

Notwithstanding, plaintiff did in fact receive notice of the Answer as evidenced by plaintiff's instant motion to strike and has therefore not been prejudiced by any purported inadequate service. Kosrae v. Langu, 16 FSM Intrm. 83, 87 (App. 2008) (holding that a lack of a certificate of service for a notice of appeal does not require dismissal where appellee would not be prejudiced by the lack of a certificate of service, although lack of actual service could). Because the plaintiff does not dispute that he actually received defendants' Answer, has acknowledged its existence by filing the instant motion, and, in fact, quotes directly from the Answer in the instant motion, actual service has not been contested. "Where actual service is not contested, there is little point to invalidating an Amended Complaint for lack of a certificate" Ives, 3 F. Supp. 2d at 195. The same reasoning should apply here where "[i]nvalidation would seem to serve no purpose except to fruitlessly extend the length of this litigation." *Id.* Accordingly, defendants' Answer should be considered, despite their failure to comply with service requirements. See Russell v. City of Milwaukee, 338 F.3d 662, 666 (7th Cir. 2003) (the absence of a proper certificate of service does not require the invalidation of the pleading where service is not contested or service is actually accomplished).

ACCORDINGLY, because plaintiff received timely notice of defendants' Answer, plaintiff's motion to strike for inadequate service is DENIED. However, counsel for defendant is INSTRUCTED to file more accurate and descriptive certificates of service in future filings with this court.

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CHUUK STATE SUPREME COURT APPELLATE DIVISION

MINORU KAMA,)	CIVIL APPEAL NO. 02-2012
)	
Appellant,)	
)	
vs.)	
)	
CHUUK STATE,)	
)	
Appellee.)	
_____)	

OPINION

Argued: April 30, 2014
Submitted: July 17, 2014
Decided: July 12, 2016

BEFORE:

Hon. Keske S. Marar, Associate Justice, Presiding
Hon. Derensio S. Konman, Temporary Justice*
Hon. Brian Dickson, Temporary Justice*

*Attorney at Law, Weno, Chuuk

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Kama v. Chuuk
20 FSM R. 522 (Chk. S. Ct. App. 2016)

APPEARANCES

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HEADNOTES

Appellate Review – Standard – Civil Cases – De Novo; Civil Procedure – Summary Judgment – Grounds

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if it concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

Appellate Review – Standard – Civil Cases

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

Judgments

There is no Chuuk statute making judgments against the state (or a municipality) a vested property interest, and there are no statutes requiring that judgments be paid within a certain time, or providing the means to effect payment if the governmental entity does not have the funds available. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

Constitutional Law – Taking of Property; Judgments

The state's failure to appropriate funds to pay a judgment debt does not constitute a taking in violation of the due process clause because the property right created by a judgment against a government entity is merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

Constitutional Law – Taking of Property; Judgments

A money judgment against the state is not property such that its non-payment constitutes a taking, but a money judgment against the state is a recognition of the state government's continuing debt or obligation. Kama v. Chuuk, 20 FSM R. 522, 529-30 (Chk. S. Ct. App. 2016).

Separation of Powers – Chuuk

The Legislature raises funds by enacting tax legislation and the executive collects those funds. Under the Chuuk Constitution's separation of powers scheme, the executive branch, the Governor, proposes the state's budget and how to spend the state's money, and the Legislature appropriates the funds that were or will be raised and directs the executive how to spend the appropriated funds. Kama

v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

Separation of Powers – Chuuk – Judicial Powers

The judiciary cannot usurp the other branches' powers by appropriating and spending the state's money without any regard to the Chuuk Constitution's separation of powers. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

Debtors' and Creditors' Rights – Orders in Aid of Judgment; Separation of Powers – Chuuk – Judicial Powers

The Chuuk State Supreme Court cannot issue an order directing the payment of money by Chuuk State absent an appropriation therefor. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

Debtors' and Creditors' Rights – Orders in Aid of Judgment; Judgments

If a judgment creditor wants Chuuk to furnish money to pay his judgment now, he must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it. Kama v. Chuuk, 20 FSM R. 522, 530-31 (Chk. S. Ct. App. 2016).

