Fritz v. Salii, 1 ROP Intrm. 521 (1988)
LTELATK FRITZ, et al.,
Appellees, Cross-Appellants,

vs.

LAZARUS E. SALII, et al.,
Appellants, Cross-Appellees.

CIVIL APPEAL NO. 8-88
Civil Action No. 161-87

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: August 29, 1988

Counsel for Appellees, Cross-Appellants: Ann E. Simon; Sara Rios

Counsel for Appellants, Cross-Appellees: Arnold Leibowitz; Eric S. Basse

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

⊥522 SUTTON, Associate Justice:

BACKGROUND

This Appeal and Cross-Appeal come before us from a Lower Court decision that the Referendum to amend the Republic of Palau Constitution (hereinafter the Constitution), held on August 4, 1987, is null and void and that the Referendum held on August 21, 1987, on the question of approval or disapproval of the Compact of Free Association between the United States of America and the Republic of Palau (hereinafter, the Compact) failed to ratify the Compact because the yes vote was less than the seventy five percent (75%) majority required by Articles II and XIII of the Constitution.

The Constitutional Amendment voted upon in the August 4, 1987, Referendum declared that Article II, § 3 and Article XIII, § 6 of the Constitution, popularly known as "the nuclear control provisions," would be suspended insofar as their application to the Compact was concerned, that such provisions would, however, remain in full force and effect for all other purposes, and that § 324 of the Compact, which limits introduction by the United States of nuclear materials into Palau to transit of nuclear capable and nuclear propelled ships and aircraft, would be in full force and effect.

Finally, the proposed amendment made provision for a ⊥523 referendum to be held on

August 21, 1987, on the subject of approval of the Compact itself.

The history of Compact negotiations, efforts by delegates to Palau's Constitutional Convention to accommodate free association with the United States, subsequent referenda on the Compact question, political maneuvering, and violence and terrorism, purportedly conceived and executed for the purpose of assuring Compact ratification, all have been exhaustively documented and discussed in prior decisions of this Court, in the media, in reports and memoranda both official and otherwise, and by word of mouth locally.[1] The Court presumes that few, if any, readers of this Decision will dwell long on a ⊥524 repetition of that history here and, since much of this material, except for specific findings in reported law cases, is based upon innuendo and hearsay the Court draws no factual conclusions therefrom.

Accordingly, we refer simply to what must be viewed as a long and difficult road, by proponents and opponents of the Compact alike, as precursive to the most recent events which underlie the facts leading to this appeal.

It had doubtless become apparent to supporters of free association that, as intended by the people and their delegates to Palau's Constitutional Convention who fashioned the final version of the Constitution, approval by seventy five percent (75%) of the voting public on this issue, indeed on almost any issue, was a feat well nigh impossible.[2]

Based upon this perception there was implemented and executed a process which resulted in the August 4 and August 21 Referenda.

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[1] See: *Ngirmang, et al. v. Salii, et al.*, Civ. Act. No. 161-87 (Tr. Div., Sept. 1987). This is the instant case recaptioned *Fritz, et al. v. Salii, et al.*, after dismissal was set aside on April 5, 1988; *Inabo, et al. v. ROP*, Civ. Act. No. 125-87 (Tr. Div. Aug., 1987); *Beouch et al. v. ROP, et al.*, Civ. Act. No. 130-87 (Tr. Div., Aug., 1987); *Merep, et al v. Salii, et al.*, Civ. Act. No. 139-87 (Tr. Div., Aug., 1987); *Gibbons, et al v. Salii, et al*, 1 ROP Intrm. 333 (App. Div. Sept., 1986); *Koshiba v. Remeliik*, Civ. Act. No. 67-83 (Tr. Div., Aug., 1983); Pacific Daily News (PDN) Guam Publications Inc., numerous articles (citations omitted); Palau: A challenge To The Rule of Law in Micronesia, Report to The American Association For the International Commission of Jurists and The International Commission of Jurists (April 1, 1988), appended to Plaintiffs' Trial Brief; Reports from U.S. Congressional Hearings (100th Cong., 2d Sess. 1988), cited in Appellant's addendum to brief and Reports of the June and August, 1987; United Nations Visiting Missions to Observe Plebiscites in Palau also cited therein. See also: THE POLITICS OF FREE ASSOCIATION AND THE POLITICS OF VIOLENCE: An Essay on Recent Palauan Political History, Shuster, Donald R. unpublished draft of a presentation at the Pacific Islands Political Studies Association Conference, May 23-25, 1988 (Contact the author, Guam Community College for reprint).

