



CHUUK STATE SUPREME COURT

Federated States of Micronesia

Trial Division-Weno, Chuuk



CHUUK STATE GOVERNOR,)
Petitioner,)
)
 vs.)
)
 CHUUK STATE HOUSE OF SENATE,)
 SPEAKER OF THE HOUSE OF REPRES-)
 ENTATIVES and THE CHUUK PUBLIC)
 UTILITY CORPORATION (CPUC))
 BOARD OF DIRECTORS)
Respondents.)

CSSC-CA NO. 112-2017

**ORDER HOLDING
CHUUK STATE GOVERNOR
AND ATTORNEY MEIPPEN IN
CONTEMPT**

I. INTRODUCTION

On December 22, 2017, this Court issued an oral order (herein after referred to as injunction¹) which enjoined the Chuuk State Governor Johnson Elimo, herein after Petitioner, from impeding the business transactions of the current CPUC Board of Directors, pending the outcome of this case. On January 18, 2018, after the Chuuk State Attorney General Sabino S. Asor, who previously represented the Petitioner, withdrew from the case without discussing its history with Governor’s new counsel; however, Attorney General Asor communicated to and informed Respondent CPUC attorney that he did not draft Executive Order No. 2018-01, which the Chuuk State Governor’s Office issued, creating an “Interim Board of Directors for the CPUC”, and ordered it to call its first board meeting that week. On January 25, 2018, Respondents filed a Motion to Show Cause and Requested an Emergency Hearing. After hearing the arguments of the parties on February 9, 2018, the Court now holds the Governor of Chuuk State and Petitioner’s Counsel in contempt of Court.

¹ The December 22, 2017 Court Order which enjoined Petitioner from interfering with the workings of the CPUC is interchangeably referred to within this document as: December 22, 2017 court order, December 22, 2017 injunction, injunction, oral order, and court order. No other injunction besides that which was issued within the December 22, 2017 Oral Order is discussed anywhere within this document.

II. ISSUES PRESENTED

Two Issues are raised before this Court today:

1. Whether a party must follow a Court-ordered injunction even if the party believes that the injunction is unlawful or unconstitutional.
2. Whether a Court Order enjoining the Governor of Chuuk from interfering with the workings of a semi-publically owned utilities company, while the matter is pending before the Court, unconstitutionally infringes upon his executive authority.

III. STANDARD OF REVIEW

The standard for a civil contempt case, although not previously defined explicitly by case law, is to find by the preponderance of the evidence that the party accused of contempt had notice of, could comply with, and never-the-less intentionally disobeyed a lawful court. In order to find criminal contempt, the trier of fact must find beyond a reasonable doubt by the evidence that the party accused of contempt had notice and intentionally disobeyed a lawful court order. *Johnny v. FSM*, 8 FSM R. 203, 206 (App. 1997).

A. Contempt Defined

The Chuuk State Judiciary Act of 1990 defines contempt as "any . . . intentional disobedience or resistance to the Court's lawful writ, process, order, rule, decree, or command." CSL 190-08 § 21(1)(a). The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. *Davis v. Kutta*, 10 FSM R. 125, 127 (Chk. 2001). One of the factors that the court must consider in making a finding of civil contempt is whether the relief requested is primarily for the benefit of the complainant. *RRG (FSM) Ltd. v. Maezoto*, 15 FSM R. 243, 244 (Pon. 2007).

Criminal contempt under the FSM Code results from intentional disregard of a court order. *Alfons v. FSM*, 5 FSM R. 402, 406 (App. 1992). The intentional disobedience required for a conviction for contempt necessarily includes an element of voluntariness. *In re Contempt of Cheida*, 7 FSM R. 183, 185 (App. 1995).

A finding of civil contempt necessitates a finding that the defendant failed without good cause to comply with the court order. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 382 (App. 2003).

B. Remedies

Contempt is not a matter between opposing litigants; it is a matter between the offending person and the court, and the degree of punishment for contempt, if any, is within the sound discretion of the court. *Onopwi v. Aizawa*, 6 FSM R. 537, 540 (Chk. S. Ct. App. 1994).

Any person accused of committing a civil contempt shall have a right to notice, a defense and mitigation. A person found in civil contempt may be imprisoned until such time as he complies with a court order or pays an amount necessary to compensate the injured party, or both. CSL 190-08, § 27 (a).

This Court finds the analysis and reasoning within a recent civil contempt case stemming before the Pohnpei Supreme Court as highly persuasive as to how to classify and remedy contempt cases within Chuuk. The sanction of civil contempt serves two remedial purposes, 1) to enforce compliance with a court order, and 2) to compensate for losses caused by noncompliance. *In re Contempt of Jack*, 20 FSM R. 452, 462 (Pon. 2016). The relief granted in civil contempt proceedings, (may be) compensatory or coercive. This often takes the form of a fine in the amount of the damage sustained by the plaintiff and an award of costs and attorney's fees. *Id.* Even though the court chooses to sanction an attorney with a civil contempt, that does

not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. *Id.* Moreover, prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. *FSM v. Cheida*, 7 FSM R. 633, 637 (Chk. 1996).

