

FSM SUPREME COURT TRIAL DIVISION

MARY ACKER,

Plaintiff,

vs.

FEDERATED STATES OF MICRONESIA,

Defendant.

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CIVIL ACTION NO. 2018-012

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Beauleen Carl-Worswick  
Associate Justice

551  
Acker v. FSM  
23 FSM R. 550 (Pon. 2022)

Trial: May 8, 2020  
Decided: April 22, 2022

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.  
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For the Defendant: Josephine Leben James, Esq.  
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HEADNOTES

Torts – Trespass

In the FSM, trespass is broadly defined as a wrongful interference with another's possessory interest in property, and a trespass cause of action accrues when there is an intrusion upon another's land which invades the possessor's interest in the exclusive possession of her land. Acker v. FSM, 23 FSM R. 550, 554 (Pon. 2022).

Torts – Trespass

A trespass action is one for violation of possession, not for challenge to title, and is brought not to determine ownership but to re-establish possession; it is a question of who has the superior right of possession, not who has the better title. In order to bring a trespass action, it is unnecessary to have title to the land; a possessory interest suffices. Acker v. FSM, 23 FSM R. 550, 554 (Pon. 2022).

Torts – Trespass

In Pohnpei, in order to maintain an action for trespass, the act that constitutes the invasion of the plaintiff's possessory interest or causes the invasion of the plaintiff's possessory interest must be intentional. Acker v. FSM, 23 FSM R. 550, 555 (Pon. 2022).

Torts – Trespass

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other, if he 1) intentionally and without consent enters land in the other's possession, or causes a thing or person to do so, or 2) intentionally and without consent remains on the other's land, or 3) intentionally fails to remove from the land a thing which he is under duty to remove. Acker v. FSM, 23 FSM R. 550, 555 (Pon. 2022).

Torts – Trespass

When the plaintiff fails to produce any evidence to show that she possessed or had a possessory interest superior to the defendant's in the parcel or the part of that parcel where the defendant's monument is erected, and when the defendant, by virtue of a valid easement agreement, holds a superior possessory interest to the land with the monument and holds easement rights, the defendant could not have trespassed onto the plaintiff's property. Acker v. FSM, 23 FSM R. 550, 555 (Pon. 2022).

Torts – Trespass

A leasehold interest in land is sufficient possessory interest to give a party standing to maintain an action for trespass. Acker v. FSM, 23 FSM R. 550, 555 n.3 (Pon. 2022).

Contracts

A contract is a promise between two parties for the future performance of mutual obligations. Acker v. FSM, 23 FSM R. 550, 556 (Pon. 2022).

Contracts – Formation

In order for a promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it; an acceptance is an offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner the offeror authorized or requested, so that a binding contract is formed; and consideration is that which the performance is exchanged for. Acker v. FSM, 23 FSM R. 550, 556 (Pon. 2022).

Contracts

When neither the plaintiff nor the defendant produced any evidence to show that they had entered into a contract between them relating to the easement agreement or the monument in question, there was no legally binding contract between the parties and the plaintiff's breach of contract claim must be dismissed. Acker v. FSM, 23 FSM R. 550, 556 (Pon. 2022).

Remedies – Quantum Meruit

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. Acker v. FSM, 23 FSM R. 550, 556 (Pon. 2022).

Remedies – Quantum Meruit

Quantum meruit or unjust enrichment is the equitable doctrine that in the absence of an enforceable contract, someone, who receives something from another at the expense of the one conferring the benefit, must either pay for it or return it, but when the plaintiff could not have conferred any benefit on the defendant because she does not own land the defendant is using, the unjust enrichment claim must be dismissed. Acker v. FSM, 23 FSM R. 550, 556 (Pon. 2022).

Constitutional Law – Due Process; Constitutional Law – Taking of Property

The fundamental concept of due process is that the government may not strip citizens of life, liberty, or property in an unfair or arbitrary manner, and when such interests are subject to possible government taking or deprivation, the Constitution requires the government follow procedures calculated to assure a fair and rational decision making process. Acker v. FSM, 23 FSM R. 550, 556-57 (Pon. 2022).

Constitutional Law – Due Process; Constitutional Law – Taking of Property

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law, but when the plaintiff had no property right in the land, the government could not have violated any of her civil rights. Acker v. FSM, 23 FSM R. 550, 557 (Pon. 2022).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

This matter came before the Court for trial on May 8, 2020. Mr. Salomon Saimon, Esq. appeared on behalf of Plaintiff Mary Acker ("Ms. Acker") who was also present in Court. Assistant Attorney General

Josephine Leben-James, Esq. represented the Defendant, Federated States of Micronesia (“FSM” or “Government”). The Court provided translation for the witnesses when needed.

