20 FSM R. 482, 487 (Chk. 2016).

Civil Procedure – Summary Judgment – Grounds

Although the failure to file an opposition is, by rule, deemed to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion because there must still be a sound basis in law and in fact on which to grant the motion. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

Civil Procedure – Summary Judgment – Grounds

A court, viewing the facts and inferences in a light that is most favorable to the non-moving party, will render summary judgment when the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

Torts – Conversion

Unlawful misappropriation of funds seems to be the same cause of action as conversion. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

Torts – Conversion

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

Judgments; Torts – Damages

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Eot Municipality v. Elimo, 20 FSM R. 482, 489 n.2 (Chk. 2016).

Judgments – Interest; Torts – Conversion; Torts – Damages; Torts – Governmental Immunity

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Civil Procedure – Summary Judgment – Procedure

Regardless of whether the non-movants have filed a written opposition, a plaintiff, when moving for summary judgment, must also overcome all of the adverse parties' affirmative defenses in order to be entitled to summary judgment. The plaintiff must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Contracts – Interpretation

Interpretation of contract provisions is a matter of law to be determined by the court. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Statute of Limitations – Accrual of Action

A cause of action does not accrue for the purposes of a statute of limitations until all elements are present, including damages. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Sovereign Immunity – Chuuk

Since the Chuuk Sovereign Immunity Act permits suits against the state government for claims, whether liquidated or unliquidated, that are made upon an express or implied agreement with the State of Chuuk or with any of its political subdivisions, it does not bar a suit to recover funds that, by agreement, were to be passed on by the state government to the municipal governments. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Judgments – Interest; Sovereign Immunity – Chuuk

Sovereign immunity does bar the imposition of interest as part of or on a judgment against the State of Chuuk. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

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Equity

If both parties have unclean hands, the court may afford relief to the party who bears a lesser degree of fault. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Equity – Estoppel

Estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Equity – Estoppel

Estoppel is to be applied against wrongdoers, not the victim of a wrong. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Equity – Waiver

For a party with "unclean hands," the equitable defense of waiver (as opposed to a contractual waiver) is insufficient as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Civil Rights

Since the FSM statute, 11 F.S.M.C. 701(3), is based on the United States statute, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Civil Rights

Municipalities cannot make civil rights claims against the state of which they are a part. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Civil Rights; Civil Rights – Persons Liable

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Civil Rights – Acts Violating

The civil rights statute's purpose is to create a federal remedy for private parties, not government bodies. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Civil Procedure – Summary Judgment – For Nonmovant

When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

* * * *

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

On March 28, 2016, this came before the court to hear the nine plaintiffs' unopposed Motion

for Partial Summary Judgment; Motion to Deem Requests for Admission Admitted, filed September 30, 2015. The motions are granted to the extent described below and the court's reasoning follows.

I. BACKGROUND

Nine municipal government plaintiffs seek an accounting and payment of Capital Improvement Project (CIP) funds that were allocated to them under the first Compact of Free Association with the United States from 1986-2003, but which they did not yet receive. They assert that most of the forty Chuuk municipal governments did not receive all of the CIP funds that were allocated to Chuuk municipalities under the first Compact. These particular United States government funds were received by the FSM national government, which would then, as needed or required, disburse them to the State of Chuuk, which would hold them for later disbursement to the respective municipalities.

When the first Compact ended, some \$5,903,032 had not yet been disbursed to the Chuuk municipalities for which they were earmarked. Of that sum, the national government still held \$2,442,214.99. Under FSM Public Law No. 13-51, enacted in September 2004, those CIP funds reverted to the municipalities' current accounts. Based on a later reconciliation conducted by the national and state governments, the nine plaintiff municipalities had not received the following first Compact CIP funds that they were entitled to:

Eot	\$210,214
Ettal	\$334,982
Lukinoch	\$633,896
Moch	\$90,597
Nomwin	\$17,061
Parem	\$245,992
Ruo	\$70,959
Satowan	\$1,000,794
Udot	\$293,516

The state government, responding to requests for admission, admitted that these figures were correct. However, it contended that, except for the CIP funds that the national government had retained, the municipalities had waived any further payment of first Compact CIP money by signing a December 2007 memorandum of understanding with the Chuuk state government that set a pro rata apportionment formula for the distribution of CIP funds still held by the national government.

