

FSM SUPREME COURT TRIAL DIVISION

CORNELIO REFALOPEI and RAFOELA	)	CIVIL ACTION NO. 2021-1000
REFALOPEI,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
CHUUK STATE GOVERNMENT,	)	
	)	
Defendant.	)	
_____	)	
EMERENCIANA PRIMO,	)	CIVIL ACTION NO. 1992-044
	)	(Pohnpei venue)
Putative Garnishor.	)	
	)	
vs.	)	
	)	
KORNELIO REFALOPEI,	)	
	)	
Garnishee.	)	
_____	)	

ORDER DISMISSING CASE FOR LACK OF JURISDICTION

Larry Wentworth  
Associate Justice

Hearing: October 18, 2021  
Decided: March 30, 2022

APPEARANCES:

For the Plaintiffs: Marstella E. Jack, Esq.  
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For the Defendant: Mohammed Kutty, Jr., Esq.  
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HEADNOTES

Contracts – Formation

A debt settlement agreement is a contract because 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, and a debt settlement agreement meets all these hallmarks. Refalopei v. Chuuk, 23 FSM R. 506, 508 (Chk. 2022).

Contracts – Consideration; Contracts – Formation

When the state acknowledged the plaintiffs' claims and amounts of existing debt as genuine, thus waiving any defenses it may have had, such as the statute of limitations for actions against the state, it provided consideration because a pre-existing debt will establish sufficient consideration to support contract formation. Refalopei v. Chuuk, 23 FSM R. 506, 508 (Chk. 2022).

Civil Rights – Acts Violating; Contracts – Breach

When the parties' debt settlement agreement settled all civil rights (takings and due process) claims that the plaintiffs had or may have had against the state for its use of their land, that agreement extinguished the plaintiffs' civil rights claims for the state's possession of the land; and when the state has partially performed on the agreement, the plaintiffs' only possible cause of action, in this later case, must be based on the Chuuk debt settlement agreement where the state may be in breach of the money payment provisions of the agreement. Refalopei v. Chuuk, 23 FSM R. 506, 509 (Chk. 2022).

Contracts – Breach; Contracts – Definite Terms

When a contract does not state the time for performance, the time for performance is "within a reasonable time." Refalopei v. Chuuk, 23 FSM R. 506, 509 (Chk. 2022).

Civil Rights – Acts Violating; Constitutional Law – Due Process; Contracts – Breach

A government's breach of a contract, without more, does not constitute a civil rights or due process violation. Refalopei v. Chuuk, 23 FSM R. 506, 509 (Chk. 2022).

Civil Procedure – Dismissal – Lack of Jurisdiction; Jurisdiction – Arising Under; Jurisdiction – Subject-Matter Jurisdiction

Since the FSM Supreme Court does not have subject-matter jurisdiction over Chuukese citizens' claims of breach of contract, or related to breach of contract such as unjust enrichment, against the State of Chuuk, such a case will be dismissed without prejudice. Refalopei v. Chuuk, 23 FSM R. 506, 509 (Chk. 2022).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On October 18, 2021, this came before the court to hear the parties on the issue of the court's subject-matter jurisdiction. Both sides filed their briefs on the court's subject-matter jurisdiction. The court concludes that it lacks subject-matter jurisdiction over this case and therefore dismisses it without prejudice.

I. BACKGROUND

The plaintiffs, Cornelio Refalopei and Rafoela Refalopei, were, and are, the owners of land on Patta called Won Purek. They allege the factual background as follows.

Sometime in 1996, the State of Chuuk agreed to rent for three years, at \$500 a month, the concrete house on Won Purek for use as school classrooms for the Patta Sapota Elementary School. The Refalopeis allege that the State made no payments on this lease. After the initial lease expired in 1999, the State continued to use Won Purek for the Patta Sapota Elementary School.

In 2012, the parties signed a one-year lease agreement at \$525 a month. The State paid \$1,000 on this lease. The State continued to use Won Purek. In 2015, it signed another lease for the years 2015 through 2019, and paid the Refalopeis another \$1,000.

In 2018, the State agreed to purchase Won Purek from the Refalopeis for \$56,420, at the present purchase price of \$38,420, with an additional \$18,000 payment toward back rent, with the rest of the back rent (which the Refalopeis allege was then \$141,925) subject to the State's debt reduction program. The State paid only the \$38,420 present purchase price for Won Purek.