No preliminary matters were addressed except that the Plaintiff had some exhibits to present and that, if no objections were to be made by opposing counsel, the Plaintiff’s counsel would seek to ask the Court to have them admitted. As trial went along, numerous exhibits were introduced but because they were so voluminous, the Court asked the parties that, in order not to delay trial, they stipulate to all the exhibits they wish to have admitted and file a joint stipulation of exhibits no later than May 9, 2020.<sup>1</sup>

## I. BACKGROUND

Ms. Acker brings four causes of action against the Defendant: 1) Violation of Civil Rights and Constitutional Due Process Rights; 2) Trespass; 3) Breach of Contract/Common Law Lease for Land for FSM Sign; and, 4) Equity – Unjust Enrichment/Quantum Meruit.

The Court heard testimony from the Plaintiff, Ms. Acker; Hana Nakasone, owner of the Capitol Corner Store located next to the monument in question; Dickson Wichep, employee at FSM Transportation, Communication and Infrastructure (FSM TC&I); Maryanne Hawley, Registrar at the Pohnpei State Court of Land Tenure; Raynard Martin (“Mr. Martin”), Surveyor at Pohnpei State Department of Land; and William Manuel (“Mr. Manuel”), Field Supervisor for the Survey Division at Pohnpei State Department of Land. The Court ordered the parties to file their closing arguments no later than June 11, 2020. On June 11, 2020, both Plaintiff Mary Acker and the Government filed their closing arguments.

## II. FINDINGS OF FACT

The Court finds that the testimony and evidence presented during trial, the record and exhibits established the following facts:

1. On February 9, 1979 Mr. Tonio David, a/k/a “Donio Depit” (herein called “Tonio David”), was issued a Certificate of Title certifying him as the fee simple owner of Parcel no. 008-C-08, a land containing an area of 12,141 sq. meters, situated in Palikir, Sokehs, as shown on the Division of Lands and Surveys Cadastral Plat No. 00-C-00, and registered with the Pohnpei District Registrar on January 9, 1979 as Document No. 3663. Ex. A.
2. On July 31, 1986, Tonio David signed an Agreement Granting Easement (herein called “Easement Agreement”) with then Vice President Bailey Olter, acting on behalf of the FSM Government. The Easement Agreement granted the Government access through Parcel no. 008-C-08 from the Pohnpei Circumferential Road to the capitol site for a term of 99 years, and registered at the Pohnpei Land Commission on February 2, 1987. The Government paid a total amount of \$5,000.00 to Tonio David for this easement, with a binding effect on the parties’ respective heirs, successors, or assigns. Ex. B.
3. On or about March 24, 1987, Vice President Bailey Olter and Tonio David signed an Amendment No. 1 to the Easement Agreement to include an easement for the purpose of providing utilities to the FSM capitol. Ex. C.
4. On December 23, 1987, Tonio David conveyed a quitclaim deed (pingsapw) to his oldest son Benido David, who is also Ms. Acker’s, half of Parcel no. 008-C-08 beginning from the Pohnpei Circumferential Road on the left side of the secondary road going to the FSM capitol. On February 4, 1988, Tonio David also conveyed a quitclaim deed (pingsapw) to his daughter, Dora Mix, a portion bordering from the one deeded to Benido David, which included the secondary road going to the FSM

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<sup>1</sup>See Stipulated Facts and/or Exhibits filed by the parties on May 27, 2020.

capitol and adjacent to the one previously deeded to Benido David. Exs. D and G1.

5. Parcel no. 008-C-08 was later subdivided into three separate portions and assigned new parcel numbers: 008-C-20, 008-C-21, and 008-C-22. Parcels no. 008-C-20 and 008-C-21 fall within the portion of the original parcel that was deeded to Benido David. Benido David later conveyed Parcel no. 008-C-20 to his daughter Ms. Acker, and kept Parcel no. 008-C-21 to himself. Ms. Acker and Mr. Benido David were both issued Certificates of Title as fee simple owners of their respective properties on August 10, 1990. The remaining sub-portion, Parcel no. 008-C-22 remained with the original owner, Tonio David. Exs. E, F and G.
6. Parcel no. 008-C-22 was later subdivided into three separate portions and assigned new parcel numbers: 008-C-23, 008-C-24 and 008-C-25. Jessica Mix was conveyed and issued the Certificate of Title to Parcel no. 008-C-23 on August 24, 1994 (deeded to her by her mother, Dora Mix). Herbert A. Gallen was conveyed and issued his Certificate of Title to Parcel no. 008-C-24 on October 31, 1995. The remaining sub-portion, Parcel no. 008-C-25, remained with the original owner, Tonio David. Exs. I and J.
7. Parcel no. 008-C-25 includes the easement to provide access and utilities to the FSM capitol site from the Pohnpei Circumferential Road. The total measurement of the easement is 30.48 meters in width South, 33.90 meters in width North, 95.35 meters in length West, and 80.51 meters in length East, containing 2,680 sq. meters of land, more or less. Ex. H.
8. In June of 2002, the Government erected the marble and concrete monument (“monument”) in question at the corner or in the intersection of the access road going to the capitol and the Pohnpei Circumferential Road. The monument is situated within the boundaries of Parcel no. 008-C-25 and the area covered by the Easement Agreement. The monument serves as sign showing the direction to the FSM Capitol. Ex. L.
9. The Court takes judicial notice that on September 23, 2003, Benido David filed a lawsuit against the FSM Government alleging a breach of contract claim that the erected monument was not permitted under the terms of the Easement Agreement. On February 13, 2006, by stipulation of the parties, the Court dismissed the case with prejudice. The Government paid a total amount of \$2000.00 to Benido David as full settlement of his claims, or any other person claiming under him under the same complaint. Exs. L, M and N.

