

**UNITED MICRONESIAN DEVELOPMENT ASSOCIATION,
Plaintiff-Appellee**

v.

**NEW HAMPSHIRE FIRE INSURANCE COMPANY,
Defendant-Appellant**

Civil Appeal No. 344

Appellate Division of the High Court

Northern Mariana Islands District

January 6, 1982

Appeal from a jury verdict for plaintiffs. The Appellate Division of the High Court, Gianotti, Associate Justice, held that in each of five grounds of appeal raised, the issue was a matter of the trial court's discretion and the trial court did not abuse such discretion, and therefore the judgment was affirmed.

1. Appeal and Error—Prejudicial Error

Comments made in chambers by a trial court judge to counsel is generally not a sufficient ground for mistrial.

2. Appeal and Error—Prejudicial Error

Statement by presiding judge, at a conference in chambers with counsel present, that he felt the verdict would not be in favor of the defendant, was not a sufficient ground for a mistrial.

3. Trial—Instructions

In many instances improper remarks of counsel, in the opening statement, during the trial, or in the concluding argument, may be cured by an instruction to the jury.

4. Appeal and Error—Prejudicial Error

Certain possibly improper statements made by defense counsel during closing argument, referring to witnesses as "slick" and "ping pong," were not a valid basis for setting aside the verdict, where the trial court sustained defendant's objection to the use of the statements and made a curative instruction to the jury.

5. Jury—Special Questions

The submission of specific questions to the jury at the close of trial is within the discretion of the trial court.

6. Jury—Sequestration

Generally, a mere violation of a sequestration order does not compel the trial court to declare a mistrial.

7. Jury—Deliberations

The general rule is that the haste or shortness of time taken by a jury in arriving at its verdict has no effect upon the validity of the verdict.

8. Appeal and Error—Affirmance—Grounds

Contention of defendant on appeal that each of five grounds of appeal in itself would not justify a mistrial, but all of them accumulated are a basis for error, was without merit, where each of the individual grounds for appeal were without foundation.

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Before NAKAMURA, *Associate Justice*, GIANOTTI, *As-
sociate Justice*

GIANOTTI, *Associate Justice*

This is an appeal from a verdict rendered November 13, 1978, and a judgment the same day in favor of the plaintiff-appellee, United Micronesian Development Association, against New Hampshire Fire Insurance Company, defendant-appellant.

There are approximately five grounds for appeal raised by appellant, none of which raises any particular involved legal issue; however, as appellant stated in his opening brief, on page 2:

This case is unique in that, among other considerations, it was the first civil jury trial ever had in the High Court of the Trust Territory of the Pacific Islands in the Northern Marianas.

For this reason, we think it necessary to discuss the particular grounds of appeal in light of the present tendencies of the new political entities now formed in Micronesia to allow jury trials under certain circumstances.

The appellant's primary argument appears to have been that none of the separate grounds raised is sufficient to

reverse the finding, however, that all of the grounds accumulated in one complaint necessitates reversal.

We disagree.

In considering this opinion, one primary factor must be recognized. On each of the grounds of appeal brought by appellant, the question raised was a matter within the trial judge's discretion. This Court fails to find any case of an abuse of his discretion.

[1] Sometime during the trial, the presiding judge, at a conference in chambers with counsel present, apparently made a statement he (the trial judge) felt the verdict would not be in favor of the defendant-appellant. This sort of statement is not as uncommon as the appellant would like us to believe and generally is not a sufficient ground for mistrial.

If the trial court judge does not force his will upon the parties, and they are both aware of his remarks, especially when represented by counsel, comments in chambers ordinarily have been held not to be prejudicial. 6 A.L.R.3rd 1466, citing numerous cases.

Even where he names the amount which he thinks should be paid, a trial judge's suggestion to the defendant's counsel out of hearing of the jury that he ought to settle the case does not violate a constitutional provision guaranteeing impartial judges. 6 A.L.R.3rd 1457, as discussed in 75 Am. Jur. 2d Trials § 101.

[2] Clearly, this suggestion was made out of hearing of the parties and there is no reason to believe that the statement of the trial judge in any way influenced the jury verdict.

The second ground raised by appellant has to do with certain statements made by appellee's counsel during closing arguments, specifically references to one of the witnesses being described by the word "slick," and another statement in regards to one of the defendant's employees described by the word "ping pong." The appellant would have us believe that the use of these words influenced the

jury's decision. Appellant fails, however, to advise us that both of these statements were objected to by appellant's counsel and the objections were in fact sustained as to the use of the terms with the statement by the Court.

"I believe you are going beyond what has been shown, Mr. White." See Partial Transcript, p. 4.

The trial judge advised the jury of the following instruction:

"On opening instructions I told you that the statements and arguments are not evidence. At that time I think I told you that we could ignore anything that counsel had to say as long as they were talking, as long as they were arguing. Well, perhaps I understated it. You do not have to accept anything that counsel says to you in argument. His argument is only to guide you and to attempt to influence you to do the one basic task that you have and that is to listen to and be guided by the facts." (Closing Instructions.)

[3] Therefore, not only were the objections to the statements by counsel sustained, but the Court, in its instructions, advised the jury not to pay attention to the statements of counsel.

75 Am. Jur. 2d Trials, § 317 states:

In many instances improper remarks of counsel, in the opening statement, during the trial, or in the concluding argument may be cured by an instruction to the jury. *Singer v. United States*, 380 U.S. 24, 85 S. Ct. 783.

