**Alan Seid**
**v.**
**Republic of Palau et al.**

Civil Action No. 12-031

Supreme Court, Trial Division
Republic of Palau

Decided: August 12, 2014

Counsel for Plaintiff ..... Pro Se
Counsel for Republic of Palau ..... Craig Reffner
Counsel for Johnson Toribiong ..... Kevin Kirk

[1] **Statutory Interpretation**: Constitutional Provisions

A conflict between constitutional amendments exists if one provision authorizes what the other forbids or forbids what the other authorizes.

[2] **Statutory Interpretation**: Constitutional Provisions

For almost every rule of constitutional or statutory interpretation, there is a corresponding rule to the contrary.

[3] **Statutory Interpretation**: Constitutional Provisions

The guiding principle of constitutional construction is that the intent of the framers must be given effect.

[4] **Statutory Interpretation**: Constitutional Provisions

When the language of the constitutional text is clear, the Court must apply its plain meaning and end the inquiry as to what the constitutional language means.

[5] **Statutory Interpretation**: Constitutional Provisions

A well-known rule of constitutional construction requires the Court to avoid a construction of one provision that would nullify another provision or render it superfluous.

## Decision and Order

The Honorable ARTHUR NGIRAKLSONG, Chief Justice:

A fire at Aimeliik Power Plant broke out on November 5, 2011. The fire caused significant power outages and rationing. The cause of the fire was due to "apparent

mismanagement and maintenance". The parties do not dispute that the cause of the fire was manmade, but it was not because of war, external aggression or civil rebellion.

Because of the fire and its consequences, then President Johnson Toribiong, on November 7, 2011, declared a state of emergency under Article VIII, § 14 of the Constitution and assumed legislative powers, among them the power to appropriate funds.

On February 14, 2012 Plaintiff Alan R. Seid filed this lawsuit against then President Johnson Toribiong in his official capacity and his personal capacity as well, so we know now. The Republic of Palau is also named defendant.

Mr. Seid's complaint alleges that President Toribiong's declaration of emergency is not based on any of the enumerated grounds in the Constitution and is therefore unconstitutional.

Defendants Mr. Toribiong and the Republic of Palau filed their first motion to dismiss the complaint on April 5, 2012. They argued sovereign immunity, standing, mootness and political questions, among others.

After a hearing, the Court ruled on August 2, 2012 that then President Toribiong's declaration of the state of emergency is unconstitutional. *See Order*, dated August 2, 2012. The Court ruled that the Constitution provides two distinct grounds for a President to invoke this emergency power. One refers to manmade, "war, external aggression, [or] civil rebellion" and the other is "natural catastrophe". *See* Palau Const. art. VIII, § 14 ("Whenever war, external aggression, civil rebellion or natural catastrophe threatens the lives and property of significant number of people in Palau, the President may declare a state of emergency and temporarily assume such legislative powers as may be necessary to afford immediate and specific relief to those lives or property so threatened…"). Mismanagement and poor maintenance of the power plant do not fit into either category.

Then, on January 9, 2013, Ms. Sara Bloom, Assistant Attorney General, representing the defendants, filed a motion for leave to file a second motion to dismiss. As grounds for this second bite of the apple, Ms. Bloom stated that the 25th Amendment to the Constitution [which became effective on November 19, 2008] "has recently come to [her] attention" and that this amendment dictates that in case of a conflict between the English version and the Palauan version, the Palauan version prevails. This amendment reverses former Article XIII, § 2 of the Constitution, which said that in case of a conflict between the English version and the Palauan version, the English version prevails.

With this new constitutional rule of interpretation, Ms. Bloom argues that the Palauan word for "catastrophe" is "kerrior" which could be a natural or manmade disaster. Hence, there is a conflict between the English version and the Palauan version and the latter prevails. As such President Toribiong's declaration of the state of emergency is

constitutional "as long as the misfortune or accident threatens many people living in Palau or their property."

Mr. Seid never did file a response to Mr. Bloom's second motion filed on January 9, 2013 for leave to file a second motion to dismiss. Ms. Bloom also never did anything to prosecute her motion for leave to find a second motion to dismiss. She never filed a motion for a ruling or for a hearing. The Court also allowed this matter to fall through the cracks.

A new President of the Republic of Palau was elected in 2012. Mr. Craig Reffner, a new Assistant Attorney General, entered and filed stipulations to dismiss Mr. Toribiong as a party and for a judgment that the declaration of the state of emergency is unconstitutional. The stipulations were without Mr. Toribiong's consent.

A flurry of activities ensued. Mr. Toribiong filed a motion to intervene to protect his possible liabilities and interests. Mr. Reffner did nothing to fix the problems he created.

Upon the Court's own closer review of the file, Mr. Toribiong was sued both in his official and personal capacity. As such, his consent to the stipulated judgment and his dismissal as a party is required.

