ROP v. Pacifica Dev. Corp., 1 ROP Intrm. 214 (Tr. Div.1985)

REPUBLIC OF PALAU,
Plaintiff,

v.

PACIFICA DEVELOPMENT CORP., ROMAN TMETUCHL, SURANGEL WHIPPS, M & F CO., PALAU EAST COAST FARMERS COOPERATIVE, YUKIO SHMULL, and JOHN DOES 1 thru 10,

v.

KOROR STATE GOVERNMENT and KOROR STATE PUBLIC LAND AUTHORITY,
Intervenors,

v.

REPUBLIC OF PALAU, PACIFICA DEVELOPMENT CORP., ROMAN TMETUCHL, SURANGEL WHIPPS, M & F COMPANY, PALAU EAST COAST FARMERS COOP., and JOHN DOES 1 thru 10,
Defendants.

CIVIL ACTION NO. 28-84

Supreme Court, Trial Division
Republic of Palau

Opinion and judgment
Decided: June 27, 1985

BEFORE: ROBERT W. GIBSON, Associate Justice.

This matter came on for hearing before the undersigned Judge of the above-entitled Court on Tuesday, the 28th day of May, 1985. Plaintiff appearing by Eric Basse, Esq., Assistant Attorney General, Defendants appearing by Johnson Toribiong, Esq., Toribiong and Coughlin, of counsel, and Intervenors appearing by David F. Shadel, Esq., and the Court having heard the testimony of the witnesses, admitted into evidence divers and sundry documents, agreed to the exercise of Judicial Notice in respect of related matters and things, and having entertained

Argument of counsel and therefore being in all things advised,

⊥215 Now delivers its Opinion and Judgment as follows:

PREFACE

Throughout this opinion abbreviations will be used as follows: PPLA, Palau Public Land Authority; KMPLA, or KSPLA, Koror Municipal/State Public Lands Authority; TTPI, the Central Government of the Trust Territory of the Pacific Islands; S/O, Secretarial Order; KS, Koror State; ROP, Republic of Palau; PDC, Pacifica Development Corporation; RT, Roman Tmetuchl; Ibedul, Intervenor/Mayor, Yutaka M. Gibbons; MOC, Micronesian Occupational College.

During the course of trial additional documentary evidence to that originally stipulated in was admitted by Stipulation, Judicial Notice, Identification and Authentication, or by Reference to Exhibits attached to previously filed Pleadings presumed and treated by the parties, and therefore accepted by the Court, as Record Evidence. The Court in reaching its Decision has considered all such evidence.

In order that the Court's Judgment may be effectively carried out and an overly lengthy Opinion not become totally unwieldy, certain Exhibits are attached to this Opinion and incorporated by reference. Where appropriate they are to serve as an identifying legal property description pending the preparation and recordation of documents containing more exact legal descriptions as hereinafter directed by the Court.

JURISDICTION

As the outset Intervenors raise the question of the jurisdiction of this Court to resolve land disputes and land which has come within the purview of 67 TTC § 105 and point out that parcel PK-19 has been designated as within a"registration area", and so under 67 TTC § 105 excepted from the Court's Jurisdiction.

The Court does not accept this argument. (i) Section 105 is intended simply to defer premature court action having to do with land then under determinations of ownership by Land Registration Teams pursuant to Sections 107-110, and has no further application to the work of the Land Registration Team and Land Commission once determinations have been concluded within that Registration Area. (ii) If otherwise as contended for by Intervenors Section 115 dealing with Appeals would have no meaning or efficacy. (iii) That the provisions of Section 105 are precatory and not mandatory is evidenced by the case of *Ngiruchelbad v. Trust Territory*, 2 TTR 631 at 634 wherein the ⊥216 Court stated:

> But it may be laid down as a general proposition, subject to certain exceptions not material here, that all persons, and property within the territorial jurisdiction of a sovereign are amenable to the jurisdiction of the sovereign or its courts, and that the sovereign possess the power to regulate the terms and conditions upon which

real or personal property within its territory may be held or transmitted.

On September 14, 1960, the TTPI granted to the OEK (Palau Legislature) the right of use to the "Palau Congress Area" PK-20; Serial 119, and the "Koror Community Center Area" PK-19 Serial 118, (Plaintiff's Exhibit No. 1). The grant was premised upon a continuing public use of the area subject to termination at the request of Palau or the High Commissioner should public use cease.

