

ROP v. Etpison, 5 ROP Intrm. 313 (Tr. Div. 1995)
REPUBLIC OF PALAU,
Plaintiff,

v.

NGIRATKEL ETPISON, KUNIWO NAKAMURA,
SANTOS OLIKONG, REGIS AKITAYA, YUJI MESUBED,
SANDRA PIERANTOZZI, OKADA TECHITONG,
WILLIAM TABELUAL, DILMEI OLKERIIL, FRANZ REKSID,
former Republic of Palau Minister of Administration,
THOMAS REMENGESAU, SR., WILHELM RENGIL,
JOHN O. NGIRAKED, YOICH SINGEO, BONIFACIO BASILIUS,
TITUS MESUBED, ROMAN YANO, AUGURIO JOSEPH,
JOHANES ADELBAI, TOBI NGERUL, JOHNSON BREL,
SELESTINO OTONG, PAULA HOLM, ANTHONY BESONG,
KOICHI WONG, TEMMY SHMULL, BROWNY SALVADOR,
ELIAS TUCHELIAUR, KAREN KOHAMA, SALVADOR INGEREKLII,
THEODOSIA FAUSTINO, JOEL TORIBIONG, SILAS ORRUKEM,
TADASHI SAKUMA, VINCENT REMELIIL,
Defendants.

Supreme Court, Trial Division
Republic of Palau

Memorandum opinion and order
Decided: June 23, 1995

ARTHUR NGIRAKLSONG, Chief Justice:

Before the Court in this consolidated action are motions and cross-motions for summary judgment. The motions have been extensively briefed and oral argument was held on June 5, 1995. The dispute arises over the propriety of payments to certain former executive branch officials from the Salii, Remengesau and Etpison administrations (“defendants”), for annual leave the defendants had accrued, but had not used, at the time of their leaving office. The Republic of Palau (“government”) asserts that the payments were illegal and that restitution from the officials is the proper remedy. In addition, the government contends that two of the defendants, both former Ministers of Administration in the Etpison administration, breached their fiduciary duties to the Republic by allowing the payments.

¶314 Because the Court agrees with the Etpison administration defendants that, as a matter of law, the payments were proper, the Court grants those defendants’ motions for summary judgment on all claims. Because issues of fact remain for trial as to the claims against the former Salii and Remengesau officials, the Court denies the government’s and those defendants’ motions for summary judgment.

1. Facts and Procedural Posture

The relevant facts in this case are undisputed. Each defendant was at one time an official in the executive branch of the government and falls in one of three general categories.¹ The first category comprises former Presidents and Vice Presidents.² The second category comprises former ministers.³ The third category comprises former special assistants.⁴ It is also undisputed that each defendant received a lump sum payment for unused accrued annual leave upon leaving office. This payment was in addition to the payment of salary.

According to the undisputed testimony presented at the hearing on the motions, the payment for unused annual leave to outgoing officials has a long history in Palau, dating back to the days of **L315** the Trust Territory. *See* Trust Territory Public Service System Act, 61 T.T.C. § 1-3 (Michie 1980). Even after the Trust Territory provisions were repealed on September 7, 1984, through the promulgation of the Rules and Regulations of the Public Service System by the National Civil Service Board, the payments continued as a matter of course and without interruption. *See* 33 P.N.C. § 204.

The government, through its Special Prosecutor, filed an action challenging these annual leave payments to certain former officials who served in President Etpison's administration. In its complaint, the government requests declaratory relief only. Subsequently, two taxpayers initiated their own suit. In that action, the taxpayer-plaintiffs named the same defendants named in the government's action, but included many others as well. In their complaint, the taxpayers seek equitable relief in the form of a declaration that the payments were illegal and that the defendants must reimburse the government for the payments plus interest. In addition, the taxpayers seek punitive damages against defendants Sandra Pierantozzi and Franz Reksid. By stipulation of the parties and order of this Court, the two actions were consolidated. The government was left as the sole plaintiff prosecuting both complaints.

