FSM SUPREME COURT TRIAL DIVISION

ONANU MUNICIPALITY and POLOWOT MUNICIPALITY Plaintiffs, vs. JOHNSON ELIMO, in his capacity as Governor of Chuuk State, CHUUK STATE, and FEDERATED STATES OF MICRONESIA, Defendants.	CIVIL ACTION NO. 2015-1003
NAMA MUNICIPALITY, ONOUN MUNICIPALITY, and TA MUNICIPALITY, Plaintiffs, vs. JOHNSON ELIMO, in his capacity as Governor of Chuuk State, CHUUK STATE, and FEDERATED STATES OF MICRONESIA, Defendants.	CIVIL ACTION NO. 2014-1011
FEDERATED STATES OF MICRONESIA, Cross-Claimant, vs. STATE OF CHUUK, Cross-Defendant.	

ORDER DISPOSING OF MOTIONS FOR DEFAULT AND FOR PARTIAL SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Decided: July 20, 2016

APPEARANCES:

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HEADNOTES

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. Onanu Municipality v. Elimo, 20 FSM R. 535, 540 n.4 (Chk. 2016).

Civil Procedure – Motions – Unopposed

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even then the motion must be well grounded in law and fact before the court can grant the unopposed motion. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

Evidence – Judicial Notice

The court may take judicial notice of its own files in related cases. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

Civil Procedure – Default and Default Judgments

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

Civil Procedure – Default and Default Judgments

The party making the request is not entitled to a default judgment as of right, but if a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true, but liability is not deemed established simply because of a default. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

Civil Procedure – Default and Default Judgments

In evaluating a motion for a default judgment, the court accepts as true all well-pled facts in the complaint but must reach its own legal conclusions. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

Civil Procedure

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when an FSM court has not previously analyzed an aspect of an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in applying the rule. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 n.5 (Chk. 2016).

Civil Procedure – Default and Default Judgments

While the factual allegations in a complaint, except those as to damages, are treated as conceded by the defendant for purposes of a default judgment, legal issues remain subject to the court's adjudication. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Civil Procedure – Default and Default Judgments

Even after default, it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Civil Rights

Since the FSM civil right statute 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). Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Civil Rights

Political subdivisions generally are held to lack constitutional rights against the creating state. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Civil Rights; Civil Procedure – 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. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Civil Rights

The civil rights statute's purpose is to create a federal remedy for private parties, not government bodies. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Civil Procedure – Default and Default Judgments; Judgments – Interest

When part of the plaintiff's damages claim rests on their legal conclusion that interest can be imposed and included in a money judgment against the state, but this legal conclusion is incorrect, a default judgment against the State of Chuuk will be entered, but no interest will accrue on the judgment amount. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (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, must 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. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Civil Procedure – Summary Judgment – Grounds

Although the failure to file an opposition is deemed, by rule, to be a consent to a motion, the court cannot automatically grant an unopposed summary judgment motion since there must still be a sound basis in law and in fact on which to grant the motion. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Civil Procedure – Summary Judgment – Procedure

Since the burden of a plaintiff moving for summary judgment extends to affirmative defenses as well as to the plaintiff's own positive allegations, 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. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

Civil Rights – Acts Violating; Civil Procedure – Persons Liable

A municipality, as a matter of law, cannot maintain a civil rights claim against the state of which

it is a political subdivision. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

Civil Procedure – Summary Judgment – For the 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. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (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. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

Torts – Conversion

When the municipalities owned and had a right to possess, as their current account funds, the subject CI funds; when the state government's unauthorized use of those funds for its own purposes was an exercise of dominion over those funds inconsistent with the municipalities' right to them, and the municipalities were damaged, in the amount of their missing funds, by not being able to use those funds themselves, the municipalities have made out a prima facie case that they are entitled to summary judgment for the funds that the state government converted. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

Civil Procedure – Summary Judgment – Grounds; Statute of Limitations

When the complaint was filed on November 26, 2014, the six-year statute of limitations would bar the plaintiffs' claims unless their cause of action accrued on or after November 26, 2008, or some event or action tolled the running of the limitations period so that the six years did not end until November 26, 2014 or later. Thus, events that took place in 2007, cannot successfully overcome a statute of limitations affirmative defense. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

Constitutional Law – Case or Dispute – Ripeness

A party cannot sue until its cause of action has accrued. A matter must be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

On March 28, 2016, this came before the court to hear the five plaintiffs' unopposed Motion for Partial Summary Judgment; Motion to Take Judicial Notice; Motion for Default Judgment or Summary Judgment, filed November 30, 2015. The motions for judicial notice and for a default judgment are granted to the extent explained below. The motion for partial summary judgment is denied without prejudice on all claims except the civil rights claim which is denied with prejudice. The court's reasons follow.

