

**FEDERATED STATES OF MICRONESIA
SUPREME COURT TRIAL DIVISION**

Cite as People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3,
10 FSM Intrm. 337 (Yap 2001)

[10 FSM Intrm. 337]

**THE PEOPLE OF SATAWAL, by and through
GABRIEL RAMOLOILUG, SABINO SAUCHOMAL
and ANDREW YATILMAN,
Plaintiffs,**

vs.

**THE MINA MARU NO. 3, YOSHINORI KUGAI, ICHIO
YAMASHIRO, and SANKO BUSSAN CO., LTD.,
Defendants.**

**YOSHINORI KUGAI, ICHIO YAMASHIRO, and
SANKO BUSSAN COMPANY LIMITED,
Counter claimants,**

vs.

**THE PEOPLE OF SATAWAL,
Counter defendants.**

CIVIL ACTION NO. 1998-3005

ORDER AND MEMORANDUM

Martin Yinug
Associate Justice

Hearing: March 19, 2001

Decided: July 20, 2001

APPEARANCE:

For the Plaintiffs:
Clara Kalscheur, Esq.
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HEADNOTES

Civil Procedure - Default and Default Judgments

When none of the defendants appeared on the day set for trial on damages, the defendants were in default under Rule 55(a), and the trial could then proceed as a hearing under Rule 55(b)(2) to determine plaintiffs' damages. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM Intrm. 337, 338 (Yap 2001).

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Civil Procedure - Dismissal

When on the day set for trial the defendants were not present to proceed on their counterclaim, the counterclaim is dismissed. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM Intrm. 337, 338 (Yap 2001).

Civil Procedure - Class Actions

An action brought by the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM Intrm. 337, 338 (Yap 2001).

Torts - Damages

Various approaches exist for monetary valuation of damages to reefs: commodity value, which is posited on a sale of the components of the damaged area; tourism value, which is based on what visitors spend to visit the site; and replacement value involves, which is the cost of replacing the damaged corals by reseeding. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM Intrm. 337, 339 (Yap 2001).

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COURT'S OPINION

MARTIN YINUG, Associate Justice:

This case arises out of a reef grounding of the vessel Mina Maru No. 3 on the reef surrounding the island of West Fayu. West Fayu is a small island which lies somewhere between 46 to 49 miles to the northwest of Satawal, one of the Outer Islands of Yap. The grounding occurred on April 7, 1998.

On April 19, 2000, the court granted plaintiffs' motion for partial summary judgment on liability. On the day set for trial on damages (March 19, 2001), none of the defendants appeared. The defendants were thus in default under Rule 55(a) of the FSM Rules of Civil Procedure. The trial

proceeded as a hearing under Rule 55(b)(2) to determine plaintiffs' damages. Since the defendants were not present to proceed on their counterclaim, the counterclaim is dismissed pursuant to Rule 41(b) of the FSM Rules of Civil Procedure.

As a preliminary matter, this case was brought by the people of Satawal by their named representatives as a class action under Rule 23.2 of the FSM Rules of Civil Procedure, which relates to actions brought by unincorporated associations. The rule provides that "[a]n action brought by . . . the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members." The court so finds.

The uninhabited island of West Fayu is owned by the people of Satawal. Historically, the island and surrounding waters have served as a storehouse for the people of Satawal. The trees and plants from the island itself have been used as building materials for houses and outrigger canoes. Birds and coconut crabs from the island were used as food, while the waters surrounding the reef provided fish, lobsters, clams, and turtles. Organized outings to West Fayu for fishing typically occurred about twenty times a year. The fish caught on these expeditions would be distributed community wide when the boats returned to Satawal. Since the grounding event, fishing trips to West Fayu have been less productive. There has also been an instance where those who ate the fish taken from the waters

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surrounding West Fayu became ill. The reported symptoms were consistent with ciguatera poisoning, which results when the levels of a certain type of marine organism known as a dinoflagulate. The increased presence of this organism can occur where corals have been damaged due to a grounding. The dinoflagulate produces a toxin, which is toxic to humans when present in fish in certain levels.

Dr. Robert Richmond, professor of marine biology at the University of Guam and plaintiffs' expert witness, testified as to the significant value of the West Fayu reef, which serves both to protect the island itself from wave and storm damage and to provide a habitat for fish and other marine creatures. In terms of monetary valuation, various approaches exist. One method is the commodity value, which is posited on a sale of the components of the damaged area. Another method is tourism value, which is based on what visitors spend to visit the site. Replacement value involves replacing the damaged corals by reseeded. Dr. Richmond testified that the cost of doing so in this case would be between \$700,000 and \$1,000,000, inclusive of labor and transportation but exclusive of cleanup costs. By way of comparison, Dr. Richmond also referred to the grounding of the *Oceanus*, a 225-meter cargo vessel, which ran aground on the east side of Satawal Island in 1994. The area damaged in that case was just over 10,000 square meters, and that case ultimately settled for \$2,000,000 dollars. In this case, the area of primary damage was approximately 3,375 square meters. According to Dr. Richmond's calculations, if the settlement in the *Oceanus* case is prorated per square meter, and that result applied to the area damaged in this case, then damages in this case would amount to \$660,000. Dr. Richmond also testified that

a proper cleanup including removal of the ship hull, debris, and sand resulting from the impact would cost between \$150,000 and \$200,000.

Based on all of the evidence, the court finds that reasonable compensation for the damage to the West Fayu reef is \$850,000, plus the cost of cleanup, or an additional \$175,000. Thus the total damages awarded jointly and severally against all defendants is \$1,025,000, plus the costs of this action.

A judgment consistent with the foregoing issues herewith.

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