

Aquino v. Nestor, 11 ROP 278 (Tr. Div. 2004)
NICHOLAS AQUINO, ANNIE TIRSO, and VALENTINE TIRSO,
Plaintiffs,

v.

EMILIO NESTOR, LEE PEDRO, LORRETA KINTOKI, QUENTINA NESTOR,
LAURENCE SUMOR, KUTERBIS KUTERMALEI, LAURENCE IERAGO, JOSEPHA
KINTOKI, LEO PEDRO, AGNES ESIWINI, RHINEHART TIRSO, and SIXTH
SONSOROL STATE LEGISLATURE,
Defendants.

CIVIL ACTION NO. 04-157

Supreme Court, Trial Division
Republic of Palau

Decided: August 31, 2004

¶279

KATHLEEN M. SALII, Associate Justice:

Plaintiffs are three voters in Sonsorol State who are also members of the Fifth Sonsorol State Legislature (“Fifth State Legislature”). They filed the complaint herein on May 24, 2004, alleging, *inter alia*, that they were sworn in as members of the Fifth State Legislature on October 16, 2000, and that they are mandated to serve a term of four years, or up until October 16, 2004, pursuant to Article VIII, Section 3 of the Sonsorol State Constitution.

Plaintiffs allege that the installation of the Sixth Sonsorol State Legislature (“Sixth State Legislature”) on April 30, 2004, which cut short their terms as legislators in the Fifth State Legislature by approximately six months, violates Article VIII, Section 3, as well as their right to due process as guaranteed by Article IV, Section 6 of the Palau Constitution and Article III, Section 1 of the Sonsorol State Constitution.

On May 27, 2004, the Court issued a Temporary Restraining Order to prevent the Defendants from functioning as the Sixth State Legislature, including enacting legislation, introducing any measures, or spending any public funds during the pendency of this matter, or in any way interfering with Plaintiffs’ right to discharge their duties as sitting members of the Sonsorol State Legislature. Before the Court are cross-motions for summary judgment by both factions. For the reasons set forth herein, the ¶280 Court has determined to deny Plaintiffs’ motion and to grant Defendants’.

STANDARD FOR GRANTING SUMMARY JUDGMENT

Republic of Palau Rule of Civil Procedure 56 provides that summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, admissions, or affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a

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matter of law. ROP R. Civ. P. 56(c). Summary judgment is appropriate against a party who fails to make an evidentiary showing sufficient to raise a factual question as to an element essential to that party's case and on which that party will bear the burden of proof at trial. *Wolff v. Sugiyama*, 5 ROP Intrm. 105, 109 (1995). A party may defeat a motion for summary judgment by offering evidence that shows there is a genuine issue of material fact to be resolved at trial. *Id.* at 110. A factual question is "material," as that term is used in Rule 56(c), if the fact finder must resolve it in order to determine whether an essential element has been established. In reviewing a motion for summary judgment, all doubts must be resolved against the movant, and the motion must be denied if the non-movant identifies some evidence in the record demonstrating a genuine factual dispute on a material issue. *Dilubech Clan v. Ngeremlengui State Gov't*, 8 ROP Intrm. 106, 108 (2000).