### III. CONCLUSIONS OF LAW

#### A. *Trespass*

For her trespass claim, Ms. Acker claims that she is the fee simple owner of the parcel of land in question. She alleges that her late grandfather, Tonio David, previously owned the land and that the land was later deeded to her as evident by her Certificate of Title to Parcel no. 008-C-20 issued on August 10, 1990. According to her, the monument in question is within her parcel; therefore, the Government trespassed and continues to trespass onto her property.

Trespass has been broadly defined in the FSM as “a wrongful interference with another’s possessory interest in property, and a trespass cause of action accrues when there is an intrusion upon another’s land which invades the possessor’s interest in the exclusive possession of her land.” Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019). A trespass action is one for violation of possession, not for challenge to title. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001). A trespass action is brought not to determine ownership but to re-establish possession; it is a question of who has the superior right of possession, not who has the better title. *Id.* at, 187. In order to bring a trespass action, it is unnecessary to have title to the land; a possessory interest suffices. Ponape Enterprises Co. v. Soumwei,

6 FSM R. 341, 344 (Pon. 1994).

In many jurisdictions, including Pohnpei, in order to maintain an action for trespass, the act that constituted the invasion of the plaintiff's possessory interest or causing the invasion of the plaintiff's possessory interest must be intentional. *Id.*; Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015); Damarlene v. Damarlene, 19 FSM R. 519, 528 (Pon. 2014). Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99-100 (Pon. 2002). One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other, if he 1) intentionally and without consent enters land in the possession of the other, or causes a thing or person to do so, or 2) intentionally and without consent remains on the land of the other, or 3) intentionally fails to remove from the land a thing which he is under duty to remove. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

In order for Ms. Acker to prevail on her trespass claim, she must first prove that she had a right of possession over the property in question that is superior to that of the Government. If it is determined that Ms. Acker had superior right of possession to the property, then the next question is whether the Government intentionally and without consent erected the monument.

During trial, the Court heard testimonies from Mr. Martin, a Surveyor at the Pohnpei State Department of Land and Mr. Manuel, a Field Supervisor for the Survey Division at Pohnpei State Department of Land<sup>2</sup>. In their testimonies, Mr. Martin and Mr. Manuel described and explained the boundaries as shown in the maps jointly submitted as the parties' trial exhibits. According to the witnesses, the monument in question is well within the boundaries of Parcel no. 008-C-25, the portion of Tonio David's land which was the subject property of the Easement Agreement signed on July 21, 1986 between Vice President Bailey Olter and Tonio David for a term of ninety-nine (99) years. Parcel no. 008-C-25 was never conveyed to Ms. Acker. Furthermore, at trial, Ms. Acker failed to produce any evidence to show that she was in possession of Parcel no. 008-C-25 or the portion of that parcel where the monument is erected. Ms. Acker also failed to offer any evidence showing that she has a possessory interest in Parcel no. 008-C-25, or the portion of that parcel where the monument is located, superior to that of the Government. On the contrary, by virtue of the valid easement agreement entered into between Tonio David and Vice President Bailey Olter, the Court finds Government to hold a superior possessory interest over Ms. Acker respecting Parcel No. 008-C-25 or the portion of the land with the monument and easement rights. Hence, the Court finds that the Government could not have trespassed onto Ms. Acker's property without the evidence or absent showing that Ms. Acker held superior leasehold or possessory interest over land 008-C-25. All in essence, Ms. Acker lacks the proper standing to sue the Government over the monument on parcel 008-C-25. Accordingly, Ms. Acker's trespass claim is hereby dismissed.<sup>3</sup>

#### B. *Breach of Contract/Common Law Lease for Land*

Ms. Acker also asserts a claim for breach of contract. In her complaint, Ms. Acker claims that the Government had been using her land for a significant amount of time without paying rent thereby breaching

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<sup>2</sup> Ms. Acker questioned the accuracy of the information provided by the witnesses, or the knowledge and expertise of the witnesses, arguing that the grid system used is inadequate or outdated and that the surveyors were not certified. However, Ms. Acker provided no evidence to support such argument, thus this argument is unsubstantiated. Moreover, following this line of argument would undermine and invalidate every surveyed land in Pohnpei.

