

FILED
8/27/13
DATE _____ TIME _____
BY AV
CLERK, FSM SUPREME COURT
APPELLATE COURT

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION

WEBSTER GEORGE

APPELLANT

Versus

FSM Appeal Case No. K4-2012
Kosrae Civil Case No. 30-96

ERISINA V. GEORGE

APPELLEE

APPENDIX TO BRIEF OF APPELLANT WEBSTER GEORGE

BEFORE THE HONORABLE JUSTICES OF THE APPELLATE COURT OF THE SUPREME
COURT OF THE FEDERATED STATES OF MICRONESIA.

THIS IS AN APPEAL FROM THE SEPTEMBER 11, 2012, ORDER OF THE KOSRAE
STATE COURT (WRITTEN ORDER OF SEPTEMBER 19, 2012) WHERE CHIEF JUSTICE
ALIKSA B. ALIKSA VACATED POST JUDGMENT INTEREST MANDATED BY LAW
AND THE JUDGMENT OF SEPTEMBER 17, 2007 BY THE SAME COURT. THIS APPEAL
IS ALSO BASED ON CHIEF JUSTICE ALIKSA'S DENIAL OF COSTS AND ATTORNEY
FEES AND FURTHER BASED ON OTHER ISSUES RAISED IN THIS BRIEF.

For the Appellant:

Snyder H. Simon, Esq.
Attorney at Law
P.O. Box 1017
Tofol, Kosrae, FM 96944
Tel: (691) 970-7878/8708
Email: shsimon_2006@yahoo.com

For the Appellee:

Canney L. Palsis, Esq.
Directing Attorney
MLSC-Kosrae Office
P.O. Box38
Tofol, Kosrae, FM 96944
Tel: 370-3032
Email: cpalsis@mlscnet.org

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APPENDIX A
NOTICE OF APPEAL

IN THE SUPREME COURT OF THE
 FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION – STATE OF KOSRAE

FILED
 DATE: 10/29/12 TIME: 2:30 PM
CLW
 BY _____
 CLERK, FSM SUPREME COURT
 KOSRAE
 TRIAL DIVISION

WEBSTER GEORGE)
)
 Appellant,)
)
 v.)
)
 ERCY V. GEORGE)
)
 Appellee.)
 _____)

APPEAL NO. 154-2012
 Kosrae Civil Action No. 30-06

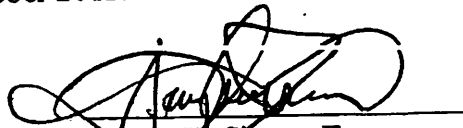
**NOTICE OF APPEAL AND REQUESTS
 FOR CERTIFIED RECORD ON
 APPEAL AND TRANSCRIPT**

NOTICE IS HEREBY GIVEN that Webster George, Appellant in the above styled and numbered cause, by and through the undersigned counsel, has filed his Notice of Appeal and Requests for Certified Record on Appeal and Transcript of Proceeding, pursuant to Rule 3 and 4 of the Rules of Appellate Procedure of the FSM Supreme Court, appealing the Order on Motion to Show Cause; Order Granting Motions for Writs of Garnishment, Attachment and Execution, on the following errors and those that will be discovered from the full review of the record thereof, that:

1. The trial court erred as a matter of fact and law in denying Appellant statutory interest.
2. The lower court erred as a matter of fact and law in denying attorney fees and costs of suit.
3. The lower court erred as a matter of fact and law in denying Appellant the granted writs.

Appellant also hereby requests for the production of the certified records on appeal and the transcript of proceeding of September 11, 2012.

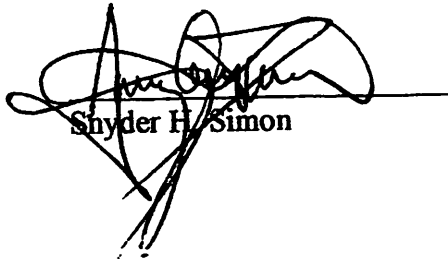
Respectfully submitted 27 October 2012.



