

substitution, was solely attributable to the movant and as such, "extraordinary circumstances" are not present to substantiate relief under Civil Rule 60(b)(6). Finally, the Defendants should not be expected to endure the prejudicial repercussions attendant to such disproportionate tardiness on the part of Plaintiff. As a result, Plaintiff's request to set aside the Dismissal Order is devoid of merit.

Accordingly, the Court hereby DENIES Plaintiff's Motion to Set Aside [the] Order of Dismissal entered on September 2, 2016.

* * * *

FSM SUPREME COURT TRIAL DIVISION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Beauleen Carl-Worswick
Associate Justice

Trial: April 22, 2016
Decided: November 18, 2016

APPEARANCES:

| | |
|--------------------|--|
| For the Plaintiff: | Erick B. Divinagracia, Esq. Ramp & Mida Law Firm P.O. Box 1480 Kolonias, Pohnpei FM 96941 |
| For the Defendant: | Salomon M. Saimon, Esq. Directing Attorney Micronesia Legal Services Corporation P.O. Box 129 Kolonias, Pohnpei FM 96941 |

* * * *

HEADNOTES

Evidence – Burden of Proof

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a

Pohnpei Transfer & Storage, Inc. v. Shoniber
21 FSM R. 14 (Pon. 2016)

preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Contracts

A contract is a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Contracts

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be an enforceable contract, there must be an offer, acceptance, consideration, and definite terms. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Contracts – Definite Terms

For an agreement to be binding, it must spell out the essential commitments and agreements with respect thereto. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

Contracts; Contracts – Necessity of Writing

Generally, an oral agreement is as enforceable as a written one. Reducing an agreement to writing, however, can assist the parties in assuring that all the necessary terms have been agreed to and are definite, or later assist a court in ascertaining what those terms were. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 n.3 (Pon. 2016).

Contracts – Definite Terms

An agreement may lack definite terms when there is no indication as to a schedule of payment that would detail the amount to be paid and a duration or timeline for which payments are to be made. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

Contracts – Definite Terms; Remedies

When no valid contract exists between the parties because of a lack of definite terms, a party may recover for the benefit conferred upon another pursuant to other legal remedies under the law of contracts. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

Contracts – Definite Terms; Remedies – Quantum Meruit; Remedies – Restitution

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the restitution doctrine. The unjust enrichment doctrine also applies when there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

Remedies – Quantum Meruit; Remedies – Restitution

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

Remedies – Restitution

When the court can find no contract, restitution is a remedy which returns the benefits already received by a party to the party who gave them. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM

R. 14, 18 (Pon. 2016).

Remedies – Restitution

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the restitution doctrine. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

Interest and Usury; Remedies – Restitution

When a court finds a lack of an enforceable contract, and no evidence was submitted to support the plaintiff's request for interest, the plaintiff may not recover on a claim for 1.5% interest per month based on the parties' unenforceable agreement. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 19 (Pon. 2016).

* * * *

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

The complaint in this matter was filed on February 10, 2011 and amended on February 14, 2011 by the plaintiff, Pohnpei Transfer & Storage, Inc. d/b/a Pohnpei Travel (herein "PT&S"). In its amended complaint, PT&S sets forth two causes of action: 1) Breach of Contract, and 2) Unjust Enrichment, against the defendant, Percy Shoniber (herein "Shoniber").

During Trial, the court received testimony from the following witnesses: Takiko Ifamilik, former employee of PT&S, Joe Vitt, general manager of PT&S, defendant Percy Shoniber, and Acting Chief of Immigration Ricky Falcam. After considering the evidence on the record, the court makes the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

Lisa Shoniber, daughter of Percy Shoniber, was shot in South Carolina, U.S.A.¹ As a result of this incident, on April 12, 2005 Shoniber went to PT&S and obtained a ticket to South Carolina to be with her ailing daughter. The ticket was paid for on the next day, April 13, 2005.

In January of 2006, Shoniber went to PT&S and obtained six (6) tickets for travel to South Carolina for the following individuals: Christopher Shoniber, Omar Shoniber, Melissa Shoniber, Wayne Narruhn, Benry William, and the defendant Percy Shoniber.² The named individuals are the children of Percy Shoniber, except Benry William. Although PT&S argued that a contract was executed reflecting the amount owed on the tickets as \$9,400.00 plus 1.5% interest per month, no such written

¹ A review of the court record shows that during Trial, the shooting of Lisa Shoniber occurred in April of 2005. However, the plaintiff's Pre-Trial statements indicates that the shooting took place in January of 2006. The actual date of the shooting is a collateral matter to Percy Shoniber's liability as to the tickets obtained in January 2006.

² The addition of Benry William was allowed pursuant to an Order entered on June 30, 2016.

agreement was produced during Trial.

The court received the testimony of Takiko Ifamilik, who was employed by PT & S from 2002 to 2006 as an assistant accountant. Ifamilik testified that she issued the six (6) tickets to the named individuals above under an Open Account in Shoniber's name, as reflected in an Accounts Receivable report (AR report). Ifamilik also issued electronically generated tickets (e-tickets) for this transaction, which she initialed upon issuance. Ifamilik further affirmed that the total amount for the tickets was \$9,400.00.

