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FILED

JAN 10 2018


ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,)	CIVIL ACTION NO. 2016-121
)	
Plaintiff,)	
)	
vs.)	
)	NOTICE OF APPEAL; EXHIBITS "A" -
ROBSON YASIWO ALMEN and LADIE)	"B"; CERTIFICATE OF SERVICE
JACK,)	
)	
Defendants.)	

samuel notice of appeal holdover case		

NOTICE OF APPEAL

Notice is hereby given by Plaintiff MUDGE SAMUEL, pursuant to Rule 3 and 4 of the Supreme Court Rules of Procedure, Republic of the Marshall Islands, that he appeals the Order filed 14 December 2017, denying Plaintiff's Motion for Summary Judgment and Dismissing this matter; and the Order filed on 09 January 2018, denying Plaintiff's Motion For Reconsideration, issued by the Honorable COLIN R. WINCHESTER, true and correct copies of which are attached hereto as Exhibits "A" - "B".

The issues on appeal are as follows:

1. Whether High Court Associate Justice Colin R. Winchester committed error in denying Plaintiffs' Motion For Summary Judgment and dismissing these entire proceedings on

SAMUEL V. ALMEN, ET AL., CA NO.2016-121, RMI HIGH COURT; NOTICE OF APPEAL

the basis that the Court erroneously interpreted the word “certified” as that term is used in Section 8(1) of the Majuro Atoll Local Government Constitution, literally; which interpretation includes “premature” certifications, even though illegally issued under the RMI Elections and Referenda Act 1980. See Order of 14 December 2017 attached hereto as Exhibit “A”.

2. Whether High Court Associate Justice Colin R. Winchester committed error in dismissing the action in the Order of 14 December 2017, when there were still pending constitutional issues to be resolved;

3. Whether High Court Associate Justice Colin R. Winchester committed error in denying Plaintiff’s Motion For Reconsideration in the Court’s Order of 09 January 2018, a copy of which is attached hereto as Exhibit “B”.

DATED: Honolulu, Hawai’i, 09 January 2018.



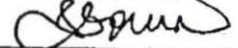
ROY T. CHIKAMOTO

Counsel for Plaintiffs-Appellants

EXHIBIT "A"

FILED

DEC 14 2017



ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

<p>MUDGE SAMUEL, Plaintiff, v. ROBSON YASIWO ALMEN and LADIE JACK, Defendants.</p>	<p>CIVIL ACTION 2016-121</p> <p>ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT</p> <p>ORDER GRANTING DEFENDANT ALMEN'S MOTION FOR DISMISSAL</p> <p>ORDER DENYING DEFENDANT JACK'S MOTION TO VACATE</p>
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Roy Chikamoto, counsel for plaintiff
Filimon Manoni, counsel for defendant Almen
Alonso Elbon, counsel for defendant Jack

This matter came before the Court for oral arguments on plaintiff's motion for summary judgment and defendant Almen's motion for abatement or dismissal on November 7, 2017.

Plaintiff ("Samuel") was not present but was represented by counsel Roy Chikamoto. Defendant Almen ("CEO") was not present but was represented by counsel Filimon Manoni. Defendant Jack ("Jack") was not present, and his counsel, Alonso Elbon, was absent due to an ongoing TRC trial on Mejit Island. Elbon did not file a motion to continue the hearing, and I determined to proceed with the hearing in his absence. Messrs. Chikamoto and Manoni argued their respective positions, and I took the motions under advisement. Upon his return from Mejit Island, Mr. Elbon filed a motion to vacate the "fruits" of the November 7 hearing.

INTRODUCTION

Samuel is entitled to summary judgment if he shows that there is no genuine dispute as to any material fact and that he is entitled to judgment as a matter of law. Here, there are no disputed material facts. However, Samuel is not entitled to judgment as a matter of law. In fact, the law is contrary to Samuel's position and supports CEO's position. I therefore deny Samuel's motion for summary judgment and grant CEO's motion to dismiss.¹ As a result, Jack's motion to vacate is moot, and I therefore deny it.