I. Background

Five municipal government plaintiffs seek an accounting and payment of Capital Improvement Project (CIP) funds which were allocated to them under the first Compact of Free Association with the United States from 1986-2003, but which they did not receive. They assert that most of the forty Chuuk municipal governments did not receive all 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, $5,903,032 had not yet been disbursed to the various Chuuk municipalities. Of that sum, the national government still held $2,442,214.99. Under FSM Public Law No. 13-51, enacted in September 2004, the first Compact municipal CIP funds reverted to the municipalities' current accounts. A later reconciliation conducted by the national and state governments determined that the five municipalities had not received the following amounts that they were entitled to:

Nama	$78,408
Onanu	$114
Onoun	$183,437
Polowot	$973,915
Ta	$69,468

Under a January 14, 2010 Presidential directive, most of the $2.44 million retained by the national government was eventually distributed by the national government directly to the intended municipal government recipients, bypassing the state government. Some funds remain in the national government's hands. The national government paid the following amounts of municipal CIP funds directly to the five municipalities:

Nama	$32,000.00
Onanu	$0
Onoun	$0
Polowot	$402,930.19
Ta	$28,740.45

And, as of July 25, 2014, the national government still held, in trust for the municipalities, the following CIP funds, either as "unpaid balance" (Nama) or "unclaimed"[1] (Onanu and Onoun):

Nama	$439.13
Onanu	$47.16
Onoun	$75,891.95
Polowot	$0
Ta	$0

On November 26, 2014, Nama Municipality, Onoun Municipality, and Ta Municipality (in Civil

[1] It is unclear, other than the notation "unclaimed," why these funds have not been paid to the municipalities. Nor is it clear why, at least for the "unclaimed" funds, the municipality whose funds they are has not claimed them.

Action No. 2014-1011) and on April 23, 2015, Onanu Municipality and Polowot Municipality[2] (in Civil Action No. 2015-1003) filed suit against the national and state governments seeking an accounting of the unpaid CIP funds by the national and state government defendants and alleging that, because these funds had not been paid, the state government defendants (the State of Chuuk and its Governor) were liable to them for conversion, unlawful misappropriation of funds, and for violation of their civil rights.[3]

The national government filed answers in both actions. The state government defendants filed an answer in Civil Action No. 2014-1011. They raised as affirmative defenses a two-year statute of limitations for the accounting, unlawful misappropriation, and conversion claims, and a six-year statute of limitations for the civil rights claim. They also raised the affirmative defense of the plaintiffs' failure to state a claim on which relief could be granted: 1) for the accounting, unlawful misappropriation, and conversion claims because of the "lack of proofs of any of their assertions in their causes" and 2) for the civil rights claim because the plaintiffs could not "be entitled to any relief against the defendants . . . where the plaintiffs are political subdivisions of the defendant Chuuk State." The state defendants did not file an answer or otherwise defend in Civil Action No. 2015-1003.

On June 12, 2015, the two cases were consolidated. On July 10, 2015, the 2015-1003 plaintiffs requested, and the clerk entered, the state defendants' default on the 2015-1003 plaintiffs' claims against them.

The municipal plaintiffs seek disbursement of their unpaid CIP funds. Subtracting the sums the FSM national government paid directly to the municipalities and subtracting the sums the FSM still holds for the municipalities,[4] the state government is potentially liable for the following amounts:

Nama	$45,968.87
Onanu	$66.84
Onoun	$107,545.05
Polowot	$570,984.81
Ta	$40,727.55

II. Plaintiffs' Motions

The plaintiffs in 2014-1011 move for summary judgment against the state defendants on their accounting, conversion, unlawful misappropriation, and civil rights claims and the plaintiffs in 2015-1003 move for a default judgment against the state defendants on their accounting, unlawful misappropriation, conversion, and civil rights claims. To support these motions, the municipal government plaintiffs also move that the court take judicial notice of the discovery filings in Eot

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[2] Nama's November 26, 2014 and Polowot's April 23, 2015 filings were actually refilings since they had originally been plaintiffs in Civil Action No. 2012-1024, filed January 24, 2012, but were voluntarily dismissed from that lawsuit in April, 2012.