Debtors' and Creditors' Rights – Orders in Aid of Judgment; Judgments; Separation of Powers – Chuuk

Since the principle that funds appropriated for other purposes cannot be redirected to pay judgments is inherent in the separation-of-powers scheme in the Chuuk Constitution, the Chuuk State Supreme Court cannot levy any writs on Chuuk state funds because those writs would be levied on money that the Chuuk Legislature has already appropriated for another purpose. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Constitutional Law – Interpretation

A constitutional provision cannot be unconstitutional under the constitution it is a part of. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Separation of Powers – Chuuk – Judicial Powers; Separation of Powers – Chuuk – Legislative Powers

The judicial branch does not have the power to appropriate money. The judicial branch cannot enact statutes or prescribe by statute. The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Attachment and Execution; Debtors' and Creditors' Rights – Orders in Aid of Judgment; Separation of Powers – Chuuk

Chuuk State Law No. 190-08, § 4 does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an attachment, execution, or garnishment of public property. The general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Separation of Powers – Chuuk – Judicial Powers; Sovereign Immunity – Chuuk

The judicial branch can, consistent with the state's waiver of sovereign immunity, declare the amount of the state's liability, but while the Chuuk State Supreme Court is empowered to declare the rights as between a judgment creditor and the government, it cannot enforce payment of the judgment absent legislative appropriation. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Separation of Powers – Chuuk – Judicial Powers; Sovereign Immunity; Sovereign Immunity – Chuuk

Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of consent to the appropriation. When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. Kama v. Chuuk, 20 FSM R. 522, 531-32 (Chk. S. Ct. App. 2016).

Debtors' and Creditors' Rights – Orders in Aid of Judgment; Separation of Powers – Chuuk – Judicial Powers

For a money judgment against the state to be paid there must be an appropriation by the Legislature and the courts have no power to compel an appropriation. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

Sovereign Immunity

A sovereign's judicial power does not extend to lawsuits against the sovereign unless the sovereign has waived its immunity to suit and then only to the extent that it has waived its immunity. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

Attachment and Execution; Separation of Powers – Chuuk; Sovereign Immunity – Chuuk

When Chuuk not only has not expressly waived its sovereign immunity to writs of attachment, execution, and garnishment, but has also gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs, that statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

Constitutional Law – Chuuk – Equal Protection; Constitutional Law – Equal Protection

A state court litigant's right to equal protection is not violated because he can only get a judgment in the state court and cannot get a judgment in the FSM Supreme Court. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Constitutional Law – Chuuk – Equal Protection; Constitutional Law – Equal Protection

Each court system, national and state, treats all persons before it equally under the law and the difference in each court system's jurisdictional requirements is not unequal treatment under the laws. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Civil Procedure – Declaratory Relief; judgments – Interest

A declaratory judgment is not a money judgment and does not need to mention interest. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Judgments; Statutes – Presumptions

The statutory presumption that judgments over twenty years old have been satisfied is a rebuttable presumption. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

Constitutional Law – Due Process; Constitutional Law – Equal Protection; Constitutional Law – Taking of Property; Judgments

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

COURT'S OPINION

PER CURIAM:

This appeal arises from the Chuuk State Supreme Court trial division's July 25, 2012 Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment. That trial court order in Civil Action No. 008-2011 confirmed plaintiff Minoru Kama's judgment in Civil Action No. 129-90 and denied his claim that that judgment was a property interest in the State of Chuuk; denied that Kama's civil rights had been violated by Chuuk's failure to satisfy the Civil Action No. 129-90 judgment; denied Kama's claim that, under the equal protection clause, the Chuuk State Supreme Court was constitutionally authorized to issue writs against the State of Chuuk to enforce judgments; and ruled that an unpaid judgment against the State of Chuuk is valid even after the expiration of 20 years. Kama v. Chuuk, 18 FSM Intrm. 326, 336 (Chk. S. Ct. Tr. 2012). Kama appealed the trial court decision to the extent that it denied his summary judgment motion.

By the parties' consent, we entertained oral argument for this appeal on April 30, 2014, even though the briefing was not completed, but would be after oral argument. The State of Chuuk's brief was filed on May 29, 2014, and Kama's reply brief was filed on July 17, 2014. We then considered the matter submitted to us for our decision. When we were able to, we held our chambers conference to formulate our opinion in this matter. We reached substantial agreement, and set about drafting it in written form to be circulated among the panel members. At various times, one or another panel member was off-island for extended periods.