Combined public, semi-public and private commercial use of Koror Community Center Area, thereafter continued sporadically under the aegis of the September 1960, Use Agreement until December 6, 1982, when, by Deed, (Plaintiff's Exhibit 4) the Koror Community Center Area, PK-19 having been previously excepted, (Plaintiff's Exhibit 2) was thence quit-claimed from TTPI to PPLA. PPLA quit-claimed PK-19 on KMPLA, now KSPLA, (Plaintiff's Exhibit 5) who had previously on June 25, 1981, entered into a Land Exchange Agreement with Defendant RT and PDC (Pl's Ex. 6A) implementing same on August 10, 1981, by Exchange Deeds. Defendants received title to PK-19 plus a purported portion of MOC land (whose title currently remains in TTPI) and Intervenors received two residential parcels, Idid and Otaor (Pl's Exs. 6c & 6d). Concurrently, under date of July 10, 1981, Intervenors leased the Quarry Pit Site to Defendant RT (again land whose title has been retained by TTPI) for 25 years, at a royalty rate of $.40 per cubic yard of material extracted and sold. (Pl's Ex. 6A). The apparent basis upon which Intervenors advance the claim of right to lease is the postulate that the Quarry Site is ancient land of the Idid Clan of which Intervenor, Ibedul Yutaka M. Gibbons is highest chief. No evidence was offered to show that either Deed, or Pit-Site Lease, were ever recorded nor was any evidence introduced to verify the claimed ownership by Defendants of that portion of Defendant's Exhibit 19-B characterized as containing 1,750.03 tsubo (63001.08 square feet) laying northerly of parcel PK-19 in contrast to the ownership of TTPI/MOC as shown by Intervenor Koror Exhibits 2 & 3, or to establish the claim of Idid to the Quarry Site.

⊥217 With Deed in hand Defendant then embarked on a program of notice to PK-19 area tenants and users of the change in ownership (Def's Exs. 1-4) and thereafter commenced making good faith improvements on and the upgrading of parcel PK-19 to the extent that its current highest and best use appears to be as commercial property. The Court takes Judicial Notice of the fact that a portion of the newly remodeled structure on PK-19 is currently devoted to Public Market and Public Fish Market use at what the Court understands is a substantially reduced rental.

Plaintiff, maintaining that the right of continued use under the original 1960 Agreement remained in it as the alter ego and successor in interest of the Palau Congress, initiated suit in February, 1984, following the passing of correspondence between plaintiff and defendants as evidenced by Defendant's Exhibits 3, 9, 12, & 13.

In the meantime, Intervenor, we suspect getting substantial "flak" from Plaintiff, private PK-19 tenants and the MOC, determined it to be in their best interest to attempt a rescission of the Land Exchange Agreement and a recapture of parcel PK-19 with the defendant's improvements thereon, and a retaking of the Quarry Site thus nullifying defendant's purchase of

some $440,000 of crushing and Quarry equipment, on the ground of fraud and misrepresentation in inducing Intervenors to execute a Warranty Deed purporting to convey, by "sketch," more property than Intervenor owned to convey, i.e. PK-19 plus the additional non-owned 63,0006.08 square feet (Def's Ex. 19b) of property whose ownership had been retained by the TTPI and currently occupied by MOC.

On this state of facts issue was joined.

OPINION

Intervenors claim of right to ownership stems from Article XIII, § 10, ROP Constitution, (Appendix 1). Its ownership claim derives from two several deeds dated May 14, 1980, (Pl's Ex. 3), and February 17, 1983, (Pl's Ex. 5), wherein PPLA was grantor and KSPLA grantee.

We examine first these and other pertinent documents.

Article XIII, § 10 provides for the "return to the original owners or their heirs any lands which became a part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration." (emphasis supplied).

⊥218 "Public lands" are those described in Section 2(c) of Secretarial Order No. 2969, (Appendix 2) Section 2(c) of said Order directs that "public lands" are those defined by Sections 1 & 2 of Title 67 TTC. (Appendix 3).