Any person accused of committing a criminal contempt shall have a right to notice of the charges and an opportunity to present a defense and mitigation; provided that no punishment of a fine of more than \$100.00 or imprisonment shall be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, to have the assistance of counsel, and to be released on bail pending adjudication of the charges. He shall have a right to be charged within three months of the contempt and a right not to be charged twice for the same contempt; and a person found to be in criminal contempt of court shall be fined not more than \$1,000 or imprisoned for not more than six months or both. CSL 190-08, § 27 (b).

C. Higher Standard for Officers of the Court

An officer of the court should be held to a higher standard for his contumacious behavior due to his intimate knowledge of the legal system. *Cheida v. FSM*, 9 FSM R. 183, 190 (App. 1999).

A possible, but drastic, means by which a party may immediately challenge an interlocutory court order is to not comply with it and thus subject themselves to a contempt proceeding and then appeal the contempt finding, if there is one. Usually in such cases, if the client chooses to follow the attorney's advice it is only the party disobeying the order, not the

party's attorney, who is then subjected to a contempt proceeding, often as part of the same proceeding in which the disobeyed order was given. *FSM v. Kansou*, 13 FSM R. 344, 349 (Chk. 2005).

D. Collateral Bar Rule

At this time, the Chuuk State Supreme Court will adopt the collateral bar rule as applicable to *injunctions* issued by the Chuuk State Supreme Court. The collateral bar rule, in jurisdictions where it has been adopted, basically prevents defendants from defending themselves against a contempt charge on grounds that the court's *injunction* was unlawful or incorrect. Although such doctrine has not been incorporated into FSM jurisprudence prior to this point, there are highly persuasive reasons for this doctrine to be borrowed from U.S. Jurisprudence and adopted to meet the needs of society within Chuuk State.

At its most basic, the collateral bar has long held that a person who disobeys a court order cannot challenge the merits of that order as a defense to criminal contempt charges. Thus, in the 1922 case of *Howat v. Kansas*, the U.S. Supreme Court stressed that "[a]n injunction... must be obeyed.., however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case." *Howat v. Kansas* 258 U.S. 181, 189-90 (1922). It was even upheld in cases where the order was clearly unconstitutional under the U.S. Constitution such as a ban on Martin Luther King Junior's March in Birmingham to end segregation. *See Walker v. City of Birmingham* 388 U.S. 307, 315-21 (1967).

The reasoning for implementing this doctrine into Chuuk State's jurisprudence is self-evident: there is a public interest in a peaceful and orderly resolution to disputes. The orderly and peaceful resolution of disputes is completely frustrated when parties chose to disregard

injunctions issued by a court while a case is pending – even if those parties allege that such injunctions are improper or unlawful. Micronesian society has customarily prized peaceful and orderly resolution of disputes much (more so) than in the United States. *FSM v. Wainit*, 11 FSM R. 424, 436 (Chk. 2003). Therefore, while a case is pending, a party may challenge an injunction by appealing its application, but may not deliberately disobey the injunction and then raise the defense to a contempt charge by claiming that the temporary injunction is unlawful.

Chuuk's courts have already applied the collateral bar rule to the execution of search warrants. The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government. *FSM v. Wainit*, 11 FSM R. 424, 436 (Chk. 2003). And it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes particularly when a proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. *Id.* This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. *Id.*

In adopting the collateral bar rule as applicable to injunctions issued by the Chuuk State Court, this Court refuses to recognize as a defense to contempt charges, a party's refusal to follow a court order which the party believes is unlawfully made – and will not entertain an analysis as to such defense if it is raised within a motion. A motion for reconsideration, followed

by an appeal, is the only adequate remedy mechanism for an injunction that a party believes to be unlawful.

IV. PROCEDURAL HISTORY

On December 22, 2017 this Court issued an oral order which enjoined Petitioner from interfering with the workings of the CPUC. On January 8, 2018, Petitioner issued an executive order, upon advice of his new counsel, which established an Interim Board of Directors for the CPUC. On January 10, 2018, Attorney General Sabino Asor, who represented Petitioner withdrew as Counsel after he learned of Executive Order No. 2018-01, which new counsel Johnny Meippen advised and drafted for Petitioner. On January 25, 2018, Respondent CPUC filed its Second Motion to Show Cause and Requested an Emergency Hearing – which the Court then granted. Petitioner requested that the Court continuing the hearing to Show Cause to February 9, 2018, which was also granted. On Friday February 9, 2018 at 10 a.m. all the parties were present and made oral arguments on the issue of contempt before the Court. After making the findings as detailed below, the Court then orally found the Governor of Chuuk State Johnson S. Elimo, Attorney General Asor, and Governor’s current counsel Mr. Meippen, in Contempt of the December 22, 2017 injunction. Upon further review of the findings, the Court reverses its decision to hold the Attorney General in contempt of Court. However, this Court still holds the Governor of Chuuk State in Civil and Criminal Contempt of its December 22, 2017 injunction and holds the Governor’s current counsel, Johnny Meippen in Civil Contempt of this order as well. The Court further held Executive Order No. 2018-01 as void in violation of the injunction from December 22, 2017 and that CPUC is not subject to the decisions issued by the “interim board.”