Unfortunately, during a long absence in part due to the need for medical treatment, the presiding member of our panel, Associate Justice Keske S. Marar, in December, 2015, passed away on Oahu. It is therefore with a heavy heart that we, the remaining panel members, issue this opinion, per curiam, unchanged from what we had agreed upon in conference, and with only minor changes from the last draft seen by all three panel members.

We affirm the trial court.

I. BACKGROUND

Minoru Kama is or was the undisputed owner of Lot 64098. Sometime around 1989, the State of Chuuk, in the process of paving and widening a road, extended the road onto Kama's land. In 1990, Kama filed a complaint (docketed as Civil Action No. 129-90), premised as an inverse condemnation action. Chuuk offered, and Kama accepted, \$80,000 as compensation for the land that was taken. An \$80,000 stipulated judgment was entered on June 13, 1994. The judgment further stipulated that if payment was not made within 90 days, post judgment interest would then accrue from the date of the entry of judgment. No payment was made within 90 days.

On October 18, 1999, the trial court, on its own motion, ordered that the \$80,000 judgment against Chuuk State be set aside and held for naught, and further ordered that the case be set for trial on the merits at the request and notice by either party. Kama v. Chuuk, 9 FSM Intrm. 496, 500 (Chk. S. Ct. Tr. 1999). The trial court also ordered that a previous order in aid of judgment that ordered the judgment be paid from Chuuk's public funds be vacated because the judgment was void and since the order conflicted with the statute banning the attachment, execution, or garnishment of public property. *Id.* at 497 (citing Chk. S.L. No. 190-08, § 4).

On appeal, we reversed that order because the motion for relief from judgment had been made by the trial court itself and not by a party, Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App.

2002), and because the trial court's *sua sponte* motion and order voiding of the judgment were made without notice, *id.* at 600. We held that when considering the order in aid of judgment:

This court concludes that this provision [Chk. S.L. No. 190-08, § 4] does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an "attachment, execution and garnishment of public property." The July 7, 1999 order in aid of judgment does not appear to act in such a fashion. It ordered the Chuuk Director of Finance to submit budget requests to the Legislature. (While the court may have some doubt whether an order in aid of judgment in one case can include orders in aid of judgments in "all other similarly unpaid court judgments" that point was not raised and argued and so will not now be addressed here.) The order also generally ordered the state to pay, but every money judgment is an order to pay. The July 7, 1999 order in aid of judgment is therefore reinstated to the extent that its terms are still applicable.

Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002) (noting that only a combined total of \$5,920 had been paid on the judgment from 1998 to 2002).

Following the FSM Supreme Court's ruling in Narruhn v. Chuuk and presumably picking his best test case,¹ plaintiff's counsel then filed a new case on February 10, 2011, Kama v. Chuuk, Civil Action No. 008-2011, in which Minoru Kama alleged three causes of actions: (1) violation of civil rights and constitutional right of due process; (2) confirmation of [the Civil Action No. 129-90] judgment; and (3) declaratory relief. On summary judgment, the trial court concluded that an unpaid judgment was enforceable against Chuuk even after 20 years and that the statutory presumption of payment of a judgment cannot be raised until after the lapse of 20 years from when the debt is either due or demandable. Kama v. Chuuk, 18 FSM Intrm. 326, 335-36 (Chk. S. Ct. Tr. 2012). The trial court further held that since the Chuuk Legislature is responsible for enacting state laws and appropriating the money necessary to operate the government, the court, adhering to the authority vested in the judicial branch, should only interpret the laws regarding property in Chuuk and should not take over the Legislature's role. *Id.* at 332. The trial court concluded that since there had been no legislative intent shown of a specific desire to ascribe a property right to judgments, such a right could not be ascribed to judgments absent specific Chuuk legislation creating a specific property right. *Id.* The trial court held that a failure to timely fulfill a judgment does not constitute a taking in violation of the due process clause as there continues to be an existing liability against the state. *Id.* at 333.

Kama timely appealed.

