

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

MARIANA ISLANDS DISTRICT)
)
 MOSE 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.)

CIVIL ACTION NO. 17-75

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO DISMISS

1. The Government of the Trust Territory of the Pacific Islands has determined how, when and under what circumstances it may be sued, and the authority for such suits is found in Title 6, Sections 251, et seq, of the Trust Territory Code. The instant action is an action against the Government of the Trust Territory of the Pacific Islands, and more particularly it is an action against the Marianas Political Status Commission and the Mariana Islands District Legislature, and their agents, all of which constitute either subdivisions or employees of said Government. This is not an action which is permitted under the law of the Trust Territory.

THAT the Trust Territory of the Pacific Islands may give or withhold its consent to be sued is no longer open to question. Urrimech v. Trust Territory, 1 TTR 534 (1958); Alig v. Trust Territory, 3 TTR 603 (1967); Rivera v. Trust Territory, 4 TTR 140 (1968); Malarme v. Ligor, 4 TTR 204 (1969). In the United States, the immunity of the United States from suit has long been a basis for the dismissal of suits brought against the government but without the government's consent. Kansas v. United States, 204 US 331, 51 L. Ed. 510, 27 S. CT. 388 (1907).

The Complaint alleges, in paragraphs 41 through 43, that the defendants have acted and propose to act in a manner "inconsistent with the provisions of Territory-wide law." This allegation is presumably based on the unsubstantiated assumption that because the Congress of Micronesia has entered into its own status negotiations with the Administering Authority, that Congressional action is equivalent to an exclusive grant of authority to the Congress to so act. Nowhere in the law of the Trust Territory is such exclusive authority specifically delineated. The nearest thing to a grant of exclusive authority is the Senate Joint Resolution No. 38 (set forth in part in paragraph 35 of the Complaint), which resolution does not constitute a law of the Trust Territory. The complaint merely alleges actions that may be somehow "inconsistent" with the Territory-wide law. There is no basis for the proposition that the actions of defendants in conducting separate status negotiations is violative of any specific Trust Territory law.

The complaint also alleges, in paragraph 44, that the actions of defendants will result in the denial of plaintiff's rights to due process and equal protection of the laws, as guaranteed in Title 1 of the Trust Territory Code. Yet the actions of defendants in negotiating a separate status for the Mariana Islands, and in signing the Covenant defining that negotiated status, will (according to Plaintiff's own statement of events as contained in paragraph 41 of the complaint) have absolutely no binding legal effect on the people of the Mariana Islands. Not until the people themselves have approved the covenant, in a plebiscite held for that purpose, will their rights be effected in any way.

The United States Supreme Court, whose decisions are of great weight in the Trust Territory, has held that consent to sue the government is a privilege, and not a right. Lynch v. United States, 292 US 571, 78 L.Ed. 1434, 54 S.Ct. 840 (1934). Accordingly, the consent to bring suits against the Trust Territory, which is contained in Section 251, Title 6, of the Trust Territory Code, should be construed narrowly.

The complaint alleges jurisdiction in this Court by virtue of Subsection (1)(b) of that Section. Subsection (1)(b) waives sovereign immunity in all civil actions founded upon any law of the Trust Territory. At no point does the complaint substantiate any direct violation of Trust Territory law brought about by defendants' action. Absent something more than an assertion of some vague abuse of authority, the principle of governmental immunity from suit should be followed in this case.

2. Section 252(2), Title 6, of the Trust Territory Code contains one of the limitations on the jurisdiction of the High Court to adjudicate suits against the Government. In paragraph 41 of the Complaint it appears that the plaintiff bases part of his action on the alleged acts or omissions of the District Administrator of the Marianas District in the exercise or performance of discretionary functions. As to the District Administrator (the employee and agent of defendant Trust Territory Government), this aspect of the suit is clearly within the exception specified in the law.

3. There is a great body of law in the United States to the effect that the judicial branch of government shall not become involved in matters which are deemed "political questions." Controversies involving Presidential and Congressional handling of foreign affairs have often been held to be a "political question" not proper for judicial review. See, e.g., Re Baiz, 135 US 403, 34 L.ED. 222, 10 S. CT. 854 (1890). In determining whether or not a question is a political one, the United States Supreme Court has placed considerable emphasis on the extent to which the issue involves a coordinate branch of government, Baker v. Carr, 369 US 186, 7 L.ED. 2d 663, 82 S. CT. 691 (1962); and on the lack of satisfactory criteria for judicial determination, Coleman v. Miller, 307 US 433, 83 L.ED. 1385, 59 S. CT. 972 (1939).

In the instant case, both of the above factors are present. The defendants here are the lawfully constituted legislative and executive branches of the Trust Territory Government. There is no question that the issue of future status for the Marianas Islands must ultimately be determined by the legislative representatives of the people of these islands. The conflict is not whether the status negotiations should be left to a legislative body, but rather it is to which legislature the job ought to be entrusted. Defendants take the position that this is a political question to which the Court should not attempt to address itself. The Court has no judicially manageable standards or guidelines with which it can tackle the fundamental controversy involved in this case.

The District Legislature and the Marianas Political Status Commission have manifested a clear intention to formulate and direct the political future of the Mariana Islands. Absent a specific abuse of legislative authority, the Court need not, indeed it must not, interfere in this controversy.

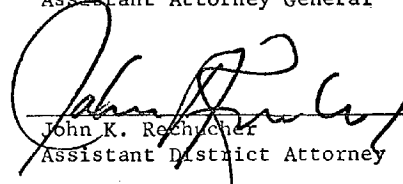
4. From a careful reading of the complaint it is clear that the plaintiff has presented no specific present, or immediately impending, violation of a Trust Territory law. There is no evidence of defendants having exceeded their recognized legal authority. The process of ratification and approval of the covenant is only beginning. Plaintiff will have ample opportunities in the future to contest the actions of defendants, when and if those actions should prove to be illegal. At this point in time, however, there is no cause of action upon which relief can be granted.

Based on the foregoing points and authorities, it is respectfully submitted that the Defendant's Motion to Dismiss should be granted.

Dated: February 15, 1975

By: _____

Carlos H. Sali
Assistant Attorney General



John K. Reznicher
Assistant District Attorney

Attorneys for the Defendant
Trust Territory of the Pacific Islands