Most of the \$2.44 million retained by the national government was, under a January 14, 2010 Presidential directive, distributed by the national government directly to the intended municipal government recipients, bypassing the state government. The distribution followed the memorandum's pro rata formula. Some amounts remain in the national government's hands.

On January 24, 2012, the municipal plaintiffs filed suit against the national and state governments seeking an accounting of these funds by the national and state government defendants and alleging that, because these funds had not been paid, the state defendants (the State of Chuuk and its Governor) were liable to them for conversion, unlawful misappropriation of funds, and violation of their civil rights.¹ During discovery, the national government accounted for the funds it had disbursed

¹ They also alleged a breach of contract claim for a 1999 loan of municipal CIP funds to the state government to finance the Chuuk airport renovation project, which was the subject of an earlier motion for partial summary judgment. *Eot Municipality v. Elimo*, 19 FSM R. 290 (Chk. 2014). The grant of that motion

to the municipalities and that it still held. The national government, in its January 19, 2015 Answers to Requests for Admission, admitted, and the plaintiff municipalities do not dispute, that it has paid the plaintiffs the following sums:

Eot	\$86,970.18
Ettal	\$138,587.47
Lukinoch.	\$262,256.81
Moch	\$37,481.98
Nomwin	\$7,058.51
Parem	\$95,845.93
Ruo	\$29,356.95
Satowan	\$414,050.63
Udot	\$121,434.07

The national government further admitted that, as of January 8, 2015, it still held the following municipal CIP funds: Ettal, \$2; Param, \$5,926.41; and Ruo, 36¢. The national government further averred that it has paid everything else to the Chuuk state government. Neither the municipal plaintiffs nor the state government dispute these figures or the national government's statement that the rest of the CIP funds had been paid to the state government.

II. MOTION TO DEEM REQUESTS FOR ADMISSION ADMITTED

In their second set of requests for admissions directed to the Chuuk state government, served on October 18, 2013, the plaintiff municipalities asked the state government to admit that \$3.6 million municipal CIP funds, which the state had received from the national government, were not passed on to the municipalities but were instead used by the state for other purposes, including \$1.5 million that was "borrowed" without authorization to reimburse the United States government for funds that Chuuk had improperly expended and that Chuuk intended to repay the municipalities. The Chuuk state government did not respond to this set of requests and never asked for more time to respond or to be allowed to respond belatedly.

Under the rules, "[t]he matter is admitted unless, within 30 days after service of the request, . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party, or by the party's attorney . . ." FSM Civ. R. 36(a). Thus, a party intending to admit all of a set of requests for admission directed to it, does not have to respond to those requests since its non-response will be deemed an admission. Under Rule 36(a), if a party to whom requests for admission are directed does not answer the requests within 30 days after service, the matter that is the subject of the requests is deemed admitted, and it is irrelevant if the request sought admission of so-called ultimate facts since Rule 36(a) neither expressly nor implicitly excepts such facts from its requirements. Mathehei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 25 (Yap 1999).

Any matter thus admitted under Rule 36 "is conclusively established unless the court on motion permits withdrawal or amendment of the admission." FSM Civ. R. 36(b). No such motion has been made. It is thus established that the Chuuk state government received about \$3.6 million in municipal CIP funds that the state used for other purposes and that were not sent on to the various municipalities.

resulted in the entry of a Rule 54(b) final judgment in favor of twelve (the nine involved here plus Fananou, Fanapangas, and Tamatam) municipal government plaintiffs. Eot Municipality v. Elimo, 20 FSM R. 7 (Chk. 2015).

The plaintiffs' motion that these requests for admission be deemed admitted is hereby granted.

