

Remengesau v. Senate, 10 ROP 173 (Tr. Div. 2001)
TOMMY E. REMENGESAU, JR.,
President of the Republic of Palau,
Plaintiff,

v.

THE SENATE AND HOUSE OF DELEGATES
OF THE SIXTH OLBIIL ERA KELULAU,
Defendants.

CIVIL ACTION NO. 01-062

Supreme Court, Trial Division
Republic of Palau

Decided: July 16, 2001

ARTHUR NGIRAKLSONG, Chief Justice:

At the center of this dispute is a \$550,000 appropriation in the 2001 Interim Budget for the purchase of land in Guam. The Interim Budget was passed in September 2000. On February 14, 2001, President Tommy E. Remengesau, acting on the appropriation, purchased a tract of land in Guam for \$547,000. The purchase price was paid and title was transferred at that time. Nine days later, on February 23, 2001, the Olbiil Era Kelulau (OEK) passed the 2001 Unified National Annual Budget Act. One provision purported to repeal the Guam appropriation. President Remengesau signed the Unified National Annual Budget Act into law on February 28 but “line-item vetoed” the repealer of the Guam appropriation. The President thereafter filed this action, seeking a declaration that the OEK “lacks the power to repeal a fully executed law.” The OEK counterclaimed, asserting the President’s veto of the repealer was “legally void.” The President has moved for a dismissal of the OEK’s counterclaim and for judgment on the pleadings. The court grants the President’s motion.

FACTS

The Fifth OEK passed the 2001 Interim Budget Act, House Bill No. 5-263-27S on September 27, 2000. [Defendants’ Answer and Counterclaim, Exhibit 1.] President Kuniwo Nakamura signed the Interim Budget Act into RPPL No. 5-47 on September 29, 2000. [*Id.*] Section 22 of RPPL No. 5-47 reads,

Section 22. Land in Guam. The sum of \$550,000 is hereby authorized and appropriated for Fiscal Year 2001 to purchase land in Guam for the Republic of Palau. These funds shall be administered by the President of the Republic of Palau, and shall come from local revenues.

In December 2000, the President’s office, acting pursuant to its authority in Section 22,

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reached a settlement with a seller ¶174 to purchase land in Dededo, Guam, for \$547,000. [Plaintiff's First Amended Complaint for Declaratory Relief, Exhibit B.] The closing on the sale took place on February 14, 2001. On that day the seller executed a warranty deed and in turn the ROP paid over the full amount, leaving a balance of "0." [*Id.*] Title was then transferred. [Defendants' Answer and Counterclaim, Exhibit 4.]

On February 23, 2001, the Sixth OEK passed the 2001 Unified National Annual Budget Act, Senate Bill No. 6-58. [Defendants' Answer and Counterclaim, Exhibit 2.] Palau's new President, Tommy E. Remengesau, Jr., signed the Budget Act, Senate Bill No. 6-58, into RPPL No. 6-1 on February 28, 2001. Section 7 of the law purported to repeal the appropriation in RPPL No. 5-47(22) for the purchase of land in Guam: " **Section 7. Repealer.** RPPL No. 5-47(22) is hereby repealed." [*Id.*] Although President Remengesau signed the Budget Act, he struck the text of Section 7 and added the notation, "Line Item Vetoed" along with his initials in the right margin. [*Id.*] Above his signature at the bottom of the bill President Remengesau added,

Pursuant to the powers accorded the President by Article IX, Section 15 of the Constitution of the Republic of Palau, Section 7 [concerning the repeal of RPPL No. 5-47(22)] of the foregoing bill is hereby vetoed.

[*Id.*] In a transmittal letter to the OEK accompanying his signature of the bill, President Remengesau explained his actions:

I would . . . like to express my concern with the action of your Joint Committee in attempting to repeal RPPL No. 5-47(22) in Section 7 of your Budget Bill. This appropriation, made in the Interim Budget, earmarked \$550,000 for the purchase of land in Guam. *Pursuant to the authority previously granted by the OEK, the subject land has been purchased and title transferred.* The funds have been expended and the matter is closed. Repealing this provision from the Interim Budget Act, in view of the fact that the issue is now moot, raises unnecessary and uncertain legal issues.

[*Id.* at Exhibit 4 (emphasis in original).]

President Remengesau subsequently filed suit seeking a declaration that "the Sixth OEK lacks the power to repeal a fully executed law and that therefore Section 7 of RPPL 6-1 is void, unlawful, and of no legal effect whatsoever." [Plaintiff's First Amended Complaint For Declaratory Relief.] The OEK counterclaimed. It seeks a declaration that the President "is without constitutional authority to veto or reduce anything in an appropriation bill that is not . . . a positive sum." [Defendants' Answer and Counterclaim.]