Snyder H. Simon, Esq.
Counsel for Appellant
P.O. Box 1017
Tofol, Kosrae, FM 96944
Tel.: (691) 370-8775
(691) 970-2288
Email: shsimon_2006@yahoo.com

CERTIFICATE OF SERVICE

This is to certify that the foregoing Notice of Appeal was served upon counsel for Appellee, Canney Palsis, Esq., in Tofol, Kosrae, on October 29, 2012 by personal delivery.



Snyder H. Simon

APPENDIX B

ORDER

EXH-F

KOSRAE STATE COURT
FEDERATED STATES OF MICRONESIA

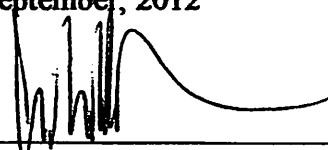
WEBSTER GEORGE,)
)
Plaintiff,)
vs.)
)
)
)
ERCY V. GEORGE,)
)
Defendant.)
_____)

CIVIL ACTION NO. 30-06

ORDER ON MOTION TO SHOW CAUSE;
ORDER GRANTING MOTION FOR WRIT S OF
GARNISHMENT, ATTACHMENT AND
EXECUTION

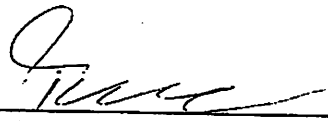
This Court ordered both parties to show cause as to the income made by defendant as well as the attorney's fees requested. Documentation was received by Plaintiff Webster George's counsel as to how the attorney's fees were made as well as the settlement agreement signed by both the Plaintiff and the Defendant. Defense Counsel said at the hearing on September 11, 2012, that there is a small source of income which defendant has from social security benefits. Most of it goes to pay off a housing loan which leaves a balance of \$34.00 that goes to her family, and also a payment of \$75.00 given to HO Victor George from Senny's Enterprises every end of each month. Plaintiff requested that this \$75.00 be taken to pay off the \$6000 defendant owes him. Based on submissions of counsels, the Court orders that starting today defendant is to take \$35.00 out of this \$75.00 payment given to HO Victor George and pay to Plaintiff Webster George starting September 2012, and give \$40.00 to HO Victo George until the principal of \$6000 is fully paid. Attorney's fees will not be awarded and parties will bear their own costs. Plaintiff may appeal if he chooses.

SO ORDERED this 19 th Day of September, 2012



Aliksa B Aliksa
Chief Justice

ENTERED this 19 th Day of September, 2012.



Shrue C. Lonno
Chief Clerk of Court

Service on: **Snyder Simon**
Canney Palsis

APPENDIX C

JUDGMENT

FILED

DATE 1/12 TIME 1:11

BY Keller
CLERK, FSM SUPREME COURT
APPELLATE COURT

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION

APPEAL CASE NO. K9-2007

ERSINA V. GEORGE,
Appellant,

vs.

WEBSTER GEORGE,
Appellee.

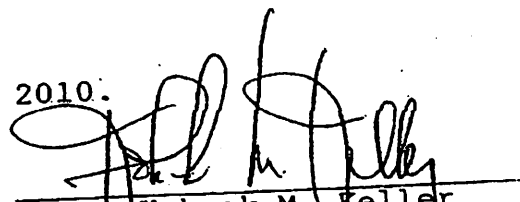
JUDGMENT

Appeal from the Kosrae State Court trial division.

This cause came on to be heard at oral argument on December 17, 2009, and on the record from the Kosrae State Court trial division and was duly submitted.

On consideration whereof, it is now hereby ordered and adjudged by this court that the judgment of the Kosrae State Court trial division in this cause be, and hereby is, affirmed, with costs awarded to the appellee.

Entered this 12th day of January, 2010.


Kohsak M. Keller
Chief Clerk of Court

APPENDIX D

OPINION

2000

FILED

DATE 1/12 TIME 4:30

BY Kella
CLERK, FSM SUPREME COURT
APPELLATE COURT

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION

APPEAL CASE NO. K9-2007

ERSINA V. GEORGE,
Appellant,

vs.

