PALAU PUBLIC LANDS AUTHORITY,
Appellant,

v.

KOROR STATE PUBLIC LANDS AUTHORITY, KOROR STATE GOVERNMENT,
Appellees.

CIVIL APPEAL NO. 11-020
Civil Action No. 08-228

Supreme Court, Appellate Division
Republic of Palau

Decided: October 7, 2011

[1] **Agency:** Apparent Authority

As there is no case law on point in Palau concerning whether public officers may act with apparent authority, the Court adopts the relevant principles of law set forth in the Restatement (Third) of Agency respecting governmental actors.

[2] **Agency:** Apparent Authority

Apparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations.

[3] **Agency:** Apparent Authority

The doctrine of apparent authority generally does not apply to sovereigns and entities that have been created by sovereigns to achieve

governmental ends. In other words, the rule that an agent can bind his or her principal by acts within apparent authority has been held not to apply to public officers.

[4] Agency: Apparent Authority

The rationale for the rule that the doctrine of apparent authority does not apply to the government or its officers is that a sovereign has the exclusive ability to prescribe what its creations and its agents may do; third parties who deal with national governments, quasi-governmental entities, states, counties, and municipalities take the risk of error regarding the agent's authority to a greater degree than do third parties dealing through agents with nongovernmental principals. Still, this exception is subject to a few qualifications.

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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; KATHERINE A. MARAMAN, Part-time Associate Justice.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

This appeal concerns whether the trial court erred in applying the doctrine of apparent authority as the basis for dismissing a complaint seeking declaratory judgment and injunctive relief.

On August 12, 2008, Plaintiff-Appellant Palau Public Lands Authority (PPLA) filed a complaint seeking declaratory judgment and injunctive relief against Defendants-Appellees Koror State Public Lands Authority (KSPLA) and Koror State Government (KSG) to invalidate a 2001 Amendment to a land transfer agreement and stop KSPLA from developing a piece of property in Meyuns. The trial court granted KSG's motion to dismiss PPLA's complaint under ROP R. Civ. P. 12(b)(6) on the basis that PPLA's Chairman had the apparent authority to bind PPLA when he signed the 2001 Amendment. PPLA appealed the trial court's dismissal of the complaint. This Court dismissed the appeal on the basis that the trial court's order was without prejudice and was therefore not a final judgment appealable to the Appellate Division. On May 11, 2011, the trial court dismissed the case with prejudice with the consent of the parties. PPLA now appeals the trial court's dismissal of the complaint. The parties did not request oral argument, and we will decide the case on the briefs in accord with our appellate rules. *See* ROP R. App. P. 34(a). For the reasons below, we **REVERSE** the trial court's Order granting KSG's motion to dismiss PPLA's Complaint.

BACKGROUND

The facts and allegations, as presented by PPLA in its Complaint and attachments to the complaint, are accepted as true. In February 1997, the Republic of Palau (ROP), PPLA, KSPLA, and KSG entered into a land settlement agreement (the 1997 Agreement) to resolve pending disputes over various

properties in Koror State, including the property in Meyuns, which is the subject of this litigation. Signatories to the 1997 Agreement included President Kuniwo Nakamura for ROP, Chairman Tadashi Sakuma for PPLA, Acting State Executive Administrator Alexander Merep for KSG, and Chairman Yutaka Gibbons for KSPLA. An Assistant Attorney General, along with legal counsel for PPLA and KSPLA, "approved [the agreement] as to form and legality" by signing. In December 2000 and January 2001, the same parties[1] signed an amendment to the 1997 Agreement, including an amendment to the litigated Meyuns property (the 2001 Amendment). The 2001 Amendment decreased the amount of land designated for ROP's use as Meyuns Elementary School. The 2001 Amendment was filed with the Clerk of Courts on January 4, 2001. There is no record of PPLA Board meeting minutes that approve Chairman Sakuma's actions. In reliance upon the 2001 Amendment, KSPLA has been conducting surveys of the property "for the purposes of subdivision" and "has placed padlocks on buildings and storage containers" on the property.

On August 12, 2008, PPLA filed a complaint seeking a declaratory injunction and declaratory relief against KSPLA and KSG to invalidate the 2001 Amendment and to stop KSPLA from developing a piece of property in Meyuns.

On October 9, 2008, KSG filed a motion to dismiss, asserting several grounds: failure to state a claim upon which relief may be granted, ROP R. Civ. P. 12(b)(6), lack of subject matter jurisdiction, ROP R. Civ. P. 12(b)(1), and failure to join an indispensable party under Rule 19, ROP R. Civ. P. 12(b)(7).[2] On October 10, 2008, KSPLA filed an answer to PPLA's Complaint. On January 23, 2009, PPLA filed an opposition to KSG's motion to dismiss.[3] On January 31, 2009, KSG filed a reply to PPLA's opposition to the motion to dismiss, and KSPLA filed its notice of joinder to KSG's reply. To avoid premature dismissal without affording PPLA the opportunity to respond to the Court's concerns, which were not raised in the original briefing, the Court held a hearing on February 16, 2010 and heard from counsel for PPLA, KSG and KSPLA on the issue of Chairman Tadashi Sakuma's apparent authority to bind PPLA.