The parties filed for summary judgment⁵ and oral argument was held. In its partial

¹ In briefing after oral argument, the government conceded that defendants Theodosia Faustino, Tadashi Sakuma and Vincent Remeliik did not fall in any of these categories and should not have been included in this action. Accordingly, the claims against these defendants are dismissed.

² According to the government, the following defendants comprise this category: Ngiratkel Etpison, Kuniwo Nakamura and Thomas O. Remengesau.

³ According to the government, the following defendants comprise this category: Regis Akitaya, Yuji Mesubed, John O. Ngiraked, Santos Olikong, Dilmei Olkeriil, Sandra Pierantozzi, Franz Reksid, Wilhelm Rengiil, Nobuo Swei, William Tabelual and Okada Techitong.

⁴ According to the government, the following defendants comprise this category: Johannes Adelbai, Bonifacio Basilius, Anthony Besong, Johnson Brel, Paula Holm, Salvador Ingereklii, Augurio Joseph, Karen Kohama, Titus Mesubed, Tobi Ngerul, Silas Orrukem, Selestino Otong, Brown Salvador, Temmy Shmull, Yoich Singeo, Joel Toribiong, Elias Tucheliaur, Koichi Wong and Roman Yano.

⁵ Defendant Etpison filed his motion first, which was ultimately joined by all other defendants. The government filed its motion and oral argument was held. During oral argument,

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summary judgment motion, the government seeks a declaration that (1) the payments were illegal and (2) that restitution from the defendants is the proper remedy. The government does not seek a monetary award in its motion. In their motions, the defendants request summary judgment enter in their favor on all the claims.

2. Discussion

The government's argument that annual leave payments to these former officials was illegal is based on the undisputed premise that, to be proper, compensation provided to the former officials must have been made pursuant to law. *See* 63A AM. Jur.2d *Public Officers and Employees* § 432 (1984). The government concedes that, **L316** if the national legislature approved the payments, the payments were proper. The government argues, however, that there was no such legislative authorization. The defendants, on the other hand, assert that the national legislature did approve the payments to the defendants who served in the Etpison administration. Specifically, the defendants contend that the legislature authorized the payments through R.P.P.L. 4-1, an appropriations bill for fiscal year 1993.

a. Compensation of Public Officials

The parties agree that compensation to officials in the first category of defendants, the President and Vice President, is governed by article VIII, section 8 of the Constitution, which provides that the compensation to those office-holders "shall be established by law." Pursuant to this provision, the national legislature enacted Title 2, sections 401 and 402 of the P.N.C., which set the "annual salary" for the President and Vice President.

The parties also agree that the "annual salary" of officers in the second category of defendants, the former ministers, is set by title 2, section 403 of the P.N.C. *See also* ROP Const. art. VIII, § 5 (creating executive cabinet); 2 P.N.C. § 102(b) (providing that ministers are members of the executive's cabinet).

Similarly, the parties agree that those in the third category of defendants, referred to here as former "special assistants," are exempt from the National Public Service System Act, 33 P.N.C. §§ 101-2052 ("Act"), and may not avail themselves of that Act (or rules promulgated thereunder), to collect payment for unused accrued annual leave. The parties agree that the payments for accrued unused annual leave to this third category of defendant were proper only if authorized by a source of law other than the Act.

The government contends that the above provisions are the only existing sources of authority to provide compensation to the defendants and that none of the sources grant the executive the power to make payments for unused annual leave. Accordingly, the government argues, the payments were not made pursuant to law. The defendants contend that, through the budget process which resulted in the unified budget for fiscal year 1993, the national legislature

it became apparent that additional exhibits were necessary for proper resolution of the matter. Accordingly, briefing was reopened for this limited purpose. Defendants and the government filed supplemental briefs.

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authorized or ratified the payments for outgoing officials of the Etpison Administration. Defendants assert that these payments were thus permitted by law and were proper.