The Court set aside the stipulated dismissal and judgment as mistakes. *See Order*, June 26, 2014. The Court then granted defendant's motion for leave to file a second motion to dismiss and granted the second motion as deemed filed nunc pro tunc.

The Court ordered Mr. Seid to file a response to the defendants' second motion to dismiss by July 31,2014. Mr. Seid filed his response on that date. Mr. Toribiong, with Mr. Kevin Kirk as his new attorney, filed his reply brief on August 8, 2014. The Attorney General's Office was ordered on May 20, 2014 to designate an attorney to represent the Republic of Palau when Mr. Reffner declared a conflict and has failed to do so.

The Court now addresses the new issue presented by "kerrior" in this second motion to dismiss.

It does not take much to dispose of Mr. Toribiong's argument of conflict between English and Palauan version because of a glaring oversight or a deliberate omission on his part. Mr. Toribiong is right that the word "kerrior" could be a natural or manmade disaster. And the word "catastrophe" also could be both natural or manmade disaster. "Catastrophe" means a "momentous tragic, usually sudden event marked by effects, varying from extreme misfortune to utter overthrow or ruin; utter failure; death". *Webster's Third New International Dictionary*, (1961). There is no conflict between the English word "catastrophe" and the Palauan translation "kerrior"

A glaring omission in Mr. Toribiong's argument is that the word "catastrophe" is not the only word standing by itself in the Constitution. It is modified by the word "natural". Also glaringly missing is the Palauan definition of the word "natural". Here

is the relevant Palauan version and the corresponding English version in the Constitution without the word "natural":

*14. Bades. Sel labor ngii a mekemad ma lechub eng ngodechelakl era ikrel Belau el mei ma lechub e nguldikel er a beluu ma lechub eng kerrior el mo uchul a elemellel a betook el klengar er a rechad ma klalo er a Belau, ea President…*

*Section 14. Whenever war, external aggression, civil rebellion or … catastrophe threatens the lives or property of significant number of people in Palau, the President may…*

[1] "A conflict between constitutional amendments exists if one provision authorizes what the other forbids or forbids what the other authorizes." 16 Am. Jur. 2d *Constitutional Law* § 67 (2009). Applying this definition to this case, there is no conflict.

When you have the words "natural catastrophe" in the Constitution and the official Palauan translation fails completely to define "natural" and leaves only the word "kerrior" which means catastrophe, no conflict exists between the English word "catastrophe" and the Palauan translation, "kerrior". There is also no conflict between the word "natural" in the Constitution and the absence of a Palauan version of the word "natural". There is no conflict between a constitutional word that exists and a missing Palauan translation. Absence does not speak. What should be clear is that the word "natural" is in the Constitution and the Palauan version of the word "natural" is nowhere to be found. There is no rule of constitutional construction that would make the word "natural" in the Constitution go away, not even an Egyptian or a Greek Mythology.

Since no conflict exists, this alone should end this argument on "kerrior". What follows is a review of our case law on constitutional construction.

Without the definition of the word "natural" in the Palauan version, defendants can only argue either that the word "natural" should be read as if it does not exist in the Constitution because there is no Palauan translation in the Palauan version or the word "natural" has been swallowed by the Palauan world "kerrior" and "natural catastrophe" in the Constitution should be read together to mean any disaster, natural or manmade. Both constructions of the provisions are absurd and must be avoided. 16 Am. Jur. 2d *Constitutional Law* § 76. There is also no known rule of constitutional construction that would support either attempt in constitutional interpretation.

The only reasonable explanation for the omission of the Palauan translation for the word "natural" is that it was mistakenly omitted. *Peleliu State v. Koror State*, 6 ROP 91, 93 (1997).

To allow defendants' argument to stand is to drastically amend Article VIII, § 14. It would read like this:

*Whenever ~~war ,external aggression , civil rebellion or natural~~ catastrophe threatens the lives or property of a significant number of people in Palau, the President may declare a state*

*of emergency and temporarily assume such legislative powers as may be necessary to afford immediate and specific relief to those lives or property so threatened.*

"War, external aggression, [and] civil rebellion" and the word "natural" would be deleted as unnecessary and superfluous. See *Ucherremasech v. Hiroichi*, 17 ROP 182, 190 (2010); *Reklai v. Aimeliik State Legislature*, 7 ROP 220, 222 (1999). The word "catastrophe" includes natural and manmade disasters, such as "war, external aggression or civil rebellion".

If the delegates to the Second Palau Constitutional Convention were told they amended Article VIII, § 14 as shown here, they just may be a bit surprised, including both Mr. Toribiong and Mrs. Pierantozzi.[1]

It must be clear that the 25th Amendment is a constitutional rule on interpretation in case of a conflict between an English version and Palauan version. The 25th Amendment is not intended to amend Article VIII, § 14 of the Constitution or any other specific section or provision of the Constitution, except Article XIII, § 2.