On April 16, 2020, Refalopei and the State executed a Chuuk State Debt Settlement Agreement. Under its terms, the parties nullified the Won Purek purchase agreement; applied all payments to the past rent; acknowledged that past rent of \$101,555 was still owed and that this amount was more than 200% of the land's agreed purchase price; that the right of possession of Won Purek was returned to the Refalopeis in order for the State to avoid any liability for future rent; and that the Refalopeis would take possession of Won Purek free from any legal or equitable encumbrances by the State.

The State did not make any further payments to the Refalopeis. On January 15, 2021, the Refalopeis filed this suit, alleging that the State had violated their civil rights from 1996 to 2019 by occupying their land without paying rent and often without any formal rental agreement, and that this was also a due process violation that caused the State to be unjustly enriched.

And, on April 28, 2021, Emerenciana Primo, who has an outstanding money judgment in Civil Action No. 1992-044, against Cornelio Refalopei, obtained a conditional writ of attachment on one half of any judgment proceeds in this case to be used toward satisfying her judgment against Cornelio Refalopei.

During the August 27, 2021 default judgment hearing, the possibility that the court may lack subject-matter jurisdiction arose, and was noted *sua sponte* by the court. The plaintiffs asked to brief the point.

## II. REFALOPEIS' CONTENTIONS

The Refalopeis contend that the court has subject-matter jurisdiction over this case because theirs is a civil rights claim involving an unconstitutional taking without compensation of their land by the Chuuk state government due to its use of Wanpuker for a long time without rental payments being made.

The Refalopeis contend that the parties' Debt Settlement Agreement is not a contract because it is just an acknowledgment of a debt and not an agreement to pay that debt. They contend it cannot be an agreement to pay the debt, and thus a contract, because it does not say how it will be paid and because there was no budget appropriation for it and therefore incurred public indebtedness without legislative authority.

## III. ANALYSIS

The court cannot agree. When the parties executed their Debt Settlement Agreement, they created a contract. A contract is a promise between two parties for the future performance of mutual obligations. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 (App. 2017). For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. *Id.*

The parties' Debt Settlement Agreement meets all these hallmarks of a contract. It cannot be disputed that there were offers and acceptances (no doubt as part of a negotiation) that led to the execution of the Chuuk State Debt Settlement Agreement. The terms are most certainly definite. And both sides provided consideration. The State acknowledged the Refalopeis' claims and amounts of existing debt as genuine, thus waiving any defenses it may have had, such as the statute of limitations for actions against the State. A pre-existing debt will establish sufficient consideration to support contract formation. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003). The Refalopeis also obtained possession of Won Purek free of encumbrances even though they had earlier agreed to sell it and received the full present value purchase price. In return, the State was freed from any claims of future rent liability. The Chuuk State Debt Settlement Agreement is thus a contract.

The Chuuk State Debt Settlement Agreement settled all civil rights (takings and due process) claims that the Refalopeis had or may have had against the State for its use of Won Purek. This agreement thus extinguished the Refalopeis' civil rights claims for the State's possession of Won Purek. The Refalopeis' only possible cause of action, in this later case, must be based on the April 16, 2020 Chuuk State Debt Settlement Agreement.

The Refalopeis concede that they have taken possession of Wanpuker. The State has thus partially performed on its contractual obligations under the agreement, but it may be in breach of the money payment provisions of the agreement. (When a contract does not state the time for performance, the time for performance is "within a reasonable time." Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 476 (Pon. 2014).)

But a government's breach of a contract, without more, does not constitute a civil rights or due process violation. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016); Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011); FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009); Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004); Island Dev. Co. v. Yap, 9 FSM R. 18, 20 (Yap 1999); Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001). Thus, this case does not present a civil rights or due process claim under the FSM Constitution.

#### IV. CONCLUSION

Accordingly, this case is dismissed for the lack of subject-matter jurisdiction, FSM Civ. R. 12(h)(3), because the court does not have subject-matter jurisdiction over Chuukese citizens' claims of breach of contract, or related to breach of contract such as unjust enrichment, against the State of Chuuk. This dismissal is without prejudice. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012) (dismissal is without prejudice whenever the court lacks subject-matter jurisdiction); FSM Civ. R. 41(b).

Additionally, Emerenciana Primo's conditional writ of attachment on a judgment in this case is therefore dissolved.

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