¶317 b. Former Etpison Administration Officials

The crucial issue with regard to the former Etpison administration officials is whether the legislature approved or ratified the payments.⁶ Defendants contend the payments were ratified by the legislature's enactment of the Unified National Budget for Fiscal Year 1993 (R.P.P.L. 4-1), which appropriated funds to the Executive Branch Budget Activities. Statutory construction and discerning legislative intent present questions of law. *See Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117, 119-20 (1995). Where the language of a statute is plain and admits of no more than one meaning, the language of the statute controls without resort to other materials. *See Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992). Where the language in a statute is unambiguous, courts are to find legislative intent in the ordinary meaning of the language alone. *See Blum v. Stenson*, 104 S.Ct. 1541 (1984); *see also Yano*, 3 ROP Intrm. at 183. Unfortunately, R.P.P.L. 4-1 is silent on how the appropriated funds are to be spent and in that regard is ambiguous. Accordingly, the Court must look to the legislative history to discern the legislature's intention in appropriating the funds. *See Blum*, 104 S.Ct. 1541.

The history of these payments is not in dispute and was established by the evidence presented by plaintiff and defendants. As the Etpison administration wound down in late 1992, officials began leaving the government's employment. The majority of the officials left on December 31, 1992, the date that the Etpison administration officially concluded. As a matter of course, these officials received payment for any unused annual leave.⁷

The transition from the Etpison administration to the Nakamura administration occurred in the midst of Fiscal Year 1993. The Nakamura Administration thus inherited the task of funding the payments to the former Etpison administration officials. Because, among other reasons, the fiscal year 1993 budget proposal to the national legislature made by former president Etpison did not **¶318** include these costs, the new administration proposed an adjusted budget bill which did include amounts for annual leave payments. It is this proposal that led to the enactment of R.P.P.L. 4-1. *See* ROP Const. art. VIII, § 7(8) (inherent power and duty of President to propose annual budget).

In the transmittal letter accompanying the proposed budget to the national legislature, President Nakamura explained that "[s]o far this fiscal year there have been some extraordinary and unavoidable costs, particularly for payoffs of accrued annual leave for appointed employees whose employment terminated December 31st. These costs cannot be absorbed selectively

⁶ These defendants also offer an array of additional defenses to the government's claim. Because the Court agrees that the national legislature did approve the payments, there is no need to reach those additional arguments.

⁷ There was no evidence submitted that any official acted in bad faith in dispersing or collecting annual leave payments. Indeed, the undisputed evidence established that these payments have been made as a matter of course since Palau was a Trust Territory and that the practice has continued uninterrupted since.

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within an activity's budget, so these budgets reflect one-time increases for those purposes." President Nakamura's proposed appropriations bill further detailed the need for funds to cover the cost of annual leave payments to the former Etpison administration officials. Specifically, in the summary of the bill, President Nakamura requested funds to cover "payoff of accrued [annual leave] of President Etpison and appointed staff" and similarly situated staff of the former Vice President. In response to the budget proposal, the national legislature enacted the Unified National Budget for Fiscal Year 1993. R.P.P.L. 4-1 (effective Feb. 23, 1993).

Defendants argue that R.P.P.L. 4-1 constitutes authorization or ratification of the payment for unused annual leave to the out-going Etpison administration officials. The government argues that because R.P.P.L. 4-1 was enacted after the payments were made, it could not be construed as authorization for the payments. The government likewise contends that R.P.P.L. 4-1 was not a legislative ratification of the payments because the payments had already been made and the legislature appropriated the money solely to maintain a positive budget balance. In support of this contention, the government presented evidence that, subsequent to the passage of R.P.P.L. 4-1, President Nakamura exercised his appropriation reprogramming powers in order to address "unplanned costs." *See* 40 P.N.C. § 351(a).

Although the evidence presented by the government may show that the President was concerned with maintaining a positive budget, it in no way suggests that the national legislature did not intend that the funds it appropriated were to be used for the purposes for which the funds were requested. On the contrary, the legislature's actions clearly show its intention that the funds expressly requested by the President to cover payments for annual leave would be used for that purpose. The President requested funds to cover a certain expense and the legislature appropriated the funds. This pattern is enough to establish the legislature's intention that the appropriate funds be spent for the purposes **1319** identified by the President. *See Rengulbai v. Solang*, 4 ROP Intrm. 68, 74 n. 2 (1993) (ambiguous statutory provisions should be given reasonable, rational, sensible, and intelligent construction.).

