

Renguul v. Ililau, 1 ROP Intrm. 188 (Tr. Div. 1985)
REKEMESIK SULIAL RENGUUL,
Plaintiff,

v.

ONGELUNGEL ILILAU and
HARUO I. REMELIHK, President of
the Republic of Palau,
Defendants.

CIVIL ACTION NO. 77-83

Supreme Court, Trial Division
Republic of Palau

Memorandum of decision re defendant Remeliik motion for summary judgment
Decided: January 24, 1985

BEFORE: LOREN A. SUTTON, Associate Justice

BACKGROUND

Between May 17, 1981, and July 21, 1981, a document entitled "Community Development Agreement" was signed by Haruo I. Remeliik ("Government's Authorized Representative"); Ongelungel Ililau ("Community's Authorized Representative") and ("Contractor") and Ron Stock ("Palau District Attorney-Approved as to Form").

This Agreement provided for ". . . the Government of Palau, Trust Territory of the Pacific Islands . . ." to give a sum of money in the form of ". . . Government assistance . . ." to the ". . . Community . . ." for the purpose of building a traditional Bai in the State of Melekeok.

An Act appropriating \$10,000.00 for this project was passed by the Seventh Palau Legislature (PPL 7-4-18) on June 13, 1980, and approved July 10, 1980, by Adrian P. Winkel, the then High Commissioner of the Trust Territory.

On July 29, 1981, the District Director of Budget and Finance for Palau signed off the Agreement, certifying that the funds were available.

Work was commenced on the Bai and the plaintiff Renguul complains that he was hired by defendant Ililau to haul lumber to the sawmill and saw it according to specifications. Further, that he completed these tasks in August 1981, and has not been paid the ". . . agreed cost . . ." of \$2,800.00 (the **1189** Court assumes reference to page one (1), fourth (4th) "whereas" paragraph, the Agreement).

The plaintiff directs his claim against defendant Ililau as Magistrate of Melekeok at the

Renguul v. Ililau, 1 ROP Intrm. 188 (Tr. Div. 1985)

time of the Agreement and defendant Remeliik, as President of the Republic of Palau. The plaintiff grounds his complaint versus defendant Ililau on contract law and versus defendant Remeliik on an Agency theory and Contracts (third party beneficiary to an implied contract).

On November 15, 1983, defendant Remeliik filed a Cross-Complaint versus “. . . the Magistrate of Melekeok . . .” praying for indemnification from defendant Magistrate of Melekeok for any amount the Republic of Palau is ordered to pay to plaintiff, for costs and such other relief . . . etc. Said Cross-Complaint was grounded upon page three (3) paragraph five (5) of the Agreement, an indemnification and hold harmless clause.

Defendant Ililau, it should be noted, has never appeared in this matter. In the early stages of this case documents were filed by Trial Assistant John O. Ngiraked purporting to represent defendant Ililau (Answer to Complaint, filed June 14, 1983 and Pre-Trial Statement filed February 28, 1984). The Court, on June 19, 1984, entered an order bringing in the State of Melekeok as an indispensable party defendant. For the purpose of the decision which follows the Court considers and so FINDS that defendant Ililau was complained against by plaintiff in his official capacity as the then Magistrate of Melekeok and is not a proper party defendant in his individual capacity.

On November 28, 1984, defendant Remeliik filed a Motion For Summary Judgment. A schedule for the submission of briefs was ordered on December 21, 1984, and the Motion was argued on January 18, 1985. The Court took the matter under submission and set January 24, 1985, at 3:30 p.m., for the rendering of a decision. Said decision follows:

DECISION

The Court takes up the issue of Sovereign Immunity at the outset and FINDS and HOLDS that given the following discussion, the Government of the Republic of Palau, while “Sovereign” in some respects does not enjoy a level of sovereign independence which would support a holding on the Motion in favor of defendant Remeliik strictly upon that ground.

As stated in Appellate Decision re Writ of Prohibition, *Julio Kazuo v. Republic of Palau; Yukie Yano v. 1190 Republic of Palau*, Special Proceeding No. 7-83 [Palau Supreme Court, Appellate Division, 1984]¹:

The curious situation in which Palau now finds itself gives rise to the unusual issue before us. Palau is currently under the administration of two governments.
p. 7, *supra*.

