

FOR PUBLICATION

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

**IN RE THE ESTATE OF
MARIA PIERE MALUS,
Deceased.**

CIVIL ACTION NO. 99-0769

**ORDER GRANTING MOTION FOR
CONTEMPT**

Jeffrey Kaipat, Administrator of the Estate of Maria Pierce Malus (the “Estate”), moves for an order of contempt against former Administrator Crispin Kaipat, following his July 18, 2005, admission to misappropriating \$36,000 of Estate funds. In conjunction with a finding of contempt, Administrator seeks reimbursement of the misappropriated amount, attorney’s fees, 6% interest prior to the order of contempt, and 9% post-order interest. Oral arguments were held November 21, 2006 with Robert Torres representing Administrator, and Richard Pierce representing Crispin Kaipat.

The Court agrees that Crispin Kaipat has acted in contempt, and is liable to the Estate for the current Administrator’s attorney’s fees and costs, the principal, and the requested pre-order and post-order interest.¹ The instant order serves to set the date of the commencement of post-order judgment and clarify the nature of Mr. Kaipat’s contempt and the mechanism by which he will reimburse the Estate.

¹ At the hearing, counsel for Mr. Kaipat pointed out that the Estate would never have earned this amount of interest had its money been invested in a savings account in a local bank. Liability for interest on a judgment, however, has no relation to the current interest rate. In the Commonwealth, the maximum liability at 12% for pre-judgment interest and 9% for post-judgment interest. *See* 7 CMC § 4101; 4 CMC § 5301-03. Mr. Kaipat has retained the benefit of the misappropriated funds, and has been free to spend or invest them according to his choice. The Estate did not and would not have had this benefit.

The Nature of Contempt

The Commonwealth Code and Rules of Civil Procedure do not expressly provide for orders of civil contempt in the event that an officer of the court breaches his or her fiduciary duties.² The Court's power to find contempt in such cases stems from its inherent power to perform its functions without interference.

The U.S. Supreme Court described the court's power to punish in *Ex parte Robinson*, 86 U.S. 505, 510 (U.S.1873): "The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice." See also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980) (court has the power to impose sanctions for "willful disobedience of a court order . . . or when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons"). A court should utilize its inherent powers to find civil contempt when it encounters conduct, which defies classification pursuant to either Rule 11 or its criminal contempt authority, and yet still threatens the court's ability to function properly. *Commonwealth v. Marianas Pub. Lands Auth.*, No. 05-0332 (Supr. Ct. Dec. 7, 2005).

Courts distinguish criminal from civil contempt by the purpose and character of the sanctions imposed. Compare 7 CMC § 4208 with 6 CMC § 3307; see *ConTex, Inc. v. Consolidated Technologies, Inc.* 531 N.E.2d 1353, 1355 (Ohio App. 1988) While the purpose of criminal contempt sanctions is to vindicate authority and punish past acts of disobedience, that of civil

² The Rules of Civil Procedure specifically provide for findings of contempt for violations of discovery, Com. R. Civ. P. 37; failure to comply with a subpoena, Com. R. Civ. P. 45; affidavits made in bad faith, Com. R. Civ. P. 56; and failure to execute a judgment vesting title, Com. R. Civ. P. 70.

Section 4208 of Title 7 of the Commonwealth Code provides for civil contempt where a debtor "fails without good cause to comply with any order in aid of Judgment." The debtor is "committed to jail until the debtor complies with the order or is released by the court or serves a period fixed by the court of not more than six months in jail, whichever happens first." 7 CMC § 4208.

Section 3307 of Title 6 of the Commonwealth Code provides for criminal contempt where a person "unlawfully, knowingly, and willfully interferes directly with the operation and function of a court, by open defiance of an order . . . or by disturbing the peace in or near the courtroom; or by speaking or writing in such a manner as to intimate that the court." Upon conviction the person "may be imprisoned for a period of not more than six months, or be fined not more than \$100, or both."

contempt is to coerce compliance with underlying order and to compensate complainant for loss sustained by contemnor's disobedience. *Id.* at 1356. Punishment for civil contempt may be compensatory (in the form of a fine), or prospective and conditional. *Id.* Whereas criminal contempt usually results in an unconditional prison sentence, confinement as a result of civil contempt may be avoided or terminated by the contemnor's adherence to the contempt order. *Id.*; *see also* 7 CMC § 4208; *Paulis v. Superior Court*, 2004 MP 10 at ¶ P. 33 (contempt was civil in nature where non-compliant debtor could avoid her jail sentence entirely by complying with the order to pay \$25 per month).