[2] The August 21, 1987, Referendum is the sixth such held on the issue of Compact approval. None has achieved a (75%) majority. *See Gibbons, et al. v. Salii, et al.*, 1 ROP Intrm. 333, 340, citing language from SCREP 29 re Prop. 91 (3-3-79), 36th Day Summary Jo. (3-4-79) at 9, in support of the contention that delegates to the Constitutional Convention intended the (75%) plurality requirement to provide a rigid bar to harmful substances being introduced into Palau.

It is this process which was challenged in the Lower Court. The Court's ruling that such process was unlawful and ⊥525 therefore null and void forms the basis of the Appeal now before us.

Specifically, on July 19, 1987, the Olbiil Era Kelulau (hereinafter the OEK) passed a bill, RPPL 2-30, which called for a Constitutional Amendment Referendum to be held on August 4, 1987.

RPPL 2-30 declared that the August 4 Referendum was called pursuant to Article XV, § 11, found in the Transition portion of the Constitution, to remove inconsistency between the Compact and the Constitution. [3] The proposed amendment suspended Article II, § 3 and Article XIII, § 6 of the Constitution as applied to the Compact and provided for a second referendum to be held on August 21, 1987, on the question of ratification of the Compact. If passed, this amendment would have removed the seventy five percent (75%) majority requirement for Compact ratification and allowed for such to occur upon achievement of a simple majority vote.

⊥526 It is conceded by all Parties to this Appeal that neither House nor Senate achieved a three-fourths (3/4) majority of the membership in voting passage of RPPL 2-30, that it was introduced and passed in bill form rather than resolution form, and that it was not suspended by the Principal Deputy Undersecretary of the U.S. Department of Interior.[4]

On July 29, 1987, in a case entitled *Merep, et al. v. Salii, et al.* , Civ. Act. No. 139-87, a Complaint for Temporary Restraining Order and Preliminary Injunction was filed in an effort to prevent the August 4 Referendum. These requests for restraint and injunction were denied by the Court. The Referendum was held as scheduled and the question passed by over seventy percent (70%) in fourteen of the sixteen States.

The Plaintiffs in *Merep* then filed similar motions to halt the August 21 Referendum on

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[3] Art. XV, § 11 reads:

> Any amendment to this Constitution proposed for the purpose of avoiding inconsistency with the Compact of Free Association shall require approval by a majority of the votes cast on that amendment and in not less than three-fourths (3/4) of the states. Such amendment shall remain in effect only so long as the inconsistency continues.

The inconsistency cited in RPPL 2-30 was between the approval requirements contained in Articles II, § 3 and XIII, § 6 of the Constitution and § 324 of the Compact.

[4] U.S. Department of Interior Secretarial Order No. 3119 requires that all legislation of the Republic of Palau be submitted to the Department of Interior for review and approval before such may become law. This provision is the same as those contained in Part III, § 13 of Secretarial Order No. 2918 and § 4., a. of Secretarial Order No. 3039 which vested such review and approval power in the now defunct Office of the High Commissioner of the Trust Territory of the Pacific Islands.

ratification of the Compact, which were likewise denied. The August 21 Referendum was held, and again the question passed by a large majority of seventy three percent (73%).

On August 28, 1987, the Parties in *Merep* stipulated to a dismissal and the Court, characterizing such as pursuant to ⊥527 ROP R. Civ. Pro. 41(a)(1), [5] made no order and entered no judgment or decision, holding that such was not indicated or required, as nothing remained before the Court.

On August 31, 1987, the case under consideration here was filed under the caption *Ngirmang v. Salii*, Civ. Act. No. 161-87, the Complaint pleading essentially the same matters as in *Merep* and praying for like relief.