WEBSTER GEORGE,
Appellee.

OPINION

Argued: December 17, 2009
Decided: January 12, 2010



BEFORE:

- Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
- Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
- Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

For the Appellant: Canney Palsis, Esq.
Micronesian Legal Services Corporation
P.O. Box 38
Tofol, Kosrae FM 96944

For the Appellee: Snyder H. Simon, Esq.
P.O. Box 1017
Tofol, Kosrae FM 96944

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

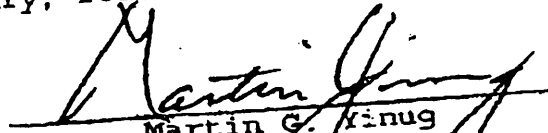
This appeal is from the Kosrae State Court's September 2007 decision, George v. George, 15 FSM Intrm. 270 (Kos. S. Ct. 2007), which awarded plaintiff Webster George \$6,220.52, as balance due on defendant Ersina V. George's open account at plaintiff's store. We affirm the trial court judgment. reasons follow.

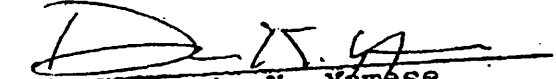
We conclude that since the trial court did not rely on unadmitted evidence (the ledger sheet) to reach its decision and since there was substantial trial testimony from which the trial court could reasonably find that the defendant owed the plaintiff \$6,220.52, the trial court decision did not violate the defendant's due process rights. The trial court's factual finding that \$6,220.52 was the amount owed was not clearly erroneous.


IV. CONCLUSION

Accordingly, the trial court decision is affirmed.


So ordered the 12th day of January, 2010.


 Martin G. Vinug
 Associate Justice


 Dennis K. Yamase
 Associate Justice


 Ready E. Johnny
 Associate Justice

Entered this 12th day of January, 2010.


 Kohsak M. Keller
 Chief Clerk of Court

APPEANDX E

AFFIDAVIT

IN THE KOSRAE STATE COURT
STATE OF KOSRAE
FEDERATED STATES OF MICRONESIA

WEBSTER GEORGE)
)
Plaintiff,)
)
vs.)
)
ERSINA V. GEORGE)
)
Defendant.)
_____)

CIVIL ACITON NO. 67-06

AFFIDAVIT IN SUPPORT OF MOTIONS FOR
WRITS OF GARNISHMENT, ATTACHMENT,
AND EXECUTION, AND FOR COSTS AND
ATTORNEY'S FEES

COME NOW WEBSTER GEORGE, the undersigned Affiant, after first being duly sworn deposes and states the following in support of his Motions for Writs of Garnishment, Attachment, and Execution:

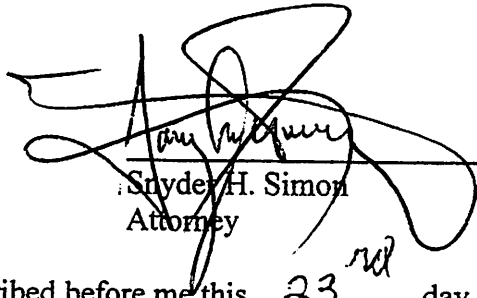
1. I am a bona fide resident of the State of Kosrae and a citizen of the Federated States of Micronesia.
2. I am over the age of consent and of sound and able mind.
3. I am the Plaintiff in this case.
4. After judgment was entered for the Plaintiff on September 17, 2007, and following the FSM Supreme Court's affirmation of the judgment on January 12, 2010, Defendant has not paid a single penny toward the judgment.
5. Prior to the judgment, defendant left the island for Seattle, Washington, U.S.A. She has not returned to Kosrae since then.
6. I have attempted to collect with all the possible avenues but failed. Having run out of options, I instructed my attorney to seek remedying the balance on the judgment with other costs and fees.