Objections to improper argument by counsel were sustained, counsel desisted, and the Court twice instructed the jury that arguments of counsel were not evidence and that a verdict must be based solely on the evidence. While the remarks were improper, they were not so gross as to warrant an assumption of prejudice, incapable of "being neutralized by the trial judge before submission of the case to the jury." *United States v. Homer*, 545 F.2d 864 (3rd Cir., 1976).

We are uncertain that the remarks of counsel would have in any way influenced the jury; however, the Court made every effort to advise the jury to disregard the state-

ments and, further, sustained appellant's objections to the use of the statements.

[4] The trial court did its duty and this is not a basis for setting aside the verdict.

Appellant's third ground of appeal relates to a request for special interrogatories which was denied by the court. Rule 49(b) of the Federal Rules of Civil Procedure, which rules are followed by the High Court of the Trust Territory, provides for the submission of written interrogatories at the conclusion of trial; however, such submission is discretionary with the trial judge.

Special questions which submit substantial questions dealing with disputed facts are proper, but their submission rests in the discretion of the trial court, and upon failure of the plaintiff to show abuse of discretion the trial court's refusal to submit requested questions is sustained. *Plains Transport v. Baldwin*, 217 Kan., p. 2; 535 P.2d 865.

We hold the submission of special questions to rest in the sound discretion of the district [trial] court. *Plains Transport v. Baldwin*, *ibid.*, 870.

Where the instructions properly advise the jury, the court need not give specific instructions requested. *Kiser v. Gilmore* (Kan.), 587 P.2d 911, 919.

The appellant also, in the present case, made a request for special interrogatories to be submitted without offering the proposed interrogatories while a reading of the instructions offered by the court clearly did advise the jury of the considerations present in this case and the duties of the jury.

[5] In any event, such matter is discretionary and there appears to have been no abuse of said discretion.

The submission of written interrogatories to be answered by the jury upon reading a general verdict is the exercise of a judicial discretion. *U.S. Code Service*, Civil Procedure Rule 49, citing *Moyer v. Aetna Life*, 126 F.2d 141; *Marcus Loew Booking Co. v. Princess Pat Ltd.*, 141 F.2d 152.

[6] Appellant has raised some question about the sequestration of the jury and alleges that the jury in fact was not sequestered at the conclusion of the trial but was allowed to roam freely in the area of the court, visiting with various people who were present. This question is well covered in 75 Am. Jur. 2d Trials, specifically § 1009, where it states:

It may be stated generally that contact or communication between a juror and an outsider is not in all cases a sufficient ground for vitiating the judgment.

Generally a mere violation of a sequestration order does not compel the trial court to declare a mistrial. 75 Am. Jur. 2d Trials § 67.

And, we find in 64 A.L.R.2d 164:

It may be stated generally, that contact or communication between a juror and an outsider, is not in all cases a sufficient ground for the ordering of a mistrial or a new trial.

That to warrant such action there must be some showing or indication of injury, actual or potential, to the complaining party 64 A.L.R.2d 172.

Both A.L.R. sections cite numerous cases and again there has been no particular issue raised that such communications with outsiders in any way influenced or affected the decision of the jury.

[7] Appellant complains about the length of time which it took the jury to render a verdict in this case. It appears that the jury was out a very short period of time; however, the authorities have generally held that such a situation would not justify a mistrial.

The general rule is that the haste or shortness of time taken by a jury in arriving at its verdict has no effect upon the validity of the verdict. *Segars v. Atlantic Coastline Railroad*, 286 F.2d 767, citing 91 A.L.R.2d 1222.

[8] As we have stated, appellant would like us to believe that all of these questions raised each in itself would

not be sufficient to justify a mistrial, but all of them accumulated are a basis for error. As we have stated, we do not agree. All of these matters were confined to the just discretion of the trial court judge and in each case an examination of the record would not allow us to find that there has been an abuse of that discretion.

Judgment AFFIRMED.

JONATHAN NGIRMEKUR, Plaintiff-Appellee

v.

**MUNICIPALITY OF AIRAI by its MAGISTRATE, et al,
Defendants-Appellants**

Civil Appeal No. 173

Appellate Division of the High Court

Palau District

March 10, 1982

Appeal from judgment of trial court awarding plaintiff compensatory and punitive damages in tort against municipality and its agents for eviction of plaintiff by municipality. The Appellate Division of the High Court, Nakamura, Associate Justice, held that under the circumstances, doctrine of sovereign immunity did not apply to immunize municipality from liability, that trial court properly refused to recognize local custom of eviction as contrary to public policy and violative of criminal law, and that trial court improperly assessed punitive damages against municipality, but properly assessed punitive damages against other defendants, and therefore judgment was affirmed as to compensatory and punitive damages, except reversed as to punitive damages against municipality.

1. Municipalities—Sovereign Immunity—Not Applicable

Where a municipality through its officials, agents or employee is engaged in positive misfeasance or wrongful acts as distinguished from mere negligence, the municipality sheds its mantle of immunity from tort liability.

2. Municipalities—Sovereign Immunity—Not Applicable

Trial court properly denied motion to dismiss action brought against municipality, where it was alleged that actions of municipality involved a wilful tort and not simple negligence or a failure to perform some duty.