Ngirmang ended similarly to *Merep* with a voluntary withdrawal, again pursuant to ROP Civ. Pro. 41, on September 9, 1987.

On March 31, 1988, this case was reinstituted upon the granting of a motion by Plaintiffs to vacate their earlier withdrawal but under a different caption due to a change in the persons bringing the action.

The Defendants filed a Motion to Dismiss and the Plaintiffs filed a Motion for Summary Judgment. The Trial Court denied the former and granted the latter. These rulings are the subject of this Appeal.

SUMMARY OF ARGUMENTS AND THE DECISION BELOW

DEFENDANTS' MOTION TO DISMISS:

⊥528 In the Trial Court before Associate Justice Robert A. Hefner, [6] Defendants argued, in support of their Motion to Dismiss, that *Merep* was concluded by way of a consent judgment and that it was therefore dispositive on the merits and res judicata to the matter before the Court.

The Court found that: 1) No final judgment on the merits was rendered in *Merep*. 2) There was no consent judgment rendered by the Court, since no contractual agreement existed between the parties and no exercise of judicial authority occurred. 3) Since it was not stated to the contrary, and pursuant to ROP Civ. Pro. 41(1), the dismissal was without prejudice. 4) The attempt to make findings of fact pursuant to the memorandum of understanding incorporated by reference into the stipulation for dismissal in *Merep* constituted collusion. 5) No judgment of any kind was rendered by the Court conclusive and binding or otherwise and that, contrary to Defendants' assertion below, the matter was not a class action and, therefore, the Parties in *Merep* are neither the same as those in the instant case nor in privity therewith.

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[5] This rule covers Voluntary Dismissals by Plaintiff and such dismissal pursuant to this rule requires no Court order and is without prejudice.

[6] The Honorable Robert A. Hefner is the Chief Judge of the Commonwealth Trial Court, Saipan, MP. He is also an appointed Associate Justice of the Supreme Court, Republic of Palau, who sits in that capacity on occasions where the disability of a local Associate Justice requires it.

On the basis of these findings the Court held that, as a matter of law, the doctrine of Res Judicata was not applicable to bar Plaintiffs' Complaint and denied Defendants' Motion to Dismiss.

⊥529 Defendants appeal the Trial Court's decision denying their Motion, making essentially the same arguments as below.

Plaintiffs argue on appeal briefly on the merits, but primarily that this Court is without jurisdiction to hear an interlocutory appeal.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT:

Below, there existed no dispute between the Parties as to the essential facts of the matter. The legal issues raised by Plaintiffs and ruled upon by the Court revolved around Plaintiffs' contentions that: 1) Article II, § 3 and Article XIII § 6, of the Constitution provide the only means by which nuclear substances may be introduced into Palau, i.e., upon the achievement of a seventy five percent (75%) majority in a nationwide referendum. 2) The utilization of Article XV § 11, the Transition Article in the Constitution, is only appropriate and lawful if an inconsistency exists between the Compact and the Constitution and that there is no such inconsistency. 3) Article XV § 11, by its terms, requires a Compact ratified and in effect and cannot be utilized to bring the Constitution and a proposed Compact into harmony. 4) Article XV § 11, requires the methods of proposal of a constitutional amendment found in Article XIV § 1(a) (b) and (c) and allows for no other and that, therefore, RPPL 2-30 was unlawfully enacted and is null and void as are the August 4 and August 21 Referenda.

Other contentions were made by Plaintiffs below concerning the Political education process, alleged ⊥530 intimidation of voters, the President's Executive Order No. 60 authorizing the August 21 Referendum and alleged improper expenditure of funds in conducting the Referenda. The Trial Court, however, made no findings and rendered no judgments thereupon, and these matters are not before us on appeal.

Judge Hefner did not rule specifically on Plaintiff's Article II-Article XIII "only means" contention but, in light of his analysis of the issues, it is obvious to this Court that he correctly recognized that the seventy five percent (75%) approval required by these constitutional provisions was one of two existing means by which nuclear substances might be lawfully introduced into Palau short of amendment of the Compact, i.e., the other being amendment of the Constitution under proper circumstances and lawfully accomplished.