The trial court granted KSG's motion to dismiss under ROP R. Civ. P. 12(b)(6) on the basis that PPLA failed to state a claim

[1] Again, President Kuniwo Nakamura signed for ROP and Chairman Tadashi Sakuma signed for PPLA. Governor John Gibbons signed for KSG and Acting Chairman Ermans Ngiraelbaed signed for KSPLA. No counsel signed the 2001 Amendment.

[2] KSG also alleged that the complaint was barred by the statute of limitations, 14 PNC §§ 401 *et seq.,* and that PPLA had no standing to bring this action.

[3] Originally, KSPLA filed a "response" and PPLA filed an "objection to Defendant KSG's motion to dismiss and [an] answer to KSPLA's response." As the trial court noted, no Civil Rule requires or allows for an answer to a response where KSPLA filed no counterclaims. Accordingly, the trial court properly treated KSPLA's "response" as an "answer" and PPLA's "answer to KSPLA's response" as part of PPLA's opposition to KSG's motion to dismiss.

upon which relief may be granted because PPLA's Chairman had apparent authority to bind PPLA when he signed the 2001 Amendment.[4] The court reasoned that PPLA placed its agent, Chairman Sakuma, in a position which caused third parties, namely KSPLA and KSG, to reasonably believe that PPLA consented to Chairman Sakuma's exercise of authority when he signed the 2001 Amendment. Because Chairman Sakuma had the apparent authority to bind PPLA, and KSPLA and KSG properly relied upon Chairman Sakuma's apparent authority to act, the trial court concluded that PPLA could not argue that it should not be bound by the contract because it failed to comply with its own internal regulations back in 2000 and 2001.

On March 1, 2010, PPLA filed a motion for reconsideration, seeking to introduce new evidence to prove that KSPLA had knowledge that Chairman Sakuma did not have PPLA Board approval to bind PPLA. The evidence PPLA sought to introduce was a January 31, 1997 letter from then-ROP President Kuniwo Nakamura and then-KSPLA Director Rechucher Alex Merep to Chief Justice Ngiraklsong regarding another case, *Wenty v. KSG, et al.* , Civil Action No. 70-93, raising the issue of whether a former PPLA Board Chairman had the authority to bind PPLA without the consent of the Board (*Wenty* letter). On March 22, 2010, the trial court denied the motion for reconsideration, explaining that it would not consider the *Wenty* letter because it would convert the matter into a motion for summary judgment. The trial court further stated in a footnote that the *Wenty* letter would not change the court's analysis.

[4] Although KSG included ROP R. Civ. P. 12(b)(6) as one of the stated grounds for its motion to dismiss, KSG did not raise the argument of apparent authority as the rationale for dismissing the complaint for failure to state a claim upon which relief may be granted.

STANDARD OF REVIEW

The Appellate Court reviews *de novo* the trial court's granting of a motion to dismiss. *Giraked v. Estate of Rechucher*, 12 ROP 133, 145 (2005). In reviewing a motion to dismiss, all allegations in the complaint are accepted as true, and this Court is left to determine whether those allegations are sufficient to justify relief. *Id.* A complaint should not be dismissed unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Taro v. ROP*, 12 ROP 175, 177 (Tr. Div. 2004).

DISCUSSION

PPLA presents two arguments on appeal. First, PPLA argues that the trial court improperly ruled that the doctrine of apparent authority bars its recovery in this action because PPLA is a public entity to which the doctrine of apparent authority does not apply. Second, PPLA contends that even if the doctrine of apparent authority applies to public entities, it does not apply here because of Appellees' actual knowledge of the limits and extent of Chairman Sakuma's authority.

In their brief in opposition, KSPLA and KSG do not address PPLA's appellate arguments and instead address issues not discussed by the trial court's dismissal order.

KSPLA and KSG first argue that PPLA did not overcome the presumption that Chairman Sakuma's signature on the 2001 Amendment was valid. Second, they argue that the complaint is barred by the statute of limitations. Third, they contend that PPLA does not have standing to maintain the action.

