

*Metes v. Airai State*, 1 ROP Intrm. 261 (Tr. Div. 1985)  
**RINGANG WALTER METES,**  
**Plaintiff,**

v.

**AIRAI STATE; ROMAN TMETUCHL,**  
**An Individual,**  
**Defendants.**

CIVIL ACTION NO. 64-85

Supreme Court, Trial Division  
Republic of Palau

Decision re defendants' motion to dismiss/for summary judgment  
Decided: September 19, 1985

BEFORE: LOREN A. SUTTON, Associate Justice.

#### BACKGROUND

This action, based upon a theory of detrimental reliance, is for damages allegedly incurred when plaintiff, relying upon representations by an Airai State employee that he had certain property rights in the subject land expended a sum of money to purchase building materials and built a house thereupon only to be advised that the Governor of Airai State, Roman Tmetuchl, claimed ownership of said land as a private individual and that accordingly, he must cease building.

Plaintiff complied and sought further information but alleges he was unable to gain clarification and fears to resume building until he does.

Plaintiff alleges that building materials and his partially completed house are exposed to the elements and suffering damage and prays for recompense therefore: of all fees charged by Airai State for alleged lease, building permit, etc., and for costs.

The action was originally filed versus Airai State and Roman Tmetuchl in his individual capacity.

By Order of September 10, 1985, defendant Roman Tmetuchl was dismissed as a party, on Motion of himself and there being no objection by plaintiff, without findings of law or fact.

**¶262** Presently before the Court is Defendant's Motion To Dismiss or For Summary Judgment on grounds that the remaining defendant, Airai State, is immune from suit by virtue of the Doctrine of Sovereign Immunity and base upon PPL 6-3-2, which legislates a Statute of Frauds within the Republic of Palau.

DECISION

Ownership of the subject land herein has not been judicially established by this Court. While certain documents and affidavits have been submitted and reside in the file they are insufficient, in and of themselves, to quiet all questions of fact which must be decided before the respective rights and duties of the Parties herein may be determined., e.g., where exactly is the land allegedly leased to plaintiff in relationship to the plot claimed by Roman Tmetuchl; did the plaintiff build on land lawfully leased to him by the State of Airai or on another plot by mistake; did the State of Airai lease public land to plaintiff or did the employee(s) involved lease land to plaintiff which was privately owned as defendant contends? Was the lease valid at all?

A Motion for Summary Judgment alleges that all matters of fact are settled and that the Court need only to determine the law of the case and grant final judgment.

Defendant's Motion here is of a jurisdictional nature and if granted would preclude any final judgment settling the rights and duties of the parties by virtue of removing the case entirely from the perusal of the Court on either the ground that the defendant is immune from suit or that the Statute of Frauds precludes going beyond a finding that the lease attached to the Complaint shows no proof of final execution.

STATUTE OF FRAUDS

The second contention, that the Statute of Frauds (PPL 6-3-2), precludes the plaintiff from going forward, there being no showing that the alleged lease between plaintiff and the State of Airai was ever executed by the latter, is without merit as the crucial issue here is not whether or not plaintiff, the State of Airai, or Roman Tmetuchl holds title to the subject land but rather, whether reliance by the plaintiff on the validity of the alleged leasehold estops the defendant from denying plaintiff's requested relief. It is not the legality of the grant that is at issue here but rather plaintiff's reliance thereupon. Accordingly, and for the purpose of this Motion only the Court FINDS that the Statute of Frauds (PPL 6-3-2) does not preclude the plaintiff from seeking **¶263** relief before this Court and Denies the Motion on that ground.

SOVEREIGN IMMUNITY

The question of whether or not the State of Airai enjoys immunity from suit as a sovereign entity has been decided by the Court on prior occasions though in slightly different contexts.

We start with the Constitution of the State of Airai and find no section therein which addresses the subject. Likewise, we find no municipal or state statute, regulation or other directive carrying the force of law and applying directly to the State of Airai which is dispositive or indeed, which even covers the question.

The cases which touch on this issue are almost exclusively found under the heading of

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Torts Law. The case from which defendant seeks support for the theory of immunity, [*Ngirmekur v. Municipality of Airai, by its Magistrate, et al.* , Civil Appeal No. 173 (1982)], is one where the Court dealt with issues quite distinct from those herein and held not that the State of Airai is possessed of immunity from suit but rather, in a very narrowly construed decision, that where the State commits positive acts of Misfeasance, as distinguished from simple negligence, there is no immunity from Tort liability. *Ngirmekur, Id.*, at, p. 5.

As no State Law, statute or custom is shown to exist covering this issue the Court goes to 1 TTC § 101 for further guidance and FINDS that the proper law to apply to the question is found therein and in 6 TTC §§ 251, 252.

While these statutes do not apply directly to the State Governments of the Republic of Palau they have been found applicable by this Court to the Government of the Republic of Palau (*Rekemesik Sulial Renguul v. Melekeok State Government et al.* , Civil Action No. 77-83, Memorandum Decision re defendant Rmeliik Motion For Summary Judgment, January 21, 1985). Modern Commentary on the subject which indicates a trend away from non statutory Sovereign Immunity, notwithstanding, this Court sees no reason not to apply the same principles of law to a State Government of the Republic of Palau as are applied to the Republic itself.

Accordingly, the Court FINDS that 6 TTC § 251(b) allowing suit versus the Government on an express or implied contract is applicable here and further that the restriction applied to such waiver as is contained in the aforementioned **1264** section, as outlined in 6 TTC § 252(2), do not apply as the act complained of, e.g., processing a request for a lease of public lands, is a purely ministerial and not a discretionary act.

The Motion For Summary Judgment is ORDERED denied.

All other Orders of the Court remain in full force and effect.