We pause to note that while the property described in the RT to KSPLA Deed of August 10, 1981, (Pl's Ex. 6c) has previously been the subject of adjudication and determined to be privately owned lands, those described in the Exchange Deed from KSPLA to RT were publicly owned and so within the provisions of Article XIII, Section 10. As to any described public lands (Pl's Ex. 6d) other than Idid and Otaor the Court has not been advised as to whether or not the same have been the subject of any adjudication by the Land Commission under 67 TTC § 101, *et seq*. The Court presumes all such lands to have been public lands formerly owned or occupied by Japanese Nationals, Japanese Entities or the Japanese Government, and as such, pursuant to vesting Order of September 27, 1951 (Interim Regulation No. 4-48 amended by Interim Regulations Nos. 6-48 and 3-50), to have come under the ownership, as to title, of the United States Alien Property Custodian for the TTPI. See 27 TTC Section 1; (Appendix 4); *Wasisang v. T.T.*, 1 TTR 14; *Ngikleb v. T.T.*, 2 TTR 139 at 141.

Ngirkelau v. T.T., 1 TTR 543 enunciates the proposition that the Alien Property Custodian holds the position of Bona Fide Purchaser without notice, (p. 548). As such transferee for value without notice it follows that property held (and conveyed to PPLA[] by the Alien Property Custodian or his TTPI successor, the High Commissioner) cannot be property which is the subject of Article XIII, Section 10, of the ROP Constitution since the lands thus so held could not have been acquired by force, coercion, fraud or without just compensation or adequate consideration. As such they cannot be defined as "any lands" which either the TTPI under

Secretarial Order 2969, or PPLA under Article XIII, Section 10, ROP Constitution, is required to "return to the original owners." The chain of authority for the revesting of lands of ancient owners (i.e. prior to the German/Japanese/United States occupation) applies only to land found to have been in prior individual, clan, or lineage, ownership and so established by Court Commission or other administrative procedure. The Court reads the provisions of Title 67 TTC, and in particular Section 101-118 thereof, as having been enacted for the purpose of providing a means whereby individually owned lands or lands which are claimed as ancient land of individuals, lineages, or clan, in contrast to "public lands," might be resolved and title assurance issued after due process proceedings. "Rights and interests in private property, located in territory acquired by conquest, or by cession, or other treaty are to be ⊥219 respected by the new sovereign, but are defined, held, and transmitted under the laws of the new sovereign." *Ngiruchelbad v. Trust Territory*, 2 TTR 632 at 635.

There is no evidence before the Court to show that any of the lands described in Plaintiff's Exs. 1-5 w[ere] ever registered in private ownership in the Tochi Daicho and so [sic] even entitled to the benefit of the presumption of such ownership. *Ngirudelsang v. Ito*, 3 TTR 351. Or that the Land Commission had ever, after hearing, issued its 67 TTC Section 117 Certificate of Title covering the same. *Rudimch v. Chin*, 3 TTR 323 at 328; "when such determination has become final, it must prevail over any claims or interest thereafter asserted which are found upon land custom existing prior to the determination."

Rather the Court is of the opinion that Secretarial Order 2969 "public lands" were intended to become a part of the National Treasury of Assets to be held in trust by the National Government for the use and benefit of the people of all Palau (we here remark that we cannot construe "people of Koror" to be synonymous with "people of Palau" as the former constitute only some 60% of the latter) and in so doing be used by the National Government in the several ways enumerated in Section 3 of Secretarial Order 2969 as a self-help adjunct means of financing, in part, the National Government operations.

We are forcibly drawn to this conclusion by the terminology of the pertinent Sections of 2969 wherein throughout such order reference is made to "District Legal Entity." Pursuant to Section 2(a) of the order we turn to 3 TTC Section 1 (Appendix 5) to find that thereunder the term "District Legal Entity" refers to "Palau District" in its entirety, and does not encompass lesser districts created by the "District Legal Entity" itself, e.g. KSPLA.

The Court's reading of the following Section, 3 TTC § 2, (Appendix 5) clearly evinces the vesting in PPLA to have been intended to be a "Territory-Wide" Government grant and not one of local significance only, as the powers enumerated in Section 2 are of necessity those to be exercised by a sovereign and not such as are delegable to States or Municipalities within the parameters of the ROP Constitution.

The Court is of the belief that Intervenors misread and misinterpret the meaning and intent of the "return to" provision of Article XIII, Section 10. Correctly read it refers only to "any public lands" to which prior individual, lineage, or clan ownership has been established by then available due process methods and which lands had been taken by a previous occupying

power by force, coercion, fraud, without ⊥220 just compensation, or for inadequate consideration. None of these conditions have been shown to exist with respect to acquisition or conveyance of any of the public lands here under review, the Court concludes irrefragably that Intervenors' Claim of Right of Ownership is without merit.

