took to write the allegedly libelous articles and to provide for their circulation here.

"There has been a 'movement away from the bias favoring the defendant,' in matters of personal jurisdiction 'toward permitting the plaintiff to insist that the defendant come to him' when there is a sufficient basis for doing so."

Buckley v. New York Post Corp., 373 F.2d 175 (1967). Buckley dealt with an action for libel, brought in New Jersey, against a New York corporation, for alleged libelous matter published in New York. Circulation of the Micronitor in this district provides a "sufficient basis" for permitting venue to be laid here. A liberal use of discovery procedures can, of course, minimize the inconvenience to either party.

Adoption of the Uniform Single Publications Act (P.L. 4C-20), 6 TTC Ch. 19, does not determine the question of venue, its primary purpose being to avoid multiplicity of actions. See *Firstamerica Corp. v. Daytona Beach N-J Corp.* 196 So.2d 97 (Fla.), 15 A.L.R.3d 1238 at 1247. To the same effect, see *Buckley v. New York Post Corp.*, supra, at page 179.

Accordingly I find venue to be properly laid in this District. Defendants motion is therefore denied.

WILLIAM ROBERT HAMRICK, Plaintiff

v.

RODDY MARIE HAMRICK, Defendant

Civil Action No. 36-73

Trial Division of the High Court

Mariana Islands District

June 19, 1973

Divorce action by husband, who had been in the territory eight months, against wife, who resided in Guam. The Trial Division of the High Court,

Harold W. Burnett, Chief Justice, held the court did not have jurisdiction where statute required two years' residence, and that the statute did not deny equal protection.

1. **Domestic Relations—Divorce—Jurisdiction**

   To grant a divorce, a court must have jurisdiction over the res, or marriage, which follows the domicile of the spouses. (39 TTC § 202)

2. **Residence—Domicile**

   In general, residency can be viewed as a manifestation of domicile.

3. **Statutes—Validity—Tests**

   A court should be reluctant to invalidate a legislative act unless it is clear that the act is in violation of the legislative body's power; and when an act is valid on its face, it is not fitting to impute unacceptable motives to the legislature in the absence of evidence of such.

4. **Domestic Relations—Divorce—Jurisdiction**

   Where statute required two years' residence to file for divorce, it was not within court's discretion to violate it in favor of husband suing wife, a Guam domiciliary, for divorce even though he had been in the Trust Territory for only eight months, merely because wife did not contest the action and even requested the entry of a default against her and the decision would thus not be subject to collateral attack. (39 TTC § 202)

5. **Constitutional Law—Residency Requirements—Divorce**

   The Trust Territory is not a state of the United States and for many purposes is considered a foreign state or territory under United States administration; and its citizens are not citizens of the United States; thus, while the territory must insure equal protection and freedom of migration within the territory under the TTC, it is under no obligation to insure to non-citizens the right to immigrate at will, and residency requirement of two years to file for divorce could not be attacked as a denial of the rights to travel and equal protection. (39 TTC § 202)

BURNETT, *Chief Justice*

This is a divorce action. Plaintiff husband has now resided in Saipan for somewhat more than eight months. Defendant wife resides on Guam. She has accepted service and does not contest the action. In fact, she has requested that the case be determined by default against herself. Both parties have already entered into a settlement agreement.

The problem presented is whether this court has jurisdiction over this matter, since the plaintiff has not fulfilled the residency requirements of 39 TTC § 202, which states that "No divorce shall be granted unless one of the parties shall have resided in the Trust Territory for two years next preceding the filing of the complaint."

Plaintiff relies in part upon the case of *Yang v. Yang*, 5 T.T.R. 427 (1971), in which the Trial Division of the High Court, Ponape District, declared 39 TTC § 202 invalid as a denial of equal protection.

[1, 2] In order for a court to have the power to grant a divorce, it must have jurisdiction over the res, or marriage status, and that res follows the domicile of the spouses. 24 Am. Jur., Divorce and Separation, § 246. In 1945, the Supreme Court recognized domicile as a necessary requirement for jurisdiction. *Williams v. North Carolina*, 65 S.Ct. 1092 (1945), a case which has been extensively cited since that time in state court decisions. In general, residency can be viewed as a manifestation of domicile, and almost every state has some residency requirement.