Judge Hefner agreed with Plaintiffs that Article XV § 11 was only available as a means of amending the Constitution if there was an inconsistency between the Constitution and Compact, and he defined "inconsistency" as a requirement or obligation mandated by the terms of one or the other of these documents which would render them "incapable of concurrent operative effect".

He reasoned that no such requirement or obligation existed and found that, with specific reference to the nuclear control provisions in the Constitution and § 324 of the Compact, there was no inconsistency. He opined that these former Constitutional provisions provided for a method by which the People, or more accurately, at least a seventy five percent ⊥531 (75%) majority thereof, could remove the prohibition in Articles II and XIII of the Constitution, thus rendering the Constitution and the Compact capable of concurrent operative effect.

By ruling thusly on this issue Judge Hefner might have rendered his Judgment on that point alone. If Article XV § 11 was held not to be available to amend the Constitution, the next obvious step would have been to declare the August 4 Referendum null and void as being without legal foundation, since it was not conducted in compliance with Article XIV of the Constitution.

Judge Hefner, however, made other findings and rulings. He held that transition amendments under Article XV §11 could be proposed and ratified at any time (emphasis ours) by popular vote contrary to the limitation expressed in Article XIV § 2, that amendments be voted on only in regular general elections held every four (4) years.

In so deciding, Judge Hefner relied upon his analysis of the intent of delegates to Palau's Constitutional Convention and of the People, who overwhelmingly supported the final draft of the Constitution.

On the question of whether or not Article XV § 11 was intended to be used where a Compact is not yet ratified but by its proposed terms is inconsistent with the Constitution, Judge Hefner ruled that, pursuant to principles of constitutional construction, and to his interpretation of the Framers' intent as drawn from Standing Committee on Transition Report No. 45 , Palau Constitutional Convention, March 8, 1979, ⊥532 (hereinafter referred to as SCREP No. 45) Article XV § 11 is to be given broad effect, and its utilization to amend the Constitution for the purpose of avoiding conflict with the Compact is proper before Compact ratification.

Defendants argued at trial that the directory provisions of Article XIV § 1(c) were not applicable to Article XV § 11 and that therefore any reasonable means of implementation of Article XV § 11 is lawful.

The Trial Judge held contra, finding that the Article XIV § 1(c) process includes any amendment pursuant to Article XV § 11, on the grounds that no Constitutional Convention history supports the assertion that the Framers intended that Article XV § 11 amendments not be proposed pursuant to the processes required by Article XIV, and that it was clear to him that the Framers intended that the high standards and requirements of Article XIV not be diluted or reduced for Article XV § 11 amendments.

Finally, having held that the proposal requirements of Article XIV apply to Article XV § 11 amendments, Judge Hefner determined that a bill passed by a majority of the OEK was not a constitutionally authorized method under Article XIV or XV § 11 and that RPPL 2-30 was improperly enacted to implement the August 4 Referendum; therefore, such Referendum was

null and void.

As an after note, the Trial Judge declared that the Article XIV requirements for proposal of an amendment under Article XV § 11 were a condition precedent to any amendment being placed before the electorate, and that the 75% ⊥533 inconsistency between the Constitution and the Compact.

In reviewing Judge Hefner's reasoning and conclusion on the question of whether or not an inconsistency exists between the Constitution and the Compact, we are struck by the fact that in his decision he has left this question to the last and considered it almost as an afterthought. We observe that, based upon his conclusion that no inconsistency exists between a proposed, but not yet ratified, Compact and the Constitution, he might have ruled further that, therefore, Article XV § 11 was unavailable for implementation to amend the Constitution by its terms, and issued his Judgment that RPPL 2-30 was unlawful, null and void, with no further discussion.

We note further that the question of inconsistency is closely tied to the timing issue. A finding of no inconsistency between the Constitution and the Compact would lead to the conclusion that Article XIV be the exclusive vehicle for amendment proposal and that such could only be implemented every four (4) years at the next regular general election.

