Ngerul v. ROP, 8 ROP Intrm. 295 (2001)

THEOPHILUS NGERUL,
Appellant,

v.

REPUBLIC OF PALAU, through the NATIONAL ELECTION COMMISSION, and ELIAS CAMSEK CHIN,
Appellees.

CIVIL APPEAL NO. 01-06
Civil Action No. 00-223

Supreme Court, Appellate Division
Republic of Palau

Argued: March 28, 2001
Decided: April 2, 2001

Counsel for Ngerul: Mark Doran

Counsel for Chin: Oldiais Ngiraikelau, Antonio Cortes

Counsel for Republic of Palau: Mina Rhee, James P. Kelleher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; DANIEL N. CADRA, Senior Land Court Judge.

MILLER, Justice:

Theophilus Ngerul, a registered voter, appeals from the Trial Division's decision granting summary judgment in favor of the defendants Elias Camsek Chin and the Republic of Palau. Ngerul claims that the Trial Division should have concluded that Chin does not satisfy the residency requirement for candidacy set forth in Article IX, Section 6(3), of the Constitution, and argues that it erred in addressing Chin's citizenship. We affirm in part and vacate in part.

⊥296 I.

The facts as found by the Trial Division are as follows: Chin was born in Peleliu of Palauan parents and spent his early years in Palau. He left Palau at the age of eleven to attend school, and then obtained a position in the United States Army. While in the Army, Chin was stationed at various military assignments outside of Palau. In June 1994, Chin returned to Palau with his wife and son, moved in with his mother-in-law, and enrolled his son in school. In August 1994, Chin was assigned to a duty station in Kwajelein. In 1997, Chin retired from the military and returned to Palau to serve as Minister of Justice. He ran for the Senate in the

November 2000 election, and received a sufficient number of votes to elect him to the office of senator.

Ngerul originally alleged that Chin was not a citizen of Palau, as required by Article IX, Section 6(1), of the Constitution, and that Chin did not satisfy the five-year residency requirement of Article IX, Section 6(3), of the Constitution. He later voluntarily dismissed Count I of his complaint, which pertained to Chin's citizenship. Chin counterclaimed for a declaratory judgment that he was both a citizen of Palau, and that he did satisfy the constitutional residency requirement.

The Trial Division found that the drafters of the Constitution intended that in order to maintain residency, continuous physical presence was not required so long as the individual continued to possess the intent to make Palau his or her permanent home. The Trial Division concluded that Chin never gave up his residency in Palau, and even if he had, he re-established it in June 1994. The Trial Division also found that because Chin never became a citizen of the United States, Chin was a citizen of Palau. Therefore, the Trial Division declared that "Chin meets the qualifications set forth in Article IX, section 6 of the Palau Constitution for the office of Senator in the Sixth Olbiil Era Kelulau," and that "[t]he Election Commission properly certified counterclaimant Chin as a candidate for Senator in the Sixth Olbiil Era Kelulau."

II.

Article IX, Section 6(3), of the Constitution of the Republic of Palau states that, in order to be eligible to hold office in the Olbiil Era Kelulau (hereinafter "OEK"), the person must be "a resident of Palau for not less than five (5) years immediately preceding the election." The Trial Division held that a person can be a "resident" of Palau even if that person is not continuously physically present in Palau for the entire five-year period. Ngerul contends that Article IX, Section 6(3), requires that a person must live continuously in Palau for the five years immediately before the date of the election. Ngerul does not dispute that Chin always had the intent to return to Palau to live permanently, but argues that Chin did not satisfy the five-year residency requirement because he did not live continuously in Palau until 1997 when he retired from the U.S. military.[1]

"The guiding principle of constitutional construction is that the intent of the framers must be given effect." *Palau* ⊥*297 Chamber of Commerce v. Ucherbelau*, 5 ROP Intrm. 300, 302 (Tr. Div. 1995). Sometimes that intent can be discerned by looking no further than the language chosen by the framers. "When constitutional language is clear and unambiguous, we must apply its plain meaning, which we may discern by consulting both general and legal dictionaries." *Tellames v. Congressional Reapportionment Comm'n,* 8 ROP Intrm. 142, 143 (2000) (citations

[1] In its brief on appeal, the Republic urges that, irrespective of the merits of the constitutional issues presented, Ngerul should have been denied relief because of his failure to challenge Chin's qualifications prior to the election. As this issue was not addressed by the trial court, we are reluctant to do so here. *See KSPLA v. Diberdii Lineage,* 3 ROP Intrm. 305, 312 n.3 (1993). However, we share the government's concern that election challenges should be brought promptly, and we leave this issue open for consideration if raised in the future.

omitted). Ngerul urges us to take that course and apply the "plain meaning" of "resident."

