

**MARUYAMA & ASSOCIATES,
LTD.
vs.
MARIANA ISLANDS HOUSING
AUTHORITY**

**Civil Action No. 82-0066
District Court NMI
Appellate Division**

Decided March 14, 1986

**1. Civil Rights - Judgments -
Enforcement**

Commonwealth law protecting funds of the Mariana Islands Housing Authority from execution does not prevent the federal court from issuing a writ to execute on such funds where the underlying judgment is based on federal civil rights law. 42 U.S.C. §1988.

FILED
Clerk
District Court

MAR 14 1986

For The Northern Mariana Islands

UNITED STATES DISTRICT COURT By _____
FOR THE NORTHERN MARIANA ISLANDS (Deputy Clerk)

1 MARUYAMA & ASSOCIATES, LTD.) CIVIL ACTION NO. 82-0066
2)
3 Plaintiff,)
4)
5 vs.) DECISION AND ORDER
6 MARIANA ISLANDS HOUSING)
7 AUTHORITY,)
8 Defendant.)

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11 On December 10, 1985, judgment was entered in favor of
12 plaintiff, Maruyama & Associates, Ltd. (Maruyama) and against
13 Mariana Islands Housing Authority (MIHA). An order allowing an
14 attorney's fee of \$52,419.29 as part of the costs was issued on
15 February 7, 1986. MIHA appealed this order on February 18, 1986,
16 but did not move for a stay pending the appeal. Mr. Randall T.
17 Fennell, attorney for plaintiff, applied for ex parte, and was
18 granted, a writ of execution on March 11, 1986, to satisfy this
19 award. On the following day, March 12, 1986, MIHA moved to quash
20 the writ of execution. A hearing was held on March 12, 1986, in
21 which both sides were given an opportunity to present their
22 positions. For the following reasons, the motion to quash the
23 writ of execution is denied.

24 Rule 69 of the Federal Rules of Civil Procedure governs
25 execution of federal judgments. Rule 69 states:

26 Process to enforce a judgment for the
payment of money shall be a writ of

1 execution, unless the court directs
2 otherwise. The procedure on execution, in
3 proceedings supplementary to and in aid of a
4 judgment, and in proceedings on and in aid of
5 execution shall be in accordance with the
6 practice and procedure of the state in which
the district court is held, existing at the
time the remedy is sought, except that any
statute of the United States governs to the
extent that it is applicable.

7 The Commonwealth's provision for writs of execution, 7 C.M.C.
8 §4203, states:

9 The Court, at the request of the party
10 recovering any civil judgment in that Court
for the payment of money, shall issue a writ
11 of execution against the personal property of
the party against whom the judgment has been
12 rendered, except as provided in Section
4210.^{1/}

13 The Code specifically sets out in 2 C.M.C. §4457 that "[a]ll
14 property, including funds, acquired or held by MIHA pursuant to
15 this Chapter shall be exempt from levy and sale by virtue of an
16 execution, and no execution or other judicial process shall issue
17 against the same nor shall any judgment against MIHA be a charge
18 or lien upon such property."

19 Though the language of §4457 appears to foreclose the
20 possibility of obtaining a writ of execution against MIHA, case
21 law is to the contrary. See, e.g., Span v. Mountanous, 690 F.2d
22 742 (9th Cir. 1982); Gary v. Louisiana, 441 F.Supp. 1121 (E.D.La.
23 1977), aff'd., 622 F.2d 804 (5th Cir. 1980), cert. denied, 101
24 S.Ct. 1695, 450 U.S. 994, 68 L.Ed.2d 193 (1981).

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26 ^{1/}Section 4210 deals with property which is exempt from writs of
execution or attachment and does not apply to the case at bar.

1 [] The Commonwealth cannot frustrate the intent of 42
2 U.S.C. §1988 by "setting up state law barriers to block
3 enforcement of an attorney's fees award." Spain v. Mountanous,
4 690 F.2d at 746. This would be contrary to the command of the
5 Supremacy Clause of the United States Constitution. Gates v.
6 Collier, 616 F.2d 1268 (5th Cir. 1980).

7 Pursuant to §1988, the prevailing party in a §1983 suit
8 is entitled to recover an attorney's fee. The order of February
9 7, 1986, set this amount at \$52,419.29. The Commonwealth Code
10 provides for writs of execution to satisfy judgments. Though
11 §4457 appears to strip away this avenue from a judgment creditor
12 who prevails against MIHA, the case law is to the contrary and
13 Maruyama must prevail.

14 For these reasons, the motion to quash the writ of
15 execution is denied.

16 IT IS SO ORDERED.

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18 DATED this 14th day of March, 1986.

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JUDGE ALFRED LAURETA