

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

MICRONESIAN TELECOMMUNICATIONS )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KHALID A. ISLAM, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 98-968  
(Small Claims Case No. 91-326)

**DECISION AND ORDER**

**I. PROCEDURAL BACKGROUND**

This matter came before the Court on February 9, 1999, in Courtroom D on Defendant's appeal of a small claims judgment entered in Plaintiff's favor in the amount of \$1,160.05. James S. Sirok, Esq., appeared on behalf of Plaintiff Micronesia Telecommunications Corporation. Defendant Khalid A. Islam appeared pro se. The Court, having heard and considered the arguments of the parties, and being fully informed of the premises, now renders its decision.

**II. FACTS**

On May 13, 1991, Plaintiff filed a small claims complaint against Defendant Khalid A. Islam seeking damages in the amount of \$905.05 for an unpaid account, attorney's fees, interest, and costs. On June 13, 1991, a small claims summons was issued, but Plaintiff was unable to perfect service of process. The summons was reissued four times: August 10, 1993; February [p. 2] 15, 1995; July 24, 1995; and October 27, 1997. Each time, Plaintiff was unable to perfect service of process.

Finally, on March 9, 1998, the summons was reissued a fifth time and Plaintiff was able to perfect service of process as Defendant was served with a summons and complaint on March 13, 1998. On August 6, 1998, the small claims court heard the case and entered judgment

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against Defendant in the amount of \$1060.05. Defendant made a timely appeal of that judgment to the Commonwealth Superior Court on September 4, 1998.

### III. ISSUES

1. Whether Plaintiff's complaint is barred by the statute of limitations where the complaint was filed within statutory period but where service of process was not perfected within statutory period?

2. Whether Plaintiff's complaint should be dismissed without prejudice for failure to perfect service of process within 120 days of filing as required by Rule 83(j) of the Commonwealth Rules of Civil Procedure?

### IV. ANALYSIS

On appeal of a Small Claims Court judgment, the Superior Court conducts a new trial, reviewing both the facts and the law de novo. Rule 83(i) of the Commonwealth Rules of Civil Procedure states, in pertinent part: "[a]ny defendant who has had a small claims judgment rendered against him/her may appeal the judgement by requesting, in writing, a new trial in the Superior Court within 30 days after the judgment was entered." Com. R. Civ. P. 83(i). Defendant made a timely appeal of the Small Claims Court judgment and is entitled to a new trial.

#### A. Statute of Limitations.

Defendant contends that Plaintiff's complaint is barred by the statute of limitations because Plaintiff did not perfect service of process on Defendant within the statutory period. Pursuant to 7 CMC §2505, the applicable statute of limitations is six years. 7 CMC §2505 provides that "[a]ll actions other than those covered in 7 CMC §§2502, 2503, and 2504 shall be commenced within six years after the cause of action accrues." 7 CMC §2505. Pursuant to 7 CMC §2512, "[e]xcept [p. 3] as otherwise provided, periods prescribed in this chapter shall be reckoned from the date when the cause of action accrued." 7 CMC §2512. A cause of action "accrues" when the plaintiff could have first maintained the action to a successful conclusion. Von Shrader v. Board of Comm'rs., 103 P.2d 930, 931 (Okla. 1940). Plaintiff's action

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“accrued” in October of 1990, when Defendant allegedly failed to pay \$705.05 owed to Plaintiff for telephone services. The statute of limitations began to run at that time, thus giving Plaintiff six years to commence an action against Defendant. Pursuant to Rule 3 of the Commonwealth Rules of Civil Procedure, “[a] civil action is commenced by filing a complaint with the court.” Com. R. Civ. P. 3. Plaintiff filed a complaint with the Small Claims Court on May 13, 1991, within the six year statutory period.

The public policy behind a statute of limitations is to “protect defendants from the necessity of defending stale claims and require plaintiffs to pursue their claims diligently.”

Romano v. Rockwell International, Inc., 926 P.2d 1114, 1119 (Cal. 1996), citing Jolly v. Eli Lilli & Co., 751 P.2d 923 (Cal. 1988). The Romano Court also stated further that;

“[Statutes of Limitations] are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.” Id., citing Adams v. Paul, 904 P.2d 1205, quoting Order of R. Telegraphers v. Ry. Express Agency, 321 U.S. 342, 348-349, 64 S. Ct. 582 (1944). (1944).

