

TRUST TERRITORY OF THE PACIFIC ISLANDS  
TRIAL DIVISION OF THE HIGH COURT

MARIANA ISLANDS DISTRICT

CIVIL ACTION NO. 17-75

JOSE P. MAFNAS, on behalf )  
of himself and all others )  
similarly situated, )  
)   
Plaintiff, )  
)   
v. )  
)   
MARIANAS POLITICAL STATUS )  
COMMISSION, )  
)   
AND )  
)   
MARIANA ISLANDS DISTRICT )  
LEGISLATURE, )  
)   
AND )  
)   
TRUST TERRITORY OF THE )  
PACIFIC ISLANDS, )  
)   
Defendants. )

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION IN OPPOSITION

FAILURE TO SHOW PROBABLE SUCCESS

A Temporary Restraining Order, like a preliminary injunction, is an extraordinary remedy which will not be granted unless there is a clear showing of probable success of the Plaintiff and of possible irreparable injury to the Plaintiff. Societe Comptoir de l'Industrie Cotonniere Etablissement Boussac v. Alexander's Department Stores, Inc. 299 Fed. 2d. 33.

The Plaintiff by his complaint has failed to show probable success in that his whole argument is that Public Law 3C-15 which on its face does not prohibit the several districts and Mariana Islands District in particular from negotiating for a political status, gives Congress of Micronesia exclusive power to negotiate future political status for Micronesia. Said Public Law created, authorized and charged the Micronesian Political Status Delegation to seek, support, and press for an early resolution and determination of the future political status of Micronesia. It did not reserve to the Congress of Micronesia the exclusive power to seek an

early resolution and determination of the future political status of Micronesia. In addition to construe Public Law 3C-15 as such would be contrary to the clear intent and language of Article 6(1) of the Trusteeship Agreement which requires the Administering Authority "to promote the development of the inhabitants of the Trust Territory toward self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned".

#### NO SHOWING OF IRREPARABLE HARM

Plaintiff's motion for a temporary restraining order must be denied unless the Plaintiff satisfies all requirements for the granting of this extraordinary remedy as set forth in Rule 19(a) of the Rules of Civil Procedure of the Trust Territory Code. Rule 19(a) provides that no restraining order is to issue unless it clearly appears from specific facts shown by a statement under oath that immediate and irreparable injury, loss, or damage, will result to the applicant before notice can be served and a hearing had thereon.

A temporary restraining order is a species of temporary injunction but is distinguishable on the basis that it is ordinarily granted pending the hearing of a motion for a temporary injunction. Upon disposition by the Court of the motion for a temporary injunction, the restraining order loses all force and effect. Houghton v. Cortelyou, 208 U.S. 149, 52 L.Ed. 2d 432, 28 S.Ct. 234 (1908).

The standards for determining irreparable harm has been described by one authority as follows:

"Suitors may not resort to a court of equity to restrain acts, actual or threatened, merely because they are illegal or transcend constitutional powers, unless it is apparent that irreparable injury will result. The mere assertion that apprehended acts will inflict irreparable injury is not enough. The complaining party must allege and prove facts from which the court can reasonably infer that such will be the result."

42 Am. Jur. 2d. Injunctions § 48.

Irreparable injury has also been defined as that injury which is certain and great. West Coast Construction Co. v. Oceano Sanitary District, 311 F. Supp. 378 (N.D. Ca. 1970); Federal Maritime Commission v. Atlantic & Gulf/Panama Canal Zone, 241 F. Supp. 766, 781 (S.D.N.Y. 1965).

In the present case, Plaintiffs have failed to show that any harm which would result from the denial of their motion for a temporary restraining order would be both certain and great. In paragraph 44 of their complaint, Plaintiffs have alleged three grounds on which they base a claim of irreparable injury.