DISCUSSION

I. Undisputed Facts¹

Members of the Fourth Sonsorol State Legislature ("Fourth State Legislature") took office on May 1, 1996. In January 2000, that Legislature enacted Sonsorol State Public Law ("SSPL") No. 4-15R-1 to provide for regular general elections for the offices of Governor, Lieutenant Governor, and members of the State Legislature. Pursuant thereto, elections were to be held every four years on February 29, commencing in 2000. Sonsorol held a general election in February 2000, and the installation of the Governor and Lieutenant Governor occurred on May 1 of that year, but the election of members of the Fifth State Legislature held in accordance with the same law was nullified by the Election Commission. (See Stipulated Facts ¶¶ 1-3). The Fourth State Legislature then enacted SSPL No. 4-37S-1 in April of 2000, which was entitled "The Sonsorol State Special Legislative Election Act of 2000." This law provided for the election of members of the Fifth Sonsorol State Legislature to be held on May 30, 2000, and for the installation of the winners on June 16, 2000.² In July 2000, the Fourth State Legislature enacted SSPL No. 4-41S-2.³ This law provided for a special election for the Fifth State Legislature to be held on September 26, 2000, and for the installation thereof on October 16, 2000. The special election and installation of the winners thereof proceeded in accordance with the provisions of this law. Members of the Fourth State Legislature, including Plaintiffs Aquino and Valentine Tirso, remained in office until **1281** the installation of the Fifth State Legislature. (See Stipulated Facts ¶¶ 4-7).

In January 2004, the Fifth State Legislature enacted SSPL No. 5-14R-1. This law amended SSPL No. 4-15R-1 by changing the date of the quadrennial general election from "February 29" to "the last Friday in February." In April of the same year, the Fifth State Legislature enacted SSPL No. 5-15R-1, which further amended SSPL No. 4-15R-1 by providing

¹The Court's decision herein is based on the undisputed facts as stated in the parties' June 24, 2000 submission of Stipulated Facts.

²For reasons not made known to the Court, the election did not take place on May 30, 2000.

³SSPL No. 4-41S-2 repealed SSPL No. 4-40S-1, the statute referred to by the Court in its Order Granting Preliminary Injunction. There appears to be no dispute that there were no changes to either the election or installation dates that had been set by the repealed law.

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that if the May 1 installation date for officials elected in the quadrennial general election falls on a Saturday or Sunday, then the installation will be held on the preceding Friday. On April 30, 2004, installation of the winners of the 2004 general election for the offices of Governor, Lieutenant Governor, and members of the Sixth State Legislature was conducted. (See Stipulated Facts ¶¶ 8-10).

II. Discussion

The allegations contained in Plaintiffs' complaint and restated in their cross-motion for summary judgment are straightforward. Article VIII, Section 3 of the Sonsorol Constitution states that "[t]he legislators shall be elected for a term of four years." Plaintiffs argue that SSPL No. 4-41S-2, to the extent it purports to end their terms before they have served full four-year terms, is invalid. Defendants, in their motion for summary judgment, counter that the terms of the members of the Fifth State Legislature expired within the meaning of Article VIII, Section 3 upon the scheduled expiration of the four-year terms on April 30, 2004, pursuant to law, and that Defendants and all members of the Sixth State Legislature are entitled to resume their seats.

Plaintiffs respond that, under the plain language of Article VIII, Section 3, it was the intent of the framers of the Sonsorol Constitution that the members of the legislature serve four years in office, except as may be provided by law for cause, until the next scheduled quadrennial election or in the event of a vacancy. They contend, therefore, that since the plain and unambiguous language of Article VIII, Section 3 states that legislators shall be elected to a term of four years, legislatures have no authority to either abridge or extend term limits through legislation. Accordingly, SSPL No. 4-41S-2 is invalid because it contravenes the intent of the framers and founding fathers of the Sonsorol Constitution.

In support of Plaintiffs' argument, they provide the affidavit of Mariano Carlos, President of the Sonsorol State Constitutional Convention, and two letters from Defendants' counsel to two different members of the State Legislature. Mr. Carlos' affidavit recounts his recollections of what he and the rest of the framers of the Sonsorol Constitution wanted to achieve during the convention over 20 years ago. Notably, Plaintiffs have provided no legal authority in support of their interpretation or to rebut the legal authorities cited by Defendants. In essence, Plaintiffs argue that the intent of the framers was for the legislators to serve four years in office and that the language of the provision was intended to effectuate such intent.

