

Basilus v. EDLF Instit., Nat'l Dev. Bank of Palau, 7 ROP Intrm. 134 (1998)
POLYCARP BASIULIUS,
Appellant,

v.

EDLF INSTITUTE, NATIONAL DEVELOPMENT BANK OF PALAU,
Appellee.

CIVIL APPEAL NO. 43-97
Civil Action No. 145-96

Supreme Court, Appellate Division
Republic of Palau

Argued: November 20, 1998
Decided: December 11, 1998

Counsel for Appellant: Carlos Salii
Counsel for Appellee: William L, Ridpath

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R- BARRIE MICHELSEN, Associate Justice

MICHELSEN, Justice:

INTRODUCTION

This appeal concerns a decision of the Trial Division enforcing a promissory note. The Trial Division entered judgment in favor of Palau National Development Bank (“the Bank”) in the amount of \$46,836.05. We affirm.

The facts are not in dispute. Appellant Basilus is the debtor on a promissory note for approximately \$67,000, originally given by him to the Trust Territory Economic Development Loan Fund (“EDLF”) in August 1974. On **L135** May 31, 1983, Ron Patika, Executive Director of the EDLF, assigned the 34 EDLF loans in the Palau District, including Appellant’s, to the Bank. Appellant continued to make payments on his note until 1994, at which time he became delinquent. In 1996, the Bank commenced this action to enforce the note. Appellant contends here that the Bank has no cause of action against him because the assignment of the notes by Patika to the Bank was invalid since it was not approved by the U.S. Government as required by 26 PNC § 123(f).

DISCUSSION

The National Development Bank Act [hereinafter, “the Act”] became law February 24,

Basilus v. EDLF Instit., Nat'l Dev. Bank of Palau, 7 ROP Intrm. 134 (1998) 1982 as RPPL 1-26,¹ and is now codified, as later amended, as 26 PNC § 101 et. seq. The Act conferred upon the Bank general powers to receive, manage, and administer property received from any source,² and further granted the Bank “Additional and Specific Authority,” including the authority under section 123(f):

to administer and manage the Trust Territory Economic Development Loan Fund upon the granting of such authority by the United States Government on any terms deemed reasonable and acceptable by the Bank and the United States Government.

This provision was included because of the express legislative finding that:

It is the national interest that a national development bank make use of existing administrative and funding sources, such as the Trust Territory Economic Development Loan Fund

26 PNC § 102(c).

The EDLF was established by the United States Congress in 48 U.S.C. § 1688, and authorized

payment to the government of the Trust Territory of the Pacific Islands as a grant in **§ 136** accordance with the provisions of sections 1688 to 1693 of this title, an amount which when added to the development fund established pursuant to section 3 of the Act of August 22, 1964 (78 Stat. 601), as augmented by subsequent federal grants, will create a total fund of \$5,000,000 which shall thereafter be known as the Trust Territory Economic Development Loan Fund.

48 U.S.C. § 1688.

¹ Annotations in the PNCA incorrectly indicate that the Act was initially passed as RPPL 1-27. [sic]

² Section 122(b) provides that:

The Bank shall operate as a development bank and not as a commercial bank, and may receive funds in the form of direct appropriations, and from any legitimate source both domestic or foreign; provided that no demand or other time deposits shall be accepted.

Section 122(o) states that

The Bank shall receive, manage and administer all monies or other property real or personal which may be appropriated, granted, given, bequeathed, devised, endowed or in any manner received from any source for the purposes of the Bank's operations, improvement or adornment.

Basilus v. EDLF Instit., Nat'l Dev. Bank of Palau, 7 ROP Intrm. 134 (1998)

Appellant contends that pursuant to 26 PNC § 123(f), authorization of the United States Government was required before an assignment to the Bank could legally take place. Appellant does not dispute that the assignment and the terms were approved by Mr. Patika as Executive Director of the EDLF, but contends his actions were on behalf of the Trust Territory. Mr. Basilus then directs us to United States federal cases holding the Trust Territory government was not an agency of the United States. *People of Saipan v. United States*, 356 F. Supp. 645 (D. Hawaii 1973); *Guerrero v. Johnston*, 6 TTR 124 (1972). He then concludes the United States Government has not been involved in the assignment, and consequently the requirements of section 123(f) have not been met.

A review of all pertinent cases demonstrates that “the TT government is a hybrid.” *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d 1401, 1405 (9th Cir. 1989). Depending on its role in a given situation, the Trust Territory government may or may not be found to be an agency of the United States Government. In *Diaz*, the court noted that the Trust Territory

performs a governmental function; the President appoints the TT High Commissioner, its executive, with the advice and consent of the U.S. Senate; its operations are largely paid for by the U.S. Treasury; no other persons have a proprietary interest in the TT government; and the U.S. government's interest is not “merely custodial.”

876 F.2d at 1405.

The facts of this appeal provide an example of the Trust Territory Government acting as an agent of the United States. In anticipation of the end of the Trusteeship, the Secretary of the Interior promulgated Secretarial Order 3039, which was to be effective in Palau after the implementation of the Palau Constitution. The Order instructed the Trust Territory Government to

transfer of all executive, legislative, and judicial functions of the Trust Territory not contrary to or in conflict with existing treaties, laws, and regulations of the U.S. generally applicable in the Trust Territory *except those specifically retained by the Order*.

Seklii v. ROP, 1 ROP Intrm. 108, 111 (1984) (emphasis in original). These transfers did not occur automatically, but were usually L137 accomplished by written transfer agreements. *Id.*

When the Executive Director assigned the EDLF notes to the Bank, he was implementing a written order of the Secretary of the Interior. He thus was an authorized agent of the United States Government, and the requirements of section 123(f) were fully satisfied.³

³ Because we hold that the requirements of section 123(f) were met, we need not reach the compelling argument that the Bank also had authority to accept the assignment under its general powers stated in section 122, especially in light of legislative intent that the Bank receive these funds.

Basilus v. EDLF Instit., Nat'l Dev. Bank of Palau, 7 ROP Intrm. 134 (1998)

We therefore affirm the Trial Division's decision. Costs are awarded to Appellee. Attorney's fees are also awarded to Appellee pursuant to the note. A motion for a specific award of attorney's fees and costs on appeal shall be submitted to this Court within twenty days of this opinion. This matter will be remanded after that motion is decided, or when the time period for filing the motion for fees and costs expires, if no such motion is filed.