

Peleliu State Govt v. 9th Peleliu State Legislature, 15 ROP 179 (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 3, 2008

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ARTHUR NGIRAKLSONG, Chief Justice:

Before the Court is the Republic of Palau's Ex Parte Application and Request for Hearing for Prejudgment Seizure of Personal Property. For the reasons stated below, the Republic's application for prejudgment seizure is approved, and a writ of replevin is granted.

BACKGROUND

In 2007, the Odasangel Dil, commonly known as the Peleliu State Boat, needed repairs and was inoperable. The boat was docked at its usual mooring in Malakal. The Peleliu State Government¹ hired Jim's Boat Repair² to repair the boat. At some point in early 2008, the Republic of Palau (ROP) took possession of the boat, with the consent of the Peleliu State Legislature, and towed it to the Belau National Shipyard for repairs. Jim's Boat Repair, however, still has vital parts of the boat such as the drive shafts, propeller, and rudders and refuses to turn them over to the ROP, following the orders of the Peleliu State Government.

Peleliu State Government sued the Peleliu State Legislature, the ROP, and various John **¶181** Does, seeking return of the boat, a declaratory judgment declaring Peleliu State as the

¹ Governor Jackson Ngiraingas is the chief executive of the Peleliu State Government. See Peleliu Const. art. VII, § 1.

² Jim's Boat Repair consists of Alodia Hesus Persinger and Jim Persinger.

Peleliu State Govt v. 9th Peleliu State Legislature, 15 ROP 179 (Tr. Div. 2008) rightful owner of the boat, and damages. In a separate action, the ROP sued Jim's Boat Repair and various John Does for the boat parts still in their possession. The ROP sought replevin, a preliminary and permanent injunction, and declaratory relief. The actions were consolidated on May 28, 2008. Currently before the Court is the ROP's Ex Parte Application and Request for Hearing for Prejudgment Seizure of Property.

DISCUSSION

The ROP is correct that the ROP Civil Rules contemplate an action for replevin, which is “[a]n action for the repossession of personal property wrongfully taken or detained by the defendant, whereby the plaintiff gives security for and holds the property until the court decides who owns it.” Black’s Law Dictionary 1325 (8th ed. 2004); *see* ROP Civ. R. 64. Replevin is also a remedy that often includes prejudgment seizure without a hearing, but with a summary determination of ownership and an opportunity for a post-deprivation hearing. *See Fuentes v. Shevin*, 407 U.S. 67, 78-80, 92 S. Ct. 1983 (1972); *Gem Plumbing & Heating Co. v. Rossi*, 867 A.2d 796 (R.I. 2005).

Most jurisdictions have statutes specifying the circumstances under which ex parte prejudgment seizure is allowed. Palau has no such statute, so the Court must attempt to parse out the common law version of replevin. *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.”). The U.S. Supreme Court has spoken at length on the boundaries to which replevin and other prejudgment seizure statutes must conform in order to comport with procedural due process concerns. If this Court ensures that an ex parte prejudgment seizure of the boat parts complies with procedural due process as outlined by the U.S. Supreme Court, a writ of replevin for the drive shaft, rudder, and propellor of the Odesangel Dil is appropriate.

The minimum requirements of due process in prejudgment seizure cases are as follows:

(1) the availability of ex parte prejudgment seizure must be limited to situations where plaintiff has established that the property to be seized is of a type that can be readily concealed, disposed of, or destroyed; (2) the plaintiff must allege specific facts based on actual knowledge supporting the underlying action and the right of plaintiff to seize the property; (3) the application for the order of seizure must be made to a judge rather than to a clerk; (4) the defendant has a right to a prompt, postseizure hearing to challenge the seizure; and (5) the defendant must be able to recover damages from the plaintiff if the taking was wrongful and to regain possession of the seized items by filing a bond. *Mitchell v. W. T. Grant Company*, 416 U.S. 600, 616-18, 94 S.Ct. at 1904-05; *see also Connecticut v. Doehr*, 501 U.S. 1, 111 S.Ct. 2105, 2111-15, (1991); *North Georgia Lumber Co. v. Georgia Lumber Co.*, 419 U.S. 601, 606-07, 95 S.Ct. 719, 722, (1975); *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, (1972) (holding that “notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner” in replevin actions); Paul S. Owens, *Impoundment Procedures Under the Copyright Act: The Constitutional Infirmities*, 14 Hofstra L.Rev. 211, 234-35 (1985).

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Paramount Pictures Corp. v. Doe, 821 F. Supp. 82, 87-88 (E.D.N.Y. 1993).

Here, all the factors are met. The boat parts are easily concealed, disposed of, or destroyed. Although this is not a case of a valuable object that could easily be sold on the open market, the property in question is fungible and could easily be salvaged by Jim's Boat Repair for repairs to another boat.

As to the second factor, the ROP claims that it need show a superior possessory interest only to Jim's Boat Repair. But Jim's Boat Repair is not claiming to be the rightful owner of the boat parts, it asserts that it is acting in the Government of Peleliu's claimed right to the boat. Thus, the ROP must show a superior right to possession over the Government of Peleliu, not over Jim's Boat Repair. *See* 66 Am. Jur. 2d *Replevin* § 11 (2001). The ROP has met this heavier burden, however, because of the affidavit of Theo Isamu (Exhibit 1) and especially because of the contract for purchase of the boat between the ROP and the Japanese Manufacturer (Exhibit 2). The affidavit and the purchase agreement are strong evidence that the boat is owned by the ROP, not the Government of Peleliu. In its complaint, the Government of Peleliu offers only conclusory allegations that the ROP "turned over" the boat to Peleliu State Government with no supporting affidavits or documents. *See* Compl. ¶ 8. Of course, Peleliu State Government will have a chance to produce evidence of its ownership of the boat at a post-seizure hearing as well as at a trial on the merits.

The remaining factors are easily met. The ROP's application is made to the Court (third factor) and the Court must provide a prompt post-seizure hearing (fourth factor). Finally, the ROP is required to post a bond in the amount of \$60,000.00. This is the amount, according to the ROP, of additional costs of repair that would be incurred if the parts currently held by Jim's Boat Repair are not returned. *See* Application at 6. This ensures that Peleliu State Government has an easy remedy in the event that it prevails at trial or at the post-seizure hearing.

CONCLUSION

The Court issues a writ of replevin, ordering Jim's Boat Repair to turn over the drive shafts, rudders, and propellers of the Odesangel Dil and any other parts of the vessel in its possession. The ROP must post a bond of \$60,000.00, and a hearing on the seizure will be scheduled promptly.