The meaning of "resident," however, is far from plain. This Court has said that "residence" is a word that "'has an evasive way about it, with as many colors as Joseph's coat.'" *ROP v. Pedro,* 6 ROP Intrm. 185, 187 (1997) (quoting *Weible v. United States,* 244 F.2d 158, 163 (9th Cir. 1957)). Ngerul argues that *Pedro* recognized a plain meaning for resident, but applied a different meaning only in the context of interpreting the Voting Rights Act. To the contrary, as the above quotation makes clear, the Court in *Pedro* found that, in the legal context, its meaning springs from the context in which it is used. [2] Dictionaries do not resolve this ambiguity. [3] Black's Law Dictionary, for example, distinguishes between the "usual" meanings of "residence" and "domicile" but acknowledges that "[s]ometimes, though, the two terms are used synonymously." *Black's Law Dictionary* 1310 (7th ed. 1999).

Because the language of the constitutional text is ambiguous and does not have one "plain meaning," we must look beyond the text of the constitution to determine the framers' intent. *Remeliik v. The Senate,* 1 ROP Intrm. 1, 5 (High Ct. 1981) ("[W]here the meaning of constitutional provisions is not entirely free from doubt, resort may be had to preceding facts, surrounding circumstances and other forms of extrinsic evidence, to ensure that the provisions are interpreted in consonance with the purposes contemplated by the framers of the constitution and the people adopting it."). To do this, Palauan courts have, on many occasions, consulted the records and committee reports of the Constitutional Convention to interpret constitutional language. *See, e.g., Tellames* , 8 ROP Intrm. at 144-45; *Ucherbelau,* 5 ROP Intrm. at 302-04; *Gibbons v. Etpison,* 4 ROP Intrm. 1, 6 (1993); *Koror State v. ROP*, 3 ROP Intrm. ⊥298 314, 319-20 (1993); *Gibbons v. Salii,* 1 ROP Intrm. 333, 339-44 (1986); *Remeliik v. The Senate* , 1 ROP Intrm. 1, 5-10 (High Ct. 1981).

In this instance, the intent of the framers not to equate "residence" with "continuous

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[2] *See Cambridge Mut. Fire Ins. Co. v. Vallee,* 687 A.2d 956, 957 (Maine 1996) ("As many courts have observed, 'residence' has different shades of meaning depending on the context in which it is used."); *Missouri v. Tusin,* 322 S.W.2d 179, 180 (Mo. App. 1959) ("We hesitate to essay any definition of 'residence,' for the word is like a slippery eel, and the definition which fits one situation will wriggle out of our hands when used in another context or in a different sense."); *Huffman v. Huffman,* 441 N.W.2d 899, 904 (Neb. 1989) ("'To reside' and its corresponding noun residence are chameleon-like expressions, which take their color of meaning from the context in which they are found."); *American Employers' Ins. Co. v. Elf Atochem North America, Inc.,* 725 A.2d 1093, 1098 (N.J. 1999) ("'Residence' is a word with many meanings."); *Jamestown Mut. Ins. Co. v. Nationwide Ins. Co.*, 146 S.E.2d 410, 414 (N.C. 1966) ("The words 'resident,' 'residing,' and 'residence' are in common usage and are found frequently in statutes, contracts, and other documents of a legal or business nature. They have, however, no precise, technical and fixed meaning applicable to all cases.").

[3] Dictionaries give varying meanings of the word "resident," including "[a] person who has a residence in a particular place," *id.* at 1311, "dwelling or having an abode for a continued length of time," *Websters Third New Int'l Dictionary* 1931 (Unabridged 1981); "one who resides in a place," *id.*, and "a permanent inhabitant of a place, not a visitor." *Oxford American Dictionary* 575 (1980).