Upon agreement of all parties that the facts of this case are not in dispute, the Court set a final hearing date for Wednesday, February 21, 2018 at 10 a.m. The parties also agreed to submit any supplemental briefs as to the following issue, by Wednesday, February 14, 2018: whether the Speaker of House of Representatives and the House of Senate Chuuk State Legislature has the authority by under statutory and constitutional law to nominate and confirm members of the CPUC board, after their predecessor's term had expired?

V. FINDINGS OF THE COURT

The Court made the following findings regarding to Contempt:

The Governor received notice of the December 22, 2017 court order which enjoined the Governor from interfering with the business of the CPUC. The Attorney General took the stand as a witness and expressed that he recited what had transpired during the December 22, 2017 proceedings prior to withdrawing as counsel for the Governor. The Petitioner did not cross-examine nor contest the testimony of the Attorney General – despite having ample opportunity to address this testimony. The Governor submitted an affidavit stating that he lacked notice of the order. While there is certainly a possibility of having received a lack notice originally, the Governor did nothing to ensure compliance with the Court's injunction, such as revoking the executive order, upon clearly gaining knowledge of the injunction's content at a later time. In essence, the review of the proceedings serves to underscore beyond reasonable doubt that the Governor had notice of the injunction for several weeks prior to this hearing and refused to adjust his conduct so as to comply with the injunction until the present hearing.

Secondly, the Governor's act of affirmatively creating an interim board was an intentional violation of the Court's December 22, 2017 injunction. The act of writing an executive order which creates a new interim board clearly shows intent to impact CPUC's

management – since management at the CPUC answers directly to the board of directors. As such it was an intentional act which violated the order of this Court. Even if the Governor alleged a lack of notice originally, his continued entertainment of the board upon admitting to having receiving notice of the injunction, constituted an intentional violation of this Court’s injunction.

Moreover, as to the element required of civil contempt, Court is further aware that the Governor had the ability to comply with this order. Unlike the numerous debtors’ cases cited by preceding courts on matters regarding criminal and civil contempt, the Governor merely had to refrain from interfering with the CPUC’s business. Instead, the Governor affirmatively signed an executive order which created a new “interim CPUC Board.” And upon clearly having knowledge of the injunction, he did nothing to comply with that injunction. Thus, the Court can establish all the elements required for finding the Governor of Chuuk State in both criminal and civil contempt of its December 22, 2017 injunction.

As a mitigating factor, this Court found that the Governor would have been unlikely to execute Executive Order No. 2018-01 in direct violation of the Court’s injunction but for the blatant misconduct and poor legal advice from his Counsel, Johnny Meipen. Thus, despite finding the Governor in Criminal Contempt of this Court, the vast portion of responsibility for this violation rests with counsel.

The Court found the Attorney General to be elusive on the stand as to the question of whether he adequately communicated the Court’s December 22, 2017 proceeding to his client before withdrawing. The Attorney General testified that he conveyed the information from the proceedings to his client. However, nothing in the testimony suggested that the Attorney General omitted specifying the oral order issued during the December 22, 2017 hearing. Moreover, the Petitioner’s brief suggests that the Governor knew of the order and asked his new counsel on

whether it would be a violation of the order to issue his own executive order. Therefore, this court cannot find by the preponderance of the evidence that the Attorney General failed to communicate the court order to the Governor or that he avoided attempts by present counsel to contact him regarding the history of the case - which resulted in the injunction's violation. Thus, the Attorney General is not in civil or criminal contempt.

This Court further finds that Governor's current counsel, Johnny Meippen, intentionally violated the December 22, 2017 order when he drafted and advised the Governor to sign Executive Order No. 2018-01, which created the interim CPUC Board of Directors. It is clear that the Governor himself questioned whether he would be in violation of this injunction and consulted with Johnny Meippen, his attorney, prior to signing the executive order. Based on the testimony before the Court, Mr. Meippen advised his client, the Governor, that he should go ahead with the creation of the interim board without consulting Governor's previous attorney and being aware that there was an injunction in place. Even if he were unaware, it is bad practice not to learn of the preceding history of a case before providing advice to the client. In essence, even if Mr. Meippen lacked knowledge of the injunction, his abstention from consulting with the Attorney General constituted willful ignorance on a matter which Mr. Meippen had an affirmative duty to know. In essence, Mr. Meippen lacks good cause as to why he had not complied his conduct to conform with the language of the injunction.