<sup>3</sup> A leasehold interest in land is sufficient possessory interest to give a party standing to maintain an action for trespass. *In re* Parcel No. 046-A-01, 6 FSM R. 149, 157 (Pon. 1993). *Mwoalen Wahu lleile en Pohnpei v. Peterson*, 20 FSM R. 632, 639 (Pon. 2016) (a party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy); *Sipos v. Crabtree*, 13 FSM R. 355, 363 (Pon. 2005) (a person has standing when he has alleged a sufficient stake in the controversy's outcome and he has suffered some threatened or actual injury resulting from the defendants' allegedly illegal action).

a contract to lease the property.

A contract is a promise between two parties for the future performance of mutual obligations. In order for the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005); Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014); Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003). “An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” 17A AM. JUR. 2D *Contracts* § 43 (1991). Acceptance is “[a]n offeree’s assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed. BLACK’S LAW DICTIONARY 12 (8th ed. 2004). Consideration is that which the performance is exchanged for. O’Byrne v. George, 9 FSM R. 62, 64 (Kos. S. Ct. Tr. 1999).

In the instant case, neither Ms. Acker and nor the Government produced any evidence to show that they had entered into a contract between them relating to the easement agreement or the monument in question, thus the Court finds no legally binding contract between the parties. Ms. Acker’s breach of contract/lease theory was premised on the claim that she owns the property in question or that the disputed monument is situated in her parcel of land.<sup>4</sup> However, as already established above, Ms. Acker’s land, Parcel no. 008-C-20, does not include the monument. The monument is well within the boundaries of Parcel no. 008-C-25 and within the limits of the easement agreement entered into between Tonio David and Vice President Bailey Olter. Therefore, Ms. Acker’s breach of contract claim must also be dismissed.

#### C. *Equity-Unjust Enrichment/Quantum Meruit*

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). Quantum meruit or unjust enrichment is the equitable doctrine that in the absence of an enforceable contract, someone who receives something from another at the expense of the one conferring the benefit either pay for it or return it. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 646 (Pon. 2008).

Here, as already established there is no legally binding contract between Ms. Acker and the Government. Therefore, Ms. Acker could not have conferred any benefit on the Government because she does not own Parcel no. 008-C-25 – the parcel of land with the monument and easements granting access and utilities to the national capitol.

Accordingly, this claim must also be dismissed.

#### D. *Violation of Civil Rights and Constitutional Due Process*

A person may not be deprived of life, liberty, or property without due process of law, or be denied equal protection of the law. FSM Const. art. IV § 3. The fundamental concept of due process is that the

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<sup>4</sup> The Court takes judicial notice that on September 23, 2003, Ms. Acker’s father Benido David also brought a lawsuit against the Government regarding the same parcel of land 008-C-25 and monument in question. Benido David alleged that the government breached the terms of the easement agreement when it built the monument on the same parcel of land. However, that lawsuit was later dismissed with prejudice by stipulation of the parties with a \$2000.00 in full settlement of all of Benido David’s claims, including those claiming under him in later lawsuits. See Exs. L, M, and N. By asserting a breach of contract claim against the government, it is highly probable that Benido David recognized the monument to be built upon lot no. 008-C-25.

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government may not be permitted to strip citizens of life, liberty, or property in an unfair or arbitrary manner. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010). Where such interests are subject to possible government taking or deprivation, the Constitution requires the government follow procedures calculated to assure a fair and rational decision making process. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016); Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

This claim must likewise be dismissed because it is impossible for the Government to violate or deprive Ms. Acker of any property right. As already determined, the monument is well within Parcel no. 008-C-25 and this parcel was never deeded or conveyed to Ms. Acker. Since Ms. Acker does not own Parcel no. 008-C-25, the Government could not have violated any of her civil rights.

JUDGMENT

For the reasons set forth above, the Court finds in favor of the Government and against Ms. Acker on all her claims as set forth in the Complaint.

ACCORDINGLY, it is ADJUDGED, ORDERED and DECREED that Ms. Mary Acker's claims are HEREBY DISMISSED. Judgment shall be entered in favor of the Government and against Ms. Acker as set forth above.

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