Defendant argues that the public policy behind a statute of limitations requires that Plaintiff’s action be time-barred. The Court disagrees, even though such a result would fulfill the public policy considerations of statutes of limitations; the law is clear that Plaintiff need only “commence” an action within the statutory period and that such period begins to run upon “accrual” of the cause of action. Plaintiff filed a complaint with the Small Claims Court on May 13, 1991, within the statutory period. Therefore, the Court finds that Plaintiff’s complaint is not barred by the statute of limitations pursuant to 7 CMC §2505. [p. 4]

**B. Requirement of Service Within 120 Days of Filing Complaint.**

Plaintiff filed the original complaint on May 13, 1991. Service of process was not obtained, however, until March 13, 1998, -- six years and ten months later. Defendant argues that Rule 4(m) of the Commonwealth Rules of Civil Procedure mandates that the Court dismiss Plaintiff’s complaint without prejudice because service was not perfected within 120 days after filing of the original complaint on May 13, 1991, and because Defendant has not shown “good

cause” for the failure to perfect service. Plaintiff argues that Rule 83 of the Commonwealth Rules of Civil Procedure, not Rule 4(m), applies to this case because Rule 83 governs small claims procedure and Rule 4(m) is only applicable if the provisions of Rule 83(k) are triggered.

Rule 83(k) states:

(k) OTHER PROCEDURES. All matters in small claims proceedings which are not expressly covered by this rule shall be governed by the Commonwealth Rules of Civil Procedure. Com. R. Civ. P. 83(k).

The Court finds that Rule 83 expressly covers this action and that the provisions of Rule 83(k) are not triggered so as to make application of Rule 4(m) of the Commonwealth Rules of Civil Procedure necessary.

Rule 83(j) of the Commonwealth Rules of Civil Procedure states:

(j) DISMISSALS. The court **may dismiss without prejudice** all cases for which plaintiffs fail to file a return of service **within 120 days from the date the case is commenced**. In addition, cases will be dismissed where judgment was obtained but no other action has been taken in the case for 120 days from the date judgment was entered. (emphasis added) Com. R. Civ. P. 83(j).

Plaintiff filed the original complaint on May 13, 1991, and service was not perfected until March 13, 1998, -- six years and ten months later. Defendant argues that Plaintiff’s complaint should be dismissed without prejudice under Rule 83(j). However, Plaintiff argues that pursuant to Rule 83(d), Plaintiff did perfect service of process within the 120 day time limit because Rule 83(d) allows the summons to be refiled if service isn’t perfected at least three days before the hearing date. Plaintiff argues that the 120 day time limit is calculated from the last filing of the summons. [p. 5]

Rule 83(d) states:

(d) SMALL CLAIMS SUMMONS AND COMPLAINT. Upon the signing of a claim on the small claims docket . . . the clerk of the court shall issue and give to the plaintiff . . . a small claims summons and complaint in duplicate, which shall be served on the defendant(s) at least five business days prior to the date that the matter is to be heard by the court. . . . Should the plaintiff fail to file the endorsed return of service at least three days before the hearing, the hearing date shall be vacated. Thereafter, it will be plaintiff’s responsibility to arrange a new hearing date with the clerk and have the revised summons served on the defendant at plaintiff’s expense. Com. R. Civ. P. 83(d).

Therefore, according to Plaintiff, service of process was perfected within the 120 day time limit because Defendant was served on March 13, 1998, four days after the final summons was issued on March 9, 1998.

The Court disagrees. Rule 83(j) specifically states that “[t]he court may dismiss without prejudice all cases for which plaintiffs fail to file a return of service within 120 days from the date the case is commenced.” Com. R. Civ. P. 83(j). As previously noted, pursuant to Rule 83(k), “all matters in small claims proceedings which are not expressly covered by [Rule 83] shall be governed by the Commonwealth Rules of Civil Procedure.” Com. R. Civ. P. 83(k). Rule 83 does not define when a small claims action is “commenced,” therefore it is appropriate to look to other Commonwealth Rules of Civil Procedure. Pursuant to Rule 3, “[a] civil action is commenced by filing a complaint with the court.” Com. R. Civ. P. 3. The court cannot construe a statute against its plain meaning. Office of Attorney General v. Deal, 3 N.M.I. 110, 117 (1992). Therefore, Plaintiff’s action was “commenced” on May 13, 1991, and service of process should have been perfected within 120 days. However, service was not perfected until March 13, 1998. Therefore, the court has discretion pursuant to Rule 83(j) of the Commonwealth Rules of Civil Procedure to dismiss plaintiff’s complaint without prejudice. The Court finds that Plaintiff’s complaint was not served properly under Rule 83(j) of the Commonwealth Rules of Civil Procedure and therefore the decision of the Small Claims Court granting judgment in favor of Plaintiff in the amount of \$1,060.05, is vacated and Plaintiff’s complaint is dismissed without prejudice. [p. 6]

## V. CONCLUSION

For the foregoing reasons, the Court finds that Plaintiff’s complaint is not barred by the statute of limitations pursuant to 7 CMC §2505.

For the foregoing reasons, the Court finds that Plaintiff’s complaint was not served properly under Rule 83(j) of the Commonwealth Rules of Civil Procedure. Therefore, the decision of the Small Claims Court granting judgment in favor of Plaintiff in the amount of \$1,060.05, is **VACATED** and Plaintiff’s complaint is **DISMISSED WITHOUT PREJUDICE**.

So ORDERED this 2 day of March, 1999.

/s/ Juan T. Lizama  
JUAN T. LIZAMA, Associate Judge