IN THE SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BANK OF GUAM,) CIVIL ACTION NO. 95-811
Plaintiff,) and consolidated case) (C.A. No. 95-1196)
vs.) ODDED DENIVING DI AINTELEEC!
PATRICIA FARNSWORTH,	ORDER DENYING PLAINTIFFS' PROPOSED ORDER FOR
Defendant	DEFENDANT'S COMMITMENT
)

I. INTRODUCTION

This matter comes before the Court on a Declaration by Plaintiffs' counsel signed September 18, 2003, and a proposed Order of commitment for the Defendant.

II. PROCEDURAL BACKGROUND

On March 8, 1996, and then again on March 11, 1996, in two separate civil actions that were subsequently consolidated into the present case, the Court issued judgments against the Defendant. On June 25, 1999, the Court issued an order stating that based on a hearing on Plaintiffs' Motion for an Order to Show Cause, the Defendant was found in contempt of court for failing to make payments pursuant to those judgments, and the Court sentenced her to three (3) days imprisonment, all suspended on the condition that she pay the balances due upon the judgments at the rate of \$50.00 biweekly, commencing on June 30, 1999, and continuing every two weeks thereafter until full satisfaction.

The June 25, 1999, Order further provided that if the Defendant failed to comply with any of the foregoing conditions of suspension, and upon the filing of a Declaration to that effect by Plaintiff's attorney, the aforesaid suspension of sentence shall be revoked, and a commitment

order shall issue, all "without further notice to the Defendant, remanding Defendant into custody to serve the sentence hereby imposed."

Now, more than four years after the suspended sentence was imposed, but consistent with that Order's terms, Plaintiffs request that this Court issue a commitment order for the Defendant's arrest for again failing to make payments on the original judgments, without notice to the Defendant and without a hearing beforehand. This Court declines to issue such a commitment order for the following reasons.

III. ANALYSIS

The Commonwealth Code at 7 CMC § 4208 governs how the Court may punish violations of orders in aid of judgment. Section 4208 reads:

If any debtor fails without good cause to comply with any order in aid of judgment made under this chapter, the debtor may be adjudged in contempt as a civil matter, after notice to show cause why the debtor should not be so adjudged and an opportunity to be heard thereon, and upon such adjudication shall be committed to jail *until* the debtor complies with the order <u>or</u> is released by the court or serves a period fixed by the court of not more than six months in jail, whichever happens first.

Thus, civil contempt sentence may be issued for failure to pay in accordance with an order in aid of judgment only after notice and a hearing. Upon finding a Defendant in civil contempt of court, the Court must commit the Defendant to jail, and such commitment shall continue until one of three things happen:

- (1) the Defendant/Debtor complies with the Court's order, or
- (2) the Defendant is ordered released by the Court from her jail sentence (as it did here when it suspended the sentence for contempt), or
- (3) the Defendant serves a fixed jail term set by the Court, not to exceed six months, and the Defendant continues to fail to comply with the Court's order and the Court does not order her released.

Although 7 CMC § 4208 does not explain what procedures apply when a Plaintiff seeks to revoke a Defendant's suspended sentence, I interpret Section 4208 to require that this Court provide the Defendant notice and a hearing to make a finding of defendant's continued ability to pay and thereby ability to comply with the conditions to the probation prior to her commitment to jail.

Were this Court to issue an order for the Defendant's summary incarceration, without any consideration of the Defendant's ability to pay (especially given that four years have passed since that original determination was made), it would effectively circumvent the Code's requirements. Given that the revocation of a suspended sentence in this scenario is no different in theory than entering a new finding of civil contempt, this Court finds that it should be no different in practice. The rationale for providing a Defendant an opportunity to be heard in his or her defense in the first stage of the contempt process is no less applicable in the second stage.

IV. CONCLUSION

Based on the foregoing, this Court declines to issue an order of commitment against the Defendant based solely on the declaration of Plaintiffs' counsel. Furthermore, this Court strikes that portion of the June 25, 1999, Order which provides for a summary revocation of the Defendant's suspended sentence without any further notice to the Defendant. Should Plaintiffs wish to pursue this commitment request, Plaintiffs should either request that a hearing be held on the revocation of the suspended sentence, or alternatively, move for a new finding of civil contempt and request that a sentence be imposed pursuant to 7 CMC § 4208.

Accordingly, Plaintiffs' proposed Order for Defendant's commitment into custody is hereby DENIED.

SO ORDERED this $\underline{29}^{th}$ day of October, 2003.

RAMONA V. MANGLONA, Associate Judge

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