owned by the United States Army (Tr. p. 139, lines 3–7), but any changes of major components on the vessel had to receive Army approval (Tr. p. 139, lines 17–20; p. 141, lines 11–22). Simply put, Global operated and maintained the vessel under the ultimate control and command of the U.S. Army.

[5] This court comes to the unalterable conclusion that the trial court gave an erroneous reason for granting a judgment to Global but this case is a unique one in that the judgment is affirmed since it is clear to the panel that the appellant could not prevail on his theory of the case or even on an unseaworthiness theory. The panel does not take this approach lightly. However, the appellant was on notice early in this litigation as to appellee's position and failed to meet the challenge. Unfortunately, the trial court also failed to address the issue on appellee's motion for summary judgment. If it had, we are convinced the result would be the same as reached by this panel.

The judgment for the appellee is affirmed.

SANTOS BORJA and PAULINE B. BORJA, Plaintiffs-Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant-Appellee

Civil Appeal No. 374

Appellate Division of the High Court

Palau District

January 19, 1984

Appeal from granting of summary judgment for defendant, on statute of limitations ground, in medical malpractice action. The Appellate Division of the High Court, Hefner, Associate Justice, held that there was no basis for tolling the two-year statute of limitations, where plaintiff had told the physi-

cian right after the allegedly negligent surgery that "I sue you because you make the wrong operation", and therefore judgment for defendant was affirmed.

1. **Limitation of Actions—Medical Malpractice**

   Where a medical malpractice cause of action arose more than two years prior to the filing of the complaint, the action was barred by the statute of limitations. (6 TTC § 303)

2. **Limitation of Actions—Discovery Rule**

   Exception to two-year statute of limitations for medical malpractice is where the plaintiff can show that the accrual of the cause of action was delayed to a later date because he did not discover or could not have reasonably discovered the claim he had for malpractice. (6 TTC § 303)

3. **Limitation of Actions—Discovery Rule**

   There was no basis to toll the two-year statute of limitations for medical malpractice, where plaintiff experienced physical difficulties after the allegedly negligent surgery, and told the attending physician that "I sue you because you make the wrong operation".

Counsel for Appellants: JOHN S. TARKONG, ESQ., P.O. Box 728, Koror, Palau 96940

Counsel for Appellee: KEVIN N. KIRK, ESQ., *Assistant Attorney General, Office of the Attorney General,* Trust Territory of the Pacific Islands, Saipan, CM 96950

Before MUNSON, *Chief Justice,* MIYAMOTO, *Associate Justice,* and HEFNER[1], *Associate Justice*

HEFNER, *Associate Justice*

BACKGROUND

The plaintiff and his wife filed this medical malpractice action against the Trust Territory Government and a Doctor Meddins. The latter was dismissed out of the suit some time ago and only the Government remains as a defendant.

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[1] Chief Judge, Commonweath Trial Court, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by Secretary of Interior.

The complaint is in several counts but for the purpose of resolving this appeal it can be simply stated. The plaintiff alleges that the Government was negligent in providing health services to the plaintiff who has suffered from the mistreatment. The plaintiff asks for monetary damages against the Government.

The Government answered the complaint and raised the affirmative defense of the statute of limitations, 6 TTC § 303.

After discovery was completed, including the deposition of the plaintiff, the Government moved for summary judgment on the statute of limitations ground and the trial court granted the motion. The plaintiff filed a timely appeal.

DISCUSSION

The appellants concede that the two-year statute of limitations (6 TTC § 303) applies. The complaint alleges that the treatment given to the plaintiff, which gives rise to his claim, occurred in January of 1978. The complaint was filed about two and a half years later.

[1, 2] The statute of limitations commences to run when a cause of action accrues and if the complaint, on its face, shows that a medical malpractice cause of action arose more than two years prior to the filing of the complaint, the action is barred. *Butirang v. Uchel*, 3 T.T.R. 382 (Tr. Div. 1970). The exception is where the plaintiff can show that the accrual of the cause of action was delayed to a later date because he did not discover or could not have reasonably discovered the claim he had for malpractice. *Camire v. United States*, 535 F.2d 749 (1976); *Casias v. United States*, 532 F.2d 1339 (1976); 61 Am. Jur. 2d Physicians & Surgeons § 321.

[3] In this case, it is clear that the plaintiff knew of the negligence of the defendant no later than February of

1978. His deposition relates the physical difficulties he experienced almost immediately after his surgery, and he told the attending physician that "now I'm going to look my lawyer and I sue you because you make the wrong operation." This deposition was placed before the trial judge at the hearing on defendant's motion for summary judgment There was no counter affidavit filed to form any basis for the tolling of the statute. The trial judge was correct in granting the motion.

It might be added that on appeal, the plaintiff has raised additional issues such as waiver, estoppel, and the fiduciary relationship of the Trust Territory Government to the plaintiff. These issues were not properly raised at the trial level nor were they properly preserved on appeal, and this court declines to consider them.

Accordingly, the decision of the trial court is affirmed.

PENIDO PETER, DAHNIS PETER, DALMON WALTU, DANIEL JOHNNY, and JOHNNY and ALPERIHDA SARAPIO, Appellants/Counter-Claimants

v.

IUHDIS ALFONS, Appellee/Claimant

Civil Appeal No. 362

EPENSIO EPERIAM, SEKISMUNDO SARAPIO, IOANA RESEPWIL, and IOANA GILMETE, Appellants/Counter-Claimants

v.

IUHDIS ALFONS, Appellee/Claimant

Civil Appeal No. 355

Appellate Division of the High Court

Ponape District

January 19, 1984

Appeal from judgment in land ownership dispute. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that the case should