¹ On September 15, 1993, the Chuuk State Supreme Court entered a \$40,000 stipulated judgment for Alex Narruhn against Chuuk in Civil Action No. 28-93. By 2008, Chuuk had paid only \$6,720 on that judgment. Plaintiff's counsel then filed an FSM Supreme Court case alleging that the non-payment of the state court judgment constituted an unconstitutional taking of his property. The FSM Supreme Court abstained from the case so that the Chuuk State Supreme Court could resolve whether the state court judgment against Chuuk was property under Chuuk state law and so that Narruhn could seek further enforcement of his No. 28-93 judgment there. Narruhn v. Chuuk, 16 FSM Intrm. 558, 564 (Chk. 2009). Narruhn appealed and the FSM Supreme Court appellate division affirmed that abstention. Narruhn v. Chuuk, 17 FSM Intrm. 289, 300 (App. 2010).

II. ISSUES PRESENTED

Minoru Kama contends that the trial court erred by not holding that he had a property right in his judgment against the state and that the state's non-payment violated his due process and equal protection civil rights under 11 F.S.M.C. 701. Kama asks that we inform him what power the court has to enforce his judgment (or any judgment) against Chuuk and that we tell him what was the purpose of confirming his judgment against Chuuk if the court will not enforce it against the state.

Kama contends that the Chuuk statutory ban on levying writs against the state, Chk. S.L. No. 190-08, § 4, is unconstitutional and that the trial court's holding is an unconstitutional deprivation of the court's judicial power and vests power in the Chuuk Legislature that it should not have. Kama claims that because of this the court can no longer act as a check or balance against the Legislature and that it is no longer a co-equal branch of government. Kama contends that he sought declaratory relief and none was given although he was entitled to have a right of enforcement of the underlying judgment prescribed.

Kama also contends that there was an erroneous determination of law and fact because accrued interest of over \$119,597.34 was not included in the confirmation of the \$80,000 judgment.

III. STANDARD OF REVIEW

We use the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Bualuay v. Rano, 11 FSM Intrm. 139, 149 (App. 2002). Therefore, if we conclude that a genuine issue of material fact was present, then we must rule that the summary judgment should have been denied; and if we conclude that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, we rule *de novo* on whether the movant was entitled to judgment as a matter of law. *Id.* We may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. FSM Dev. Bank v. Adams, 14 FSM Intrm. 234, 249 (App. 2006).

IV. ANALYSIS

Kama's arguments can be broken down into four broad categories – 1) that judgments against a state government, particularly state court judgments, are property; 2) that the constitutional separation of powers with three co-equal branches of government gives the courts the power to enforce payment of his money judgment against the state without legislative appropriation; 3) an equal protection claim; and 4) that his judgment should be amended to show that he is entitled to 9% interest on \$80,000 since 1994.

This case presents a troubling situation. Usually when we are called on to interpret laws, the cause of the dispute is that a law has been enacted that a litigant believes violates constitutional provisions. Here, the dispute arose, not from the Legislature's actions, but from the Legislature's inaction – its failure to appropriate funds to satisfy judgments against the state.

A. *Property Rights in Judgments*

Kama contends that a judgment against the state is a vested property interest and thus a long delay in paying a judgment is an unconstitutional taking of property. The trial court held that: "Based on the research of existing legislation, there has been no showing of a specific desire to ascribe a property right to judgments, and therefore, absent a specific Chuuk State legislation creating a specific property right, such a right cannot be ascribed to judgments." Kama v. Chuuk, 18 FSM Intrm. 326,

332 (Chk. S. Ct. Tr. 2012).

Kama contends that this cannot be correct – a judgment must be a vested property interest that, if it remains unpaid, would constitute a taking of property without just compensation and, if some persons are paid and he is not, then that would violate his constitutional right to equal protection. Kama does not cite any authority that directly holds that judgments are a vested property right but presumes that it must be true. Kama does not assert that any specific legislation or act of the Chuuk Legislature creates the property rights he claims. Nor does he point to any specific case law to support that result.

In 1883, the United States Supreme Court held that a judgment against a government entity was not property that can be taken when it was not paid by any certain time but that the property right created by a judgment against a government entity was not a right to payment at a particular time but merely the recognition of a continuing debt of that government entity. Louisiana ex rel. Folsom v. Mayor of New Orleans, 109 U.S. 285, 289, 3 S. Ct. 211, 214, 27 L. Ed. 936, 938 (1883). That ruling is still good law. In Evans v. City of Chicago, 689 F.2d 1286, 1297-98 (7th Cir. 1982), the court, distinguishing Evans from Folsom, held that the delay in payment of judgments against the City of Chicago was a deprivation of a property interest because a state statute made final judgments against municipalities a vested property interest that must be paid within one year and that if the municipality did not or could not pay the judgment within that time then the municipality was required to issue bonds and levy special taxes in order to pay the judgments against it.