Intervenors' evidence makes frequent reference to PL 5-8-10, (Appendix 6), implementing legislation required of enactment of Secretarial Order 2969 as a pre-condition to transfer of "Public Lands" from TTPI to the new Nation. This Act within itself contains the requisite seeds of perpetual existence, successive constituency, administrative authority, and revenue raising power, all mandated by 2969. One but needs to look to Section 17 of PL 5-8-10 to conclude that PPLA was intended, without equivocation, to be a continuing Governmental unit charged with the responsibilities enumerated in its enacting legislation and absent the power or authority to terminate its own existence by simply disposing of that which it had been created to manage. Section 17 makes reference to "revenue realized and received by Authority generated from the administration and management of public lands" and provided that same is to be included "in the general fund of the Legislature". Where a Municipal Authority within the District Legal Entity has been created to hold and manage certain lands, administratively determined to be best served by such municipal authority, the latter may retain "three-fourth (3/4th) of all revenue" generated from the Municipal Authority's administration and management and the remaining "one-fourth (1/4)" shall be returned "to the general fund of the Palau Legislature". All other Sections of PL 5-8-10, read together, are of equal persuasion.

The foregoing points directly to the fact that PL 5-8-10 was intended by the enacting Legislature, as was 2969, to be mandatory rather than directory in establishing the functional characteristic of PPLA. Any alternative construction, that is to say, a construction which would accord PPLA the right to absolve itself of its continuing duties, would totally emasculate the Act's effect and make of the legislative intent in enacting the Act, a nullity. This Court may not presume the Legislature to have enacted useless Statute. As was said by Mr. Justice Field in *French v. Edwards*, 14 Wall. 506 20 L.Ed. 702:

> There are undoubtedly many statutory requisitions for the guide of officers in the conduct which do not limit power or render its exercise in disregard of the requisitions ineffectual. Such generally are regulations designed to secure order, ⊥221 system, and dispatch in proceedings, and by disregard of which the right of parties interested can not be injuriously affected. But when the requisitions prescribed are intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which the rights might be and generally would be injuriously affected, they are not directory but mandatory.

In determining whether a statute is intended to be mandatory or directory one must consider the entire act, its nature, its object, and the consequences which would result from construing the statute one way or the other. *Assessor of Springfield v. New England*, 112 N.E.2d 260, 330 Mass. 198 (1953); *see also Cruz v. Johnston*, 6 TTR 354, at pp. 357-358.

It is also clear that S/O 2969 and PL 5-8-10, concerning themselves as they do with

matters of public policy, are in pari materia. Together they form a dual political entity scheme to get public lands back into the hands of a National Management Body, each dependent upon the operative force and effect of the other. All statutory interpretations which tend to injuriously encroach upon the affairs of a constitutional government must receive an interpretation most favorable to the general public at large. Administrative agencies, being purely creatures of legislation, without inherent or common law powers, may exercise only such authority as is legislatively granted or by necessary implication conferred. This has resulted in the general rule of strict construction where the means employed to accomplish the statutory objective for which the agency was created are the concerning questions. *Ngirasmengesong v. Trust Territory*, 1 TTR 345 at p. 355.

The Court reads Secretarial Order 2969 as effectively constituting PPLA a Trustee of Public Lands and PL 5-8-10 as an instrument establishing the terms and conditions for the administration of the "Trust". We find nothing within the aforementioned PL 5-8-10 granting to PPLA the right to pass on its "Trust" to any local or series of local agencies or to relinquish the revenues reserved to the national government for, as we have noted *supra*, the underlying purpose of creating such an agency was to make certain it was vested with such powers as would properly enable it to administer the Trust lands on the widest possible basis and so to advance the greater good for the greater number of people. Anything less (local level control) would not produce the same benefits as ⊥222 would an authority operating under territory-wide laws having universal application throughout the entire sovereignty area. Section 10(12) of PL 5-8-10 must be read for what it purports to grant -- simply the authority to transfer such public lands within the geographical limits of the particular municipality as shall be agreed upon in concert between PPLA and the local PLA. The words "in whole" may not be read as creating authority in PPLA to divest itself of all land and so sound its own "death-knell". Were this the intendment of the Act there would be no need for the provisions having to do with perpetual existence, board member terms, filling of vacancies and the other long-term provisions incorporated therein.

