

*Peleliu State Govt v. 9th Peleliu State Legislature*, 15 ROP 183 (Tr. Div. 2008)  
**PELELIU STATE GOVERNMENT,**  
**Plaintiff,**

v.

**9th PELELIU STATE LEGISLATURE, REPUBLIC OF PALAU, and DOES ONE through  
THREE,**  
**Defendants,**

and

**REPUBLIC OF PALAU, Plaintiff,**

v.

**ALODIA HESUS PERSINGER and JIM PERSINGER, d/b/a JIM's BOAT REPAIR, and  
DOES ONE through TEN,**  
**Defendants.**

CIVIL ACTION NO. 08-091

Supreme Court, Trial Division  
Republic of Palau

Decided: June 24, 2008

ARTHUR NGIRAKLSONG, Chief Justice.

Before the Court is the Republic of Palau's Unopposed Motion to Modify Court Order and Waiver of Bond on Writ of Replevin. In this Court's Order dated June 3, 2008, the Court issued a writ of replevin ordering Defendant Jim's Boat Repair to turn over drive shafts, rudders, propellers, and any other parts of the vessel Odesangel Dil in its possession. The Court also ordered the ROP to post a bond securing the parts and scheduled a hearing on the matter for June 30, 2008.

In the instant motion, the ROP asserts that because the government is exempt from posting security for preliminary injunctions and temporary restraining orders under ROP Rule of Civil Procedure 65(c), and for stays or injunctions pending appeal under ROP Rule of Appellate Procedure 8(c), it should not be required to post a bond in order to secure this writ of replevin. The Court disagrees. By its very nature, a replevin action is one "for the repossession of personal property wrongfully taken or detained by the defendant, *whereby the plaintiff gives security for* and holds the **¶184** property until the court decides who owns it." Black's Law Dictionary 1325 (8th ed. 2004) (emphasis added).

The rule exempting the government from posting a bond is a statutory creature not found in the common law, and the Republic's only cited case accords. *See United States v. Bryant*, 111

*Peleliu State Govt v. 9th Peleliu State Legislature*, 15 ROP 183 (Tr. Div. 2008) U.S. 499, 505 (1884) (“It has been held that the United States are relieved by *section 1001* [of the revised statutes] from giving the undertaking required from a plaintiff . . . .”) (emphasis added); *see also* 28 U.S.C. § 3101(a)(1); (c)(3) (no bond required of the United States for “any prejudgment remedy”). Although Rule 64 of the Rules of Civil Procedure authorizes replevin as a prejudgment remedy, there is no statute governing replevin in the Republic of Palau, and in the absence of such a statute the common law must apply. *See* 1 PNC § 303 (“The rules of the common law . . . shall be the rules of decision in the courts of the Republic in applicable cases, in the absence of written law . . . to the contrary.”). Because there was no government bond exemption at common law and there is no statute exempting the Republic of Palau from posting a bond in prejudgment attachment proceedings, the Court will not grant such an exemption here.

The Republic argues that it is logical to apply the government bond exemption in Rule 65(c) to all the prejudgment remedies listed in Rule 64. But while Rule 64 authorizes prejudgment remedies such as “arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies,” Rule 65(c) applies only to preliminary injunctions and temporary restraining orders. The difference between the two is readily apparent. Rule 64 authorizes “all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered,” while Rule 65 governs judicial proceedings whereby an “act or acts [are] sought to be restrained.” ROP R. Civ. P. 65(d). Nor is Appellate Rule 8(c), exempting the government from posting a bond for a stay of execution of judgment pending appeal, applicable here.

Finally, the Republic argues that the “purpose of the bond is primarily for the protection of the defendant in the event the plaintiff does not prevail.” 66 Am. Jur. 2d *Replevin* § 44 (2001). The government certainly has the resources to repay the defendant should defendant prevail on the merits; the defendant is adequately protected. But “the manifest object of a replevin bond is to secure prosecution of the replevin suit in which it is given, to effect and without delay, and to make a return of the property to the defendant if a return of property is awarded - the bond is intended to assist the parties in obtaining justice.” *Id.* With this purpose in mind, maintaining the bond requirement in the absence of a statutory directive to the contrary is sure to assist the parties in obtaining justice by ensuring that the underlying prosecution regarding the parts of the Odesangel Dil is prompt. Accordingly, the Motion is denied.