There is no Chuuk statute making judgments against the state (or a municipality) a vested property interest. Also, there are no statutes, as there was in Evans, requiring that judgments be paid within a certain time, or providing the means to effect payment if the governmental entity does not have the funds available.²

The court in Minton v. St. Bernard Parish School Board, 803 F.2d 129, 132 (5th Cir. 1986) noted Folsom's continuing validity, and held that "the School Board's failure to appropriate funds to pay the [judgment] debt to the Mintons does not constitute a taking in violation of the due process clause" because "the property right created by a judgment against a government entity is . . . merely the recognition of a continuing debt of that government entity."³

Thus, it is not the underlying factual basis for a judgment that must be a property right; the judgment itself must be property before constitutional guarantees against the taking of property come into play. For the reasons given above and further explained in the next section, the judgment itself is not property of that sort. Accordingly, we affirm the trial court ruling that a money judgment against

² The Chuuk Governor did issue an Executive Order that notes that no law currently defines whether a judgment against the state or one of its agencies is property within the meaning of the word in Article III, section 2 of the Chuuk Constitution or Article IV, section 3 of the FSM Constitution and decrees that state court judgments against the state are not property as the phrase is used in those constitutional provisions. Chk. Exec. Order No. 02-2011 (May 21, 2011). Needless to say, the Chuuk Legislature could, if it chose to, enact a statute defining judgments as that type of property, effectively overruling that executive order. It has not chosen to enact such legislation.

³ The Minton court did hold that the Mintons' allegation that the School Board paid judgments obtained by local residents and did not pay judgments obtained by non-residents did state an equal protection claim but explicitly noted that it would not rule on whether, if proven, the Mintons were entitled only to declaratory relief or to additional relief. Minton, 803 F.2d at 135.

the state is not property such that its non-payment constitutes a taking.⁴ We also affirm the trial court ruling that a money judgment against the state is a recognition of the state government's continuing debt or obligation.

B. Separation of Powers of the Co-Equal Branches of Government

Kama focuses his argument on the idea that since the judiciary is a co-equal branch of government, it ought to be able to enforce its judgments against the other co-equal branches and compel those branches to satisfy the court's money judgments. Kama contends that the restriction on levying writs against the sovereign State of Chuuk is unconstitutional and that the trial court holding deprives the judicial branch of its constitutional status as a co-equal branch of government and vests unconstitutional powers in the Chuuk Legislature. He argues that for the court to prove it is a co-equal branch of government it must give him the relief he seeks – the ability to attach, execute, or garnish Chuuk public funds.

Kama thus asserts that section 4 of the Chuuk Judiciary Act is unconstitutional because it prevents the court from enforcing its judgments against the state by the means of writs that would divert state funds to judgment creditors. That statute provides that

[e]ach court shall have power to issue all writs for equitable and legal relief; except the power of attachment, execution and garnishment of public property and to issue other process, make rules and orders, and do all acts, consistent with law and with the rules established by the Chief Justice of the State Supreme Court, as may be necessary for the due administration of justice

Chk. S.L. No. 190-08, § 4.

We conclude that the powers that Kama asks the court to exercise and what he seeks is not for the judiciary to be a co-equal branch of government but for it to be the superior branch of government. The Legislature raises funds by enacting tax legislation and the executive collects those funds. Under the Chuuk Constitution's separation of powers scheme, the executive branch, the Governor, proposes the state's budget, Chk. Const. art. VIII, § 4, and how to spend the state's money, and the Legislature appropriates the funds that were or will be raised and directs the executive how to spend the appropriated funds, Chk. Const. art. VIII, § 2. Kama would have the court, supposedly as a co-equal, perform the powers of the other two branches of government and have the court usurp those branches' powers by appropriating and spending the state's money without any regard to the Chuuk Constitution's separation of powers. We note that

[i]t is indisputable, as a matter of law, that th[e Chuuk State Supreme] Court cannot issue an order directing the payment of money by Chuuk State absent an appropriation therefor. To do so would be in violation of Article VIII, § 2 of the Chuuk State Constitution and the Chuuk State Judiciary Act, Chk. S.L. No. 190-08, § 4.