We agree with the Lower Court's analysis of the relationship between Articles XIV and XV § 11 of the Constitution; however, we find, contrary to the decision of the Lower Court, that an inconsistency does exist between the Constitution and the finally negotiated, but not yet ratified Compact. Since the Constitution is the Supreme Law of the Land and prohibits, in Articles II and XIII, the presence of nuclear substances in Palau, the Compact which provides for transit of ⊥534 such through Palauan territory in § 324, cannot stand alongside the Constitution absent the seventy five percent (75%) approval required by the Constitution to render this prohibition temporarily impotent, or a constitutional amendment.

We also find that an identified inconsistency extant between the Constitution and the Compact prior to ratification may properly and lawfully trigger the implementation of Article XV § 11.

Accordingly, we are compelled to disapprove of Judge Hefner's reasoning on this issue, but hasten to point out that we affirm his conclusion that the Framers intended the approach we have outlined as to timing, so that an agreement not in conflict with the Constitution might be put before the People for ratification.

Judge Hefner chose not to consider the question of inconsistency until after he made a dispositive ruling based upon his finding that the process of proposal required of an Article XIV amendment was exclusive and applied as well to an Article XV § 11 amendment, and that such process had not been observed and followed by the OEK in its passage of RPPL 2-30, which he therefore declared was null and void.

The critical issue, as we see it, is the timing of the decision of whether or not

inconsistency is present, and, as we have stated, we find that this decision may be exercised prior to ratification and affirm the lower Court on that issue.

Judge Hefner reasoned that, since Article XV § 11 was silent on timing and, therefore, ambiguous when set against ⊥535 Article XIV, which contains a timing provision (at the next general election) the use of extrinsic aids to determine the intent of the Framers of the Constitution was permissible to resolve the ambiguity. We agree.

Upon reviewing SCREP 45,[7] the language therein led the Trial Judge to the decision that the delegates to Palau's Constitutional Convention intended that Article XV § 11 be implemented at any time that an inconsistency between the Constitution and a finally drafted but not yet ratified Compact, of such magnitude as to preclude these documents from having concurrent operative effect, was identified.

Specifically, Judge Hefner referred to language in SCREP 45 to the effect that voting on the Compact and upon any proposed amendment pursuant to Article XV § 11 would occur at the same referendum.[8]

We note that, while it is not cited in support of his analysis, the same committee report also contains language referring to a finally negotiated but not ratified Compact, further supporting Judge Hefner's reasoning and conclusion.[9]
⊥536 Plaintiffs contend that subsequent Constitutional Convention debate and committee revisions of proposals finally passed as Article XV § 11, belie the rationale of the Trial Judge, and demonstrate that the Framers intended Art. XV § 11 to be applicable only if a ratified, in effect Compact was inconsistent in some part with the Constitution.

Plaintiffs cite debate on the Constitutional Convention floor transcribed at p. 7 of the 42th Day Summary Journal, which occurred the day after submission of SCREP 45, in support of their arguments as follows:[10]

> "It was pointed out that this Section [then Sec. 10 of Prop. 499] would be used only after treaties have been approved to reconcile any inconsistencies between the Constitution and such treaties." [emphasis added]
>
> and

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[7] *Supra* at 11.
[8] Trial Memorandum Opinion, at 21.
[9] SCREP 45 *supra* at 11.

> "This alternative stressed that conflicts should be avoided wherever possible. However, if the Compact as finally negotiated [emphasis ours] would conflict with the Constitution, the legislature was authorized to draft temporary amendments to the Constitution which would be voted on by the People in the same referendum conducted for the Compact."

[10] Plaintiff/Cross-Appellants' Opening Brief at 12.

The section of the proposal being debated on the floor on second reading to which the above quoted statement refers:

> "Any amendment to this Constitution proposed for the purpose of avoiding inconsistency with, adjustment to or implementation of a treaty Compact, covenant or other agreement between the sovereign nation of Belau and another sovereign state or international organization shall have effect upon ratification only as long as and to the extent required for such avoidance of inconsistency, adjustment or implementation." [emphasis added]

⊥537 Additionally, Plaintiffs argue that the absence of any further reference by committee members, or in transcriptions of floor debate, to a simultaneous vote on an amendment to the Constitution and the Compact indicates that this approach was abandoned.