The Court has gone to some length to point out wherein PPLA has failed in its responsibilities to the TTPI, ROP, and the people of Palau. We have done so because Intervenor has voiced its consistent reliance on the ownership of public lands as evidenced by Deeds from PPLA to KSPLA, (Pl's Exs 3 & 5), the agreement between ROP and Koror State of August 17, 1982, and Koror State Ordinance No. 112-79. If more were needed to convince the Court of the excess of authority exhibited by PPLA in divesting itself of the benefit of the public lands acquired by it from TTPI by transferring them into to KSPLA, a reading of paragraph 1 & 2 of the August 17, 1982, Agreement between PPLA and KSPLA (Intervenors Ex. 21) would be more than ample. There has been no showing, and we presume none can be made of any attempt by KSPLA to comply with the requirements of Section 17 of PL 5-8-10. Neither has the Court been made aware of any accounting for such of those funds as might be due under that Section to the General Fund of the OEK.

The Court does not rule on Intervenors' contention that ROP, having failed to make its "study" of its needed properties known to KSPLA within the times scheduled or extended under the August, 1982 Agreement has thereby forfeited any rights it might have had under that Agreement, as the views expressed herein makes such adjudication unnecessary, that agreement being in our opinion, as to PPLA, ultra vires. A contract is said to be ultra vires when it is

"outside of the object of its creation as defined in the law of the organization and therefore beyond the power conferred upon it by the legislature." *Jenkins v. City of Henderson*, 199 S.E.37, 214 N.C. 244. The doctrine of ultra vires includes not only acts prohibited "but acts which are in excess of powers granted and not prohibited." *State Ex Rel S. Temple v. Cook*, 136 S.W.2d 142, 234 Mo. App. 898, and it may be said that "if a contract is of such character that had the corporation at once proceeded to execute it, its act would be contrary to public policy, or expressly or impliedly prohibited by statute, or would in any degree disable the corporation from the performance of its ⊥223 statutory duties, the undertaking cannot be enforced by either party". *Muncie Natural Gas Co. v. City of Muncie*, 66 N.E. 436, 160 Ind. 97.

As we have pointed out in our discussion of Section 17, PL 5-8-10, the Legislature had in mind the concept of profit sharing with KSPLA of revenues derive from public lands use. It did not however evince its desire to make a gift of all such revenues to KSPLA to the enhancement of latter's position and the impoverishment of the former. Neither can we envision the United States intending that the National Government should commence its existence beholden to one of its own creatures, Koror State, and bereft of even the ownership of land upon which its three branches of government sit. Lacking then the authority to make the conveyance evidenced by Plaintiff's Exhibits 3 & 5 those Deeds must be set aside and PPLA or its successor entity, required to reassume its rightful position as guardian of the public lands originally entrusted to it for the benefit of all the people of all Palau.

The Court however acknowledges that the June, 1982, agreement, (Def'd ex. 5) evidences a recognition on the part of both ROP and KSPLA of the need for some division of the public lands between these two primary public bodies. Intervenors' Exhibit 9 sets forth in detail those public lands which the Republic deems required for its best interest and over which it proposes to exercise its directive authority for the benefit of the people of Palau. Thus, were it not for this fact that the Republic of Palau, presumably acting as the alter ego of PPLA, has made its selection, the Court would appoint a Master to resolve the allocation question as between ROP and KSPLA, but the mechanics of such resolution being so readily at hand further delay, and the legal complications inherent in such referral, appear unwarranted. The right in ROP - PPLA of first choice by retention of those received TTPI lands is sufficiently obvious from our Opinion here to dispense with the need for further elaboration of this issue. We accomplish same by our following Judgment.

It now remains to dispose of the questions raised by the parties with regard to that land in Koror known as Central Market, the lands known as Idid and Otaor, the Quarry Pit Site in Malakal, and the sum of $2,500.