Narruhn v. Chuuk, 11 FSM Intrm. 48, 53 (Chk. S. Ct. Tr. 2002) (footnotes omitted).

If Kama wants Chuuk law to define a court judgment against the state as a form of property that state law recognizes can be taken by the state's non-payment, Kama can ask the Chuuk Legislature to

⁴ Tellingly, Kama has never sought as relief the return of the land encroached upon even as an alternative to payment.

enact a statute that makes a judgment against the state that form of property. But if Kama wants Chuuk to furnish money to pay his judgment now, Kama must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it.

Any writs levied by the Chuuk State Supreme Court on Chuuk state funds will be levied on money that the Chuuk Legislature has already appropriated for another purpose. Funds appropriated for other purposes cannot be redirected to pay judgments. Chuuk statutory law sets this forth explicitly. "[I]n no event shall unappropriated funds or funds appropriated for another purpose be used to satisfy a money judgment under this [sovereign immunity] act." Chk. S.L. No. 5-01-39, § 17. Presumably, although he does not argue it, Kama also seeks to have this statute declared unconstitutional. This principle is inherent in the separation-of-powers scheme in the Chuuk Constitution. "No public funds may be paid out of the treasury of the State of Chuuk except as prescribed by statute." Chk. Const. art. VIII, § 2. Kama cannot ignore this constitutional provision nor can he even argue that it is unconstitutional. That is a legal and logical impossibility. A constitutional provision cannot be unconstitutional under the constitution it is a part of.

The judicial branch does not have the power to appropriate money. The judicial branch cannot enact statutes or prescribe by statute. The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to appropriate funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM Intrm. 16, 20 (Chk. S. Ct. Tr. 2011).

We have previously concluded that Chuuk State Law No. 190-08, § 4 "does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an 'attachment, execution and garnishment of public property.'" Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002). Kama dismisses that ruling as mere dicta and of no value as a precedent.

Regardless, the general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. See, e.g., Davis v. McDuffie, 185 Fed. App'x 7, 8 (5th Cir. 2012) (no writ of execution allowed against a state when sovereign immunity is not expressly and unequivocally waived); Diaz v. Department of Educ., 823 F. Supp. 2d 68, 77 (D.P.R. 2011) (government entities are not subject to writs of attachment); Wescott v. City of Omaha, 1988 WL 383125, at 2 (D. Nebr. 1988) (sovereign immunity statute bars writs of execution against government subdivisions); Owens v. Lewis, 1980 WL 1689, at 2 (M.D. Tenn. 1980) (writ of execution cannot be issued against Internal Revenue Service when sovereign immunity has not been waived by statute); Johnson v. Johnson, 332 F. Supp. 510, 511 (E.D. Pa. 1977) (sovereign immunity bars garnishment of government funds in the absence of legislation permitting such action); Grunley Constr. Co. v. District of Columbia, 704 A.2d 288, 290 (D.C. 1997) ("sue and be sued" clause in enabling legislation did not constitute waiver of sovereign immunity permitting a writ of attachment against the government); State ex rel. Dep't of Highways v. Olsen, 334 P.2d 847, 848 (Nev. 1959) (writ of "execution cannot properly be levied against the State in the absence of statute granting such right").

The judicial branch can, consistent with the state's waiver of sovereign immunity, declare the amount of the state's liability. While the Chuuk State Supreme Court is empowered to declare the rights as between a judgment creditor and the government, it cannot enforce payment of the judgment absent legislative appropriation. U.S. state courts are in almost unanimous agreement that they cannot compel the legislature to appropriate funds either directly or indirectly to satisfy a judgment. 72 AM. JUR. 2d *States, Territories, and Dependencies* § 73 (1974). Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy

a judgment in the absence of consent to the appropriation. Baltzer v. North Carolina, 161 U.S. 240, 245-46, 16 S. Ct. 500, 502, 40 L. Ed. 684, 687 (1896). When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. *Id.* at 243, 16 S. Ct. at 501, 40 L. Ed. at 686.

