Airai State Government v. Iluches, 6 ROP Intrm. 57 (1997)

AIRAI STATE GOVERNMENT and
AIRAI STATE PUBLIC LANDS AUTHORITY (ASPLA),
both represented herein by GOVERNOR, CHARLES I. OBICHANG
who is also Chairman of ASPLA,
Appellants,

v.

TITUS ILUCHES, ROMAN TMETUCHL, and TATSUO KAMINGAKI,
Appellees.

CIVIL APPEAL NO. 26-95
Civil Action No. 120-94

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: January 30, 1997

Counsel for Appellants: John K. Rechucher.
⊥58
Counsel for Appellees: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER Associate Justice

MILLER, Justice:

In this action, Airai State Government and Airai State Public Lands Authority (ASPLA) seek to invalidate a lease previously entered into by ASPLA prior to the invalidation of the first Airai Constitution in the *Teriong* case. Looking backward from *Teriong*, they contend that the lease is invalid because the then-existing Airai State Government and ASPLA were invalid governmental entities at the time the lease was entered into. The trial court rejected this contention and they now appeal. We affirm.

BACKGROUND

The facts of this case are not in dispute. In 1985, Roman Tmetuchl, in his capacity as governor, applied for and received a permit to dredge and fill submerged coastal land near the Koror-Babeldaob Bridge in Airai; this "fill land" was to be the site of the Airai State Marina. On May 1, 1987, Tmetuchl, in his personal capacity, entered into a long-term lease agreement with ASPLA under which he obtained the right to use the subject land for a term of 99 years at a rate

of $25 per year. [1] In 1989, this Court, affirming a trial court decision to the same effect, [2] concluded that the first Airai State Constitution was invalid. *Teriong v. Airai*, 1 ROP Intrm. 664 (1989). In 1992 -- two years after a new constitution had been adopted by Airai -- Tmetuchl allowed Titus Iluches to begin constructing a home on the land. In 1994, appellants brought this suit against Tmetuchl, Iluches, and Tatsuo ⊥59 Kamingaki[3] seeking a declaration that the lease was invalid and to enjoin them from any more construction on the house and eject them from the premises.

The trial court herein held that the lease between Tmetuchl and ASPLA was valid and enforceable, rejecting appellants' contentions on three grounds: that the lease was valid under the *de facto* municipal corporation doctrine, that the legal existence of the former Airai State Government was not subject to collateral attack, and that the State of Airai was estopped from questioning its own existence. Appellants, as they must, challenge all three bases of the trial court's judgment. This Court need only examine the first, the *de facto* corporation doctrine, as it is sufficient to uphold that judgment.

DISCUSSION

In upholding the validity of the lease, the trial court found:

> The Airai State Government, as it existed at the time the lease was executed, had the status of a *de facto* government. While the defects in its creation were sufficient to invalidate its existence as a *de jure* government, these defects and the subsequent decision in *Teriong* . . . did not invalidate its *de facto* governmental status.

Decision at 6. Noting further that a *de facto* government "is possessed of the same powers as a *de jure* government," *id.* at 9, it concluded that the lease at issue was valid and binding on appellants.

Appellants argue that the *de facto* municipal corporation doctrine should not have been applied to the Airai State Government in this case. We disagree. It is obviously correct that Airai is not a municipal corporation, but one of the sixteen states making up the Republic of Palau. We have previously noted that "[t]he states under the ROP Constitution have substantially more powers and responsibilities than their predecessor municipal governments." *Teriong*, 1 ROP Intrm. at 667. Nevertheless, in the present circumstances, we find that the analogy of states to municipal corporations was an apt one. We see no reason why the *de facto* municipal

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[1] According to appellees, the rental rate reflected the fact that Tmetuchl had personally borne the cost of creating the fill land. As appellants have not raised any conflict-of-interest concerns, or otherwise attacked the fairness of the lease agreement, we have no occasion to address this issue.

[2] The trial court's decision was issued in March 1988, after the execution of the lease at issue here.

[3] Kamingaki was Chief Techedib of Ngetkib Hamlet. He advised and gave official consent to both Tmetuchl's and Iluches' use of the land in question.

corporation doctrine should not be applied, and we ⊥60 believe that the reasons for adopting that doctrine -- to avoid "the deleterious consequences of a disincorporation", *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147, 1153 (Alaska 1974) -- are surely equally, if not more so, applicable to a state government as to a municipal corporation. As the trial court noted:

> "[T]o find that there had been no valid state government or public lands authority between the time the State was created and the date of the *Teriong* decision is to create untold mischief. Numerous contracts and deeds would be void, payrolls invalid, governmental actions a nullity, and so on. The havoc such a decision would wreak on the orderly administration of government, business and personal affairs in Airai State and Palau is beyond reckoning."

Decision at 7.

Appellants also contend that the prerequisites for *de facto* status were not present here. Appellants cite the general definition of de facto municipal corporations:

> "The essentials of a de facto municipal corporation are often stated to be a valid statute authorizing incorporation, an organization in good faith under such statute, a colorable compliance with such statute, and an assumption of corporate powers. Where there is no law authorizing the creation of a municipality de jure, there can be none de facto."

See 56 Am. Jur. 2d *Municipal Corporations* § 34 (1971). Appellants contend that this Court's holding in *Teriong* precludes our finding that Airai meets the requirements of a *de facto* corporation. Specifically, relying on the last sentence of the quotation above, [4] appellants argue that since *Teriong* held that the first Airai Constitution was never legally adopted, there was no law authorizing the creation of the State. Consequently, "there can be no de facto corporation when there is no law authorizing the creation of a municipal corporation de jure." (Appellants' Brief at 16) By making this assertion, appellants misconceive the hierarchy of governmental organization involved in this case.

⊥61 At the time that Airai inaugurated its new government in 1981, the law which enabled the creation of states was the Palau Constitution. Article XV, § 6 of the Constitution provides:

> All municipal charters existing on the effective date of this Constitution shall remain in force and effect until the state governments are established pursuant to this Constitution which shall take place not later than four (4) years after the effective date of this Constitution.

This provision mandates that municipalities, of which Airai was one, reorganize themselves as states. The Airai Constitution of 1980 embodied the municipality's bid to become a state in compliance with the Palau Constitution. While it is true that this attempt failed, there is no question that the attempt was authorized by the Palau Constitution. In effect, the Palau

[4] Appellants do not argue that any of the other prerequisites were not met.

Constitution was the "law authorizing the creation of a municipality *de jure*". That the first Airai Constitution did not suffice to create a *de jure* government is the very reason for (and certainly no bar to) now according that government *de facto* status. Appellants' assertion to the contrary is without merit.

CONCLUSION

We agree with the trial court's finding that, under the *de facto* doctrine, appellants are bound to honor the lease in question here. Because appellants' other assertions of error only challenge the propriety of the trial court's alternative reasons for upholding the validity of the lease, and cannot change the result in this matter, we do not address them. The judgment of the trial court is AFFIRMED.