As to the Central Market/Idid/Otaor, exchange contemplated by Plaintiff's Exhibit 6a, an examination of Intervenors' Exhibit 9 discloses that ROP claims only that portion of the Central Market Area occupied by the Telephone Exchange Building, ownership of the remaining portion thereof ⊥224 thus being impliedly confirmed in KSPLA and under Plaintiff's Exhibit 5. KSPLA claims it has been misrepresented to by defendant Roman Tmetuchl as to what land was the subject of its exchange deed. If we understand Intervenors' claim for rescission, it is predicated upon the fact that Intervenors feel themselves at risk because Intervenors' Deed to Defendants

was of a warranty nature and since Intervenors did not own all the lands which the"sketch" description to the deed delineated, (*see* Defendants' Exhibit 19b), Intervenors could not then have conveyed all which the deed promised and that perhaps at some future date Intervenors might be called upon to answer to its Warranty by reason of such deficiency. We set Intervenors at ease by here holding that Intervenors could convey only that which they owned and have the right to convey, nothing more. Their warranty extends only to such land as they may legally convey and not to lands which in the present circumstances it is quite obvious they did not own. (Not only by reason of this opinion, but because of the fact that a portion of the lands shown on the "sketch" is still vested in the Central Government of the TTPI.) We are not told how the mis-description of the Central Market adjacent block came about nor what the latent intent of such description might have been. Suffice it that an erroneous property description, without more, is not prima facie evidence of intent to defraud. The Court finds no basis for declaring a rescission since the demand for same is unilateral as to Intervenors, and the mistake (intentional or otherwise) likewise unilateral as to Defendants. To effect recission of a complete contract the mistake sought to be corrected by such rescission must be mutual. It involves "in effect a mutual release of further obligations." *Reed v. McLaws*, 110 P.2d 222, 56 Ariz. 556. An effort which Defendant resists of accomplishment. Further, rescission involves the placing of the parties in status quo, *Bowman v. Victor*, 189 P.2d 876, 83 Cal.App.2d 693. It occurs to the court that more properly is Intervenors' plea one for "Reformation," a situation where a written contract fails to properly express the true intent of the parties by reason of a legal mistake on one side (Intervenor) and purported fraud on the other (Defendants). *Perry v. Betlar Corp.*, 29 N.Y.S.2d 560.

We do not make determination as to ownership of that portion of land shown on the "sketch", (Def's. Exs. 19a & 19b), lying to the North of the Central Market Area and shown as containing 63,001.08 sq. ft. for as noted it appears that ownership of this area has been retained by the TTPI and is currently occupied by Micronesian Occupational College. As however neither TTPI or MOC are parties to this action our judgment goes no further than absolving Intervenors of liability under its Warranty Deed should it later prove that TTPI/MOC are in fact, as we believe, owners of such block. ⊥225 There appears no doubt however that parcel PK-19 was included within Plaintiff's Exhibit 4 conveyance from TTPI to PPLA and acknowledging ROP to have had an enforceable use right under Plaintiff's Exhibit 1, the resultant of the quit claim deed, (Pl's Ex. 4), was to effect a merger of the fee with the right of use and cut of the latter by reason of the higher estate of the former. *Smith v. Bank of Pinehurst*, 25 N.E.2d 859, 523 N.C. 248. Alternatively, if we adopt the trust theory advanced by Plaintiff, we find the trust extinguished by the transfer, as ROP then stood in the dual position of trustee and beneficiary, the legal title passing from TTPI merging into the equitable interest previously obtained from TTPI and so extinguishing it. *Clark, Summary of American Law, Trust*, Section 39. *Dickson v. Neal*, 2 Fed.2d. 523.

But both "reformation" and "rescission" are equitable remedies "designed to afford relief from contracts entered into through mistake, fraud or duress". *Cleave v. Thompson*, 251 P. 429, 122 Kan. 43. Equitable jurisdiction once invoked, need not limit its relief to that sought but may apply equitable principles to the resolution of all collateral matters before the Court. *Katchen v. Landy*, 382 U.S. 323 15 L.Ed.2d 391, 86 S.Ct. 467. We follow this "broad brush" approach in

addressing the question of the Central Market property. From Intervenors' Exhibit 9 we learn that plaintiff has little interest in the Central Market property other than the Telephone Exchange property. Based upon our view of the premises and the taking of Judicial Notice, we learn that Defendants have expended substantial sums in improving parcel PK-19. From Plaintiff's Exhibits 6a, b, c, and d, we learn of the intended good faith exchange (absent any testimony as to why the "sketch" included the purported TTPI/MOC parcel) and from the testimony of Defendant RT we have been apprised of the traditional history of the Idid and Otaor parcels. All this considered, induces the Court to conclude that equity dictates the parties be left in status quo in respect of parcel PK-19, and Idid and Otaor, except that from parcel PK-19 there should be excluded and vested in PPLA or its designee, that portion of PK-19 currently occupied by the Telephone Exchange Building.