III. SUMMARY JUDGMENT MOTION

A. *Standard*

The court now turns to the motion for partial summary judgment. It is unopposed. Although the failure to file an opposition is deemed, by rule, FSM Civ. R. 6(d), to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion because there must still be a sound basis in law and in fact on which to grant the motion. Aunu v. Chuuk, 18 FSM R. 467, 468 (Chk. 2012); Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 610 (Chk. 2011); Salmon v. Wainit, 16 FSM R. 143, 146 (Chk. 2008); American Trading Int'l. Inc. v. Helgenberger, 15 FSM R. 50, 52 (Pon. 2007); Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004); Fredrick v. Smith, 12 FSM R. 150, 152 (Pon. 2003); Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 95 (Pon. 1995).

A court, viewing the facts and inferences in a light that is most favorable to the non-moving party, will render summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015); FSM v. Kuo Rong 113, 20 FSM R. 27, 30 (Yap 2015); George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014); Zacchini v. Hainrick, 19 FSM R. 403, 410 (Pon. 2014).

B. *Conversion and Unlawful Misappropriation Claims*

Based on the Chuuk state government's admissions and on the unanswered requests deemed admitted, there is no genuine dispute about the material facts. The nine plaintiff municipalities were entitled to the amount of CIP funds shown above on page 486. The Chuuk state government received part of those funds and did not pass those funds on to the municipal governments, but used the funds for other purposes. The national government retained some of the municipal CIP funds, which it has since either distributed directly to the respective municipality, as shown above on pages 487, or which it still has and agrees it owes.

These facts satisfy the elements for conversion, and apparently also for unlawful misappropriation of funds, which seems to be the same cause of action as conversion. The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014); Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009); Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128-29 (Chk. 2005); Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Under FSM Public Law No. 13-51, the plaintiff municipalities owned and had a right to possess, as their current account funds, the subject CIP funds. The state government's unauthorized use of those CIP funds for its own purposes was an exercise of dominion over those CIP funds inconsistent with the municipalities' right to them, and the municipalities were damaged, in the amount of their missing CIP funds, by not being able to use those funds themselves. The nine municipal plaintiffs have therefore made out a prima facie case that they are entitled to summary judgment for the amounts of CIP funds that the state government converted.

Deducting from the undisputed reconciliation figures, the amounts that the national government has admitted paying to the plaintiff municipalities and further deducting the sums that the national

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government admits that it still holds for Ettal, Parem, and Ruo,² the State of Chuuk would be liable to the nine plaintiff municipalities as follows:

Eot	\$123,243.82
Ettal	\$196,392.53
Lukinoch.	\$371,639.19
Moch	\$53,115.02
Nomwin	\$10,002.49
Parem	\$144,219.66
Ruo	\$41,601.69
Satowan	\$586,743.37
Udot	\$172,081.93

The nine municipalities ask that they be further awarded, under their conversion and misappropriation theories, prejudgment interest of nine per cent on the converted funds from the date of the conversion as well as the usual nine per cent postjudgment interest. But, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest. Eot Municipality v. Elimo, 20 FSM R. 7, 11-12 (Chk. 2015). The state government has not expressly consented, by statute or by contract, to the imposition of interest for these claims or for a claim such as this. Thus, no interest will be permitted on these claims.

C. Affirmative Defenses

Regardless of whether the non-movants have filed a written opposition, a plaintiff, when moving for summary judgment, must also overcome all of the adverse parties' affirmative defenses in order to be entitled to summary judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014); Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015); Chuuk Health Care Plan v. Pacific Int'l. Inc., 17 FSM R. 535, 538 (Chk. 2011); Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 (Chk. 2011); Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 108 (Pon. 2010); FSM Dev. Bank v. Jonah, 13 FSM R. 522, 523 (Kos. 2005); Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005) (movant's burden extends to affirmative defenses as well as to the plaintiff's own positive allegations). A plaintiff, when moving for a summary adjudication, must not only show that there is no issue of material fact but must also show that the affirmative defenses are insufficient as a matter of law. Andrew, 19 FSM R. at 340 (App. 2014); Isamu Nakasone Store, 20 FSM R. at 57 (Pon. 2015).

The Chuuk state government raised as affirmative defenses: 1) waiver and ratification based on the December 2007 memorandum of understanding; 2) the FSM statute of limitations and the Chuuk Sovereign Immunity Act, Chk. S.L. No. 5-01-39; 3) equitable or promissory estoppel and unclean hands; 4) lack of authority to act on certain plaintiffs' behalf; and 5) the failure to state a claim for which relief can be granted.

