

Kekerelchad v. PPLA, 1 ROP Intrm. 127 (Tr. Div. 1984)
KINTARO KEKERELCHAD, et al.,
Plaintiffs,

v.

PALAU PUBLIC LAND AUTHORITY,
et al.,
Defendants.

CIVIL ACTION NO. 64-80

Supreme Court, Trial Division
Republic of Palau

Memorandum opinion re motion to vacate
stipulated judgment and orders pertinent thereto
Decided: June 21, 1984

BEFORE: LOREN A. SUTTON, Associate Justice.

BACKGROUND

On December 28, 1974, Secretarial Order No. 2969 became effective. The Order directed the return of public lands by the Trust Territory Government to the control and management of the local Districts of the Trust Territory as defined in Title 3, § 1 of the Trust Territory Code and granted authority for each District Legislature to create a “legal entity” with certain enumerated powers for the purpose of holding said public Lands in trust for the people of the District.

On June 17, 1975, Palau Public Law 5-8-10 was signed into law. This statute created the Palau Public Lands Authority in conformity with the directives of Secretarial Order No. 2969. The Authority was to be governed by a Board of Trustees consisting (by later amendment) of 16 members appointed by the Speaker of the Legislature with the advise and consent of the body.

The Authority was fiscally dependent upon the Legislature operating, by the terms of the statute, on funds provided by appropriation each budget year and required to deposit all incoming revenue from land sales, rent, etc., into the General Fund of the Legislature.

The Authority was authorized to exercise the power of eminent domain, could sue and be sued and was required to submit an annual audit and statement of activities to the Legislature.

¶128 All members of the Board and employees were paid with Government funds[,] and per diem and travel expenses were likewise funded by the Government.

On September 29, 1982, Executive Order No. 9, was promulgated. This Executive Order

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entitled “Reorganization of the Executive Branch Government of The Republic of Palau,” established direct line authority and supervision of the Palau Public Lands Authority under the Bureau of Domestic Affairs. The Order further directed that upon dissolution of the Palau Public Lands Authority by the Olbiil Era Kelulau its powers, duties and functions would pass automatically to the Bureau of Domestic Affairs under the Ministry of State. No such dissolution has occurred to date and the Palau Public Lands Authority remains a legal entity under the supervision of the Bureau of Domestic Affairs.

OPINION

This court can find no characteristic pertinent to the creation and function of the Palau Public Lands Authority which can establish that said entity is either a corporation with the Government of Palau as sole shareholder or a private sector entity. Neither can the Authority be analogized to such corporate entities as mentioned above any more than apples can be compared to oranges.

The Palau Public Land Authority was created by the Legislature, financed solely through the normal budget appropriation process and was required to pay all monies it collected into the Legislature’s General Fund. The Authority was granted the power of eminent domain (a power strictly reserved for Government) and was required to suffer the scrutiny of the Legislature by way of an annual Audit and Statement of Activities. Today pursuant to Executive Order No. 9 the Palau Public Lands Authority continues as an entity located in the Bureau of Domestic Affairs, Government of the Republic of Palau, under the Minister of State.

This Court FINDS accordingly, that the Palau Public Lands Authority has been since its creation and is now an entity of the Government of Palau and therefore that any debts due and owing by the Authority shall be paid from public funds.

Having reached that decision and based upon the fact that in Palau it is the duty and function of the Attorney General to represent the Executive Branch of Government “. . . in all Civil litigation . . . [.]” (Executive Order No. 9, Part IV, § 1, b), ii), it follows that inasmuch as the Attorney General was not a party or signatory to the Stipulated Judgment **1129** entered by this Court on March 8, 1984, the Motion to Vacate said Judgment should be and accordingly is GRANTED.

ORDERS

It is ORDERED that a further hearing on the Motion in Aid of Supplemental Order be held on Friday, July 20, 1984, at a time to be reflected on the Motion Calendar for that week.

Further, it is ORDERED that Mr. Tarkong be relieved from representing the defendant in this matter and that the Attorney General or his authorized agent be substituted in as Attorney of Record.

Any additional Motions by either party are ORDERED set for hearing on July 20, 1984,

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with briefs to be filed at the appropriate times in the interval and due to the Court by no later than July 18, 1984.

The announcement of decision set for 9:00 a.m., Friday, June 22, 1984, is hereby ORDERED off calendar.