Anent the Malakal Quarry site. This property was excluded from conveyance by TTPI to PPLA, (Pl's Exs. 2 & 4) (Parcel No. 40398, containing 81,409 sq.m.). Defendant however is the owner of the crushing plant and its appurtenances as shown by Defendants' Exhibit 17. The Land Exchange Agreement of June 25, 1981, (Pl's Ex. 6a) purported to assign to Defendants the exclusive right to utilize the quarry "for 25 years". This agreement, implemented by written Lease dated July 10, 1981, (Pl's Ex. 6a) provided for the payment of a royalty of $.40 for every cubic yard for "all material removed ⊥226 from the lease premises and sold by lessee". (We note that the Exchange Agreement, (Pl's. Ex. 6a) calls for payment of "40 cents for every cubic yard of aggregate processed from the quarry" in contrast to "40 cents per cubic yard for all material removed from the leased premises and sold by lessee"). We are however relieved of the necessity of differentiating between these two multipliers by reason of the fact that Intervenor has nothing to lease, and Lessee, as to TTPI, is nothing more than a trespasser and conversioner of the rock and overburden, for as we have noted previously, there is a total lack of evidence in the record offered by the Intervenors to show that the pit was formerly Idid land, that it should have reverted to Idid Clan under the provisions of Article XIII, Section 10, Republic of Palau Constitution, or that any claim to the site has been favorably adjudicated in Intervenors' behalf under the provisions of 67 TTC Section 101, *et seq*.

One last matter remains for consideration. As we read Plaintiff's Exhibit 6a, Defendant Tmetuchl gave Intervenor Gibbons the sum of $2,500 with the understanding that the sum would be used to purchase capital stock of the then organizing Bank of Palau to that value. Defendant RT testified that the money was given to Intervenor Gibbons and the latter admits receiving the same. Intervenor Gibbons further testified that he has retained the sum and did not purchase any capital stock of the Bank of Palau.

Upon the foregoing it is hereby ORDERED, ADJUDGED, and DECREED, as follows:

1. That the President of the Republic of Palau, the Minister of State and the Director of the Bureau of Domestic Affairs are directed to take such steps as are necessary, pursuant to Executive Order 09, part VI, Section 2, Sub-section (d) to reconstitute the PPLA, provide[] it with staff and funding, and thereafter direct that it undertake the discharge of those responsibilities assigned to such authority by the provisions of PL 5-8-10 and Secretarial Order 2969 as continued by

Secretarial Order 3039, or, alternatively, designate an appropriate substitute Agency to assume and carry out all such functions.

2. That [the] certain agreement dated the 17th day of June, 1982, by and between PPLA and KMPLA, (Def's Ex. 5), is declared to be null, void, and of no further force and effect whatsoever, now or at any time.

⊥227 3. Those certain Quit Claim Deeds dated respectively May 14, 1980, and February 17, 1983, being Plaintiff's Exhibits 3 and 5, wherein PPLA was grantor and KMPLA grantee, purporting to convey certain properties therein described which said Deeds were respectively recorded in Bk. XVII at pp. 151-161 on the 14th day of May, 1980 and in Bk. No. 18 at p. 131 on the 17th day of February, 1983, be, and the same are hereby set aside, and declared to be null, void and of no force and effect whatsoever, now, or at any time, and PPLA, or its designee is revested of full and absolute right, title, and interest in and to all the lands therein described together with their respective appurtenances, tenements, and hereditaments there unto in any wise appertaining.

4. Within not to exceed 90 days from date, PPLA or its designee, shall reconvey to KSPLA all lands described in said Plaintiff's Exhibits 3 and 5, or to any bona fide purchaser for value from KSPLA/KMPLA, (Exclusive of parcel PK-19), with PPLA or designee determines to be surplus to the needs of the National Government of the ROP and which in the opinion of PPLA may be best administered on the local level by Local State Government. In selecting lands to be retained by the National Government PPLA shall give due regard to those lands previously designated for National Government use per Intervenors' Exhibit 9 plus such other lands including but not necessarily limited to the Telephone Exchange Building site on parcel PK-19, Quarters No. 19 Sireib, the Judiciary Building, Court House, the Palau Congress area PK-20 Serial 119, and other properties which the National Government shall deem requisite for their retention in the premises.