In striking down the statute in question, the Ponape Court relied extensively upon *Whitehead v. Whitehead*, 38 L.W. 2577 (Hawaii Family Ct. 3rd Cir. (1970)), which in turn relied upon *Shapiro v. Thompson*, 394 U.S. 618 (1969).

In *Shapiro*, state statutes required a residency of one year to qualify for welfare benefits. The court noted that the laws created two classes of people, indistinguishable, except for residency, and that they resulted in a classification amounting to invidious discrimination. In order to preserve the classifications, the states were required to show compelling governmental interests.

One of the purposes asserted by the states was to discourage an influx of needy people. Such a purpose was

:uled impermissible, infringing upon the right to travel.

At P. 1331, the court rejected the argument that a mere showing of a rational relationship between the waiting period and other permissible objectives was all that was required, declaring that a classification restricting interstate movement required a compelling government interest.

In *Whitehead*, the Hawaii court applied the *Shapiro* case to Hawaii's one year residency requirement for divorce and concluded that the requirement served no compelling state interest but created two classes of people one of which could acquire a divorce and one of which could not, thus denying the latter equal protection of the law. The court believed that a compelling state interest was required because the right to travel was affected. In fact, the court saw no *reasonable* relation to a legitimate governmental objective. This case, upon which the Ponape court relied, was reversed by the Hawaii Supreme Court in *Whitehead v. Whitehead*, 40 L.W. 2493 (January 19, 1971). The second *Whitehead* opinion opted for the reasonable relation test and declared that residency requirements are a means of insuring a good faith intention to remain; in other words, a way of determining that a "domicile" and, hence, jurisdiction exists. The court admitted that no particular length of residence is required, but "the states are justified in requiring an objective test of the establishment of domicile, such as is provided in the residential requirement for divorce, because of the possibility of perjury if the finding on that issue is made dependent upon the testimony of an interested party." In other words, the court was saying that if the residency requirement were done away with, "domicile" must be determined separately in each case and would hinge on such things as the intent of the parties. The court avoided the "compelling state interest" requirement by distinguishing the case from *Shapiro*. First, it noted that the statutes in *Shapiro* were specifically de-

signed to exclude indigents from the jurisdictions imposing the restrictions. Second, the relief which was denied involved basic necessities of life. Third, the efficacy of the requirement in accomplishing its goals (exclusion from the state) was great. The Hawaii court considered the convergence of these factors as constituting a substantial interference with the right to travel. In contrast, the divorce requirements were not designed to exclude people requiring divorce from the state, but to ensure domicile. The relief denied (divorce) is not of the nature of an urgent necessity of life which cannot be delayed, and, the court declares, the "probability of a residency requirement deterring interstate travel is too remote to render it invalid." Without commenting upon the third contention, we agree that in the other respects, *Shapiro* is distinguishable from the situation at hand.

In a late 1972 case, the Ohio Supreme Court also rejected the *Shapiro* decision as restricting a state's right to impose residency requirements for divorces. *Coleman v. Coleman*, 41 L.W. 2340 (12/15/72). The Court declared that "the privilege of obtaining a divorce is not a basic need." It went on to declare that the state did, indeed, have a compelling interest in that it must see that divorces are not granted to non-residents over whom it has no jurisdiction. It also, like Hawaii, declares that the law was not designed to prevent people seeking divorces from entering the state, while it "does provide for a reasonable deferral of application for divorce, thus encouraging a new examination of the marriage to see if the move has resolved the differences." It should be pointed out, however, that the Ohio law excepts from the one year requirement actions for alimony alone, thus providing for any immediate basic needs.

In support of his position, plaintiff cites *Alves v. Alves*, 38 L.W. 2487 (D.C.Ct.App. (2/17/70)), a case in which an alien had resided in Washington for one year with a

"floating intention" to return to his homeland in the event he became unemployed. The court accepted his domicile as being in Washington and proceeded to accept jurisdiction. The case, however, is not in point. The wife had attacked the husband's legal capacity to become a domiciliary and contended he was required to become a "permanent" resident under U.S. standards (as opposed to the District of Columbia). Those were the only questions decided. There was no consideration of whether or not the legislature could mandate a residency requirement as a means of proving domicile.