The enactment of R.P.P.L. 4-1, when viewed concurrently with the President's proposed budget, plainly shows the purpose of the legislature to ratify the annual leave payments to the former Etpison officials. *See* Restatement (Second) of Agency §§ 82-83 (1958); *Brooks v. Dewar*, 61 S.Ct. 979, 982 (1941) (appropriations can constitute ratification); *Isbrandtsen-Moller Co. v. United States*, 57 S.Ct. 407, 411 (1937) (appropriations act constitutes ratification of President's action); *United States v. Georgia-Pacific Co.*, 421 F.2d 92, 103 (9th Cir. 1970) (congressional legislation ratifies executive order issued without authority); *see also In re Mitsuye Endo*, 65 S.Ct. 208, 219 n.24 (1944) ("ratification [by the legislature] may be effected through appropriations acts" but appropriation act at issue does not ratify detention of loyal citizens based on race); *United States v. Stauffer Chem. Co.*, 684 F.2d 1174, 1189 (6th Cir. 1982) ("[t]he [US] Supreme Court has noted that Congressional ratifications may be effected through appropriations act," but "murky language" used in appropriations act not sufficient to show ratification of agency's interpretation of particular term in environmental statute), *aff'd on other grounds*, 104 S.Ct. 575 (1984). As such, the payments were provided for by law and were proper.

c. Former Salii & Remengesau Administration Officials

According to the government, three of the defendants served in the Salii and/or Remengesau administrations and received payment for accrued annual leave upon leaving employment.⁸ Based on the present state of the evidence, it does not appear that the legislative ratification of the payments to the former Etpison administration officials through enactment of R.P.P.L. 4-1 also ratified the payments to these former officials. These defendants have not met their burden of showing that summary judgment in their favor is warranted. *See Wolff v. Sugiyama*, 5 ROP Intrm. 105, 109-10 (1995).

Likewise, the evidence presented by the government is insufficient to establish that there is no genuine issue of material fact and that judgment should enter in its favor as a matter of law. Because issues of fact remain to be resolved at **1320** trial, summary judgment is not appropriate for either these defendants or the government.

3. Conclusion

Because the legislature ratified the payments of annual leave to the former Etpison administration officials by enacting R.P.P.L. 4-1, the government is not entitled to its requested declaratory relief. The former Etpison administration officials, on the other hand, are entitled to summary judgment on all claims, including those claims alleging breach of fiduciary duty.⁹ Because issues of fact remain for trial concerning the propriety of annual leave payments to the Salii and Remengesau administrations officials, summary judgment is not warranted for or against those defendants.

Accordingly, it is ORDERED that:

1. The Motions and Cross-Motions for Summary Judgment filed by the former Etpison administration officials are GRANTED;
2. Plaintiff's Motion for Summary Judgment or in the Alternative, Partial Summary Judgment as to All Defendants and Cross-Motion for Summary Judgment as to Defendant Ngiratkel Etpison is DENIED;
3. The Motions and Cross-Motions for Summary Judgment filed by the former Salii administration officials is DENIED;
4. The claims against defendants Theodosia Faustino, Tadashi Sakuma and Vincent Remeliik are dismissed;
5. The Entry of Clerk's Default of September 7, 1993 is VACATED and the entry of

⁸ These defendants are: John O. Ngiraked, Franz Reksid and Thomas O. Remengesau.

⁹ On September 7, 1993, several defendants were placed in default by the Clerk of Courts. At the hearing on the summary judgment motions, the parties stipulated that the defaults should be set-aside and the dispute resolved on the merits. Accordingly, I set the defaults aside.

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default against the each defendant listed therein is SET ASIDE;

6. Each party is to bear its, her or his own costs and attorney's fees.