5. Within not to exceed 90 days from the date PPLA or its designee, shall cause parcel PK-19 to be surveyed to the end that the portion of said parcel occupied by the Telephone Exchange Building (being approximately the westerly 50 feet of said parcel) may be set off for retention by PPLA. Within 90 days following the completion of such survey, but in any event no later than January 15, 1986, PPLA shall convey the remaining portion of said parcel PK-19 to Defendants Roman Tmetuchl or Pacifica Development Corporation, (Defendant to nominate grantee) by Quit-Claim Deed, free of all encumbrances except rights of way and easements. Prior to such conveyance however the value of all cold storage units owned by ROP situated on such parcel PK-19 shall be ascertained by appraisal made by independent appraiser appointed by ROP and Defendants shall have the option to purchase such equipment at such appraised value. Defendants electing not to purchase same, ⊥228 ROP shall cause such equipment to be removed within thirty days from date of conveyance.

6. That all right, title, and interest in those lands known as Idid and Otaor, except Clan lands of Idid Clan contained therein, if any, is vested in KSPLA.

7. The lease of the Quarry site, Plaintiff's Exhibit 6b, it is hereby declared to be null and void ab initio. All moneys previously paid by Defendants to Intervenors, shall, within 30 days from date hereof, be paid into the Registry of the Clerk of Courts to be held by said Clerk pending authorization to disburse. All moneys shown to be due from Defendants by reason of the extraction of materials from said quarry site calculated at the rate of $.40 per cubic yard for each cubic yard of material so extracted and marketed commercially, as shown by an accounting to be completed and certified by Defendants within not to exceed 30 days from date, shall be paid to said Clerk to be held and disbursed in like manner. Provided, that at the election of Defendants all such money shown to due may be secured of payment by an In-lieu Deposit Surety Bond executed by Defendants individually and in Corporate Status, such bond to be first approved by the Court. In order that a continuing supply of gravel to contractors and others requiring same pending resolution of the question of ownership of said quarry site may be maintained, Defendants are authorized to continue to operate said quarry. As a condition thereto there shall be set aside on a monthly basis and within 10 days following the close of each calendar month there shall be deposit with the Clerk of Court into said special account established by him an amount equal to 40 cents for each cubic yard of excavated material removed from said site and sold for commercial use. As used in this Order "commercial use" shall mean use by any person, firm or corporation other than public use by TTPI, ROP, Koror State, or any other municipality of the Republic of Palau. The Court suggests negotiations with TTPI looking to a conveyance of the Quarry site to PPLA or designee be forthwith opened.

8. The provisions of the prior Order of this Court requiring Defendants to post a security bond conditioned upon a payment over of accumulated rentals derived from the use and occupancy of parcel PK-19 by various and sundry tenants is hereby rescinded and all obligations thereunder terminated effective as of the expiration date for the filing of Notice of Appeal of this cause. In such latter event however said Order and Bond shall remain of full force and effect pending final disposition of such Appeal.

⊥229 9. Intervenor Ibedul Yutaka M.. Gibbons shall elect within 30 days from date hereof to either repay the sum of $2,500 to Defendant Tmetuchl or to request the issuance to him of shares of the capital stock of the Bank of Palau of the value of $2,500.

10. The Division of Land and Surveys, operating in conjunction with the Office of the Attorney General is directed to assist in the preparation of all necessary conveyance documents required hereunder.

11. KSPLA, pursuant to the requirements of Section 17, PL 5-8-10 is directed to undertake, complete, furnish, and pay over to PPLA, or designee, for transmittal to the General Fund of the Republic of Palau, within 120 days from date hereof, all moneys, otherwise shown to be due to said PPLA by reason of the revenues derived by KSPLA from the use and occupancy of all public lands previously conveyed to KSPLA as shown on Plaintiff's Exhibits 3 & 5 and to thereafter enter into an agreement with PPLA upon a program for the making of all future payments which may become due by reason of the reconveyance to KSPLA of public lands for administration by KSPLA pursuant to the provisions of PL 5-8-10. KSPLA shall however be allowed to offset against such moneys as may be due PPLA the depreciated value of all improvements made to such subject lands (except as to those to be reconveyed to KSPLA), during the time the same have been under the administration of KSPLA, and further, to be credited with an amount equal to 75% of all revenues derived from those properties as are reconveyed to KSPLA pursuant to the requirements of paragraph 4 of this Order.

12. Each party shall bear their own respective costs and attorneys fee.

13. This Court shall retain continuing jurisdiction to supervise the accomplishment of the matter and things herein ordered.