*Klongt v. Paradise Air Corp.*, 7 ROP Intrm. 140 (1999)

**CLARET KLONGT,**
**Plaintiff,**

**v.**

**PARADISE AIR CORPORATION, et al.,**
**Defendants.**

CIVIL APPEAL NO. 99-01
Civil Action No. 98-377

Supreme Court, Appellate Division
Republic of Palau

Decided: January 22, 1999
Supplemental opinion: 7 ROP Intrm. 142
Rehearing denied: 7 ROP Intrm. 159

Counsel for Plaintiff: Richard Brungard
Counsel for Defendants: No appearance

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

In this case, Plaintiff, a Palauan citizen, sues Paradise Air Corporation, a foreign investment company, for wrongful death pursuant to 14 PNC § 3104. The case arises from the crash of one of the corporation's planes during a commercial flight November 17, 1998, killing all on board. The case is before us at an early stage. Plaintiff requests this Court issue a writ of mandamus requiring the Trial Division to consider her request for a writ of attachment.

Affidavits filed by Plaintiff allege that the foreign investor in the corporation is in the process of removing all of its significant assets from the country. Specifically, these affidavits assert that one Paradise Air plane has already been flown out of the jurisdiction, and another has been dismantled and placed in a container for shipping out of Palau. One of the affidavits was supplied by the Attorney General, who averred that he had spoken to Bob Keys, "the owner of Paradise Air," who told him that Paradise Air carried no liability insurance and is seeking to obtain permission to fly the last serviceable aircraft out of the country as soon as possible. The Attorney General further stated that the aircraft could be cleared to depart Palau as early as today. Based upon those affidavits, and the provisions of ROP Rule of Civil Procedure 64 and 14 PNC § 2101, Plaintiff requested the trial court to issue a writ of attachment.

The motion was summarily denied. The Trial Division held that 14 PNC § 2101 is restricted to "a collection case, and if not, a judgment should exist before the Court would even

consider a petition for the issuance of the writ." That view is an overly restrictive reading of the statute. First, by definition,

> [a]ttachment is an ancillary remedy by which a plaintiff acquires a lien upon the property of a defendant in order to obtain satisfaction of a judgment that the plaintiff may ultimately obtain at the conclusion of the litigation. In general, "the writ of attachment is used primarily to seize the debtor's property in order to secure the debt or claim of the creditor in the ⊥141 event that a judgment is rendered." *Black's Law Dictionary* 115 (5th ed. 1970).

*Mitsubishi Int'l v. Cardinal Textile Sales*, 14 F.3d 1507, 1521 (11th Cir. 1994).

Consistent with the above definition, this Court's rules provide that

> [a]t the commencement of and during the course of an action all remedies providing for seizing of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Republic of Palau existing at the time the remedy is sought. The remedies thus available may include . . . attachment . . .

ROP R. Civ. Pro. 64 (emphasis supplied). Similarly, the statute providing for writs of attachment states that the property attached should be "sufficient to satisfy the demand set forth in the action, including interest and costs." 14 PNC § 2101 (emphasis supplied). Plaintiffs motion was therefore not premature.

The purpose of attachment statutes is to permit "plaintiffs to obtain jurisdiction and secure, for judgment, funds of persons who might otherwise dispose of assets and leave the jurisdiction." *Landau v. Vallen*, 895 F.2d 888, 891 (2nd Cir. 1990) (explaining purpose of New York attachment law). It is for that reason that the remedy is available "at the commencement of" the action, and specifically it is held to be available "before the personam service of summons upon the defendant, if there is a likelihood that such service can be made in due course." 13 *Moore's Federal Practice* ¶ 64.10, at 64-7 (3rd edition). Since Paradise Air Corporation must be at least registered to do business here, it is likely that service may be effected. Furthermore, since attachment is available "at the commencement of" the action, not upon service of a summons, it may be requested ex parte. *Accord, Richmond Wholesale Meat Co. v. Ngiraklsong*, 2 ROP Intrm. 292, 298 (1990). Indeed, in many cases, providing notice might simply prompt the defendant to expeditiously complete the dissipation of assets.

The Palau statute is unlimited in its application to all civil actions. The one limitation is the necessity of the applicant to show special cause and support it under oath. Plaintiff has a statutory right to a consideration of the merits of the prejudgment attachment motion.

The writ of mandate shall issue and the matter is remanded to the Trial Division, with instructions to consider the motion as provided by 14 PNC § 2101.