DISCUSSION

The President has moved for a dismissal of the OEK's counterclaim and for judgment on the pleadings. The President now concedes that his veto of the repealer was "ineffective."

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[Motion of Plaintiff to Dismiss Defendants' Counterclaim and For Judgment on the Pleadings at 5.] He argues that this ¶175 concession moots the OEK's counterclaim and that therefore the counterclaim should be dismissed. The OEK argues that the court should address the veto issue despite the President's concession. It claims that the veto "is now legal precedent for the exercise of presidential power under the Constitution." [Defendants' Opposition to Plaintiff's Motion to Dismiss and For Judgment on the Pleadings at 10.] The OEK argues that this "legal precedent" infringes on its legislative powers. It asks the court to address the veto issue first before addressing the repealer issue. [*Id.* at 3.]

The court agrees with the President that his concession moots the OEK's counterclaim. Both parties now agree that the President's veto was ineffective. Thus, there is no longer any actual controversy between them on this issue. See 14 PNC § 1001 (providing that the court may grant a declaratory judgment "[i]n a case of actual controversy within its jurisdiction"). While the court may arguably still address the issue even though there is no actual controversy, it chooses not to do so in this instance. The Appellate Division has recently suggested that courts in Palau may not need a "case and controversy" to establish jurisdiction, but that certain non-constitutional considerations might nevertheless justify against issuing declaratory judgments in certain cases where there is no controversy. See *Ngerul v. ROP*, 8 ROP Intrm. 295, 303 (2001) ("Although we have noted that our jurisdiction 'may be broader than the jurisdiction of federal courts in the United States,' . . . we have also recognized that declaratory relief is most appropriate 'where it will serve a useful purpose in clarifying the legal relations of the parties or terminate the uncertainty and controversy giving rise to the proceeding.'" (quoting *Senate v. Nakamura*, 8 ROP Intrm. 190, 192-93 (2000)) (internal citation omitted).

In the present case, addressing the OEK's counterclaim in the absence of an actual controversy would do little to advance the reasons for granting declaratory relief noted in *Ngerul* and *Nakamura*. Ruling on the OEK's counterclaim would not terminate the proceeding, for even if the court were to rule that the President had no constitutional authority to veto the repealer, it would still have to address the President's claim that the OEK cannot repeal an appropriation that has already been spent. Judicial economy is therefore not served by addressing the OEK's counterclaim. As for the legal relations of the parties, that is quite clear: All parties agree the President's veto was ineffective. The President's veto established no "legal precedent," as the OEK alleges. The court creates legal precedent, not the President. The President's purported veto here does not make any future veto constitutional. If in the future the President should try again to veto a repealer of an appropriation then the OEK is free to make the same arguments against such an act as it has here. The court can address those arguments at that time.

As for the President's motion for judgment on the pleadings, the disposition of the repealer issue is relatively straightforward. This is not a question of "impairment of contracts." See Palau Const. art. IV, § 6; 1 PNC § 405. It is simply the impossibility of repealing an appropriation after the money has been spent. The President's point is well taken that after the land in Guam had been purchased and the price paid "there remained nothing to repeal." [Memorandum in Support of Motion to Dismiss at 4.] The OEK clearly has the right to "alter or amend an act . . . including acts appropriating monies." *In re Advisory Opinion to the Senate of the State of Rhode Island*, 275 A.2d 256, 257 (R.I. 1971). ¶176 But appropriations of money

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may “be repealed only to the extent that such appropriations have not been expended or otherwise pledged to a binding executory contract.” *Id.* at 258. Appropriations that have been expended “are, of course, beyond the Legislature’s recall.” *Id.* at 259.

Under Section 22 of RPPL No. 5-47, the OEK authorized the President to purchase land in Guam. The President alone is vested with the power to spend the money. This is consistent with his constitutional duty “to spend money pursuant to appropriations.” Palau Const. art. VIII, § 7(6). The OEK did not authorize itself to have any role in the purchase of land on Guam. Further, “[t]he principal function of a legislative body is not to make contracts.” *Anderson v. Brand*, 303 U.S. 95, 100 (1938). Once the President purchased the property in Guam, it was too late for the OEK to change its mind. The money had already been spent. There is nothing left for the OEK to repeal or recall.

CONCLUSION

Plaintiff’s motion to dismiss the defendants’ counterclaim and for judgment on the pleadings is GRANTED. The OEK lacks the power to repeal an appropriation that has already been spent. Section 7 of RPPL No. 6-1 had no legal effect. SO ORDERED, this 16th day of July, 2001.