

Gibbons v. Remeliik, 1 ROP Intrm. 80 (Tr. Div. 1983)
IBEDUL YUTAKA M. GIBBONS, et al.,
Plaintiffs,

v.

HARUO I. REMELIHK, et al.,
Defendants.

CIVIL ACTION NO. 67-83

Supreme Court, Trial Division
Republic of Palau

Order granting partial summary judgment (Count III)
Decided: August 6, 1983

BEFORE: ROBERT A. HEFNER, Associate Justice.

Hearing on plaintiffs' Motion for Partial Summary Judgment on Count III of plaintiffs' complaint was heard on August 4, 1983. This written order along with the Court's oral ruling, given at 9:30 a.m. on August 5, 1983, shall constitute this Court's decision on that motion.

At the outset, this Court recognizes that it has jurisdiction over this action, that the action is ripe for adjudication, and that the plaintiffs have standing in this case.

Plaintiffs' Motion for Partial Summary Judgment is entertained pursuant to Trust Territory Rules of Civil Procedure, Rule 45. The Court recognizes that there is no genuine issue as to any material fact as to the portions of plaintiffs' complaint to which this motion for partial summary judgment is directed, and that this judgment is rendered as a matter of law.

The issue, as framed by this Court, and argued to by both counsel during the hearing, is as follows: In view of the vote results of the February 10, 1983, referendum and plebiscite, on the ballot used, can the Compact of Free Association (hereinafter Compact) be implemented without the constitutionally required 75% approval of Proposition One(B) or by severance therefrom?

The undisputed results of the February 10, 1983, referendum and plebiscite were as follows: On Proposition One(A) some 62% of the electorate voted "yes" to the question, "Do you approve of Free Association as set forth in the Compact of Free Association?" On Proposition One (B) 53% of the voters cast "yes" ballots to the question, "Do you approve of the Agreement concerning radioactive, chemical and biological materials concluded pursuant to Section 314 of the Compact of Free Association?" 181

It is also undisputed that Article II, Section 3 and Article XIII, Section 6 of the Constitution of the Republic of Palau required that Proposition One(B) be approved by at least

75% of the votes cast.

The defendants assert that the Agreement concerning radioactive, chemical and biological materials (hereinafter Harmful Substances Agreement) was severable from, and not an integral part of, the Compact. They consequently assert that the Compact has been approved even though the Harmful Substances Agreement referred to in Proposition One(B) was not passed by a 75% vote. The defendants make their assertion basically on the basis of the following arguments: (1) The fact that two separate questions were asked on the ballot for the Compact and the Harmful Substances Agreement indicated that the two were severable; and (2) the difference in the ballot language stating that the Compact itself would be “approved” by a majority of the votes cast and stating only that before the compact can “take effect” the Harmful Substances Agreement must also be approved by at least 75% of the votes cast, further indicated that the Harmful Substances Agreement was severable from the Compact.

In answer to the defendants’ arguments enumerated (1) above, this Court finds that the ballot questions on the Compact and the Harmful Substances Agreement were set out separately simply to abide by the requirement of Article XIII, Section 6 of the Constitution. Article XIII, Section 6 mandates that approval of usage, testing, storage, or disposal of harmful substances be obtained by 75% voter approval on a “referendum submitted on this specific question.” That this was the case is evidenced by the very similar language utilized in Article I of the Harmful Substances Agreement. Article I states, in pertinent part, that:

In accordance with . . . Article XIII, Section 6 of the Constitution . . . , the Government of Palau shall seek approval of this Agreement by not less than three-fourths of the votes cast in a *referendum in which this specific question shall be presented* . . . [.](emphasis added) *Id. et al.*

¶82 To address the defendants’ arguments enumerated (2) above, this Court need only state that the ballot language was sufficiently clear for a voter to conclude that the rejection of Proposition One(B), by virtue of less than 75% voter approval, meant the rejection of Proposition One(A) as well. The defendants argue meaningless semantic differences when they assert that the voters made the distinction between “approved” and “take effect” when reading the ballot and casting their votes.

This Court additionally recognizes that the decision in *Koshiba, et al., v. Remeliik, et al.*, Civil Action No. 17-83 (Tr. Div. Jan. 1983), in which several of the same parties in this suit were involved, recognized that the voting on the Compact was to be an all or nothing proposition. This conclusion was unanimous.¹

¹ That this was the position of the Government of Palau and the United States was stated and made unequivocally clear in the October 13, 1982, letter from the President of the Republic of Palau, Haruo I. Remeliik to the President of the Senate, Kaleb Udui and the Speaker of the House of Delegates, Carlos H. Salii; the January 12, 1983, United States position paper regarding the negotiations for the political status of Free Association; and the January 28, 1983 affidavit of Vice President of the Republic of Palau and Chairman of the Political Education Committee, Alfonso R. Oiterong. It should be noted here that the October 13, 1982, letter from the President

183 The Court decision in that case stated:

Should the electorate pass Propositions I(A) and I(B) by the necessary votes, it is inconceivable that the United States would disclaim obtaining what it clearly has sought. Should either or both propositions fail, there is nothing for the United States to reject. *Id.* at 14.

This Court, in rejecting the defendant's severability argument, also recognizes that the Harmful Substances Agreement was inextricably tied into the Compact. The Preamble of the Harmful Substances Agreement demonstrates this as it provides that the Harmful Substances Agreement will incorporate the provisions of Section 314, clarify the language contained therein, and set forth certain restrictions, pursuant to Section 314 of the Compact.

Article I of the Harmful Substances Agreement, states that the separate referendum will be conducted in "conjunction with the plebiscite on the Compact." This is not evidence that the Harmful Substances Agreement was to be separate and apart, but instead emphasizes that the Harmful Substances Agreement was an integral part of the Compact.

Article II of the Harmful Substances Agreement with its statement that Section 314, 351, and 461 of the Compact, are incorporated by reference into, and become a part of, the Agreement and the Article VIII, Section 1 statement that the Harmful Substances Agreement shall come into effect simultaneously with the Compact, further evidences the interrelationship of the Compact and the Harmful Substances Agreement.

To accept defendants' position would mean that the Compact is approved, but cannot be implemented or made effective until the Harmful Substances Agreement is resolved. In such event, the status quo would continue indefinitely until a new Harmful Substances Agreement is negotiated and approved. If no such agreement is approved the political status impasse becomes the political status of the Republic of Palau and nothing is accomplished by the February 10, 1983, referendum and plebiscite. Such a result is intolerable and one which this Court will not decree.

For the aforementioned reasons the plaintiffs' Motion for Partial Summary Judgment is HEREBY GRANTED.

to Mr. Udui and Mr. Salii preceded the passage of House Joint Resolution No. 1-0099-8 which was adopted on December 10, 1982. This Resolution approved the Compact and the subsidiary agreement (including the Harmful Substances Agreement) subject to approval of the voters of Palau. Thus it appears clear that the Olbiil Era Kelulau in passing the Resolution was led to believe that both propositions must be approved before the compact could come into effect.

From the aforementioned documents, the defendants' position was made clear well before February 10, 1983, and the voters, by virtue of the ballot wording, concluded that the voting on the Compact was an all or nothing proposition.

Gibbons v. Remeliik, 1 ROP Intrm. 80 (Tr. Div. 1983)

184 IT IS, THEREFORE, ORDERED AND DECLARED that the Compact of Free Association and its integral and subsidiary parts that include the Harmful Substances Agreement, were disapproved by the people of the Republic of Palau in the February 10, 1983, referendum and plebiscite.