With this last contention we agree, since such does not appear in the final version of Article XV § 11.

We do not consider, however, that this fact flaws Judge Hefner's conclusion though indeed, as we have observed, there are other analytical steps he might have taken.

There is a common thread woven through each of the cited discussions, which adds credence to the lower Court's analysis and conclusion, and which compels us to agree that implementation of Article XV § 11 is not restricted in its timing to the next general election.

The key word identifying this thread in the paragraph cited by Plaintiffs from the debate, on the day following submission of SCREP 45, is "approved". Plaintiffs ascribe formal, forensic meaning to the delegates use of this word, and interpret their intent to have been that Article XV § 11 not be implemented except after treaties are "ratified".

Webster's Dictionary does define "approved" in terms of "ratify" or "certify" or "formalize legally" but also, in its more common usage, as "to pronounce good," "be pleased with," and, "to show to be worthy of acceptance". [11] It is a ⊥538 word, the specific meaning of which can only be determined by other words used as qualifiers in a sentence, e.g., " final approval", " conditional approval," " preliminary approval", "approval by the President or Legislature," "approval by the electorate," and so on.

We find that at the very least, it is as logical and as potentially accurate when dealing with words said in the past, in a context and at a time now irretrievable, to ascribe to them their plain meaning as it is to torture from them a strict legal definition and meaning.

Thus, the word "approved", as used in the cited material may as easily and as accurately and, in our view, more reasonably, have been used as a reference to a finally negotiated treaty (the Compact) as to a ratified one.

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[11] Webster's Third New International Dictionary, Merriam Company, pub. 1981.

The language cited by Plaintiffs from that portion of the later amended Proposal 499 (ultimately Art XV § 11) clearly continues this thread of intent. We read ". . . adjustment to or implementation of a treaty, compact, covenant or other agreement. . ." as supportive of the reasoning and conclusion below, since it is apparent to us that the delegates were thinking in terms of amendments which would cure inconsistencies, adjust where such was necessary and pave the way for implementation of a proposed treaty or compact.

⊥539 As to Plaintiffs' Constitutional Supremacy argument, we find that to present for ratification a compact containing provisions in direct conflict with the Constitution, and upon ratification to attempt to fix the Constitution, flies fully in the face of any reasoned analysis of the principal of Constitutional Supremacy. It is, instead, the Compact which must be fixed to comport with the Supreme Law of the Land and, failing that or some other means of constitutional approval, such as the achievement of a seventy five percent (75%) majority vote rendering Articles II § 3 and XIII § 6 temporarily impotent, it is then the Constitution which must be amended by a clear expression of the people's will before any agreement in conflict with the Constitution may come into effect.

We note with approval that this very concept was understood and attempted by the Executive and Legislative branches of Palau's Government and, were it not for the question which forms the gravamen of this appeal, that such was entirely appropriate.

Finally, we reject Plaintiffs' contention that an inconsistency between the Constitution and the Compact would allow execution of that portion of the Compact not in conflict with the Constitution. This contention disregards reality.

⊥540 The quid pro quo or benefit offered by Palau in return for U.S. dollars under the Compact is access to and use of portions of Palauan territory on land and sea for United States military strategic purposes. This benefit to the U.S. is couched in terms of a concomitant benefit to Palau and, indeed, it is the latter that is stressed under the Compact by way of the defense provisions contained therein. The Compact clearly provides a dual benefit by these terms of military defense capability for Palau, if attacked, but primarily of military strategic importance to American interests.

As pointed out in *Gibbons*, 1 ROP Intrm. 333, 339 note 3, § 324 of the Compact expresses the intention of the parties to the Compact that the U.S. have the right to introduce nuclear powered and nuclear armed vessels and aircraft into Palauan territory.