Joe Vitt, general manager of PT&S, also testified and confirmed the testimony of Ifamilik. Vitt testified that no written agreement was entered into by the parties during the second transaction in January 2006 because of the good faith that Shoniber had shown during the initial transaction in April 2005.

Ricky Falcam, Acting Chief of Immigration, attested that all the named individuals departed Pohnpei in 2006. Falcam stated that Percy Shoniber, Melissa Shoniber, Christopher Shoniber departed Pohnpei on January 24, 2006, Wayne Narruhn departed Pohnpei on January 13, 2006, and Benry William departed Pohnpei on January 24, 2006.

The court also considered the testimony of Percy Shoniber, who admitted to obtaining a ticket from PT&S in 2005, which was paid for not long after they were issued. However, Shoniber denied ever entering into an agreement with PT&S for airline tickets in 2006, and does not recall obtaining any tickets for travel in 2006. Shoniber's declaration is contrary to the statements of Ifamilik and Vitt.

III. CONCLUSIONS OF LAW

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

Breach of Contract

The Restatement (Second) of Contracts, like its predecessor, defines the term contract as a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. WILLISTON ON CONTRACTS § 1.1 (West 1990). A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. Livaie v. Weilbacher, 11 FSM R. 644, 647 (Kos. S. Ct. Tr. 2003).

Here, the court finds that not all of the requirements of a valid contract are met. Although Shoniber expressly denies ever entering into an agreement with PT&S and states that she never obtained tickets to travel to South Carolina in 2006, the evidence shows otherwise.

The court finds that PT&S made a valid offer to Shoniber to provide six (6) airline tickets for travel. PT&S was engaged in the business of providing tickets to customers who could then pay the tickets off through future payments. There was a valid acceptance when Shoniber and her children and Benry William received the tickets and used those tickets to travel outside of Pohnpei. The tickets given for value by PT&S and Shoniber's obligation to pay for those tickets serves as adequate consideration.

The absence of definite terms is the element that is lacking for a valid contract in the present matter. An enforceable contract requires an offer, an acceptance, consideration and definite terms.

For the agreement to be binding, it must spell out the essential commitments and agreements with respect thereto. Heirs of Nena v. Sigrah, 14 FSM 283, 285 (Kos. S. Ct. Tr. 2006).

Vitt admitted that no formal agreement was executed by the parties.³ There is no indication as to a schedule of payment that would detail the amount to be paid and a duration or timeline for which payments are to be made. Vitt testified that because of the good faith shown by Shoniber during the 2005 transaction, no contract was made during the 2006 matter.

Accordingly, the court finds that no valid contract exists between the parties because of a lack of definite terms. However, PT&S may recover for the benefit conferred upon Shoniber pursuant to other legal remedies under the law of contracts.

Unjust Enrichment

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the doctrine of restitution. The doctrine of unjust enrichment also applies where there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 345 (Pon. 2004).

In looking at the factors for unjust enrichment as held by the court in Fonoton Municipality, PT&S bestowed the benefit of six (6) airline tickets on Shoniber, who knew of and accepted the benefit by using those tickets to travel. It is unjust for Shoniber to retain the benefit of the tickets without reimbursement to PT&S despite the absence of a valid contract, which Shoniber testified that she never entered into. Therefore, under the remedy of unjust enrichment, PT&S is entitled to recover the \$9,400.00 for the six (6) airline tickets that were issued.

Restitution

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Jim v. Alik, 4 FSM R. 199, 200 (Kos. S. Ct. Tr. 1989) (citing E. ALLAN FARNSWORTH, CONTRACTS § 12.19 (1982)). When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Livaie, 11 FSM R. at 648.

In the present matter, the facts presented at Trial show that Shoniber received the benefit of six (6) tickets for travel for herself, her children, and Benry William, totaling \$9,400.00. Because

³ "Generally, an oral agreement is as enforceable as a written one. Reducing an agreement to writing, however, can assist the parties in assuring that all the necessary terms have been agreed to and are definite, or later assist a court in ascertaining what those terms were." Livaie v. Weilbacher, 13 FSM R. 139, 143 n.1 (App. 2005).

Pohnpei Transfer & Storage, Inc. v. Shoniber
21 FSM R. 14 (Pon. 2016)

the court finds that there is no enforceable contract, PT&S should be returned to the position it was in prior to the transaction, which would require Shoniber to pay the \$9,400.00 to PT&S.

Further, the plaintiff states a claim for 1.5% interest per month based on an agreement between the parties. Because the court finds a lack of an enforceable contract, and no evidence was submitted to support the plaintiff's request for interest, the plaintiff may not recover on this claim.

IV. CONCLUSION

THEREFORE, judgment is entered in favor of the plaintiff in the amount of \$9,400.00.

* * * *

CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,

Plaintiff,

vs.

RINEI RIMUO,

Defendant.

CSSC CRIMINAL CASE NO. 076-2014

ORDER DENYING MOTION FOR REVOCATION

Jayson Robert
Associate Justice

Decided: November 23, 2016

APPEARANCES:

For the Plaintiff:

Stanley Michael
Sherry-Jane Edmund (supervisor)
State Prosecutor
Office of the Attorney General
P.O. Box 1050
Weno, Chuuk FM 96942

For the Defendant:

Bethwell O'Sonis, Esq.
Office of the Public Defender
P.O. Box 754
Weno, Chuuk FM 96942

* * * *