

Kruger v. Social Security Board, 5 ROP Intrm. 91 (1995)
STEPHEN KRUGER,
Appellant,

v.

SOCIAL SECURITY BOARD,
Appellee.

CIVIL APPEAL NO. 3-94
Civil Action No. 483-93

Supreme Court, Appellate Division
Republic of Palau

Opinion
March 30, 1995

Counsel for Appellant: Stephen Kruger

Counsel for Appellee: William L. Ridpath

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice

PER CURIAM:

This matter is before us on Stephen Kruger's appeal from the Trial Division's decision upholding a determination by the Social Security Board, that Kruger's income earned while in Palau is subject to Palauan social security taxes. We affirm.

BACKGROUND

Kruger is a United States citizen who moved to Palau in 1993 to work for the Koror State Government. After his employer withheld \$619.97 in social security taxes, Kruger applied to the Social Security Board for an exemption from making payments into the Palau Social Security Fund under the Social Security Act of 1987 (the "1987 Act"), which exempted employees participating in any other Social Security System or similar system" 41 PNC § 650(b). Although he admitted that he made no contributions to the U.S. social security system since his arrival in Palau, Kruger claimed that past contributions established his participation in the U.S. program and justified the exemption.

The Board denied the request because the Olbiil Era Kelulau (OEK) had repealed the exemption in 1991. Kruger appealed the denial to the Trial Division. The parties filed cross-motions for summary judgment. The Trial Division agreed with the Board and granted its motion for summary judgment against Kruger and denied Kruger's motion. Kruger now appeals

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from that order. He contends that the repeal of the exemption was ineffective because an actuarial report did not accompany the repeal legislation, as required by the 1987 Act. 41 PNC § 604(a). He admits, however, **192** that the OEK did have before it an actuarial report prepared in 1989 for substantially identical legislation.

DISCUSSION

Kruger contends that the denial of his exemption violated his due process rights under the Bill of Rights, 1 PNC § 404, and the Palau Constitution, Palau Const. art. IV, § 6. He also claims the denial violated his right to equal protection under the Former Trusteeship Agreement, art. 8(1), the Bill of Rights, 1 PNC § 407, and the Palau Constitution, Palau Const. art. IV, § 5. We review the trial court's grant of summary judgment *de novo*. *Becheserrak v. Republic of Palau*, 5 ROP Intrm. 63, 64 (1995).

A. Due process

The basis of Kruger's due process claim is that the 1987 Act required the OEK to have an actuarial report before it amended or repealed the 1987 Act. 41 PNC § 604(a). Kruger argues that without a report specific to the repeal legislation, the repeal was ineffective and the denial of the exemption thus denied him due process of law.

The 1987 Act previously allowed persons participating in another social security system to seek exemption from Palauan social security taxes. 41 PNC § 650(b). The OEK repealed the exemption in 1991. RPPL 3-64. The Social Security Board did submit an actuarial report to the OEK before it enacted the repeal legislation. The report was prepared on December 14, 1989 for substantially similar legislation. The repeal legislation was passed on October 28, 1991 and signed by President Etpison on November 29, 1991. Neither the OEK nor the President requested a new report to accompany RPPL 3-64.

The trial court found there was no question that the OEK had before it an actuarial certification when it enacted RPPL 3-64. Although the report was prepared for an earlier bill, Kruger conceded that the earlier bill was virtually identical to RPPL 3 -64 as enacted. From this, the trial court properly found that RPPL 3-64 was "accompanied by a report from an actuary, which analyze[d] the implications of the bill for the Social Security System," thus satisfying the requirements of 41 PNC § 604(a). The trial court thus correctly found that the repeal legislation was effective and that the Board properly denied Kruger's requested exemption.

B. Equal Protection

Non-citizens may collect only six months of Palauan Social Security benefits if they are not living in Palau, RPPL 3- **193**-64 § 38(1). A statutory exception was made for citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands, but the exception was suspended by the U.S. Department of the Interior on December 20, 1991 under the authority of Secretarial Order 3142, § 14. The suspension continued after Palau became a sovereign nation. *See* RPPL 4-28. Although the statute was suspended, under a Memorandum

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of Agreement with the FSM, the Palau Social Security Board agreed not to limit the benefits of FSM citizens who were eligible under the Palauan social security system. Kruger argues that the agreement with the FSM denies him equal protection under the former Trusteeship Agreement, art. 8(1), the Bill of Rights, 1 PNC § 407, and the Palau Constitution, Art. IV, § 5.

Kruger is not now entitled to any social security benefits and would not be so entitled even if he were treated equally with FSM citizens. As the trial court found, even assuming that Kruger was correct in his equal protection analysis, he would be entitled to equal treatment with FSM citizens and no more. "[S]uch equal treatment could be achieved simply by denying FSM citizens the benefit of the Memorandum of Agreement or by giving all non-resident non-citizens the same benefit; it would . . . in no event call for the exemption of anybody from further payments into the System." Trial Court Opinion, at 5 (Mar. 22, 1994). From the foregoing it is clear that Kruger would not be entitled to any relief even if his argument were accepted. Thus, the trial court correctly held that the claim he asserts is purely hypothetical and he therefore has no standing to assert it. *See Simon v. Eastern Kentucky Welfare Rights Organization*, 96 S Ct. 1917, 1924 (1976) (to establish standing, plaintiff must show an injury "that is likely to be redressed by a favorable decision"); 14 PNC § 1001 (requiring "actual controversy" for declaratory judgment).

There was no genuine issue of material fact and, for the foregoing reasons, the Board was entitled to judgment in its favor as a matter of law. We find that the trial court correctly entered summary judgment in favor of the Board. ROP Civ. Proc. Rule 56(c).

CONCLUSION

The trial court correctly determined that the statutory exemption from Palauan Social Security taxes was no longer available to Kruger, and that the repeal of the legislation did not deny him due process of law. The trial court also correctly determined that Kruger had no standing to assert his equal protection claim. The decision of the trial court is **AFFIRMED**.