[1-4] As there is no case law on point in Palau concerning whether public officers may act with apparent authority,[5] the Court adopts the relevant principles of law set forth in the Restatement (Third) of Agency respecting governmental actors.[6] "Apparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." Restatement (Third) of Agency § 2.03 (2006). However, "[t]he doctrine of apparent authority generally does not apply to sovereigns and entities that have been created by sovereigns to achieve governmental ends." *Id.* at § 2.03, cmt. g. In other words, "[t]he rule that an agent can bind his or her principal by acts within apparent authority has been held not to apply to public officers." 63 Am. Jur. 2d Public Officers and Employees § 233 (2009). The rationale for the rule that the doctrine of apparent authority does not apply to the government or its officers is that "a sovereign has the exclusive ability to prescribe what its creations and its agents may do; third parties who deal with national governments, quasi-governmental entities, states, counties, and municipalities take the risk of error regarding the agent's

[5] In its order, the trial court cited two cases regarding the doctrine of apparent authority that do not apply to the present case because those cases concern private entities and PPLA is a public entity. *See Ngirachemoi v. Ingais*, 12 ROP 127 (2005) (applying doctrine of apparent authority to an individual); *Klsong v. Orak*, 7 ROP Intrm. 184 (1999) (applying doctrine of apparent authority to employee of Public Utilities Corporation). Although *Klsong*, concerning a public utility, presents a closer case to the one at bar than *Ngirachemoi*, concerning an individual, it is still distinguishable from the present case. In *Klsong*, this Court held that an employee of Public Utilities Corporation ("PUC") was an agent of PUC on the basis of apparent authority or agency by estoppel because the employee's supervisor's statement that the employee was the messenger of PUC was a manifestation that he had the authority to represent PUC. *Klsong*, 7 ROP Intrm. at 187. Although PUC is a public utility created by statute, PUC is a public corporation subject to the corporate laws of the Republic, 37 PNC § 403, whereas PPLA is a recognized governmental entity. *See infra* n.6. Also, the PUC employee was not a government officer provided for by statute like the Chairman of PPLA. Thus, the holding in *Klsong* that the PUC employee was an apparent agent of PUC is inapplicable here.

[6] PPLA is a government agency, and this Court has determined that in certain circumstances, PPLA may utilize any defenses generally available to the government. *Palau Pub. Lands Auth. v. Salvador*, 8 ROP Intrm. 73, 74 n.1 (1999) (finding that one cannot assert an adverse possession claim against the government, including PPLA) (citing 35 PNC § 201 *et seq.*); see also *ROP v. Airai State Pub. Lands Auth.*, 9 ROP 201, 206 (2002) (recognizing that public lands authorities are governmental in nature). The PPLA Board is entrusted with holding in trust public lands for all Palauans. 35 PNC § 210(c). By extension, the Chairman of PPLA is a public officer because his or her office is provided for by statute, 35 PNC § 206, and is an office within a governmental entity.

authority to a greater degree than do third parties dealing through agents with nongovernmental principals." Restatement (Third) of Agency § 2.03, cmt. g. Still, this exception is subject to a few qualifications:

> First, a sovereign may waive its right to be bound only by actually authorized acts. Second, if the sovereign benefitted through the third party's performance, in some jurisdictions a third party may recover the value it has conferred on the sovereign if the sovereign would otherwise be unjustly enriched. Third, in some jurisdictions estoppel is available against a sovereign or an entity created by a sovereign. More narrowly, some states estop municipal corporations from defending on the basis of an agent's lack of authority when substantial injustice would otherwise be the consequence.

Id.

As PPLA properly argues on appeal, because PPLA is a governmental entity and Chairman Sakuma is a public officer, the doctrine of apparent authority does not apply in this case. And the three circumstances under which a court may consider allowing Chairman Sakuma's act of signing the 2001 Amendment to bind PPLA do not apply here. First, PPLA would have had to waive its right to be bound only by authorized acts. This qualification does not apply here because neither party has asserted that PPLA has waived this right. Second, PPLA would have had to benefit from Chairman Sakuma's act of signing the 2001 Amendment. This qualification also does not apply here because Chairman Sakuma's signing of the 2001 Amendment has resulted in a detriment to PPLA. PPLA brought this complaint against KSPLA and KSG to declare the 2001 Amendment null and void and to enjoin KSPLA's development of the Meyuns property. Indeed, had PPLA benefitted from Chairman Sakuma's actions, it may not have brought this action at all. Finally, the court may estop PPLA from defending on the basis of Chairman Sakuma's lack of authority when substantial injustice may occur to KSPLA and KSG. However, KSPLA and KSG have not shown that they will face substantial injury if they are unable to develop the Meyuns property at this time. None of the qualifications that permit a court to subject PPLA to the doctrine of apparent authority exist here. Thus, because PPLA is a public entity and Chairman Sakuma is a public officer, the doctrine of apparent authority does not apply here to bind PPLA to the 2001 Amendment.

To find that PPLA is bound to the 2001 Amendment, it must be on the basis of Chairman Sakuma's actual authority to sign the document. *See* Restatement (Third) of Agency § 2.03, cmt. g ("a sovereign has the exclusive ability to prescribe what its creations and its agents may do"). However, because the trial court did not have any information concerning Chairman Sakuma's actual authority in 2001 and did not make a determination in this regard, we are unable to do so now.

CONCLUSION

Accordingly, we **REVERSE** the trial court's order granting KSG's motion to dismiss and **REMAND** the case for further proceedings not inconsistent with this Opinion.