

United Micronesia Dev., Ass'n v. Mitchell, 7 ROP Intrm. 224 (Tr. Div. 1995)

**UNITED MICRONESIA
DEVELOPMENT ASSOCIATION, INC.
Plaintiff,**

v.

**THEODORE R MITCHELL, et al.,
Defendants.**

CIVIL ACTION NO. 198-93

Supreme Court, Trial Division
Republic of Palau

Issued: September 21, 1995

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice.

On August 17, 1995, the Court ordered plaintiff to explain why its complaint should not be dismissed due to the inconvenience and inappropriateness of Palau as a forum for its action. Plaintiff was given 21 days from August 17, 1995 to explain why this matter should not be dismissed. Plaintiff has failed to respond to the Court's order. After due consideration, the Court hereby dismisses plaintiff's complaint.

Pursuant to the universally recognized doctrine of forum non conveniens, "a court may resist imposition upon its jurisdiction even when jurisdiction is authorized." *Gulf Oil Corp. v. Gilbert*, 67 S.Ct. 839, 842 (1947). Simply stated, forum non conveniens allows a court, through its inherent power, and in the exercise of its sound discretion, to decline to exercise jurisdiction over a case if it believes the case may more conveniently proceed elsewhere. *See* 20 Am. Jur. 2d *Courts* § 173 (1965). Factors to be considered in determining whether to apply forum non conveniens include the residency of the parties, the extent to which the cause of action arose out of events occurring outside the forum **1225** court's jurisdiction, the location of potential witnesses and other material evidence, and the extent to which the burden placed on the forum court's judicial resources is disproportionate to the forum court. *See generally id.* at §§ 176-80.

After applying these factors to the present case, the Court is convinced that Palau is an inappropriate and inconvenient forum for the prosecution of plaintiff's action. Plaintiff's principal place of business is Saipan, defendant is a resident of Saipan, and the causes of action alleged in plaintiff's complaint arise primarily out of events occurring in Saipan. Four of the five reasons plaintiff cites in support of its claim that defendant breached his fiduciary duty to plaintiff (a duty arising from the parties' attorney-client relationship) relate to events occurring in Saipan, their sum and substance being that defendant 1) disclosed confidential information and privileged communications; 2) publicly insulted plaintiff and its employees; and 3) advanced his own interests to the detriment of plaintiff. Although plaintiff provides no further details, it is clear to the Court, after taking judicial notice of newspaper articles published in the Pacific Daily News,

United Micronesia Dev., Ass'n v. Mitchell, 7 ROP Intrm. 224 (Tr. Div. 1995)
that these claims arise out of the highly publicized and acrimonious dispute between the parties over defendant's representation of plaintiff in an important and controversial "Article XII" case in Saipan.

The one connection this case has with Palau is plaintiff's claim that defendant breached his fiduciary duty by unilaterally withdrawing as plaintiff's counsel in *Odilang Clan v. Obakrakelau*, Civ. App. No. 32-90, a case currently pending before the Appellate Division of the Palau Supreme Court. Defendant contests this claim, alleging that plaintiff's retainer of an antagonistic co-counsel in the *Odilang* case made it impossible for him to continue to represent plaintiff. Without deciding the issue, the Court finds that even if defendant breached a fiduciary duty by unilaterally withdrawing, such breach did not materially harm plaintiff, or at least did not materially harm plaintiff enough to make this claim the centerpiece of plaintiff's action. This is so because defendant withdrew as counsel after all briefing had been completed and well before any action by the Appellate Division. Plaintiff's claim to substantial detriment would have more merit if defendant's withdrawal left it unrepresented at a crucial phase in the appellate process. But the Appellate Division has not taken any action whatsoever on the *Odilang* case since defendant's withdrawal as plaintiff's counsel. Indeed, for reasons not relevant here, the Appellate Division has still not heard oral argument on the case. Given that defendant notified plaintiff of his withdrawal on December 22, 1992, plaintiff has had more than ample opportunity to secure new counsel to present it in the *Odilang* appeal and to prepare for the oral argument in that case.

It is clear, then, the plaintiff's claim arises chiefly, if not exclusively, from the parties' dispute in Saipan. Given this, the Court sees little reason to exercise jurisdiction over the dispute, especially since the court "is overcrowded with litigation having a closer connection to it." 20 Am. Jur. 2d *Courts* at § 176. In other words, the burden that this potentially substantial litigation will place on Palauan courts is so disproportionate to the tangential and inconsequential relationship the parties and the cause of action have to Palau that the Court deems this an appropriate instance to apply the forum non conveniens doctrine.

Plaintiff's complaint is DISMISSED.