physical presence" could not be clearer. Early drafts of the portion of the Constitution that became Article IX, Section 6, included the following provision: "For the purposes of this Constitution, a resident is a person who maintains a residence in Palau for an unlimited or indefinite period and to which the person intends to return, whenever absent, even if absent for an extended period of time." Constitutional Convention, Proposal No. 488, D1; *see also* Standing Committee Report No. 22 (inserting the words "a county of" between "a residence" and "in Palau"); Standing Committee Report No. 54 (changing "a county of" to "a municipality of"). Drafts of the proposal containing this definition were twice read and adopted by the main body of the Constitutional Convention. *See* Thirtieth Day Summary Journal at p. 1 (Feb. 26, 1979) (Proposal No. 488, first reading); Forty-Seventh Day Summary Journal at p. 10 (Mar. 15, 1979) (Proposal No. 488, second reading). The use of deleted material is normally inappropriate to discern the intent of the framers because the reasons for the deletion are usually unknown. Here, however, the Convention record explains the circumstances of that deletion and explicitly states why the constitutional definition of "resident" was ultimately omitted from the final draft of the Constitution. The Committee on Style and Arrangement deleted this definition from the final version of Article IX, Section 6, but not for any substantive reason. Instead, it reported that it considered "the legal definition of domicile . . . understood and inappropriate in the Constitution. *This definition can be considered incorporated without the necessity of recitation.* " Standing Committee Report No. 60 at p. 3 (Mar. 21, 1979) (emphasis added). [4] This report was adopted in full by the Constitutional Convention. *See* Forty-Eighth Day Journal at p. 12 (Mar. 21, 1979).

This alone clearly demonstrates that the framers did not intend that "resident" requires continuous physical presence in Palau. Further evidence of the framers' intent is found in RPPL No. 1-67, a law passed by the First OEK to serve under the Constitution. *See* 23 PNC § 101 *et seq*. That statute defined residency for both voting and candidacy [5] purposes to mean some physical presence and an intent to establish a permanent home in the jurisdiction. 23 PNC § 103(h). Intent is determined by considering ten factors, including "[t]he amount of time the individual is physically present within the jurisdiction," "[w]hether the individual maintains a home" in the jurisdiction, and "[t]he existence, and maintenance, or close ties with family, relatives, and friends who are physically present" in the jurisdiction. *Id.* § 107(c)(4)(A-C). Nowhere does it require that a person live continuously within the jurisdiction to maintain the status of resident. We look to the actions of the First OEK for guidance not because it had any special power to define the meaning of constitutional provisions, but ⊥299 because many of its members were members of the Constitutional Convention. To that extent, we should give significant weight to their understanding of what the framers intended and we should not lightly

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[4] The Style Committee refers to "domicile" but it must have meant "resident," since that is the only word used in the draft it was editing. The reference to "domicile" is perhaps telling, showing that although the framers chose to use the word "resident," they were aware they were giving it a meaning akin to "domicile."

[5] At oral argument, Ngerul's counsel asserted that 23 PNC § 107(c), which sets guidelines for determining residency "for the purpose of national elections," applied only to voters, not candidates. We note, however, that there is a specific provision within that subsection that is directed at the establishment of residency for candidates for the purposes of placing their names on the ballot. *See* 23 PNC § 107(c)(7).

conclude that they acted in derogation of that intent. [6] Here, we find their understanding fully consistent with the intentions expressed at the Convention itself.

The facts presented to the Trial Division established that in June 1994, "Chin returned to Palau with his wife and son, moved in with his mother-in-law, enrolled his son in school, and had no other abode anywhere else in the world" until his assignment to Kwajalein two months later. On these undisputed facts, [7] we affirm the judgment of the Trial Division insofar as it found that Chin was a "resident" within the meaning of Article IX, Section 6(3), by no later than in 1994, and that the Election Commission properly found that Chin met the residency requirement in connection with the November 2000 election.

III.

The Trial Division also declared that Chin met the citizenship requirement set forth in Article IX, Section 6(1), of the Constitution. Ngerul argues on appeal that since he had abandoned this aspect of his challenge below, the court should not have reached this issue because there was no actual controversy between the parties in that regard. We agree.

As noted above, Ngerul originally sought Chin's disqualification on two bases: that he failed to meet the five-year residency requirement, and that he was not a citizen of Palau. At a hearing on February 6, however, Ngerul moved to dismiss Count I of his amended complaint, which asserted Chin's alleged lack of citizenship, and the court granted it. The court noted at the time, however, that Chin's counterclaim remained pending and on that basis reached the citizenship issue in its decision and judgment. [8]

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[6] *E.g., Skebong v. EQPB*, 8 ROP Intrm. 80, 84 (1999) (quoting *Wisconsin v. Pelican Ins. Co.*, 8 S. Ct. 1370, 1378 (1888) (stating that acts "passed by the first congress assembled under the constitution, many of whose members had taken part in framing that instrument . . . [are] contemporaneous and weighty evidence of its true meaning")); *see Myers v. United States*, 47 S. Ct. 21, 45 (1926) ("[A] contemporaneous legislative exposition of the Constitution, when the founders of our government and framers of our Constitution were actively participating in public affairs, acquiesced in for a long term of years, fixes the construction to be given its provisions.").