Plaintiffs' first allegation is that denial of the motion for a temporary restraining order would result in the expenditure of tax revenues for unlawful purposes. As hereinbefore stated, there is no support for Plaintiffs' argument that the actions of Defendants in issue in the instant case are in violation of any Trust Territory laws. The signing of the proposed covenant between certain of the named Defendants and representatives of the United States Government does not contravene existing laws and therefore has no unlawful purpose. Defendants also suggest to the Court that even if the actions of the Defendants were found to be for unlawful

purposes, the expenditure of tax revenues could be adequately compensated for through a variety of procedures.

Plaintiffs' second allegation is that Plaintiff and all other persons similarly situated, would be deprived of their right, under the provisions of the United Nations Charter and the Trusteeship Agreement, to freely express their wishes concerning the future political status of all of Micronesia. Defendants emphasize that Plaintiffs fail to show that the injuries alleged will be a direct and certain result of the denial of their motion. The injuries alleged are merely threatened and therefore cannot be found to constitute a sufficient showing of irreparable harm. Any changes which would result in the rights or positions of Plaintiffs are at this time contingent on a series of proposed future events. There is absolutely no certainty that the actions of Defendants in this case, will eventually change or in any way affect the rights of the Plaintiffs.

The purpose of a temporary restraining order is to restrain the Defendant for a very brief period, pending a hearing on the application for a temporary injunction. The order goes no further than to preserve the status quo until that determination. 42 Am. Jur. 2d Injunctions § 10. It is clear that Plaintiffs' status will remain exactly the same should the Court deny their motion. Any signing of the proposed Covenant of Commonwealth will have no force or effect upon the legal rights of Plaintiff. Any subsequent actions of Defendants will also have no legal or practical effect unless and until a lengthy series of other events first occur. Defendants also point out to the Court that even in the event that all necessary conditions are met, the provisions of the proposed Covenant of Commonwealth will not apply until after termination of

the Trusteeship Agreement. Plaintiffs are therefore not deprived of any rights under the provisions of the United Nations Charter and the Trusteeship Agreement.

Plaintiffs' last contention is that the actions of Defendants would result in the denial of their rights to due process and equal protection of the laws, as guaranteed to all citizens of the Trust Territory by Sections 4 and 7 of Title 1 of the Trust Territory Code. Plaintiffs fail completely to specify how the actions of Defendants work deprivations of their rights. Defendants argue that the apprehensions of the Plaintiffs are not well grounded and that there is no reasonable possibility of a real injury on the part of Plaintiffs. An equal protection argument by Plaintiffs is simply premature for the reasons brought out hereinbefore. There is no certainty that the Plaintiffs' rights will ever be affected by the actions now being taken, or to be taken by the Defendants. Defendants see no basis for a due process argument by Plaintiffs. Defendants merely bring to the Court's attention that a public referendum on the Commonwealth Covenant is scheduled for this year and will afford all involved parties an opportunity to express their wishes and feelings on this issue. There has been no denial of the due process rights of Plaintiffs nor will one result by the Court's denial of Plaintiffs' motion.

Since the temporary restraining order is an equitable remedy, the Court should balance the equities of the parties and the possible injuries which would result to the parties by the granting or withholding of the order. As Plaintiffs clearly point out in their complaint, negotiations between Defendants and representatives of the United States Government have been in progress for over two years. Defendants have invested much time, funds, and staff into the proposed Covenant of Commonwealth. During the past two and a half years since the commencement of separate negotiations between

certain of the named Defendants and representatives of the United States Government, Plaintiffs have sat back and permitted Defendants to invest greater and greater sums of money, manpower, and time. At no time prior to this suit, have Plaintiffs ever initiated an action in the Court for a declaratory judgment, injunction or other applicable relief. It would be inequitable for the Court to now permit Plaintiffs to completely suspend all pending actions by Defendants. Plaintiffs will suffer no irreparable harm by the denial of their motion for a temporary restraining order but Defendants will certainly sustain irreparable and irremediable injuries should an order be issued.