For a money judgment against the state to be paid there must be an appropriation by the Legislature and the courts have no power to compel an appropriation. *See, e.g., Newman Marchive P'ship, Inc. v. City of Shreveport*, 979 So. 2d 1262, 1265 (La. 2008) (court is constitutionally prohibited from invading legislature's province and forcing the state to pay its debts); Baudoin v. Acadia Parish Police Jury, 702 So. 2d 715, 717-18 (La. 1997) (for a money judgment to be paid there must first be an appropriation); Smith v. North Carolina, 222 S.E.2d 412, 418 (N.C. 1976) ("any judgment against the state will be uncollectible unless the legislature appropriates funds which can be used to pay the obligation"); Amantia v. Cantwell, 213 A.2d 251, 254 (N.J. 1965) (government employees granted declaratory judgment that statute entitled them to differential pay but court denied request for mandate directing payment because power to appropriate money rested with the Legislature); Ace Flying Serv., Inc. v. Colorado Dep't of Agriculture, 314 P.2d 278, 280 (Colo. 1957) (whether an appropriation will be made "is a legislative question, and over purely legislative questions the courts have no supervision or control"); Campbell Bldg. Co. v. State Road Comm'n, 70 P.2d 857, 862 (Utah 1937) (while the state court judgment was valid, the state "may refuse to pay and leave a claimant without any remedy" although "the obligation remains" and the legislature cannot destroy or impair that); State v. Woodruff, 150 So. 760, 766 (Miss. 1933) (money judgment against the state "although entered by its highest court, is not enforceable except by a legislative appropriation"); Myers v. English, 9 Cal. 341, 349 (Cal. 1858) (courts have "no power to avoid the effects of [the Legislature's] *non-action*" and "when the Legislature fails to make an appropriation [courts] cannot remedy that evil" (emphasis in original)); County of San Diego v. State, 164 Cal. App. 4th 580, 612-13 (Cal. Ct. App. 2008) (when the legislature fails to make an appropriation, courts have no ability to remedy the legislature's inaction) (reaffirming Myers); Commonwealth Dep't of Highways v. Circuit Court, 365 S.W.2d 106, 108 (Ky. Ct. App. 1963) (court's power "ends when the judgment is rendered . . . and execution cannot issue on a judgment against the state").

Kama nevertheless asserts that the Chuuk Judiciary Act section 4 provision barring writs directed to public property conflicts with the rest of section 4, which he sees as the true expression of the Chuuk Constitution's vesting of the state's judicial power in the Chuuk State Supreme Court. What Kama overlooks is that a sovereign's judicial power does not extend to lawsuits against the sovereign unless the sovereign has waived its immunity to suit and then only to the extent that it has waived its immunity. Here, not only has Chuuk not expressly waived its sovereign immunity to writs of attachment, execution, and garnishment, it has gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs. Chk. S.L. No. 190-08, § 4. That statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Accordingly, we affirm the trial court.

This, however, is not an excuse for the Chuuk Legislature to shirk its responsibilities. The Legislature has a deep and solemn obligation to maintain and uphold the dignity and the standing of the sovereign State of Chuuk and must manage the state's finances and see that the state's debt is extinguished. It seems that the other branches fail to recognize the accumulating judgment debts or do not want to assume the responsibility for their payment. Such a view is irresponsible and creates a mounting problem for future Chuuk leadership. Nonetheless, we will follow the law and take such actions as we are empowered to take, and only those actions.

C. Equal Protection

Kama contends that since he cannot go to the FSM Supreme Court and plead diversity jurisdiction, his equal protection rights are violated because a foreign citizen can, in the FSM Supreme Court through its diversity jurisdiction, obtain the relief he sought and was denied in the Chuuk State Supreme Court. For this proposition he cites Barrett v. Chuuk, 16 FSM Intrm. 229, 234 (App. 2009), in which a United States citizen alleged due process violations because his breach of contract judgment against Chuuk had gone unpaid for seventeen years, and in which the FSM Supreme Court granted Barrett a writ of garnishment.

The Barrett case is Kama's sole authority for this claim. Since the FSM Supreme Court appellate division decided that case, that court has pointedly ruled that its Barrett decision, because it was a default judgment, cannot have any value as a precedent and does not stand for the proposition that a judgment is a property right that affords judgment-creditors due process rights under the national Constitution and noted that the FSM Supreme Court had not to date, made any such a determination. Narruhn v. Chuuk, 17 FSM Intrm. 289, 299 (App. 2010). Since Kama can only point to Barrett for support and since the court that decided that case has held that it does not have any value as precedent, Kama has not shown that he was a victim of disparate treatment because he cannot enforce his judgment in the FSM Supreme Court.