It is also noted in *Gibbons* that U.S. Military vessels and aircraft, deployed as part of the U.S. strategy of nuclear deterrence are, in many cases, nuclear propelled and/or armed with nuclear weapons.[12]

It is manifest that, without § 324 or some other provision of equal content, there would be no U.S. agreement to the Compact, and that both parties have always understood, and understand today, that the right of the U.S. to transit nuclear vessels, aircraft and weapons of war through

[12] *Gibbons*, at 339, note 3.

Palauan territory ⊥541 is not severable, so that, if voided, the remainder of the Compact could come into effect.

In addition, also as noted in *Gibbons* at note 10, Article II § 3 of the Constitution further compels the conclusion of non-severability in its reference to a treaty, compact or agreement, and not to a part thereof, and the Compact itself contains no provision allowing piecemeal execution should a portion of it be declared unlawful or void.

Accordingly, we affirm the Lower Court ruling that implementation of Article XV § 11, upon identification of an inconsistency between a finally proposed and agreed upon but not yet ratified Compact, is lawful and appropriate and that the Compact is a non-severable instrument. We reject, however, Judge Hefner's finding that there exists no inconsistency between the Compact and the Constitution, and hold that Articles II § 3 and XII § 6 of the Constitution and § 324 of the Compact are inconsistent and cannot stand together. The fact of Constitutional Supremacy furthermore, requires that a Compact not in compliance with the Supreme Law of the Land be conformed for compatibility or that the Law be amended by proper Constitutional process and according to the People's will.

To the extent that Judge Hefner's finding of consistency between the Constitution and the Compact forms a part of his analysis which led to judgment, we disapprove.
⊥542 Appellants, Defendants below (hereinafter referred to as Defendants) challenge the lower Court's holding that the Amended Complaint is not barred by the operation of the Doctrine of Res Judicata.

We affirm the decision below on this question with sparse comment, as we observe that there is little to add to the reasoning and analysis of the Trial Judge, and we find no fault therewith.

The Lower Court's decision on this point was grounded upon several factors, chief of which was that the decision in *Merep, supra* at note 1., which Defendants claimed finally settled the issues raised herein among the same parties as here and their privies, was not and could not be characterized in law as a consent judgment.

We agree with this finding for the same reasons expressed at trial, and we draw the same conclusion as well. Since the *Merep* case did not result in a consent judgment but ended rather in a voluntary dismissal by Plaintiffs therein, it could not be said to be binding on the parties here or to be a bar to further litigation based upon the Doctrine of Res Judicata.

We agree with Defendants' short exposition of the Doctrine of Res Judicata itself, but hold that, under our facts, such Doctrine cannot be applied and, as the Defendants themselves have urged, we move on to the merits.

⊥543 The primary issue is whether or not, assuming arguendo that Article XV § 11 was properly implemented in the first place as the appropriate Constitutional means by which to amend the Constitution for the purpose of removing barriers to Compact approval, such Article

stands alone, or whether the process of proposing a Constitutional Amendment is prescribed by Article XIV of the Constitution.

The Trial Judge agreed with Plaintiffs that Article XV § 11 was subsidiary and dependent upon Article XIV for the process of proposal of a Constitutional Amendment.

Defendants make much of Judge Hefner's brief discussion of the beginning words of Article XV § 11 and XIV respectively at p. 24 of his Memorandum Opinion.

We see no conclusionary emphasis or dependence by the Lower Court on a grammatical analysis in this text but rather, read this discussion and Judge Hefner's conclusion that Article XIV proposal processes are required to implement Article XV § 11 as being based upon the premise he expresses that the Framers intended the proposal processes of Article XIV to apply to any amendments to the Constitution in order to ensure stability and consistency, that wide-based support for a particular amendment exists, and to maintain the high standards and rigid requirements of Article XIV in the Constitutional Amendment process.

The Constitutional Convention Committee Report on Proposal No. 495, cited by Plaintiffs at p. 35 of their brief, contains language of limitation with regard to Article XV § 11 ⊥544 amendments, and refers to Article XIV, we find, as encompassing the "regular amendment procedures," thus identifying Article XIV as paramount and Article XV § 11 as subsidiary.

SCREP 31[[13] sic], also cited by Plaintiffs at pp. 36 and 37 of their responsive brief, reveals the Framers' understanding that amendments to the Constitution were serious matters calling for deep reflection and consideration and requiring more stringent proposal procedures than would be the case for the proposal of bills in the Legislature.