INJUNCTION AGAINST LEGISLATIVE ACTION NOT ALLOWED

As a general rule, a Court of equity will not enjoin a municipal legislative body from exercising legislative powers. This is so even though its action may be unconstitutional or ultra vires, and persons aggrieved by such action are remitted to the remedies available after the legislative function has been exercised.

Gas & E. Securities Co. v. Manhattan & Q. Traction Corp., (CCA 2d 1920) 266 Fed. 625 (appeal dismissed); Begg v. New York, 262 U.S. 196, 67 L.Ed. 946, 43 S.Ct. 513 (1923). So, in the case of Branch Turnp. Co. v. Yuba County, 13 Cal. 190 (1859), the court there said that an injunction is never granted unless the bill shows some vested right which is likely to suffer great or irreparable injury from the act complained of, and that no such injury appeared from allegations of a complaint that the county board of supervisors was about to pass an order fixing the rate of tolls to be charged by the plaintiff company.

In some jurisdictions it has been held that this rule results from constitutional provisions separating the executive, legislative,

and judicial departments and declaring that no person charged with the exercise of powers belonging to zone of such departments shall exercise any of the powers belonging to any other department. The case Slade v. Lexington, 121 SW 621 (1909) is in point. This rule is more obviously applicable where the proposed legislation is within the scope of the discretionary powers, and the body acts in good faith, even though the action may occasion injury to the plaintiff.

So it has been held that where a resolution granting a franchise would be absolutely void on its face, insofar as it affected private property, equity will not enjoin the adoption of the resolution for the purpose of preventing the creation of a cloud upon the title to such private property. The case of Dailey v. Nassau County R. Co. 52 App. Div. 272, 65 NYS 396 (1900) fully expresses this rule as saying that, "No rule is more fully established than that 'equity will not interfere in the case of an instrument invalid on its face, nor where its invalidity will appear upon the proofs of the party claiming under it, even where it affects the title to land.'"

Although the question does not seem to have ever been squarely presented for decision, there are many statements to the effect that a court cannot enjoin the district legislature from adopting a statute or resolution. As an example, in the case of Cas & E. Securities Co. v. Manhattan & Q. Traction Corp., (CCA 2d 1920) 266 Fed. 625, the court said to the effect that no distinction existed between the rule as to enjoining the exercise of legislative power of the state and the exercise of the legislative power of a municipal corporation. So, it has been held that the municipal legislature or the mayor of a city cannot be enjoined

from signing or approving an ordinance. A case in point is New Orleans Elev. R. Co. v. New Orleans, 39 La. Ann 127, 1 So. 434 (1887). In there the court said that where a city council has passed an ordinance repealing another ordinance under which a valid contract had been entered into between the plaintiff and the city, the mayor and councilmen could not be enjoined from signing, promulgating, recording, enforcing or giving effect to the ordinance although it might be absolutely void. It was said that a court would presume that the mayor would do his duty and that if he found that the submitted ordinance was ultra vires he would veto it, and that the council would yield and sustain the veto. At all events, the validity of the ordinance could not be contested until after it had been signed, since otherwise the court would be called upon to adjudicate the legality of an ordinance which was merely an embryo and which might never be signed.

Similarly, the signing of the proposed Covenant of Commonwealth which still must go through various stages of approval as pointed out above, is not a proper subject of injunction. Furthermore, the consideration of this matter by the Court at this time is clearly premature.

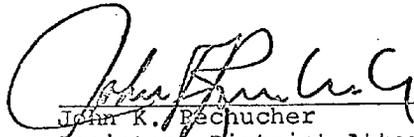
Based on the foregoing points and authorities, Plaintiff's motion for temporary restraining order must be denied.

Dated: February 15, 1975

Respectfully submitted:

By: \_\_\_\_\_

Carlos H. Sali  
Assistant Attorney General



John K. Pechucher  
Assistant District Attorney

Attorneys for the Defendant, Trust  
Territory of the Pacific Islands