

*Seid v. The Nat'l Gov't*, 2 ROP Intrm. 137 (1990)  
**ALAN SEID, BENA SAKUMA, JOSHUA KOSHIBA, and LUCIUS MALSOL,**  
**Appellants,**

v.

**THE NATIONAL GOVERNMENT OF THE REPUBLIC OF PALAU,**  
**Appellee.**

CIVIL APPEAL NO. 19-89  
Civil Action No. 595-89

Supreme Court, Appellate Division  
Republic of Palau

Opinion  
Decided: August 7, 1990

Attorney for Appellants: Martin Wolff  
Toribiong & Coughlin

Attorney for Appellee: Attorney General

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;  
ALEX R. MUNSON,<sup>1</sup> Associate Justice.

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MUNSON, Associate Justice:

#### Procedural History

Appellants filed their complaint in the Trial Division on October 19, 1989, alleging constitutional violations by the national government, the entering into of an illegal contract by the national government, various violations of other statutes, and conspiracy to violate constitutional and statutory provisions regarding expenditure of public funds and execution of public contracts. Fifty “Doe” defendants were also sued.

Plaintiffs moved for a preliminary injunction on November 2, 1989, and defendant responded with a motion to dismiss on November 8, 1989. Plaintiffs withdrew their motion for preliminary injunction on November 24, 1989. The Trial Division entered its order dismissing the complaint on November 28, 1989, and also sanctioned one of Plaintiffs’ lawyers \$100.

Notice of appeal was filed December 20, 1989.

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<sup>1</sup> The Honorable Alex R. Munson, Chief Judge, United States District Court for the Northern Mariana Islands, sitting by designation.

Facts

The decision below was not, and the issues on appeal are not, particularly fact-dependent. Rather, the Trial Division reviewed the allegations of the complaint and determined that a declaratory judgment could not be obtained against the Republic ¶139 of Palau and that, in any event, the court lacked jurisdiction due to sovereign immunity. The trial court based the former decision on 14 Palau National Code (PNC) § 1001 and the latter on 14 PNC §§ 501 and 502.

Analysis

Because we find that dismissal was prematurely granted, we do not further consider the issues as framed by appellant, nor do we undertake an examination of the applicability of declaratory judgments to the Republic of Palau or the Republic's sovereign immunity. Rather, we REMAND to the Trial Division for further proceedings consistent with this opinion.

The proceedings below were marked by uncharacteristic dispatch. From the filing of the complaint to its dismissal took little more than a month. For allegations and issues as serious as those raised (albeit in a lurid and sensational fashion), we believe that neither party devoted the time and care necessary to put the case in a posture where the allegations before the trial court justified as broad a statutory interpretation as was given.

Rule 8 of the Palau Rules of Civil Procedure requires, *inter alia*, that plaintiffs include in their complaint "a short and plain statement of the claim showing that the pleader is entitled to relief." [PRCP sic] 8(a)(2). Each averment of a pleading "shall be simple, concise, and direct." PRCP 8(e)(1). Rule 11 states that ¶140 placing a signature on a pleading is a representation that the signer, "to the best of his knowledge, information, and belief framed after reasonable inquiry" believes that the pleading is "well-grounded in fact and is warranted by existing law . . . and that it is not interposed for any improper purpose . . . ." Rule 12(b) provides that a pleading may be dismissed on one or more of several grounds, including lack of jurisdiction and failure to state a claim. Rule 12(c) provides for judgment on the pleadings, and 12(e) allows for a motion for a more definite statement if a pleading is so "vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading." Rule 8(f) mandates that all pleadings be construed "to do substantial justice." Finally, Rule 15(a) allows for amendment of pleadings and states that "leave shall be freely given when justice so requires."

We find that our inquiry need go no further than recitation of, and reliance upon, these pleading rules. Plaintiffs' complaint is rife with speculation and innuendo, and the "grounds" for the relief sought lack the necessary factual underpinnings. A fair characterization of the complaint is that plaintiffs felt very strongly that something illegal had occurred but they were not quite sure what it was, who did it, how it was done, the nature of the harm and the identity of the injured parties, or how the court could properly remedy it. Defendant Republic of Palau moved to dismiss, without identifying the rule under which it ¶141 sought relief. Rule 12 specifies the grounds for the various types of motions, and the relief appropriate under each. Defendant's effort was only nominally better than plaintiffs', particularly as regards the degree of care and thought that went into the choice of avenues to respond to plaintiffs' complaint. To his

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credit, the trial judge attempted to make some sense out of plaintiffs' complaint (never has the word "complaint" seemed more appropriate). However, a court should not allow itself to be drawn into the role of diviner of the facts upon which the complaint is grounded, the proper denomination of the cause or causes of action under which a plaintiff is proceeding, or whether the court's determination of the nature of the complaint admits of the type of relief sought. Pre-trial motion practice is the proper forum for sharpening and refining causes of action, so that the court's rulings will be based both upon a complaint that plainly and concisely states the claim, and a responsive pleading that puts the dispute at issue.

It is axiomatic that a dismissal is with prejudice, unless otherwise denominated. Here, plaintiffs should have been given an opportunity to adequately plead a claim. If they have nothing more than that contained in the original complaint, defendant Republic of Palau can seek dismissal, judgment on the pleadings, or summary judgment. At least the respective positions of both parties will have been properly framed and, thus, ripe for ruling. ¶142 Below, the court was asked to make a ruling involving profound issues of sovereign immunity on only the flimsiest of pleadings. This Court is not prepared to endorse the position of the trial court without a much more adequate record. Borrowing a notion from a somewhat analogous area of the law, we believe that a ruling dismissing the case was improvidently made absent "that clear concreteness provided when a question emerges precisely framed and necessary for decision [and for which there is] a clash of adversary argument exploring every aspect of a multifaceted situation embracing conflicting and demanding interests." *United States v. Fruehauf*, 81 S.Ct. 547, 554 (1961).

The Court believes that plaintiffs have a duty, enforcement of which may be had through the requirements of Rule 11, to meet a threshold of good faith in their pleadings. Plaintiffs cannot file a complaint that is not "well-grounded in fact" and hope that subsequent discovery will bear out their allegations. Here, if plaintiffs are unable to make a claim sufficient to satisfy the requirement of Rule 11, this lawsuit undoubtedly will not be re-filed. If the suit is re-filed and properly pleaded, the trial court can then grapple with the issue of sovereign immunity and any waivers thereto, and its decision will be based on facts cast into sharp relief by the efforts of both parties.

For the foregoing reasons, this matter is remanded to the Trial Division, where plaintiffs shall be given leave to amend.

¶143 Sanctions

Plaintiffs' attorney Mr. Wolff was sanctioned \$100 by the trial judge. Mr. Wolff does not deny that he made the statements for which he was sanctioned; rather, he argues only that he was entitled to notice and an opportunity to be heard before any fine was imposed. Although this Court has difficulty conceiving of any circumstances under which Mr. Wolff's abusive and inflammatory comments and extremely unprofessional conduct would not be sanctionable, it agrees that the Trial Division should allow him an opportunity to be heard. If, after a hearing at which Mr. Wolff will be required to attend, the trial court still believes sanctions are warranted, it shall impose such sanctions as it deems justified.

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¶144 Conclusion

For the reasons given above, this matter is REMANDED to the Trial Division for further proceedings consistent with this Opinion.