In his brief, Mr. Meippen argued that he believed that the Court's injunction infringes on the rights of the executive branch in the fulfillment of its duties. While the argument lacks merit within its assertions, more importantly, it is precisely the type of argument which this Court is precluded from considering as a defense as a result of the Collateral Bar Rule.

The evidence shows that Mr. Meippen, despite have notice of the injunction, intentionally advised his client to violate the injunction. Even if Mr. Meippen had lacked full knowledge as to the wording of the injunction, he could have inquired from the Attorney General – who would have been required under the rules of ethics to disclose the full nature of the oral order to the new counsel for the Governor. However, Mr. Meippen proudly stated that he never consults with lawyers previously representing his clients. Attorneys are held to a higher standard of conduct as compared to other parties when issues of contempt arise – and this was clearly an intentional and wanton disregard for the court’s injunction. Moreover, even if there was a lack of information as to how to best advise his client, mere prudence and careful research by a counsel who proclaimed that he has practiced in this Court for over 24 years, would have resulted in more proper legal advice. Finally, instead of advising the Governor that he is clearly in violation of the injunction and proposing a remedial measure to amiably resolve this matter, there is nothing on the record to show that counsel had done any act such as advise the Governor to revoke the executive order. For these reasons, this Court now holds Johnny Meippen in civil contempt. Furthermore, Mr. Meippen will have to appear before this Court to show cause as to why he should not be held in criminal contempt of this Court’s Order.

Clearly, Executive Order No. 2018-01, which created the interim board of the CPUC was a violation of the Court’s December 22, 2017 injunction. For that reason, the executive order is void. The “interim board of directors” therefore is not a valid governing body of CPUC’s management and the CPUC’s management shall continue to answer to the current Board of Directors until this matter is resolved. The December 22, 2017 continues to be in effect until this matter is concluded.

VI. CONCLUSION

The Court finds that for the aforementioned reasons, the Governor of Chuuk State and his Counsel Johnny Meippen are in Civil Contempt. They are therefore jointly and severally liable for Respondent CPUC's reasonable attorney's fees for submitting the two motions to show cause and attending the contempt hearing.

Respondents CPUC are directed to submit an itemized list of attorney's fees and expenses associated with pursuing the first and second Motion to Show Cause and for the Hearing of Contempt within 15 days of this Order.

Moreover, this Court now finds the Governor of the State of Chuuk in Criminal Contempt of this Court's Order. Since this Court is convinced that the Governor's contempt would not have resulted but for his counsel's blatant misconduct and poor legal advice, this Court in its discretion, will impose a penalty of \$500.00 fine for Criminal Contempt upon Petitioner, Governor Johnson S. Elimo, which shall be paid in full to the Chuuk State Supreme Court Clerk of Court Office no later than Wednesday February 28, 2018 before 4:30 p.m.

Further, this Court will require Johnny Meippen to Show Cause as to why he should not be held in Criminal Contempt for advising the Governor to violate a court ordered injunction despite allegedly having knowledge of the injunction. Alternatively, for his willful ignorance in avoiding inquiry into the injunction when he should have allegedly have had notice of it. And alternatively, for allegedly failing to advise his client to comply with the injunction after he clearly had knowledge of it. The hearing for Contempt is set for March 22, 2018 at 10 a.m. at the Chuuk State Supreme Court in Nantaku, Weno Island, Chuuk State.

Furthermore, Mr. Meippen's actions raise serious questions as to his ability to comply with the Chuuk State Rules of Professional Conduct, which leaves this Court with no other

option than to refer this matter for a Disciplinary Action hearing on the matter of Mr. Meippen's conduct in this case.

This Court finds that there is no basis for holding the Attorney General of Chuuk State in Contempt.

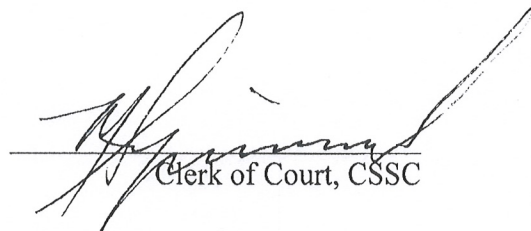
Finally, Executive Order No. 2018-01 is deemed void and the "Interim Board of Directors for the CPUC" as an illegitimate entity which is foreclosed from governing and communicating with CPUC's management under the December 22, 2017 injunction.

IT IS SO ORDERED this 14th day of February, 2018.



JAYSON ROBERT
Associate Justice, CSSC

ENTERED this 14th day of February, 2018.



Clerk of Court, CSSC