

*Orion Telecommunications, Ltd. v. PNCC*, 1 ROP Intrm. 633A (1989)

**ORION TELECOMMUNICATIONS, LTD.**

**Appellant,**

**v.**

**PALAU NATIONAL COMMUNICATIONS CORPORATION (PNCC), Represented by its Chairman FRANK MALSOL, the members of the Board of Directors, and the REPUBLIC OF PALAU, Represented by its President THOMAS O. REMENGESAU, Appellees.**

CIVIL APPEAL NO. 1-89

Civil Action No. 835-88

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: June 16, 1989

BEFORE: MAMORU NAKAMURA, Chief Justice; ROBERT A. HEFNER, Associate Justice; EDWARD KING, Associate Justice.

HEFNER, Associate Justice:

### BACKGROUND

On November 11, 1986, plaintiff/appellant Orion Telecommunications, Ltd. (Orion) entered into a Joint Venture Agreement (the Agreement) with Palau National Communications Corporation (PNCC) to operate and manage a local and international communications system for Palau. The Agreement was approved by the President and Minister of Justice of the Republic of Palau (ROP). Additionally, paragraph 2 of the Agreement states that:

**1633B** "PNCC shall be understood to include . . . the Government of the Republic of Palau . . . ."

On October 4, 1988, Orion filed a complaint for damages or specific performance against PNCC and ROP.

On November 17, 1988, ROP moved for a judgment on the pleadings contending that, as a matter of law, it cannot be a party to the Agreement between Orion and PNCC.

The trial court granted ROP's motion for judgment on the pleadings finding that ROP was not a party to the Agreement. Orion then moved for and was granted leave to file this interlocutory appeal.

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THE ISSUE

The sole issue before this court on appeal is whether ROP should be considered a party to the Joint Venture Agreement between Orion and PNCC.

THE SHORT ANSWER

ROP is prohibited from entering into any contract which purports to obligate public funds without certification that funds are available for the contract. 40 PNC § 401(b). No certification was sought or given in this case, therefore ROP cannot be a party to the Agreement.<sup>1</sup>

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The fact that the President and the Minister of Justice approved the Agreement does not make the ROP a party thereto. Indeed without certification as to the availability of funds ROP cannot be a party to any contract involving the expenditure of public funds.

Based upon the foregoing, the decision of the trial court granting defendant/appellee's motion for judgment on the pleadings is hereby AFFIRMED.

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<sup>1</sup> For a more complete analysis of the Joint Venture Agreement and the role of ROP with respect thereto, see this court's opinion in *Gibbons, et al. v. ROP, et al.*, Civil Appeal No. 28-87 (May \_\_\_, 1989).