CNMI courts have invoked their civil contempt power to discipline attorneys and promote court rules. *E.g.*, *Sonoda v. Villagomez*, 3 N.M.I. 535, 541 (1993); *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 343 (1992). This power can be extended to other officers of the court, such as trustees, executors, and administrators. *See In re Workman's Estate*, 68 P.2d 479, 481 (Or. 1937) (“An administrator, duly appointed, is thus an officer of the court, subject to its orders, answerable to the court in contempt proceedings . . . probate courts are vested with very extensive discretionary power over the conduct of these officers, and exercise of such discretion will not be interfered with on appeal unless plainly required by some principle of law.”); *O'Neill v. Cunningham*, 244 P. 444, 447 (Okla. 1926) (an administrator duly appointed is an officer of the court, subject to its orders, answerable to the court in contempt proceedings or removal from office by the court for refusal to obey the order of the court); *Ex parte Smith*, 53 Cal. 204 (Cal. 1878) (as a trustee for the heirs and creditors, and as an officer of the court, an executor is subject to attachment for contempt).³

The purpose of the current administrator’s motion for contempt should be to compensate the estate for loss sustained by the former administrator’s disobedience. An extended jail sentence

³ *See also Merritt v. Rollins*, 329 S.W.2d 544 (Ark. 1959) (executors and administrators are officers of the court and occupy a fiduciary relation toward all parties having an interest in the estate); *In re McClellan's Estate*, 129 N.W. 1037 (S.D. 1911) (the administrator is an officer of the court required by law to enter into an undertaking for the faithful performance of his trust); *Estate of Hammer*, 24 Cal.Rptr.2d 190 (Cal. App. 1993) (executor is officer of the court and occupies fiduciary relation toward all parties having interest in estate).

would only hinder the Estate's ability to recover the lost funds. A finding of civil contempt, rather than criminal contempt, is appropriate.

The Mechanism of Reimbursement

Mr. Kaipat is unemployed and has been ordered to seek employment. At this time, his only income is his retirement pension from the CNMI Supreme Court. This Court does not have the power to attach such income. However, the Court can and shall order Mr. Kaipat to make a good faith effort to reimburse the Estate by any means available to him. This includes voluntary payments from his retirement income. At the hearing, Mr. Kaipat agreed to pay the Estate \$100 per month while he is unemployed. Mr. Kaipat shall submit a report of his income and employment status on a quarterly basis. After finding employment, his monthly payments will be increased.

Mr. Kaipat's share of the Estate may be forfeited to the extent necessary to reimburse the Estate.⁴ It is in the Administrator's interest to inventory the assets and of the Estate and finalize probate as soon as possible

Conclusion

Administrator's motion to hold Crispin Kaipat in contempt is GRANTED. Mr. Kaipat is in civil contempt of court, and is liable to the Estate for \$36,000, 6% simple interest (compounded yearly) on this principal prior to the date of this order, 9% post-order interest, and reasonable attorney's fees and costs. Mr. Kaipat shall appear in Courtroom 217 at 1:30 p.m. on February 20, 2007, at which time a regular payment schedule shall be established.

SO ORDERED this 4th day of December, 2006.

/S/ _____
Juan T. Lizama
Associate Judge, Superior Court

⁴ At the hearing, counsel for the Administrator suggested that the integrity of the probate process would be undermined if the administrator were allowed to misappropriate funds and simply have the amount come out of his share. The Court agrees, and for this reason holds Mr. Kaipat liable for attorney's fees and costs, as well as interest above and beyond what the Estate would have earned otherwise.