The difficulty the Court has with Plaintiffs' argument is that it calls for the Court to look beyond the plain meaning of the provision. When constitutional language is clear and unambiguous, we must apply its plain meaning. *Tellames v. Congressional Reapportionment Comm'n*, 8 ROP Intrm. 142, 143 (2000). The language contained in Article VIII, Section 3 is clear and unambiguous, and this Court is compelled to apply the plain meaning thereof to the facts **L282** herein. Plaintiffs argue that a careful analysis reveals that they have invoked an express guaranty of a constitutional right to serve in the legislature as provided in Article VIII, Section 3. However, the Court is not persuaded by this argument, because while a court may look to the framers' intent to resolve ambiguities in the constitutional text, *Tellames*, 8 ROP Intrm. at 144, it is not necessary to do so here since there are no ambiguities. Accordingly,

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Plaintiffs' request for this Court to look beyond the plain language of the provision to the intent of the framers, as recounted by Mr. Carlos, is rejected.

With respect to the plain language of Article VIII, Section 3, the words "term" and "tenure" have legal meaning through the use thereof in constitutional and statutory language. Such terms, therefore, must be construed consistently with their legal connotations. *Ester v. City of Monmouth*, 903 P.2d 344, 348 (Or. 1995). Plaintiffs accurately point out that the Court is not bound to follow United States case law in interpreting the Palau Constitution. However, a review of United States case law demonstrates that there is authority for the argument propounded by Defendants in which a distinction is made between the words "term" and "tenure" and that such argument is not only reasonable, but is particularly appropriate when such interpretation ensures a regularly-scheduled election of state leaders. In *State ex rel. Spaeth v. Olson*, 359 N.W. 2d 876 (N.D.1985), the court concluded:

The term of the office has been defined as "the fixed and definite period of time which the law describes that an officer may hold an office." . . . The tenure of the person holding an office may vary from the term of the office. . . . It is well settled that the term of the office is separate and distinct from the term or tenure of the officer, so that the term of the office is not affected by a shortening of the officer's tenure. . . .

Thus, when the incumbent holds over beyond the expiration of his term (as when the successor fails to qualify prior to the expiration of the term) it does not affect the term of the office, but merely shortens the tenure of his successor. . . . When Olson, as incoming Governor, elected not to assume the duties of his office until January 6, 1981, that choice did not affect the term of his office, which commenced on January 1, 1981. It merely shortened his tenure. "An officer may serve a shortened tenure, but nonetheless be deemed to have served a complete term."

Id. at 881 (citations omitted).

In this case, the Fourth State Legislature was installed on May 1, 1996. Based on the language of Article VIII, Section 3, the terms of these members of this legislature expired on April 30, 2000. However, because of the nullification of the results of the election for members to the Fifth State Legislature, the Fourth State Legislature enacted SSPL No. 4-41S-2 in order to conduct a special election to fill the seats in the legislature. Pursuant to this legislation, the special election was held and members of the 1283 Fifth State Legislature were installed on October 16, 2000. There is no dispute that, prior to that date, members of the Fourth State Legislature were holdovers.

The issue for resolution is the effect, if any, a holdover has on the term and tenure of a succeeding officeholder. This issue has been addressed, albeit indirectly, in only one trial division case in Palau, *Aguon v. Ngarchelong State Assembly*, 4 ROP Intrm. 374 (Tr. Div. 1994). *Aguon* involved a vacancy in the Ngarchelong Governor's seat. The Ngarchelong Constitution

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provides, in language similar to that of the language contained in the Sonsorol Constitution regarding the term of the legislature,⁴ that its governor “shall be elected in a statewide election for a term of four (4) years.” Ngarchelong Const. art. VIII, § 2.

The plaintiff, Tobias Aguon, challenged the incumbent governor for the seat, with the election scheduled to take place in September 1990. That election was enjoined, and, for reasons not pertinent here, plaintiff’s installation as governor did not occur until June of 1992. Throughout this time, the incumbent governor remained in office. When the legislature enacted legislation which called for a scheduled gubernatorial election to be held and for the candidate with the greatest number of votes to become governor on the second Friday of October 1994, Aguon sued the legislature, challenging the bill as an unconstitutional abridgment of his term as governor.

