

State of Peleliu v. State of Koror, 5 ROP Intrm. 189 (1996)

**STATE OF PELELIU,
Appellant,**

v.

**STATE OF KOROR,
in its own behalf and as successor in interest to the
Municipality of Koror,
Appellee.**

CIVIL APPEAL NO. 3-96
Civil Action No. 180-95

Supreme Court, Appellate Division
Republic of Palau

Order denying motion for stay pending appeal
Decided: March 7, 1996

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

PER CURIAM:

Appellant, State of Peleliu ("Peleliu"), has moved this court for a stay pending appeal pursuant to Rule 8(a) of the ROP Rules of **1190** Appellate Procedure. Specifically, Peleliu seeks to restore a preliminary injunction issued by the trial court on June 30, 1995, effective during the pendency of the action below. For the reasons stated below, we decline to enjoin the appellee, State of Koror ("Koror"), from enforcing its law banning fishing within one mile of Ngemelis and Dmasch Islands at this point in the proceedings, as requested by appellant.

Procedural History

The dispute between the adjacent States of Koror and Peleliu involves the boundary dividing them. Koror contends that the appropriate line of demarcation is described in its Constitution, and runs from Ngereklim westward to Oiyaol on Mesikm Passage, then to Bkul Chotuut on the southern reef of Ngemelis Island. This reflects the boundary between Koror and Peleliu in effect prior to the adoption of each State's respective Constitution, as set forth in the municipal charters both of Koror and of Peleliu. Peleliu contends that its Constitution establishes the relevant boundary, which reflects Peleliu's historical and traditional limits rather than the boundaries of the former Municipality of Peleliu. Peleliu claims that its northern boundary runs from Bad e ra Chedmesnges at Ngerumekaol Reef southeasterly to Toachel el Iou between Ngeanges and Ngchelobel out to Bkul a Kabes at Chudell.

Pursuant to Koror State Ordinance K4-68-95, Koror created a marine preserve within the

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disputed territory. As part of its preservation effort, Koror prohibited all fishing within one mile of Ngemelis and Dmasch Islands, which Peleliu asserts is part of its traditional fishing grounds. In light of Koror's and Peleliu's conflicting claims, the trial court granted a preliminary injunction allowing residents of Peleliu to fish in the preserve. The preliminary injunction was vacated when the trial court entered judgment in favor of Koror. It is this injunction that appellant seeks to restore.

In accordance with Rule 8(a), appellant first filed its motion for stay pending appeal with the trial court. On January 26, 1996, the trial court denied the motion, stating that the injunction was only designed to prevent jurisdictional conflicts while the court resolved the boundary dispute. Furthermore, the trial court found that the motion should be denied because Peleliu could not show a likelihood of success on the merits of the appeal.

Discussion

The decision whether to grant a stay pending appeal lies within the discretion of the trial court. *Silmai v. Magistrate of Ngardmau*, 1 ROP Intrm. 181, 184 (1984). Thus, the trial court's denial of a stay will only be overturned if it is "patently grossly abusive of the rights of the parties. . . ." *Id.*; see also 5 Am. Jur. 2d *Appellate Review* § 470 (1995) ("if the application is in effect an appeal from the District Court's denial of the stay, the Court of Appeals will treat it as such and give the district judge's action the appropriate deference.").

Factors relevant to the trial court's determination are, *inter alia*, whether (1) appellant has shown a strong likelihood of success on the merits of the appeal; ¹ [sic] (2) appellant has shown irreparable injury without the relief requested; (3) the stay will injure appellee; and (4) the stay is in the public interest. See, e.g., 5 Am. Jur. 2d *Appellate Review* § 470 (1995) (above factors for consideration by either trial court or appellate court in determining whether to grant stay of judgment). These factors are particularly relevant where, as here, Peleliu seeks more than merely to stay the judgment, but rather seeks affirmative injunctive relief against Koror. See *Koshiha v. Remeliik*, 1 ROP Intrm. 65, 71-72 (Tr. Div. 1983) (identical factors to be considered on motion for preliminary injunction).

The trial court's denial of injunctive relief was not an abuse of discretion. Appellant contends that the trial court erred as a matter of law insofar as it determined that it was not the province of the judiciary to resolve boundary disputes among the states absent guidance from the Constitution of the Republic of Palau. However, appellant, instead of citing authority in support of its claim, merely indicates that such law exists, and states that "[i]t is defendant's intent within this appeal to outline this law for the Court." State of Peleliu's Memorandum of Points and Authorities at 3. While appellant is free to develop this theory in its appellate brief, its unsupported assertion is clearly insufficient to raise substantial doubt regarding the judgment below and to justify injunctive relief at this time. Moreover, appellant makes no claim of irreparable harm in the absence of the requested injunction.

¹ This factor is consistent with the "substantial question of law" requirement explicitly set forth in Rule 8(a). See *Omelau v. ROP*, 3 ROP Intrm. 258, 259 (1993) (a substantial question of law means that the appeal presents at least a close call.).

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Finally, appellee submitted affidavits to the trial court, and now to this Court, indicating that Koror State, and all of Palau, will be greatly and irreparably injured if fishing is permitted in the preserve area. Appellee contends that the preliminary ¶192 injunction has caused damage to the fish stocks in the region and to the dive environment, which could lead to injury to the Palauan dive industry. Appellant has not taken issue with these facts. Thus, all the facts weigh *against* granting the requested injunction, and the trial court clearly did not abuse its discretion.

Accordingly, appellant's motion is DENIED.