[3] Both complaints also alleged a breach of contract claim for the Chuuk municipalities' 1999 loan of municipal CIP funds to the state government to finance the Chuuk airport renovation project. That claim was the subject of an earlier motion for partial summary judgment, which resulted in the entry of a Rule 54(b) final judgment in favor of eight municipal government plaintiffs (the five plaintiffs involved here plus Makur, Onou, and Pollap, other plaintiffs in Civil Action No. 2015-1003). Order Granting Partial Summ. J. (Sept. 23, 2015).

[4] 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.

Municipality v. Elimo, Civil Action No. 2012-1024, as well as the filings in this [2014-1011 and 2015-1003 consolidated] case.

A. *Judicial Notice*

The plaintiffs ask the court to take judicial notice of the discovery filings, including the admissions by the various defendants, in Eot Municipality v. Elimo, Civil Action No. 2012-1024, which has the same defendants as this case and which involves the same issues as this case. The plaintiffs contend that much of the discovery in that case is pertinent to this case. Nama and Polowot were originally plaintiffs in 2012-1024 and discovery was propounded and answered in 2012-1024 concerning their claims. Also much of the discovery responses in 2012-1024 included material about the CIP funds for all forty Chuuk municipalities, or where the money was still unpaid, information about all the municipalities with unpaid money was provided, or where the discovery response concerned the money still held by the national government, information about all municipalities for which the national government still held money was provided. The plaintiffs further contend that the principle of collateral estoppel bars the defendants from relitigating in this case, or even challenging in this case, matters that were conclusively determined, by the means of adverse parties' admissions, in Civil Action No. 2012-1024.

This motion is unopposed. 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 motion must be well grounded in law and fact before the court can grant the unopposed motion. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 442 (App. 1994); Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 (Pon. 2011); Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004); Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004). Furthermore, 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); *see also* Sorech v. FSM Dev. Bank, 18 FSM R. 151, 154 n.1 (Pon. 2012); Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 n.2 (Chk. 2005). Civil Action No. 2012-1024 is definitely a related case.

Good grounds accordingly existing, the plaintiffs' motion to take judicial notice is granted.

B. *Default Judgment for Onanu and Polowot*

Onanu and Polowot seek a default judgment against the state defendants on their accounting, conversion, unlawful misappropriation, and civil rights violation causes of action. The clerk has entered the state defendants' default.

1. *Only Factual Allegations Accepted as True*

When the clerk has entered a defendant's default, the grant of a default judgment is not automatic, but left to the court's sound discretion. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 2 (Pon. 2015). The party making the request is not entitled to a default judgment as of right, but if a defendant is determined to be in default, the complaint's factual allegations, except those relating to the amount of damages, are taken as true. George v. Albert, 17 FSM R. 25, 32 (App. 2010); M/V Ping Da 7, 20 FSM R. at 2. Furthermore, liability is not deemed established simply because of a default. M/V Ping Da 7, 20 FSM R. at 2.

In evaluating a motion for a default judgment, "the court accepts as true all well-pled facts in the complaint but must reach its own legal conclusions." United States v. Active Frontier Int'l, Inc., 867

F. Supp. 2d 1312, 1315 (Ct. Int'l Trade 2012);[6] *cf.* Arthur v. Pohnpei, 16 FSM Intrm. 581, 593 (Pon. 2009) (same standard applied to a Rule 12(b)(6) motion – "no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations"). "[W]hile the factual allegations in a complaint, except those as to damages, are treated as conceded by the defendant for purposes of a default judgment, legal issues remain subject to [the court's] adjudication." DIRECTV, Inc. v. Pepe, 451 F.3d 162, 165 (3d Cir. 2005). "Even after default, however, it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law." 10A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2688, at 63 (3d ed. 1998).