[7] In arguing that the Trial Division erred in granting summary judgment, Ngerul does not challenge any of its factual findings relating to Chin's biographical history. Instead, he urges that the Trial Division erred by failing to resolve the meaning of the Palauan version of the Constitution. Ngerul acknowledges that to the extent that there is any conflict between the two versions, "the English version shall prevail." Const. art XIII, § 2. Although in some cases, resort to the Palauan version of the Constitution may help clarify the intended meaning of an ambiguous English word, such resort is not useful here, where there is clear evidence of the framers' intent. Likewise, in view of our discussion above, we need not address Ngerul's arguments concerning the propriety of the Trial Division's reliance on certain affidavits and their attachments regarding the biographical history of certain members of the First OEK.

[8] It is true that Chin initially opposed the dismissal of Ngerul's claim, and it appears from the hearing transcript that he would have continued to do so had the trial judge not adverted to the continued pendency of his counterclaim. However, where, as here, the dismissal amounted to a dismissal with prejudice – both practically speaking and a matter of res judicata, Ngerul

⊥300 Both Rule 57 of our Rules of Civil Procedure and 14 PNC § 1001 provide that the court may grant a declaratory judgment "[i]n a case of actual controversy within its jurisdiction." *See, e.g., The Senate v. Nakamura,* 8 ROP Intrm. 190, 192-93 (2000). Although we have noted that our jurisdiction "may be broader than the jurisdiction of federal courts in the United States," *id.* at 193 n.3, we have also recognized that declaratory relief is most appropriate "where it will serve a useful purpose in clarifying the legal relations of the parties or terminate the uncertainty and controversy giving rise to the proceeding." *Id.* at 193. Here, although a justiciable controversy may exist regarding Chin's citizenship, once Ngerul's affirmative claim was dismissed, we do not believe there was an actual controversy between these parties. Ngerul's claim was brought against both Chin and the Election Commission and, as we said in our previous opinion, presented the "not unusual claim that a government agency [had] failed to act according to law." *Ngerul v. Chin*, Civil Appeal No. 00-44 at 3 (Jan. 17, 2001). By contrast, the Election Commission was not a party to Chin's counterclaim, nor did it bring any claims on its own behalf. To that extent, there was no real issue appropriate for judicial resolution between Chin and Ngerul, two private citizens, on the question of Chin's qualifications to be a member of the Senate. While it is not surprising that Chin brought a counterclaim against the person who sued him, it is highly unlikely that had Chin initiated judicial proceedings to establish his eligibility, he would have chosen Ngerul, a single voter, as the proper party from whom to seek relief.

In any event, once Ngerul had abandoned his claim that Chin failed to meet the citizenship requirement, it is clear that there was no longer any controversy between them on that subject. "It is not enough that there may have been a controversy when the action was commenced . . . if the opposing party disclaims the assertion of countervailing rights." 10A Charles A. Wright, et al., *Federal Practice and Procedure* § 2757, at pp. 613-14 (2d ed. 1983). Although Chin points to the fact that the prayers for relief contained in Ngerul's amended complaint included references to the citizenship issue, it is clear from the record that his motion for summary judgment sought no relief in that regard and that those references were merely the vestiges of his abandoned claim. In these circumstances, we believe that the citizenship issue should not have been addressed by the court below and therefore vacate the judgment to that extent.

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cannot seek any further relief with respect to Chin's eligibility for the Sixth OEK – the court below had no choice but to grant Ngerul's motion. *See* 8 C. Brieant, *Moore's Federal Practice* § 41.40[3], at p. 41-131 & n. 11 (3d ed. 1998) (citing cases for the proposition that "the court lacks discretion to deny a motion under Rule 41(a)(2) when the plaintiff requests that the dismissal be made with prejudice, because the defendant receives all the relief that could have been obtained after a full trial and is protected from future litigation by the doctrine of res judicata"). As the trial court itself noted, if a plaintiff no longer wishes to go forward with a claim, a defendant cannot insist that the claim be adjudicated.