UNDISPUTED MATERIAL FACTS

1. Prior to the November 2015 election, Samuel was the duly elected mayor of Majuro Atoll Local Government ("MALGOV").
2. Jack ran as a candidate for MALGOV mayor in the 2015 election.
3. At all times relevant hereto, CEO was the chief electoral officer.
4. The election was held on November 16, 2015.
5. On November 26, 2015, Samuel submitted an informal re-count petition to CEO.
6. On December 4, 2015, CEO announced the unofficial election results.
7. On December 10, 2015, CEO rejected Samuel's informal re-count petition.
8. On December 14, 2015, Samuel filed a formal re-count petition.

¹ CEO's motion requested abatement *or* dismissal.

9. On December 17, 2015, Samuel filed a High Court action (Case No. 2015-233), in which he appealed CEO's rejection of the informal re-count petition and sought to prevent CEO from certifying² the election results.

10. On December 18, 2015, Samuel filed a second High Court action (Case No. 2015-234), in which he sought to prevent CEO from certifying the election results, to have the election declared void, and to require a new election.

11. On December 19, 2015, CEO certified the election results.

12. On December 21, 2015, Chief Justice Ingram declined to issue injunctive relief to prohibit CEO from certifying the election results.³

13. On December 22, 2015, Chief Justice Ingram administered the oath of office to Jack.

14. From December 2015 through today, Jack has been serving as the MALGOV mayor.

15. On June 16, 2016, Samuel filed this High Court action (Case No. 2016-121), in which he seeks to decertify the election results, seeks to remove Jack from office, seeks to have himself installed as "holdover" mayor, and seeks other relief.

² The MALGOV constitution states that the term of mayor commences on the day after the election is "certified." Section 185 of the Elections and Referenda Act ("ERA") does not reference certification, but rather, requires the CEO to "publicly announce" the official election results. I conclude that the CEO's public announcement of the official election results is in fact the certification required by the MALGOV constitution. In this order, I use the verb "certify" and the noun "certification" for brevity and because those are the terms employed by counsel.

³ The Chief Justice was apparently unaware that the CEO had already certified the election results.

16. On February 13, 2017, Chief Justice Ingram remanded Case No. 2015-233 to CEO for a decision on Samuel's formal re-count petition.
17. On February 15, 2017, CEO rejected Samuel's formal re-count petition.
18. On February 17, 2017, Samuel filed the current motion for summary judgment.
19. On March 31, 2017, CEO filed an opposition to Samuel's motion for summary judgment. Within his opposition, CEO included a counter-motion for abatement or dismissal of this action.⁴
20. It does not appear that CEO, after rejecting Samuel's formal re-count petition on February 15, 2017, again certified the election results.

ANALYSIS

Samuel argues that CEO's December 19, 2015 certification of the election results is invalid because it occurred while the formal re-count petition was pending (in violation of 2 MIRC §185(2)), and that consequently, Jack improperly occupies the office of MALGOV mayor and Samuel remains the proper office holder.

Despite the tens of thousands of words employed by Samuel in this and his other High Court actions, the issue before the court is admittedly extremely simple. Not surprisingly, the resolution of the issue is equally simple.

⁴ Placing a motion within an opposition to another motion is at best discouraged and at worst improper. No doubt, one reason is that the motion may go unnoticed. That is what happened here for several months.

Section 8(1) of the MALGOV constitution states:

The term of office of [mayor] is 4 years - and (a) commences on the day after the day on which his election or appointment is certified.

In effect, Samuel asks me to interpret Section 8(1) as follows:

The term of office of [mayor] is 4 years - and (a) commences on the day after the day on which his election or appointment is *not prematurely* certified.

Samuel bases his request on the rule of statutory construction that a court should interpret statutory provisions in such a manner as to avoid an unreasonable or absurd result.

But there is a superior rule of statutory construction, i.e., where the law is unambiguous, the court should not interpret the law, but rather apply the law as written. This “preeminent canon of statutory interpretation requires [courts] to presume that the legislature says in a statute what it means and means in a statute what it says there. Thus, statutory interpretation begins with the statutory text. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, judicial inquiry must cease.” *Kekka v. Kabua*, 3 MILR 167, 171 (2013), citations omitted.

The “preeminent” rule also applies to constitutional interpretation. “[U]nder no circumstances may the Constitution be interpreted to contain language or provisions that it does not contain.” *Niedenthal v. Almen*, RMI High Court Case No. 2014-263, Order Granting Summary Judgment (February 25, 2015).

