

Federated States Development Bank v. Yap Shipping Cooperative

Supreme Court (Yap)
Benson A.J.
30 January 1987

Sovereign immunity – statute of limitations – whether time runs against sovereign as plaintiff in civil suit.

10 *Sovereign immunity – prerogative of crown – application of doctrine to republican forms of government.*

Sovereign immunity – nature of Trust Territory government – sovereignty rests in people of Micronesia.

The Yap Shipping Cooperative Association borrowed money from the Trust Territory of the Pacific Islands Economic Development Loan Fund in 1970. According to the note executed by the borrower, final payment of the note was to be made in 1975. In 1983, more than six years after the due date, the lender assigned the note to the plaintiff, who sued in 1984. The defendant seeks summary judgment
20 based on the running of the statute of limitations against the plaintiff's predecessor in interest.

HELD: Application for summary judgment refused. The Trust Territory of the Pacific Islands, which established no independent or separate corporation to administer the loan fund, is sovereign for the purposes of the statute of limitations. The Trust Territory, although not a sovereignty in the international sense, performs basic governmental functions and the doctrine and public policy behind sovereign immunity are applicable to the Trust Territory.

30 **OBSERVATION:** See also *Heinrich v. Nauru Phosphate Corporation*, *infra* at p. 167, where an instrumentality of the Republic of Nauru was defendant in a civil suit. Cabinet leave as a condition precedent before proceedings are commenced is required in the Republic of Nauru.

Cases referred to in judgment:

Guaranty Trust Co. of New York v. U.S., 304 U.S. 126, 58 S.Ct. 785, 82 L. Ed. 1224 (1938)

In re Ngiralois, 3 T.T.R. 303 (Pal. 1967)

People of Saipan v. U.S. Department of Interior 502 F. 2d 90 (9th Cir. 1974) cert. denied 420 U.S. 1003, 43 L. Ed. 2d 761, 95 S.Ct. 1445 (1975)

40 *Porter v. U.S.* 496 F. 2d 583 (Ct.Cl. 1974), cert. denied, 420 U.S. 1004, 43 L. Ed., 2d 761, 95 S.Ct. 1446 (1975)

Legislation referred to in judgment:

6 T.T.C. section 305 (Trust Territory)

48 U.S.C.S. sections 1688-1693 (Supp. 1980) (U.S.)

M. Robert for the plaintiff*T. Mitchell* for the defendant**BENSON A.J.****Judgment:**

50 This matter came before the Court on the motions of the defendant Yap Cooperative Association for an order granting summary judgment and for an order dismissing the action. Both motions assert that the statute of limitations has run against the claim of the plaintiff.

The issue presented is whether or not the statute of limitations runs against the Trust Territory of the Pacific Islands Economic Development Loan Fund, the assignor of the plaintiff. It is an issue of first impression in this Court and in the High Court of the Trust Territory of the Pacific Islands.

I conclude that the statute does not run, and the motions are accordingly denied.

60 The complaint asks for judgment against the defendant for the balance owed on a promissory note. According to the complaint, the note was executed 6 January 1970 by Yap Shipping Cooperative Association in favour of the Trust Territory of the Pacific Islands Economic Development Loan Fund. The complaint alleges that Yap Cooperative Association, the moving party, guaranteed payment of the note.

The maker has made no payments since 17 October 1972. The note called for monthly instalment payments. The final payment on the note, had it been paid according to its terms, was due 6 November 1975. (This latter calculation was offered by the defendant and was not disputed.) On 2 January 1983 the note was assigned to the plaintiff. On 21 November 1984 the complaint was filed.

70 The parties agree that, if applicable, the statute of limitations should bar the action after six years. 6 T.T.C. section 305. The dates set out in the preceding paragraph show that if the statute runs against the Trust Territory of the Pacific Islands Economic Development Loan Fund the entire period would have run before the assignment in 1983.

The general rule is that statutes of limitations do not run against the sovereign. 51 Am. Jur. 2d *Limitation of Actions* section 409 (1970). The policy behind the rule is that the public interest should not be prejudiced by the negligence of public officials. *Guaranty Trust Co. of New York v. U.S.* 304 U.S. 126, 58 S.Ct. 785, 82 L. Ed., 1224, 1228 (1938).

80 The question to be decided is whether the Trust Territory of the Pacific Islands is the sovereign. The exemption of the sovereign from the operation of the statute of limitations was derived from the prerogative of the crown. However, the doctrine and the public policy behind it have survived monarchies and are applicable to other forms of government. *Guaranty Trust Co.*, 82 L. Ed. at 1228. I conclude that the Trust Territory of the Pacific Islands is entitled to the protection afforded by the policy. It is a "political entity possessing many of the attributes of an independent nation." *People of Saipan v. United States Department of Interior*, 502 F. 2d 90, 100 (9th Cir. 1974), cert. denied, 420 U.S. 1003 43 L. Ed. 2d 761, 95 S.Ct. 1445 (1975). "[T]he daily administration of the islands has largely shifted into the hands of the

90 local government. The Territory operates under its own comprehensive legal code. Inhabitants of the islands are citizens of the Territory. . . ." *Porter v. United States*, 496 F. 2d 583, 588 (Ct. Cl. 1974), *cert denied*, 420 U.S. 1004 43 L. Ed. 2d 761, 95 S.Ct. 1446 (1975). "Though by no means a settled point, the most persuasive view on this question is that sovereignty rests in the people of Micronesia and is held in trust for them by the administering power." *Id.* at 588 n. 4; see also *In re Ngralois*, 3 T.T.R. 303, 308, 309 (Pal. 1967) in which the High Court Trial Division held that although the Trust Territory of the Pacific Islands was not recognized as sovereign in the international sense, it was like a sovereign in regard to certain matters, and did therefore have the power of eminent domain.

100 The "basic constitutional document" of the Trust Territory is the Trusteeship Agreement. *People of Saipan*, 502 F. 2d at 98. That document imposes a primary obligation upon the administering authority to "promote the economic advancement and self-sufficiency of the inhabitants" of the Trust Territory. Trusteeship Agreement Article 6(2).

This obligation was to be met in part through the Economic Development Loan Fund, a programme established by the United States Congress. Congress appropriated the funds, and set forth the purposes of the Fund and the manner of its administration. 48 U.S.C.S. sections 1688-1693 (Supp. 1980). The Trust Territory received the funds through a grant from the Secretary of the Interior. The Trust Territory of the Pacific Islands established no special body, corporation or agency to
110 administer the Economic Development Loan Fund.

I conclude that the Trust Territory of the Pacific Islands is sovereign for purposes of the statute of limitations, that it was performing a basic governmental function and fulfilling part of its obligation of economic advancement in administering the Economic Development Loan Fund, and that the statute does not run.

The motions for summary judgment and for dismissal are therefore denied.
So ordered this 30th day of January 1987.

Reported by: D.V.W.