

Andres v. Palau Election Comm'n, 9 ROP 153 (2002)
SEIT ANDRES and JOSHUA KOSHIBA,
Appellants,

v.

THE PALAU ELECTION COMMISSION and MIRIAM TIMARONG,
Appellees.

CIVIL APPEAL NO. 02-35
Civil Action No. 02-220

Supreme Court, Appellate Division
Republic of Palau

Decided: July 11, 2002
Issued: July 12, 2002

[1] **Appeal and Error:** Standard of Review

Where no new evidence or changed circumstances were adduced and no different legal principles were introduced, the Appellate Division reviews the trial court's denial of a motion for an injunction for abuse of discretion.

Counsel for Appellants: Kassi Berg and David Schluckebier

Counsel for Palau Election Commission: Steven Carrara and C. Quay Polloi

Counsel for Timarong: John K. Rechucher

BEFORE: R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

Palau Senators Seit Andres and Joshua Koshiba filed in this Court a motion to stay the Trial Division's July 8, 2002 decision that refused to enjoin the Senators' recall election set for July 11, 2002. Because of the urgency of the matter, this Court considered the motion immediately, but decided to deny it. This opinion explains the reasons behind that denial.

As an initial matter, we observe that this motion was filed at 4:05 p.m. on July 10, 2002, with the polls scheduled to open the next day. Hence, this Court's decision had to be made without the opportunity for extensive study and analysis, and without briefing by all the parties

Andres v. Palau Election Comm'n, 9 ROP 153 (2002)

who appeared before the trial court. Within those limitations, we considered the merits.

Counsel for Appellants labeled their motion as a request for a stay of Judge Miller's order pending the appeal. However, a stay of that order denying the injunction would not accomplish their objective, which was to halt the recall election. We therefore construed their request for a stay as a motion asking the Appellate Division to enjoin the Palau Election Commission from proceeding with the recall election. So construed, the Appellants did not carry the burden which this Court would require in order to grant such extraordinary relief.

[1] The Appellants did not request this Court to review new evidence, consider changed circumstances, or apply different legal principles. Hence, in that sense, we are only reviewing the trial court's decision to not issue the injunction. Our time-constrained review of the facts presented in the Trial Division and the court's application of law to those facts, lead us to the conclusion that the ¶154 trial court did not abuse its discretion in denying the motion.¹

Having determined that Justice Miller had not abused his discretion, and recognizing that he had the benefit of hearing the testimony first-hand, we declined to grant Appellant's motion.

For these reasons, yesterday's order denying the requested relief was entered.

¹We have attached to this opinion the Court's July 11, 2002 order denying the motion.

[Editor's Note: The Trial Division's opinion appears at page 289 of this volume.]