


FILED
 DATE: 1/6/15 TIME: 4 am/pm
 By: 
 CLERK, FSM SUPREME COURT
 POHNPEI
 TRIAL DIVISION

1 Michael J. Sipos, Esq.
 P.O. Box 2069
 2 Pohnpei, FM 96941
 Tel: (691) 320-6450
 3 E-mail: MSipos@mail.fm
 4 Attorney for Defendant
 Pohnpei Port Authority
 5

6 **IN THE SUPREME COURT OF THE**
 7 **FEDERATED STATES OF MICRONESIA**
 8 **TRIAL DIVISION - POHNPEI STATE**

9 WIN SHENG MARINE S. de R.L.) CIVIL ACTION NO. 2014-024
)
 10 Plaintiff,) MOTION FOR JUDGMENT ON
) THE PLEADINGS
 11 v.)
) FSM CIVIL RULE 12(c)
 12 POHNPEI PORT AUTHORITY)
)
 13 Defendant.)
)

14
 15 COMES NOW defendant Pohnpei Port Authority ("PPA") and
 16 moves the court for an order granting it judgment on the
 17 pleadings pursuant to FSM Rules of Civil Procedure, Rule 12(c).

18 As set forth in greater detail below, this motion is
 19 grounded on the allegations of fact set forth in the complaint
 20 that PPA does not dispute and that it has admitted in its
 21 answer. These undisputed facts establish PPA's entitlement to a
 22 judgment on the pleadings as a matter of law.

23 This motion is supported by the attached memorandum of
 24 points and authorities, the pleadings filed to date, and such
 25 further evidence and argument the court may take into
 consideration.

1 MEMORANDUM OF POINTS AND AUTHORITY

2 1. Nature of Claim

3 This case presents straightforward facts that are without
4 dispute on the issues necessary to resolve this motion. The
5 suit arises from a dock-side collision between plaintiff's
6 fishing vessel, the Win Sheng, and the fishing vessel Taiyo
7 Pohnpei. At the time of the collision the Win Sheng was in
8 motion and maneuvering toward a berth at PPA's Kolonia Harbor
9 port facility. The Taiyo Pohnpei was stationary at the dock
10 having previously berthed. As it approached the dock the Win
11 Sheng was helmed by an authorized port pilot, although the
12 vessel's Master was also on the bridge observing the pilot and
13 providing instructions at the time. (Complaint at paras. 7 and
14 8 and PPA's Answer to paras. 7 and 8.)

15 The Taiyo Pohnpei was damaged as a result of the collision
16 and was placed out of service for repairs. It's owners then
17 pursued an action *in rem* against the Win Sheng (which was
18 docketed as FSM Civil Action No. 2012-020) to recover on their
19 maritime tort lien claim for the resulting economic losses. The
20 owners of the Taiyo Pohnpei did not name PPA in that action.¹

21 The damages Taiyo Pohnpei's owners sought from the Win
22 Sheng were resolved by a settlement agreement. That agreement,
23 however, did not extinguish PPA's liability (if any) for the
24 collision. (Complaint at para. 13 and PPA's Answer to para.
25

¹ The court is asked to take judicial notice of its files in FSM C. A. No. 2012-020 for evidence of these facts.

1 13.)

2 In the case at bench the owners of the Win Sheng claim
3 damages from PPA in the form of contribution for the alleged
4 negligence of the harbor pilot. The claimed damages result
5 solely from Win Sheng's owners having made settlement payments
6 to the owners of Taiyo Pohnpei to resolve their claim against
7 the vessel Win Sheng.

8 2. Plaintiffs have no Right of Contribution from PPA
9 because their Settlement did not Extinguish PPA's
10 Liability

11 In support of their claims against PPA plaintiff cites to
12 the FSM's Contribution Among Joint Tort-feasors Act found at
13 Title 6 of the FSM Code. In doing so they include reference to
14 subsection (1) of 6 F.S.M.C. 1202 but fail to include subsection
15 (4), which as indicated below proves fatal to their claims.

