

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

AUG 06 2008


DEPUTY CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

ROYAL MARSHALL CORP.,)	CIVIL ACTION NO. 2008-108
)	
plaintiff,)	
)	
v.)	
)	ORDER DENYING REQUEST FOR A
THE ASSEMBLY OF GOD CHURCH, et)	PRELIMINARY INJUNCTION
al,)	
)	
defendants.)	
)	

TO: John Masek, counsel for the plaintiff
 Ruben R. Zackhras, counsel for the defendants

REQUEST FOR TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION

On May 5, 2008, plaintiff’s counsel filed with the court the plaintiff’s complaint (“Complaint”) with a supporting affidavit from the plaintiff’s owner, Robbie Chutaro. At the same time, plaintiff’s counsel filed an ex parte motion and supporting affidavit for a temporary restraining order to restrain and enjoin the named defendants “from trespassing, committing waste or building a fence through Plaintiff’s property.” The plaintiff claims that it is the lessee of a portion of Lomar Weto, Delap Island, Majuro Atoll, extending from the northern end of defendant Assembly of God Church (“AOG”)’s lagoon sea wall east to the main road and north. The defendants claim that the AOG has a valid lease for the disputed land, and the AOG has commenced constructing a concrete-block fence on what it claims is its northern boarder running from the lagoon to the main road.

On motion by the defendants for an extension of time and with the defendants’ representation not to engage in further construction, Associate Justice Plasman continued the matter until July 14, 2008, at 10:00 a.m., to be heard by the undersigned. Upon stipulation by

counsel, the Court rescheduled the hearing on plaintiff's motion to July 25, 2008, and then to August 5, 2008.¹

APPLICABLE LAW

In considering motions for interlocutory injunctions, the High Court in the past has applied the standard set forth in Madrainglai v. Emesiochel, 6 TTR 440, 447 (Tr. Div. 1974):

that the court must consider 'the relative importance of the rights asserted, the acts sought to be enjoined, the irreparable nature of the injury allegedly flowing from the denial of preliminary relief, probability of ultimate success or failure of the suit, and balancing of damages and conveniences generally.' (internal citations omitted.)

In cases where the public interest is involved, the court must also examine whether the public interest favors the plaintiff. Fund for Animals, Inc. v. Lujan, 962 F.2d 1391, 1400 (9th Cir. 1992); Caribbean Marine Servs., Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

APPLICATION OF THE LAW

With respect to the first criterion – the relative importance of the rights asserted – the Court recognizes that the rights asserted by the plaintiff and the defendants, land rights, are extremely important ones. Loko and Kabua v. Kramer, et al., 2 MILR 89, 91 (RMI S.Ct. 1997). However, because the rights the parties seek to enforce, the rights of a lessee, are the same, the plaintiff has not established that relative to defendants' rights, the plaintiff's rights are more important. This factor does not weight in favor of granting the injunction.

With respect to the second criterion – the acts sought to be enjoined – it is undisputable that in appropriate cases the Court has the authority to enjoin construction on land. However, this factor is not determinative.

With respect to the third criterion – the irreparable nature of injury allegedly flowing from

¹Because the defendants have received notice and an opportunity to be heard on the motion, the Court shall treat the motion as one for a preliminary injunction.

the denial of preliminary relief – the plaintiff has failed to establish that it will be irreparable harmed if the Court does not issue the injunction. That is, the plaintiff has failed to establish that it has or will suffer any harm that the Court cannot later remedy in a judgment on the merits. This factor weighs against an injunction. The plaintiff claims that the AOG’s concrete block fence is on the plaintiff’s leasehold and stops it from pursuing the construction of a commercial building and rental apartments. The plaintiff, however, has no plans and specifications for such construction, does not appear to have taken any steps to prepare the site or to purchase materials, and admits that its potential loss is, at this time, speculative. Moreover, it appears from counsel’s argument that the plaintiff’s sole shareholder, Robbie Chutaro, has rights to sufficient land immediately to the north of the disputed parcel he could use for the proposed project. Finally, the plaintiff did not establish that money damages would not provide adequate relief, if the plaintiff prevails, or that the AOG could not pay money damages.

The fourth criterion – the probability of ultimate success or failure of the suit – also does not support issuance of an interlocutory injunction. The plaintiff has failed to establish “a strong likelihood or ‘reasonable certainty’ that [it] will prevail on the merits at a final hearing.” Guerrero v. Johnson, 6 TTR 124, 130 (Tr. Div. 1972). This is true for at least three reasons.

First, the lease upon which the plaintiff bases its rights, Exhibit A to the Complaint, does not include a description of the land to be leased! As the plaintiff’s counsel admits the lease, as it now stands, is not valid.

Second, the plaintiff argues that a survey permit attached to Exhibit A and the plaintiff’s Exhibit C, a confirmation from Leroij Atama Zedkeia, establish that the plaintiff has lease rights to the disputed portion of Lomar Weto. However, the survey permit states that the subject land is between Eletutu Weto on the north and Lomar Weto on the south, i.e., Mokeo Weto, the weto in between the other two (see Complaint, Exhibit B). Also, in Exhibit C, Leroij Zedkeia states the

subject land is on Mokeo Weto, not Lomar Weto. At best, the plaintiff's exhibits are ambiguous describing the plaintiff's leasehold as commencing from the northern end of the AOG's sea wall.

Third, the plaintiff's lease has not been executed by the applicable iroijedrik. Leases the AOG attached to its answer and plaintiff's Exhibit B all indicate that there is an iroijedrik for Lomar Weto. Without the signature of the iroijedrik, the lease is void. See Const., Art. XI, Sec. 1(2).

With respect to the fifth criterion – the balancing of damages and conveniences – the Court finds that the balance does not favor granting an interlocutory injunction. The defendants are in the middle of their construction project, and the plaintiff's project is still in the idea stage.

The sixth criterion – the benefit or harm to the public interest – does not require the Court grant an interlocutory injunction. As noted above, both parties claim lease rights. The enforcement of such contract rights is very important to the development of the country, and so the public interest. However, neither party has an advantage over the other in this regard.

CONCLUSION

For these reasons, and all of them, the Court **DENIES** the plaintiff's motion for an interlocutory injunction.

Date: August 6, 2008.

A handwritten signature in black ink, appearing to read 'C. Ingram', written over a horizontal line.

Carl B. Ingram
Chief Justice