2. *Civil Rights Claim*

The plaintiffs seek, under 11 F.S.M.C. 701(3), a judgment against the state government on the theory that the state government violated their civil rights by converting their municipal 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 and on the conversion or misappropriation 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, also seek to add their reasonable attorney's fees and expenses to their damages.

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. Simina, 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 Chuuk municipal governments were created pursuant to Article XIII of the Chuuk Constitution. Although 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 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").

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[6] Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, FSM Const. art. XI, § 11, when an FSM court has not previously analyzed an aspect of an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in applying the rule. *See, e.g.*, Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 n.1 (App. 2008). The court has not previously analyzed the effect of a complaint's legal conclusions on the imposition of a Rule 55 default judgment.

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 civil rights statute's purpose "[i]s 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).

Thus, Onanu's and Polowot's legal conclusion that their unchallenged factual allegations constitute a valid civil rights claim against the state government is erroneous. No default judgment can be entered on this cause of action.

3. *Conversion and Unlawful Misappropriation*

The unchallenged facts do permit the entry of a default judgment for conversion (unlawful misappropriation appears to be identical) not in the damages amount pled but in the actual amount of the unpaid CIP funds as shown by the evidence produced in discovery in Civil Action No. 2012-1024 – Onanu is owed $66.84 and Polowot is owed $570,984.81. No judgment need be entered for the accounting cause of action since Onanu and Polowot have prevailed on a substantive cause of action for the money for which they wanted an accounting.

Onanu and Polowot also seek 9% prejudgment interest on these converted funds from some unspecified date when the funds were converted to the judgment date and 9% postjudgment interest thereafter. This damages claim rests on the movants' legal conclusion that interest can be imposed and included in a money judgment against the state. This legal conclusion is incorrect. Eot Municipality v. Elimo, 20 FSM R. 7, 9-11 (Chk. 2015) (interest cannot be imposed on sovereign state unless the state has specifically waived its immunity in regards to interest).

Therefore, the clerk shall enter a default judgment against the State of Chuuk in favor of Onanu Municipality for $66.84 and against the State of Chuuk in favor of Polowot Municipality for $570,984.81, and no interest will accrue on these sums.

C. *Partial Summary Judgment Motion by Nama, Onoun, and Ta*

1. *Summary Judgment Standard*

Nama, Onoun, and Ta move for partial summary judgment. A court, viewing the facts and inferences in a light that is most favorable to the non-moving party, must 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).

The motion 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 since 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); Saimon v. Wainit, 16 FSM R. 143, 146 (Chk. 2008); 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).

Even when the non-movants have not filed an 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). Since the burden of a plaintiff moving for summary judgment extends to affirmative defenses as well as to the plaintiff's own positive allegations, Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005); FSM Dev. Bank v. Rodriguez, 2 FSM Intrm. 128, 130 (Pon. 1985), 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. Andrew, 19 FSM R. at 340 (App. 2014); Isamu Nakasone Store, 20 FSM R. at 57 (Pon. 2015).

2. *Accounting*

The plaintiffs seem to have received all the accounting that they need from the national government defendant and an accounting from the state defendants will be unnecessary if the plaintiffs prevail on any of their other three causes of action – conversion, unlawful misappropriation, and civil rights violation. The court will therefore turn to these claims.

3. *Civil Rights Claim*

The state defendants' affirmative defense for this claim is that it fails to state a claim for which relief can be granted because the plaintiffs could not "be entitled to any relief against the [state government] defendants . . . where the plaintiffs are political subdivisions of the defendant Chuuk State." To prevail on their civil rights claims, Nama, Onoun, and Ta must overcome this affirmative defense. They cannot. As explained above in part II.B.2, a municipality, as a matter of law, cannot maintain a civil rights claim against the state of which it is a political subdivision. Summary judgment for the plaintiffs will, as a matter of law, be denied on their civil rights claim, because the state is correct that the municipalities' civil rights claim 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. The plaintiffs have had that opportunity. Therefore judgment will be rendered for the defendants on the civil rights claim by Nama, Onoun, and Ta.

4. *Conversion and Unlawful Misappropriation of Funds*

Based on the Chuuk state government's admissions and on the unanswered requests deemed admitted in Civil Action No. 2012-1024,[6] there is no genuine dispute about certain material facts. Nama, Onoun, and Ta were entitled to the amount of CIP funds shown above on page 539. 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, as shown above on page 539, it has since either distributed directly to the respective municipality or it still has and agrees that it belongs to that municipality.