16 Indeed, a right of contribution does not exist in favor of
17 a settling party against another alleged tort-feasor (PPA in
18 this instance) when the settlement agreement does not extinguish
19 the liability of the other alleged tort-feasor. Below is the
20 full text of the applicable FSM Code section addressing the
21 subject.

22 § 1202. Right of contribution.

23 (1) Except as otherwise provided in this
24 chapter, where two or more persons become jointly or
25 severally liable in tort for the same injury to person or

1 property or for the same wrongful death, there is a right
2 of contribution among them even though judgment has not
3 been recovered against all or any of them.

4 (2) The right of contribution exists only in
5 favor of a tort-feasor who has paid more than his pro rata
6 share of the common liability, and his total recovery is
7 limited to the amount paid by him in excess of his pro rata
8 share. No tort-feasor is compelled to make contribution
9 beyond his own pro rata share of the entire liability.
10

11 (3) There is no right of contribution in
12 favor of any tort-feasor who has intentionally, willfully,
13 or wantonly caused or contributed to the injury or wrongful
14 death.

15 (4) A tort-feasor who enters into a
16 settlement with a claimant is not entitled to recover
17 contribution from another tort-feasor whose liability for
18 the injury or wrongful death is not extinguished by the
19 settlement nor is he entitled to recover in respect to any
20 amount paid in a settlement which is in excess of what was
21 reasonable.

22 (5) A liability insurer, who by payment has
23 discharged in full or in part the liability of a tort-
24 feasor and has thereby discharged in full its obligation as
25 insurer, is subrogated to the tort-feasor's right of

1 contribution to the extent of the amount it has paid in
2 excess of the tort-feasor's pro rata share of the common
3 liability. This provision does not limit or impair any
4 right of subrogation arising from any other relationship.

5 (6) This chapter does not impair any right of
6 indemnity under existing law. Where one tort-feasor is
7 entitled to indemnity from another, the right of the
8 indemnity obligee is for indemnity and not contribution,
9 and the indemnity obligor is not entitled to contribution
10 from the obligee for any portion of his indemnity
11 obligation.

12 (7) This chapter shall not apply to breaches
13 of trust or of other fiduciary obligation.

14 As the plaintiff's complaint makes clear, and as the answer
15 acknowledges, plaintiff's settlement with the owners of the
16 Taiyo Pohnpei resolved their claim against the Win Sheng but it
17 did not extinguish PPA's liability to anyone. Thus, as a matter
18 of law, plaintiff's claims against PPA in this action fail.

19 In addition to the plain language of the statute the court
20 can also look to the opinion of the Pohnpei trial division in
21 Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM Intrm.
22 306 (Pon. 1998) as authority for this conclusion.

23 The Joy case involved a personal injury claim made by a
24 worker who suffered injuries from an electric shock while
25

1 painting the Joy Hotel. The plaintiff sued Joy Hotel alone, and
2 Joy in turn filed a third-party complaint against Pohnpei
3 Utilities Corporation (PUC) seeking contribution and indemnity.
4 The plaintiff then entered into a settlement agreement with Joy
5 that relieved it from its liability to plaintiff but that did
6 not extinguish PUC's potential liability to either party. PUC
7 then moved for and was granted summary judgment on the third-
8 party complaint against it with the court analyzing the law as
9 follows:

10 PUC argues that it is entitled to summary judgment on
11 Joy's contribution claim because the Settlement between Joy
12 and the Toms does not extinguish PUC's liability, and Joy's
13 claim is thus barred under 6 F.S.M.C. 1202(4) and 1204(4).

14 When interpreting a statute, the plain meaning of the
15 statutory provision must be given meaning whenever
16 possible. Setik v. FSM, 5 FSM Intrm. 407, 410 (App. 1992).
17 Courts should not broaden statutes beyond the meaning of
18 the law as written. In re Slot Machines, 3 FSM Intrm. 498,
19 500-01 (Truk S. Ct. Tr. 1988). Both statutes cited by PUC
20 clearly bar Joy's contribution claim as long as the
21 Settlement, by its terms, did not extinguish PUC's
22 liability. (Underline added.)