[3] More to the point, plaintiff also cites *Wymelenberg v. Syman*, 328 F.Supp. 1353 (E.D. Wis. June 1971). In that case, decided before *Coleman*, a federal court did rule unconstitutional a Wisconsin statute requiring two years of residency before filing for divorce. That court also relied upon *Shapiro*, which we do not feel specifically applicable in the present case, especially since one of the purposes of the Wisconsin act was actually to prevent those with marital problems from entering the state. That was clearly an impermissible objective and, as such, clearly violative of the right to travel. In this respect, *Wymelenberg* is in accord with *Shapiro*, which involved a statute designed to prevent indigents from traveling. However, neither Hawaii nor Ohio claimed such an impermissible objective, and there is no evidence to indicate that the Trust Territory intended such a purpose. A court should be reluctant to invalidate an act of the lawmaking body unless it is clear that the act in question is a violation of that body's power. When an act is valid on its face, it is not fitting to impute unacceptable motives to the legislature in the absence of any such evidence. Almost every state in the United States has passed a residency requirement of some kind for divorce. Am. Jur. 2d. Desk Book, Doc. 125, Supp. 1971. In

only one jurisdiction has such a requirement been struck down, and there the legislature specifically claimed an impermissible objective.

The Trust Territory has an interest in seeing that divorces are not granted to non-residents over whom it has no jurisdiction. A residency requirement is a rational, objective test to indicate that a person intends to domicile within the territory. Without it, the courts would be forced to determine in each case what the intentions of the parties are. The present case indicates the difficulties that could arise, as the original filing claimed a residency in the Trust Territory of only "more than three months." Moreover, the two year requirement has special logic in the Trust Territory as large numbers of American citizens come here on contract with the government, and two years is the common term of these contracts. The Congress may well have felt that only those who chose to remain beyond that term had an intent to domicile.

[4] Plaintiff also points out that even if the court granted the decree in violation of 39 TTC § 202, it could only be attacked by motion or appeal. It is not within the scope of our discretion to violate an act of Congress merely because our decision is not subject to collateral attack.

[5] There is a further important circumstance which should be considered. The foregoing discussion and cases have centered around equal protection as it relates to a denial of the right to interstate travel. The Trust Territory is not a state of the United States. For many purposes it is considered a foreign state or a foreign territory under the administration of the United States. Its citizens are not citizens of the United States. Thus, while it must insure equal protection (1 TTC § 4) and freedom of migration and movement *within* the Trust Territory (1 TTC § 8), it is under no obligation to insure to non-citizens the right to

immigrate at will. There has been no showing that the statute in any way inhibits free movement from one district to another.

The Court finds that 39 TTC § 202 is not a denial of equal protection and that the Court has no jurisdiction over this action.

Motion for decree denied.

BRIKUL NGIRUCHELBAD, Plaintiff

v.

MOSES NGIRASEWEI, Defendant

Civil Action No. 594

Trial Division of the High Court

Palau District

June 22, 1973

Claim for balance claimed due on oral contract to build house. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where plaintiff claimed $11,000 was agreed on as the maximum cost and defendant claimed it was $6,000, and there was no other evidence, contract could be found unenforceable for ambiguity or for mutual mistake, and that under the circumstances plaintiff could be allowed either the value of the improvements or the cost of labor and materials, and would be allowed the latter.

1. **Contracts—Oral Contracts—Proof**

   In action for balance due on oral contract to build house, where plaintiff testified the cost of labor and materials was not to go over $11,000, and defendant testified the limit was $6,000, the evidence was at a stalemate, that being all there was, and plaintiff failed in his burden of proving his claim by a preponderance of the evidence.

2. **Contracts—Terms—Clarity**

   Before there can be a contract, the terms must be definite and understood, so that they can be agreed on.

3. **Contracts—Terms—Mutual Agreement**

   When one party to a contract reasonably means one thing, and the other reasonably understands differently, there is no contract; the parties have said different things.