In denying the relief requested by Aguon, the court held that the office of Governor of Ngarchelong became vacant upon the scheduled expiration of the four-year term of the incumbent governor in October 1990, that a new term began immediately thereafter, and that the election of Aguon in 1992 was for the unexpired portion of the term ending in October 1994. In so holding, the court noted that, “[a] holdover does not change the length of the term, but merely shortens the tenure of the succeeding officers.” 63C Am. Jur. 2d *Public Officers and Employees* § 151 (1997). In its discussion of the issue of whether there was a vacancy in the governor’s seat within the meaning of the Ngarchelong Constitution, the court looked to the wording of two different provisions of the state constitution. The court concluded that the legislature’s reading of the term “vacant” was not only legitimate, but best served the purposes that the language was intended to achieve, and the court opined that “the workings of [the vacancy provision] evince an intent of the framers of the Constitution that the term of the Governor should adhere to a regular four-year cycle.” *Aguon*, 4 ROP Intrm. at 378. Such reasoning applies in this case as well. While the Court agrees with Plaintiff that the *Aguon* case does contain factual differences from the situation here, the law as established by *Aguon* is nevertheless applicable in this case. And that rule of law is that while the tenure of an office holder may be shortened by a predecessor’s holdover, the term of office is not affected.

In this case the holdover of the members of the Fourth State Legislature did not affect the term of office of the members of the Fifth State Legislature. The term began on May 1, 2000, and ended on April 30, 2004. L284 However, the tenure of the legislators commenced on October 16, 2000, the date of the installation thereof, and the end of the term remained unaffected.

Plaintiffs’ argument would lead the Court to an absurd result. Under this argument, all legislators hereafter will be prohibited from assuming the duties of their offices prior to October 16, and if any incoming legislator qualified later than October 16, such later date would be the new date for the four-year term to run for that legislator. This would mean that a person who succeeded to the legislature upon a vacancy therein would be entitled to serve a full four years

⁴There is no dispute that Sonsorol’s Constitution concerning legislative vacancies contains language similar to that contained in the Ngarchelong Constitution concerning gubernatorial vacancies. “A vacancy in the Legislature shall be filled for the unexpired term by a special election to be held in accordance with law.” Sonsorol Const. art. VIII, § 10.

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from the date of taking office, and the term of office for that legislator would not only be different from the rest of the members of the legislature, but also from the terms of the Governor and Lieutenant Governor. Such a potentially disruptive election schedule, for both the executive and legislative offices of Sonsorol, surely was not intended by the framers. In fact, the amendments to the election laws were intended, the Court believes, to harmonize the dates of the elections of all the elected leaders. Moreover, the framers could have easily worded the language in the provision to state that the members of the legislature will serve four years in office without reference to the phrase “term of office” to avoid the current misunderstanding.

On a final note, one of the Plaintiffs continues to be a member of the legislature, and two of the three were holdovers from the Fourth State Legislature to the Fifth State Legislature. As members of the Fourth State Legislature who continued on to the Fifth State Legislature, Plaintiffs enjoyed the benefits of a piece of legislation which may have cut short the tenure of the members of the Fifth State Legislature. They continued to serve as holdovers of the Fourth State Legislature without objection. They should not be able to object now to legislation which allows for holdovers simply because some of the named Plaintiffs are no longer legislators.

CONCLUSION

For the reasons stated above, Defendants’ motion for summary judgment is well-founded and is hereby GRANTED and Plaintiffs’ cross-motion is DENIED. Defendants are entitled to a declaration that the terms of the members of the Fifth Sonsorol State Legislature expired on April 30, 2004, and that the members of the Sixth Sonsorol State Legislature may resume their seats. A separate judgment will be entered in accordance herewith.