7. Defendant's Financial Statement, filed with Court on August 25, 2010, is incorrect as she is getting paid her share from the family lease of Sronsrono Shopping Center \$75.00 monthly, even prior to the judgment date.
8. Defendant owes me the principle amount of \$6,220.52, and interest at the statutory rate beginning January 12, 2010 up to November 2010 (10 months) at \$1,244.10 (124.41 per month (principle x .02% x 10 months). Leaving the approximate grant total of \$7,464.22, and going.
9. For all the efforts of collecting and write ups, it has cost me and my lawyer so much based time and money based upon defendant's non-compliance with the judgment, and against counsel for vexatious and oppressive practice.
10. My lawyer has spent approximately 5 hours on the current motion at a Hundred dollars and hour at a total of Five hundred dollars (\$500.00).
11. He has spent approximately 3 and one half hour on the Motion in Aid at \$350.00.
12. I have since prior to these expenses had spent approximately One thousand dollars(\$1,000.00) after having retained current counsel of record on attorney fees and court costs, to include production of documents, meetings, communication, photocopying etc.
13. It is therefore requested that attorney fees and costs be awarded in the amount of \$850.00.
14. This Affidavit is made as to the truth of my knowledge and to the best of my ability.

Further Affiant sayeth naught on the 23 day of November 2010.



Webster George
Affiant


Snyder H. Simon
Attorney

Sworn to and subscribed before me this 23rd day of November 2010.


Notary Public

DELONA I. NEUMAN, NOTARY PUBLIC
FEDERATED STATES OF MICRONESIA
KOSRAE STATE
MY COMMISSION EXPIRES ON THE
16th DAY OF APRIL 2011

APPENDIX F

MEMORANDUM OF DECISION; JUDGMENT

KOSRAE STATE COURT

FEDERATED STATES OF MICRONESIA

WEBSTER GEORGE,

Plaintiff,

vs.

ERŞINA V. GEORGE,

Defendant.

CIVIL ACTION NO. 30-06

MEMORANDUM OF DECISION;
JUDGMENT

Plaintiff filed his Complaint on April 10, 2006 asking for a judgment against the Defendant in the amount of \$6,220.52, plus interest on the judgment, counsel fees and costs. He amended his Complaint on that same day to increase the amount to \$9,775.12. Defendant filed an Answer on May 3, 2006. On June 12, 2006, Plaintiff requested permission to file another amended Complaint raising the amount claimed to \$14,421.58 and to restate a legal theory. Defendant opposed this amendment. The Court granted permission to amend the Complaint and Defendant then filed another Answer on July 6, 2006. Snyder Simon represents Plaintiff. Canney Palsis represents Defendant.

Counsel for Defendant moved to withdraw from the case in January 2007, one day before trial, because Defendant requested a continuance until May or June of 2008. Defendant was living in the United States at that time. Plaintiff also requested a continuance of the same hearing due to his hospitalization. This Court continued the hearing, but refused to grant Counsel's motion to withdraw because Counsel had capably represented Defendant, was prepared for trial, and an extended continuance would not allow a prompt hearing. Defendant was advised that she could participate in the hearing by telephone.

After additional discovery and another continuance at the request of Plaintiff, this matter was finally heard on August 15, 2007.

Plaintiff argues that a contract exists between parties and that Defendant breached that contract by failing to pay for goods received on her open account. In the alternative, he argues that, if there is no contract, then he is entitled to be paid under the legal theories

(II), 2 FSM Intrm. 200, 208 (Pon. 1986). See also, Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 617 (Chk. 1994).

Plaintiff's counsel has previously been advised that this issue is to be raised only in a post-judgment motion. These issues will only be considered if Plaintiff makes a post-judgment motion for costs and attorney's fees.

III. Judgment.

Judgment is entered in favor of the Plaintiff in the amount of \$6,220.52 with post-judgment interest at the statutory rate.

SO ORDERED this 13 th Day of September 2007.



Aliksa B Aliksa
Chief Justice

ENTERED this 17 th Day of September 2007.



Shrue C. Lonno
Chief Clerk of Court

Service on: Snyder Simon
Canney Palsis