The December 2007 memorandum of understanding is a contract between the state government and the municipal governments. Interpretation of contract provisions is a matter of law to be determined by the court. Smith v. Nimega, 19 FSM R. 163, 169 (App. 2013). A review of that memorandum does not reveal any language that could be construed as a waiver of any of municipalities' rights to the first Compact CIP funds or a ratification or an accord and satisfaction

² To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery.

preventing any further disbursement.

Nor does the FSM statute of limitations bar this claim. The applicable limitations period under both the FSM statute, 6 F.S.M.C. 805, and the Chuuk Sovereign Immunity Act, Chk. S.L. No. 5-01-39, § 11, is six years after the cause of action accrues. "A cause of action does not accrue for the purposes of a statute of limitations until all elements are present, including damages . . ." Allen v. Allen, 17 FSM Intrm. 35, 39 (App. 2010) (quoting 51 AM. JUR. 2d *Limitation of Actions* § 151, at 548-49 (rev. ed. 2000)). The December 2007 memorandum of understanding was based on a September 30, 2007 fund balance verification, which appears to be the point at which the damages amount became known. Both events are within the limitations period.

The Chuuk Sovereign Immunity Act permits suits against the state government for claims, "whether liquidated or unliquidated," that are made "upon an express or implied agreement with the State of Chuuk or with any of its political subdivisions," Chk. S.L. No. 5-01-39, § 5(c). It thus does not bar this suit to recover funds that, by agreement, were to be passed on by the state government to the municipal governments. However, as mentioned above and as previously ruled in this case, sovereign immunity does bar the imposition of interest as part of or on a judgment against the State of Chuuk. Eot Municipality v. Elimo, 20 FSM R. 7, 10-12 (Chk. 2015) (interest cannot be part of a judgment against the state unless the state has consented, by statute or contract, to the imposition of interest). To that extent, the plaintiffs cannot overcome Chuuk's affirmative sovereign immunity defense.

The unclean hands affirmative defense is also insufficient as a matter of law. If both parties have unclean hands, the court may afford relief to the party who bears a lesser degree of fault. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005). In this case, there are no allegations that the municipal governments committed any wrongful acts while the state government, by its own admissions, committed wrongful acts by diverting the municipalities' CIP funds to the state's own uses.

The estoppel defenses are also insufficient as a matter of law because "estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation." Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 163 (Pon. 1997). "Estoppel is to be applied against wrongdoers, not the victim of a wrong." Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012). Generally, a party who has "unclean hands" cannot invoke an equitable doctrine. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996). As noted, the state government, not the municipal governments, is the party with "unclean hands." This principle also makes the equitable defense of waiver (as opposed to waiver alleged to have occurred contractually in the December 2007 memorandum of understanding) insufficient as a matter of law.

No basis is apparent for the defense of lack of authority to act on certain plaintiffs' behalf. In the instant motion, the plaintiffs, in response to this defense, cryptically comment that "[t]wo plaintiffs dismissed their claim in this lawsuit, but subsequently joined in a new lawsuit." They further assert that "[p]laintiffs' counsel has authority for all plaintiffs in this lawsuit." The court sees no reason to doubt that statement.

The state defendants also listed as an affirmative defense the failure to state a claim on which relief might be granted. As is apparent from the above discussion, the municipalities have adequately stated claims for conversion (and unlawful misappropriation of funds to the extent that it is identical with the conversion claim). Whether the municipalities' civil rights claim is one on which relief may be granted is discussed next.

C. *Civil Rights Claim*

The plaintiffs seek, under 11 F.S.M.C. 701(3), a judgment against the state government on the theory that they held property rights in the CIP funds and that the state government violated their constitutional rights by converting those CIP funds to its own uses thereby depriving the municipalities of their property. Although the amount of CIP funds the municipalities might recover will not change if they were to prevail on this theory, the plaintiffs seek an 11 F.S.M.C. 701(3) civil rights judgment because, if successful, they can, as part of the statutorily permitted relief, seek further damages in the form of their reasonable attorney's fees and expenses.