[2] For almost every rule of constitutional or statutory interpretation, there is a counter rule or rule to the contrary. There is one rule that stands alone. That exception is that no rule of interpretation is ever justified when it defeats the intent of the Constitution or Statute. *Noah v. ROP*, 11 ROP 227, 234 (2004) (*Ngiraklsong, Chief Justice, concurring*) (internal citations omitted). "The courts cannot ascribe to a constitution a meaning that is contrary to that clearly intended by the drafters, and they must undertake to ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted." 16 Am. Jur. 2d *Constitutional Law* § 63. Further, no rules of construction "may be used to defeat the clear and certain meaning of a constitutional provision." *Id.*at § 64.

The intent of Article VIII, § 14 is reflected in the very words used. "War, external aggression, civil rebellion or natural catastrophe" are the only state grounds for a President to invoke the state of emergency powers and assume legislative powers.

[3][4] The guiding principle of constitutional construction is that the intent of the framers must be given effect. *Peleliu v. Koror State*, 6 ROP 91, 93-94 (1997); *Palau Chamber of Commerce v. Uherbelau*, 5 ROP 300, 302 (Tr. Div. 1995); *Remeliik v. The Senate*, 1 ROP Intrm. 1, 5 (Tr. Div. 1981). We have repeatedly stated that when the language of the Constitutional text is clear, we must apply its plain meaning and end the inquiry as to

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[1] Mr. Toribiong was a member of the First and Second Palau Constitutional Conventions. Mrs. Pierantozzi was a member of the Second Constitutional Convention. Mr. Toribiong filed an affidavit in support of his cause and Mrs. Pierantozzi filed an affidavit in support of Mr. Seid's argument. The Court gives these affidavits zero credit. *Gibbons v. Seventh Koror State Legislature*, 13 ROP 157, 166 n.2 (2006) (*Ngiraklsong, Chief Justice, concurring*).

what the constitutional language means. *Ucherremasech*, 17 ROP at 190; *Tellames v. Congressional Reapportionment Comm 'n*, 8 ROP 142, 143 (2000); *Ngerul v. ROP*, 8 ROP 295, 296 (2000); *AiraiState Government v. Ngkekliil Clan*, 11 ROP 261, 263 (Tr. Div. 2004).

Furthermore, it is a well known rule of constitutional interpretation that you do not read one constitutional section or provision to nullify the existence of other sections and provisions. "As no constitutional guarantee enjoys a preference, so none should suffer subordination or deletion." *Ullman v. United States*, 76 S. Ct. 497, 5001 (1956). Here, Mr. Toribiong wants the word "kerrior", which means "catastrophe" to nullify the word "natural". It also does not make sense to use the absence of the Palauan definition of the word "natural" to nullify the existence of "natural" which is very much present in the Constitution.

Assume for the sake of argument that the absence of the Palauan translation of the word "natural" does not matter. Then there would be a conflict between the word "natural" catastrophe in the Constitution and the Palauan translation of catastrophe, "kerrior".

[5] A well-known rule of constitutional construction requires the Court, in case of conflicting sections or provisions of the Constitution, to avoid a construction of one provision that would nullify or render another superfluous. The Court should attempt to find that all sections and provisions of the constitution are in harmony. *Ucherremasech*, 17 ROP at 190; *Fritz v. Salii*, 1 ROP 521, 545 (1988); *Seventh Koror State Legislature v. Borja*, 12 ROP 206, 208 (Tr. Div. 2005).

Construing the word "kerrior" to mean only "natural" disasters would be in harmony with the word "natural" in the Constitution. To read "kerrior" to include both natural and manmade disaster would render "war, external aggression, civil rebellion or natural" in the Constitutions meaningless. *Ucherremasech*, 17 ROP at 190.

Finally, Article VIII, § 14 is not only about disasters that threaten the lives of the people and property. It is the only time under the Constitution when the President may assume the powers of another branch of the government. Nowhere else does one branch of the government be allowed to exercise the powers of another branch. As such, the Court should construe this provision strictly to ensure that the President may only invoke this awesome power of emergency based on the enumerated grounds in the Constitution and no more.

Mr. Toribiong's "kerrior" argument simply cannot stand in the face of the clear constitutional language and applicable rules of constitutional constructions.

For the second time, this Court rules that President Toribiong's Declaration of the State of Emergency on November 7, 2011 under Article VIII, § 14 is unconstitutional. The Court again DENIES this second motion to dismiss.

Since the trial on remedies may be significant, the Court believes it is best to get the final judgment on this partial Order before proceeding to the remaining issues. The Court therefore certifies that there is no just reason to delay the entry of a partial judgment herein for purposes of immediate appeal pursuant to ROP R. Civ. Pro. 54(b).