Furthermore, Barrett was in the FSM national court and the national court is not a co-equal branch of the Chuuk state government. It is not subject to the separation of powers issues that bind the Chuuk State Supreme Court. Each court system, national and state, treats all persons before it equally under the law and the difference in each court system's jurisdictional requirements is not unequal treatment under the laws.

Accordingly, we affirm the trial court ruling that Kama's right to equal protection of the laws was not violated.

D. Interest Not Included in the Confirmation of Judgment

Kama contends that the trial court erred by failing to add \$119,597.34 in interest to the \$80,000 judgment it confirmed. Kama contends that the declaratory judgment in Civil Action No. 008-2011 should have included the \$119,597.34 plus \$19.73 in interest per day from November 18, 2011. For this proposition he also relies on the Barrett default judgment.

We think that is unnecessary and not error. The trial court in Civil Action No. 008-2011 rendered a declaratory judgment, not a money judgment. It declared that the June 13, 1994 judgment in Civil Action No. 129-90 is still a valid judgment and an existing, continuing obligation of the state. The stipulated money judgment in Civil Action No. 129-90 provided for, by agreement between the parties, Chuuk's liability for interest. That judgment sets out Chuuk's liability and continuing obligation to pay and it is that judgment which Kama will continue to seek payment of until it is either satisfied or compromised.

Since the declaratory judgment appealed from is not a money judgment, it need not mention interest. Chuuk did not brief any opposition to or question Kama's right to interest in Civil Action No. 129-90. Thus, Kama is not harmed by the trial court's failure to mention interest in the Civil Action No. 008-2011 declaratory judgment. It is mentioned in the judgment (Civil Action No. 129-90) that he will try to collect.

V. CONCLUSION

Accordingly, we affirm the trial court's declaratory judgment in Civil Action No. 008-2011. We therefore confirm the validity of the Civil Action No. 129-90 money judgment (and we thereby affirm the ruling that the statutory presumption that judgments over twenty years old have been satisfied is a rebuttable presumption). We thus also hold that a judgment against the state is not a property interest but an existing, continuing liability against the state. We uphold the constitutionality of Chuuk State Law No. 190-08, § 4, and we affirm that a failure to timely satisfy a judgment does not constitute a taking in violation of due process or equal protection. We further note, that the unpaid Civil Action No. 129-90 money judgment is the judgment that Kama must seek to have satisfied and that it contains a stipulation about interest.

* * * *

BEFORE:

Hon. Derensio S. Konman, Temporary Justice
Hon. Brian Dickson, Temporary Justice

ADDENDUM

While we are satisfied that the decision rendered in this case correctly follows the law; that Section 4 of the Chuuk Judiciary Act is constitutional; and that the State has the right as a sovereign to protect the public treasury, our decision leaves us with some concern.

Any government entity gains its legitimate authority from the people, and in order to sustain its legitimacy, it is necessary that the government maintain the people's trust. Chuuk enacted its Financial Management Act, Truk S.L. No. 5-44, to ensure that no officer of the State can obligate the State without the Legislature's full agreement. Yet, in some instances like the property transaction between Chuuk and Minoru Kama, there is no provision to appropriate funds to pay for the obligation. Even after the State confessed judgment and the court ordered it so, Kama was unable to collect more than the \$5,920 in payments made many years ago. The Executive branch has not proffered any items in its proposed budget to appropriate funds for such purpose, and the Legislature has turned a blind eye to the reality that Chuuk is indebted to the citizens of Chuuk. The Judiciary is restricted in its enforcement of judgments against the State. This situation is unsustainable.

We therefore urge both the Executive and Legislative branches of the Chuuk state government to forthrightly address the mounting debt issue while there is time to correct its course before the people lose faith in their government. It is not the Judiciary's responsibility to set priorities and direct the government's operation. The Legislature has that duty, and it has been negligent. The Executive has made obligations without proper authorization, and it must cease to do so.

It strains our conscience to allow sovereign immunity to excuse the government's failure to meet its legitimate obligations, but we must follow the rule of law. There is also a broader rule of ethical behavior that requires citizens and government officers to pay their just debts so that an orderly society can continue to thrive. We may, in the future, find that this court is the Chuukese people's last resort to compel the State to observe that broader rule. Such a decision cannot be made while there is still opportunity for the governmental authorities to act responsibly, but that time is running short. At some point, the court may have to restore the people's faith in their government.

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