Finally, as correctly pointed out by Plaintiffs, SCREP 70, The Committee on Style and Arrangement Report accompanying the redraft of Proposition 495 after second reading, in § 12, again refers directly back to Article XIV and calls for "Consistency" between Articles. XIV and XV § 11.[[14] sic] The fact that Articles XIV and XV § 11 contain duplicate language regarding the ratification process of an amendment simply reveals, in our judgment, the intention of the Framers that a transition amendment be no easier of ratification than any other.

Defendant contends that Article XV §11 is an independent and separate part of the Constitution.

Applying sound principles of constitutional construction, we observe that it is the function of this court ⊥545 in interpreting the Constitution to find, and we do find, that all sections and provisions of the Constitution are in harmony. Should a discordant note be heard among two or more provisions of the Constitution, it is our task to bring them into harmony if

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[13] The full text of this Committee Report is found at p. 46 of Plaintiffs' Addendum of Documents.

[14] The full text of this Committee Report is found at p. 36 of Plaintiffs' Addendum of Documents.

such is possible.

Given our analysis thus far of the Framers' intent, we hear no discordancy in this Constitutional score, and we decline to create one by holding that Article XV § 11 is separate and apart from the whole Constitutional scheme, as would be required were we to accept Defendants' argument and agree that the proposal requirements of Article XIV do not apply to Article XV § 11 amendments.

Accordingly, we hold that Article XIV §§ 1(a), (b), and (c) constitute the exclusive processes by which amendments to the Constitution may be proposed and that, therefore, any process implemented to propose an amendment to the Constitution that is not in compliance with Article XIV requirements must be declared unlawful, unreasonable and unconstitutional, and thus null and void.

The Parties agree that the process by which RPPL 2-30 was passed in the OEK did not comport with the requirements of Article XIV § 1(c), since neither house achieved the seventy five percent (75%) majority of the membership required. We find this to be a fact as did the lower Court.

Thus, consistent with our analysis and, finding that Article XIV § 1 processes are exclusive, we affirm the holding of the lower Court that RPPL 2-30 was and is null and void and ⊥546 that, therefore, the August 4 Referendum was a nullity, and that the August 21 Referendum, failing to achieve the required 75% majority, did not result in voter ratification of the Compact of Free Association by the people of Palau.

Two matters remain which we touch on briefly.

Defendants contend that the OEK ratified the flawed passage of RPPL 2-30 by a proper majority after the Referenda had occurred. We agree with the trial judge and affirm his holding that the seventy five percent (75%) majority required of the membership of each house of the OEK by Article XIV § 1(c) is a condition precedent to the proper and lawful proposal of all amendments to the Constitution, including those proposed pursuant to Article XV.

Finally, Plaintiffs question the Court's jurisdiction to hear Defendant's Appeal of the lower court denial of their motion to Dismiss, on the ground that such lower court Order was interlocutory and thus not appealable.

The Court simply notes that, while Plaintiffs are correct that an interlocutory Order of a trial court which does not finally settle the issues on trial is generally not appealable, this rule holds and applies to matters prior to the time for final appeal of a ruling which concludes the case on its merits.

In fact, one of the tests for deciding the question of the availability of an appeal of an interlocutory Order is ⊥547 whether or not such may be included in the appeal of the concluded lower court matter.[15 sic].

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[15] See: *Olikong, et al. v. Salii and Ngiraked*, Civ. App. No. 21-87 at 8 (App. Div., June 21,

We find no legal barrier present to the inclusion of this issue in this appeal and hold that jurisdiction to consider this issue is present.

SUMMARY OF DECISION

1. Plaintiffs/Appellees/Cross-Appellants' Cross Appeal: We Affirm the Trial Court Judgment and disapprove of the reasoning of the Trial Judge as noted.

2. Defendants/Appellants/Cross-Appellee's Appeal: We Affirm the Lower Court Judgment.

1987).

4 Am. Jur. 2d, Appeal and Error, § 51 at 573.