



By Order of the Court, Associate Judge JOSEPH N. CAMACHO

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FOR PUBLICATION

CLERK OF COURT  
SUPERIOR COURT

2014 AUG -8 PM 3: 51

BY: *[Signature]*  
DEPUTY CLERK OF COURT

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

J.C. TENORIO ENTERPRISES, INC.,	)	SMALL CLAIM NO. 96-1082
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING MOTION RE:
	)	ENFORCEMENT OF MONEY
LALAINÉ J. BALTAZAR,	)	JUDGMENT
	)	
Defendant.	)	
	)	
	)	

On January 7, 2013, Plaintiff filed an *ex parte* motion in this matter requesting the Court to issue an order directing First Hawaiian Bank to pay Plaintiff all funds contained in Defendant's demand deposit account. This Court issued an order directing supplemental briefing on February 8, 2013 providing legal support that (1) such motion could be made *ex parte*; and (2) the collection method sought was supported by statute or other legal authority. Plaintiff submitted supplemental briefing on March 4, 2013. Based on a review of the filings and applicable law, the Court denies Plaintiff's motion because it does not comply with the requirements of Commonwealth statute or afford adequate procedural protection as is required by the due process clause of the Fourteenth Amendment.

This case involves a default money judgment entered on June 21, 1996. Plaintiff argues that Rule 5(a) of the Commonwealth Rules of Civil Procedure allows this motion to be made *ex parte*.

1 Rule 5(a) states in relevant part, “No service need be made on parties in default for failure to  
2 appear.” Plaintiff also argues that notice of this motion to the Defendant would allow the judgment  
3 debtor to move assets to avoid satisfaction of judgment. The Court agrees that motions may be  
4 made *ex parte* when the other party is in default for failure to appear, as is the case here.

5 Plaintiff argues that there is statutory authority for its request. Plaintiff notes that 1 CMC  
6 § 3202 gives this court “the power to issue . . . all . . . writs and orders necessary and appropriate to  
7 the full exercise of jurisdiction.” Plaintiff further argues that 7 CMC § 4104 allows for the  
8 enforcement of judgments in “any manner known to American common law or common in courts  
9 in the United States.” Plaintiff asserts that orders like the one requested here are common in courts  
10 of the United States, but provides no supporting authority for that assertion. Plaintiff notes that  
11 7 CMC § 4201(b) allows the court to issue writs of attachment for debts payable to the defendant,  
12 and argues that a demand deposit account is a debt owed to the defendant. Plaintiff suggests that if  
13 the Court has due process concerns, the Court should order First Hawaiian Bank to transfer  
14 Defendant’s funds to the Court, and that the Court can then provide notice to Defendant and  
15 schedule a hearing concerning the disposition of the funds.

16 “The process to enforce a judgment for the payment of money may be a writ of execution or  
17 an order in aid of judgment . . . .” 7 CMC § 4101. Plaintiff has requested the seizure of personal  
18 property of the Defendant. The procedure for obtaining such a result is to request a writ of  
19 execution. 7 CMC § 4203. The Court is only authorized by 7 CMC § 4203 to issue a writ of  
20 execution against personal property that is not subject to an exemption, as described in 7 CMC  
21 § 4210. Similarly, some public benefit funds are exempt from execution. *See, e.g.*, 20 CFR 404.970  
22 SSR 79-4.

23 Commonwealth statute and court rules are silent as to the particular procedure to follow  
24 when enforcing a judgment through writ of execution. However, where the judgment debtor is a

1 natural person, who may be able to claim exemptions, such process must include notice of those  
2 exemptions and the opportunity for a hearing on any claimed exemptions. *See* 7 CMC § 4210.  
3 Procedures without such notice of exemptions and an opportunity for a hearing, such as the request  
4 made by Plaintiff in this case, are not common in courts of the United States, but instead have often  
5 been found to violate the Due Process Clause of the 14th Amendment. *See, e.g. Aacen v. San Juan*  
6 *County Sheriff's Dep't*, 944 F.2d 691 (10th Cir. 1991); *Hutchinson v. Cox*, 784 F. Supp. 1339 (S.D.  
7 Ohio 1992); *Dionne v. Bouley*, 757 F.2d 1344 (1st Cir. 1985); *Deary v. Guardian Loan Co.*, 534 F.  
8 Supp. 1178 (S.D.N.Y. 1982); *and Duhon v. Gravett*, 302 Ark. 358 (1990).

9 Similarly, the Court notes that 7 CMC § 4201(b) requires exemption of any wages or salary  
10 necessary for the support of the judgment debtor or his or her dependents. Writs of attachment also  
11 require additional procedural steps and are issued only on a showing of “special cause.” 7 CMC  
12 § 4201(a).

13 Thus, the Court finds that Plaintiff’s request in this case does not follow the writ of  
14 execution procedure set forth in the Commonwealth Code, nor does the Court have enough  
15 information to determine that the personal property of Defendant sought by Plaintiff is not exempt,  
16 either under 7 CMC § 4201(b) or 7 CMC § 4210.

17 The Court is open to entertaining alternative enforcement mechanisms that more closely  
18 track the requirements of the Commonwealth Code<sup>1</sup> and provide an opportunity for an exemption  
19 hearing.

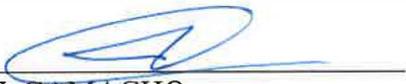
20 Accordingly, Plaintiff’s motion is **DENIED**.

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23 <sup>1</sup> For example, Plaintiff could request a writ of execution pursuant to 7 CMC § 4203, include the following information,  
24 and serve the writ on the judgment debtor. To comply with 7 CMC § 4204, the writ must include an accounting of the  
amount of money necessary to satisfy the judgment and applicable costs and fees and instructions for the levying  
officer. And, to comply with 7 CMC § 4210, the writ must be served on the judgment debtor, even in the case of  
default, and include notice of the exemptions and notice of an upcoming hearing on the exemptions.

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**IT IS SO ORDERED** this 8<sup>th</sup> day of August, 2014.

  
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**JOSEPH N. CAMACHO**  
Associate Judge