23 As with this case, the Joy settlement agreement, by its
24 terms, did not extinguish the liability of others as a result of
25

1 which the court entered judgment in favor of PUC and the matter
2 was dismissed accordingly. The same result is required here and
3 this matter must be dismissed following entry of judgment on the
4 pleadings favoring PPA.

5 3. The Negligence Claim seeks Contribution and thus Fails
6 for the Same Reason

7 As a review of the complaint reveals plaintiff's only
8 alleged damages involve the economic loss it sustained in
9 settling the claim the owners of the Taiyo Pohnpei made against
10 the vessel Win Sheng. Plaintiff cannot, however, recover
11 contribution damages indirectly through an alternate theory when
12 they cannot do so directly under the contribution statute.
13 Indeed, the contribution statute expressly defines their rights,
14 and in this case precludes their claim.

15 It would appear that the negligence claim has been alleged
16 under a "gross negligence" characterization - albeit in
17 conclusory form - in anticipation of the statutory immunity
18 defense that would have otherwise served as a bar to the
19 contribution claim had it been viable. Title 19 of the FSM Code
20 creates immunity in favor of PPA for damages resulting from its
21 negligence or the negligence of a pilot while piloting a vessel
22 in port. It also imposes a non-delegable duty on the vessel
23 Master for the proper conduct and safe navigation of the vessel.
24
25

1 The applicable code sections, 19 F.S.M.C. §§ 714 and 715,
2 follow:

3 § 714. Port Authority and Authorized Pilot not
4 liable.

5 The Port Authority and an Authorized Pilot shall not
6 be personally liable in any civil proceeding for any damage
7 or loss suffered as a result of any act done by the Port
8 Authority or the Authorized Pilot or for any failure to do
9 anything required to be done by either while acting within
10 the scope of their duties unless such act or omission
11 arises from intentional or willful misconduct, or from
12 gross negligence.
13

14 § 715. Presence of Authorized Pilot does not diminish
15 responsibility of the master.

16 (1) Subject to the authority of the master of a
17 vessel, the duty of an Authorized Pilot is to pilot the
18 vessel in pilotage areas.

19 (2) The master of a vessel is not relieved of
20 responsibility for the proper conduct and safe navigation
21 of the vessel by reason of the vessel being in pilotage
22 charge of an Authorized Pilot.

23 Even if the court were to assume that PPA or the pilot
24 acted with gross negligence this would only help Taiyo Pohnpei
25 under these facts should its owners elect to make a claim.

1 However, the allegations do nothing to support plaintiff's claim
2 because, as outlined above and as indicated in the complaint, it
3 only seeks damages in the form of contribution for the payments
4 made in settlement of the claims made against its vessel, the
5 Win Sheng.

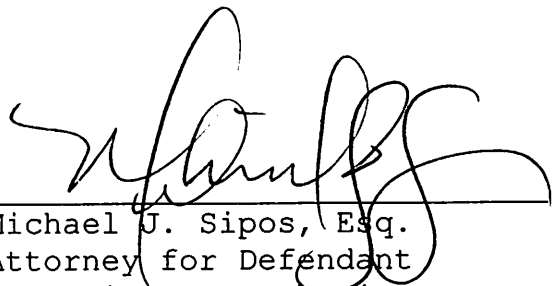
6 No other form of damages having been alleged this cause of
7 action fails for the same reason the contribution claim fails.
8 Thus, PPA is entitled to judgment on the pleadings accordingly.

9
10 4. Conclusion

11 Based on the foregoing PPA respectfully requests the court
12 to grant this motion and to enter judgment on the pleadings in
13 its favor, dismissing this case with prejudice thereafter.

14 Respectfully submitted.

15 DATED: January 6, 2015

16 
17 Michael J. Sipos, Esq.
18 Attorney for Defendant
19 Pohnpei Port Authority

Certificate of Service

I certify that on January 6, 2015 I hand served a true and correct copy of defendant PPA's motion for judgment on the pleadings by delivering it to the law office of plaintiff's counsel of record as follows:

Marstella E. Jack, Esq.
P.O. Box 2210
Kolonia, Pohnpei FM

Attorney for Plaintiff
Win Sheng Marine S. de R.L.



Kehlen Halbert