These principles have been applied to other mayoral election provisions in the MALGOV constitution. In *In the Matter of the Vacancy of the Mayoral Seat*, 3 MILR 114, 117 (2009), the RMI Supreme Court stated, “In examining constitutional provisions, the [court’s] task is to give effect to the clear, explicit, unambiguous, and ordinary meaning of language; if the language of the provision is unambiguous, it must be given its literal meaning and there is neither the opportunity nor the responsibility to engage in creative construction.” The Court also stated that “[t]he duty and function of a court is to construe, not to rewrite a constitution,” citing *State ex rel. Randolph County v. Walton*, 206 S.W.2d 979, 982 (Mo. 1947). *Id.* at 120.

Section 8(1) of the MALGOV constitution is clear and unambiguous. It states that the term of office of the mayor “commences on the day after the day on which his election ... is certified.” Because Section 8(1) is clear and unambiguous, I cannot interpret it or rewrite it as Samuel would have me do.

Jack became the mayor on December 20, 2015, the day after CEO prematurely certified the election results.

CONCLUSION


Because Section 8(1) of the MALGOV constitution is contrary to Samuel’s position, and because I am not allowed to re-write it, Samuel is not entitled to judgment as a matter of law. And pursuant to Section 8(1) of the MALGOV constitution, defendants are entitled to judgment as a matter of law. Finally, the dismissal of this action moots Jack’s motion to vacate the fruits of the November 7 hearing.

ORDERS

1. Samuel's motion for summary judgment is denied.
2. CEO's motion to dismiss is granted.
3. Jack's motion to vacate the fruits of the November 7 hearing is denied.

DATED this 14th day of December, 2017.

BY THE COURT:



COLIN R. WINCHESTER
Associate Justice

EXHIBIT "B"

FILED

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

JAN 09 2018


ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL, Plaintiff, v. ROBSON YASIWO ALMEN and LADIE JACK, Defendants.	CIVIL ACTION 2016-121 ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION
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Roy Chikamoto, counsel for plaintiff
Filimon Manoni, counsel for defendant Almen
Alonso Elbon, counsel for defendant Jack

INTRODUCTION

On December 14, 2017, I issued an order that: (1) denied plaintiff Samuel's motion for summary judgment; (2) granted defendant Almen's ("CEO's") motion for dismissal; and (3) denied defendant Jack's motion to vacate.

Samuel filed a motion for reconsideration, CEO and Jack filed independent oppositions, and Samuel filed a reply. I have thoroughly reviewed those documents, have reviewed my December 14 order, and have conducted additional legal research. In doing so, I have in fact reconsidered my December 14 order. Having done so, however, I decline to change it, and therefore deny Samuel's motion for reconsideration.

Samuel does not ask me to reconsider or change the facts set forth in my December 14 order. He simply asks me to change my decisions. The arguments he raises now have been previously raised and previously rejected.

I remain convinced that the RMI Supreme Court's decisions in *Lekka v. Kabua* and *In the Matter of the Vacancy of the Mayoral Seat* control my December 14 decisions. I cannot add words to a constitutional provision that is plain and unambiguous, and neither Samuel's reliance on dictum from the RMI Supreme Court's opinion in *Dribo v. Bondrik* nor any other authority cited by Samuel alters my conviction.

I have intentionally chosen to issue this order in summary format because Samuel's deadline for filing an appeal of my December 14 order is looming, and at least one court has held that the filing of a post-final-judgment motion for reconsideration does not toll the time period for filing an appeal. See *Gillett v. Price*, 135 P.3d 861 (Utah 2006). That issue does not appear to have been addressed by the RMI Supreme Court.

ORDER

1. Samuel's motion for reconsideration is denied.

DATED this 9th day of January, 2018.

BY THE COURT:



COLIN R. WINCHESTER
Associate Justice

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ROBSON YASIWO ALMEN and LADIE)	
JACK,)	
)	
Defendants.)	

samuel notice of appeal holdover case		

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a file stamped copy of the Plaintiff-Appellant's Notice of Appeal; Exhibits "A" and "B"; and Certificate of Service, was electronically served upon the following at their email addresses of record:

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DATED: Honolulu, Hawai'i, 09 January 2018.

ROY T. CHIKAMOTO
Attorney for Plaintiff