This Court adopts that view.

A necessary corollary is that statutes and laws existing and applicable to the Republic of Palau as an entity of the Trust Territory unless repealed or modified pursuant to the provisions of

¹ Writ of Certiorari currently pending before the High Court, Trust Territory, Appellate Division.

Renguul v. Ililau, 1 ROP Intrm. 188 (Tr. Div. 1985)

the Republic of Palau Constitution or laws enacted thereunder shall remain applicable. Secretarial Order No. 3039, reprinted at p. 47, Vol. I., TTC (*See* § 4, Legislative, c.)

The only non-Trust Territory law respecting this issue is found in the Republic of Palau Constitution (Article IV, § 7) where it is specified that the Government of the Republic of Palau may be sued in civil actions for unlawful arrest or damage to private property. This section clearly is not applicable to the present case. Article XV, § 3(a), Republic of Palau Constitution, echoes the prescription found in Secretarial Order No. 3039 (cited *supra*). Thus it is apparent and the Court so FINDS that the applicable law on this issue is the Statutory provisions in Title 6, TTC and more specifically sections 251 and 252 of that title.

Section 251(b) allows suit versus the Government upon and express or implied contract. This section, standing alone would appear to be a waiver, on the part of the Government, of Sovereign Immunity and thus allow the present suit even if the Court found that such existed and there were (as there are) no other statutes of the Republic of Palau controlling.

However, section 252, 6 TTC, specifically except a “discretionary” function or duty on the party of any agency on employee of the Government from the waiver contained in section 251(b).

¶191 A discretionary function or duty is defined as a “. . . planning level decision . . .” *Lindgren v. United States*, (1982) 665 F.2d. In *Dalehite v. United States*, (1953) 346 U.S. 15, the Supreme Court of the United States further defined the limits of “discretion”:

[discretion] . . . includes more than the initiation of programs and activities. It also includes determination made by executives or administration in establishing plans, specifications or schedules of operations. Where there is room for policy judgment and decision there is discretion . . . [.] *supra*, at 36-36.

It is clear to this Court that the act of the defendant, Remeliik, in his official capacity as President of the Republic of Palau, in signing the “Agreement” at issue here, together with whatever attendant obligations that might have entailed was a discretionary act. Section 252(2) 6 TTC insulates the defendant from suit by withholding jurisdiction from the Trial Division of the High Court (read, Trial Division of the Supreme Court, Republic of Palau).

Based upon the above, this Court specifically FINDS that:

1. 6 TTC sections 251 and 252 are applicable to the issue at hand.
2. The acts of the defendant, Remeliik in his official capacity as President of the Republic of Palau, as a party to the Agreement at issue here and carried out within the scope of his duties and prerogatives in that office, were discretionary acts and as such are not cognizable by this Court. This Court has no jurisdiction.

Given these FINDINGS it is not necessary that the Court deal with other issues raised by

Renguul v. Ililau, 1 ROP Intrm. 188 (Tr. Div. 1985)

the parties and in the interest of the development of good law, determined and established on as narrow grounds as possible so as to maintain the necessary concept of predictability in the law and avoid major changes outside a natural and reasoned progression, the Court declines to do so.

The Court also FINDS that defendant Ililau is a necessary party to this action only by virtue of the fact that he was, at the time of the acts complained of, the Magistrate of Melekeok. By admitting the State of Melekeok as an indispensable party defendant to this action the court replaces ¶192 defendant Ililau with the proper party and HOLDS and ORDERS that the plaintiff's case against defendant Ililau does not lie and that he be discharged from the matter as a party defendant.

Accordingly, and for the reasons stated above the defendant, Remeliik's Motion for Summary Judgment is ORDERED GRANTED. Cost are awarded to the defendant in an amount to be approved by the Court upon submission by the Attorney General of an accounting of said costs, any attorney fees being excluded. Said accounting to be filed with the court and served on the plaintiff no later than February 1, 1985. If said costs are contested by the plaintiff that fact should be made known to the Court by way of proper Motion and a hearing shall be set.

This order renders defendant Remeliik's Cross-Complaint moot and said Cross-Complaint is therefore ORDERED dismissed.

This matter is ORDERED set for further conference re the remaining parties at 10:00 a.m., January 31, 1985.