Since the FSM statute, 11 F.S.M.C. 701(3), is based on the United States statute, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012); Kaminanga v. Chuuk, 18 FSM R. 216, 219 n.1 (Chk. 2012); Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 n.2 (Pon. 2010); Sandy v. Mori, 17 FSM R. 92, 96 n.3 (Chk. 2010); Robert v. Simlana, 14 FSM R. 438, 443 n.1 (Chk. 2006); Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001); Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001); Plais v. Panuelo, 5 FSM R. 179, 204 (Pon. 1991); *see also* Annes v. Primo, 14 FSM R. 196, 206 n.6 (Pon. 2006).

The plaintiff municipal governments were created pursuant to Article XIII of the Chuuk Constitution. The municipal governments' civil rights cause of action presumes that municipalities can make civil rights claims against the state of which they are a part. That, however, is generally not the case. A municipality "created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." Williams v. Mayor of Baltimore, 289 U.S. 36, 40, 53 S. Ct. 431, 431, 77 L. Ed. 1015, 1020 (1933). "Political subdivisions generally are held to lack constitutional rights against the creating state." Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders, 893 F. Supp. 301, 314 (D.N.J. 1995) (quoting 13A WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE § 3531.11, at 32); *see also* City of Safety Harbor v. Birchfield, 529 F.2d 1251, 1254 (5th Cir. 1976) ("political subdivisions of states do not possess constitutional rights").

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Rockford Bd. of Educ. v. Illinois State Bd. of Educ., 150 F.3d 686, 688-89 (7th Cir. 1998) (Posner, C.J.). The purpose of the civil rights statute "was to create a federal remedy for private parties, not government bodies." City of New Rochelle v. Town of Mamaroneck, 111 F. Supp. 2d 353, 368 (S.D.N.Y. 2000).

Accordingly, summary judgment for the plaintiffs will, as a matter of law, be denied on their civil rights claim. It fails to state a claim on which relief may be granted. When a party's summary judgment motion has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party, even in the absence of a cross motion for summary judgment, if the original movant has had an adequate opportunity to show that there is a genuine factual issue and that its opponent is not entitled to judgment as a matter of law. Isamu Nakasone Store, 20 FSM R. at 58. It seems that the plaintiffs have had that opportunity. Therefore judgment will be rendered for the defendants on the nine municipal plaintiffs' civil rights claim. Likewise, judgment will also be rendered against the municipal plaintiffs on their claims for both prejudgment and postjudgment interest.

IV. CONCLUSION

There being no just cause for delay, the clerk is expressly directed to enter a final judgment, in the amounts set forth above in the table on page 489, against the State of Chuuk, on the nine municipal plaintiffs' conversion (and unlawful misappropriation) claims and in the state government's favor on the civil rights claim. FSM Civ. R. 54(b).

Since partial summary judgment and a Rule 54(b) final judgment was previously entered on twelve municipal plaintiffs' breach of contract claim, Eot Municipality v. Elimo, 20 FSM R. 7, 12 (Chk. 2015), and since, unless the court is mistaken, the plaintiffs do not seek any further relief having obtained sufficient accounting to prevail on their claims to recover missing CIP funds, the court, unless informed otherwise within 28 days of entry of this order, will consider all of the plaintiffs' claims resolved. The court notes that there is a cross-claim by the national government against the state government, which as a result of this decision may have become moot. The court will therefore ask the parties to submit, no later than July 21, 2016, their views on whether this case can be closed.

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FSM SUPREME COURT TRIAL DIVISION

POHNPEI TRANSFER & STORAGE, INC.,)	CIVIL ACTION NO. 2011-011
d/b/a POHNPEI TRAVEL,)	
)	
Plaintiff,)	
)	
vs.)	
)	
PERCY SHONIBER,)	
)	
Defendant.)	
_____)	

ORDER DENYING MOTION TO RECUSE;
ORDER GRANTING MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Beauleen Carl-Worswick
Associate Justice

Trial: April 22, 2016
Decided: June 30, 2016

APPEARANCES:

For the Plaintiff: Erick B. Divinagracia, Esq.
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