

Allied Boston Bank, Inc. v. Registrar of Corps., 10 ROP 198 (Tr. Div. 2002)
ALLIED BOSTON BANK, INC.,
Plaintiff,

v.

REGISTRAR OF CORPORATIONS,
MICHAEL S. FINEMAN, and
REPUBLIC OF PALAU ATTORNEY GENERAL,
Defendants.

CIVIL ACTION NO. 02-123

Supreme Court, Trial Division
Republic of Palau

Decided: December 2, 2002

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ARTHUR NGIRAKLSONG, Chief Justice:

The plaintiff alleges eight (8) causes of action in a 22-page complaint against the defendants: (1) unlawful communication with foreign governments, (2) violations of certain provisions of RPPL No. 6-3, the Financial Institution Act of 2001, (3) negligent interference with business relations, (4) intentional interference with contractual relations, (5) intentional interference with prospective business relations, (6) declaratory reliefs, (7) request to compel Registrar of Corporations, and (8) request for injunctive reliefs.

This matter came before the Court on defendants' motion to dismiss based on ROP R. Civ. P. 12(b)(6) and sanctions based on ROP R. Civ. P. 11. A motion to dismiss for failure to state a claim under Rule 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which could entitle him to relief." *Conley v. Gibson*, 78 S. Ct. 99, 102 (1957). When a

court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss . . . for failure to state a claim, the allegations of the complaint should be construed favorably to the pleader.

Scheuer v. Rhodes, 94 S. Ct. 1683, 1686 (1974).

The Rule itself prohibits the Court from considering matters outside the pleadings, like, as here, defendants' exhibit 1 to their reply brief. *See* Rule 12(b)(6). "A dismissal [under Rule

Allied Boston Bank, Inc. v. Registrar of Corps., 10 ROP 198 (Tr. Div. 2002) 12] is on the merits and L200 is accorded res judicata effect. For this reason, dismissal under subdivision (b)(6) is generally disfavored by the Courts.” 2A James Moore, et al., Moore’s Federal Practice, § 12.07 (2d ed. 1996) (internal citations omitted).

Even though the Court must presume all factual allegations of the complaint to be true and all reasonable inferences are made in favor of the pleader, legal conclusions are not given presumption of truthfulness. *Id.*

With these rules governing Rule 12(b)(6), the Court now turns to each of the eight (8) cause of action.

The first cause of action alleges that defendants communicated unlawfully with foreign governments in violation of 2 PNC §§ 104 and 203 and Chapter 2, Part I, Section 2 of the Regulations Implementing the Foreign Investment Act, 28 PNC § 101, *et seq.* Specifically, defendant Fineman communicated with the California Department of Financial Institutions about the plaintiff bank matters before the Foreign Investment Board (FIB) without obtaining authorization from the President of Palau. (*See* Salii’s letter of 12/13/00 to FIB officials.)

Section 104 of Title 2 of the Palau National Code states as follows:

Functions of Ministry of State. The Ministry of State shall be responsible for national defense, treaty matters, relations between the national and state governments, relations with other nations, the United Nations and other international organizations, and related matters.

2 PNC § 104. Section 203 reads:

Delegation of functions. The president is authorized to designate and empower the Vice President, or any other cabinet member or the head of any department, office, or agency in the Executive branch, to perform, without approval, ratification, or other action by the President, any executive function which is transferred from the Trust Territory Government to the Republic, or any function which is vested in the President by law; provided that nothing contained herein shall relieve the President of his responsibility in office for acts of any official designated by him to perform such functions. Such designation shall be in writing, shall be made available to the Olbiil Era Kelulau and the Judiciary, shall be subject to such terms, conditions, and limitations as the President may deem advisable, and shall be revocable at any time by the President in whole or in part.

Plaintiff claims that the above statutes require any agency in Palau, other than the Ministry of State, to obtain authorization from the President before communicating with a foreign government on any subject matter.

Defendant Fineman’s communication with the California Department of Financial Institutions about plaintiff bank matters pending before the FIB does not fall within the same

Allied Boston Bank, Inc. v. Registrar of Corps., 10 ROP 198 (Tr. Div. 2002) class of subject matters enumerated **1201** in 2 PNC § 104, namely “national defense,” “treaty matters” or even matters on “relations [between Palau] with other nations.” 73 Am. Jur. 2d *Statutes* § 134, at 342 (2001).

Plaintiff’s reading of the statutes would require every person or agency to get authorization from the President before communicating with foreign countries. Were this the case, the President’s Office would be spending considerable time each day screening requests to place international calls. There may be several ways of reading the statutes. The plaintiff’s way is the most unreasonable and would certainly lead to absurdities. *Id.* § 72, at 288.

The Court rejects plaintiff’s reading of the statutes and grants defendants’ motion to dismiss plaintiff’s first cause of action. The first cause of action in the complaint is Dismissed.

Next, defendants argue that the first six causes of action are barred by either prosecutorial or sovereign immunity and therefore should be dismissed. Having dismissed the first cause of action, the Court now turns to the next five.

The Court would agree with the defendants if the claimed immunities were “absolute.” It is undisputed that these two types of immunities are “limited” in this jurisdiction. As such, the defendants may or may not be liable depending on the evidence which plaintiff does not have to offer at this stage of the pleading. *Scheuer*, 94 S. Ct. at 1687-88.

Further, allegations in the second cause of action include violations of certain provisions of RPPL No. 6-3, intimidation and negligence. The third cause of action alleges negligence and (4) and (5) allege international interference with contractual relations and interference with prospective business relations respectively.

An allegation of negligence is sufficient to state a claim upon which relief can be granted. *Banco Cont’l v. Curtis Nat’l Bank*, 406 F.2d 510, 512 (1969). Similarly, the Court believes an allegation of intimidation is sufficient to state a claim. The remainder of the complaint seems to be on reliefs. The Court sees no reason to dismiss them now.

CONCLUSION

Given the notice pleading under our rules, [see for example Rule 8(a)(2)] the Court determines that with the exception of the first cause of action, all the allegations in the plaintiff’s complaint are sufficient to withstand defendants’ motion to dismiss under Rule 12(b)(6). In reviewing the complaint on its face, however, the Court regards plaintiff’s recovery or success to be unlikely, but that is not the test under Rule 12(b)(6). Again, the test is whether the plaintiff is entitled to offer evidence to support its claims.

MOTION FOR SANCTION RULE 11

The Court defers its decision on this motion until the final resolution of this case.