These facts satisfy the elements for conversion by the state government (and apparently also

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[6] *See* Eot Municipality v. Elimo, 20 FSM R. 482, 487-89 (Chk. 2016).

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 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. Nama, Onoun, and Ta 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.

The state defendants' affirmative defenses to the unlawful misappropriation and conversion claims, are the statute of limitations and the failure to state a claim on which relief could be granted "for lack of proofs of any of their assertions in their causes." As should be apparent, the plaintiffs do not lack proofs of their assertions when it comes to their conversion and misappropriation causes of action. That defense is overcome.

Nama, Onoun, and Ta contend that the statute of limitations defense does not bar their action either. They assert that since a cause of action does not accrue until all elements, including damages, are present, that the statute of limitations cannot have run on their claims against the state because the state has not yet appropriated the money to pay their claims.

The plaintiffs are correct that the statute of limitations for their claims is six years, 6 F.S.M.C. 805; Chk. S.L. No. 5-01-39, § 11, not the two years asserted by the state defendants in their answer. Since Civil Action No. 2014-1011 was filed on November 26, 2014, the six-year statute of limitations would bar the claims of Nama, Onoun, and Ta unless their cause of action accrued on or after November 26, 2008, or some event or action tolled the running of the limitations period so that the six years did not end until November 26, 2014 or later. The events relied on in Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016), took place in 2007, and thus cannot successfully overcome the statute of limitations affirmative defense in this case.

The court must also reject the contention that since the Chuuk Legislature has, allegedly, not appropriated any funds that could be used to pay Nama's, Onoun's, or Ta's claims, the statute of limitations has not yet started to run and their cause of action has not yet accrued. First, the funds were already in existence, having, at a minimum, been appropriated by the United States government and probably the FSM national government, before the state government received and converted them.

Second, the contention is logically inconsistent. If the cause of action has not yet accrued because Chuuk has not appropriated the funds, then the municipalities would not yet have a case or dispute on which they could sue or over which the court could exercise jurisdiction. The case would not be ripe. A party cannot sue until its cause of action has accrued. "A matter must . . . be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction." Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005). The municipalities' contention makes no sense. Following it, the Legislature could prevent the state from ever being sued by not appropriating any money. And the statute of limitations would never start running.

Nama, Onoun, and Ta thus cannot overcome the state defendants' affirmative statute of limitations defense. Their summary judgment motion must therefore be denied without prejudice. They may, at some future point, be able to overcome that defense. They may be able to estop the government's assertion of that defense in some manner or be able to toll the statute's running based on facts, events, actions, or omission not currently presented to the court for its consideration or not yet part of the record. That must be left for another day.

III. Conclusion

Accordingly, 1) the motion to take judicial notice is granted; 2) the clerk shall enter a default judgment against the State of Chuuk in Onanu's favor for $66.84 and in Polowot's favor for $570,984.81, with no interest to accrue on these sums; and 3) the partial summary motion by Nama, Onoun, and Ta is denied without prejudice on their conversion and unlawful misappropriation claims and denied with prejudice (and summary judgment granted for the state defendants) on their civil rights claim. There being no just cause for delay, the clerk shall enter a final judgment for Onanu and Polowot.

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FSM SUPREME COURT TRIAL DIVISION

MWOALEN WAHU ILEILE EN POHNPEI (Traditional Leaders Council of Paramount Chiefs of Pohnpei), by and through ISO NAHNKEN OF NETT SALVADOR IRIARTE, and the CONSERVATION SOCIETY OF POHNPEI, Plaintiffs, vs. MARCELO PETERSON, in his official capacity as Governor of the State of Pohnpei, CASSIANO SHONIBER, in his capacity as Administrator of OFFICE OF FISHERIES AND AQUACULTURE, Pohnpei State Government, POHNPEI STATE GOVERNMENT, and YOUNG SUN INTERNATIONAL TRADING COMPANY, Defendants.	CIVIL ACTION NO. 2016-014

ORDER GRANTING TEMPORARY RESTRAINING ORDER

Mayceleen JD Anson
Specially Appointed Justice

Hearing: July 18-19, 2016
Decided: July 20, 2016