

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Appellant/Cross-Appellee**

v.

**SILVENIOS KONOU, ROSALIE KONOU, EVELYN KONOU,
MICHAEL KORNELIOS, IROIJ JOBA KABUA,
DOES ONE THROUGH ONE HUNDRED, INCLUSIVE,
Appellees/Cross-Appellants**

Civil Appeal No. 401

Appellate Division of the High Court

Marshall Islands District

March 26, 1986

Ejectment action by Trust Territory against individual who moved onto land on which the United States had built an airstrip during World War II and which had been used continuously as an airport until 1973; other landowners counterclaimed seeking restoration to the possession of the land, and compensation for use of the land from 1944 to 1980. The Appellate Division of the High Court, Munson, Chief Justice, reversed a \$2.5 million judgment for the landowners on the ground that under any theory of recovery the statute of limitations bars recovery.

1. Limitation of Actions—Generally

While statutes of limitation are intended to be somewhat mechanical in their application, they represent a considered policy decision on the part of the legislature that the right to be free of stale claims in time comes to prevail over the right to prosecute them.

2. Limitation of Actions—Court's Function

Court's function is not to inquire as to the individual fairness of the application of a statute of limitations, since the courts cannot dissolve the statute of limitations into a doctrine of laches.

3. Limitation of Actions—Settlement Negotiations

It is well recognized that settlement negotiations do not prevent statute of limitations from running.

4. Limitation of Actions—Trust Territory—Trusteeship

Statutes of limitation bar recovery where Trust Territory citizens wait too long to file a claim against the Government; the United Nations Trusteeship Agreement does not create a strict formal trust relationship precluding application of statutes of limitation.

5. Limitation of Actions—Trust Territory—Particular Cases

Landowners who counterclaimed against the Trust Territory Government seeking restoration to possession of land, and compensation for use of the land from 1944 to 1980 were barred from recovery by 20-year statute

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of limitations for recovery of land, and 6-year statute of limitations on claims for compensation for the use of the land. (6 TTC §§ 302, 305)

Counsel for Appellant: JACQUELINE C. CROWLE, *Assistant Attorney General*
Counsel for Appellees: ROBERT KEOGH, ESQ., OF KEOGH & BUTLER

Before MUNSON, *Chief Justice*, LAURETA*, *Associate Justice*, and HEFNER**, *Associate Justice*

MUNSON, *Chief Justice*

During World War II, the United States military forces seized the Marshall Islands from the Japanese army. Shortly after securing Majuro atoll, the United States constructed an airstrip on Dalap Island which is within the atoll. The construction required the removal of any remaining trees and vegetation and the placement of compacted coral to provide a satisfactory surface for the runway. Sixty-eight acres were required for this project and the appellees are the owners or successors of the owners of that property.

The United States possessed the airstrip until the Trust Territory of the Pacific Islands assumed control as the administering authority. This occurred in the latter part of the 1940's. The property was used continuously as an airport until 1973 when the Trust Territory Government completed a new airport on the island of Laura, Majuro atoll.

Shortly after the use of the land as an airstrip ceased, the appellee Silvenious Konou moved onto a portion of the

* United States District Court Judge, District of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

** Chief Judge of the Commonwealth Trial Court, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

68 acres and started building a residence. The Trust Territory Government filed an action in 1973 to eject him, claiming that its right to the land was based on a Land Settlement Agreement dated February 9, 1964. Essentially the agreement provided that the Trust Territory Government acquired a 99-year lease to the 68 acres for the sum of \$68,000. Konou and other landowners who intervened counter-claimed seeking the following relief: 1. A declaration that the Land Settlement Agreement was invalid; 2. Restoration of the defendants to the possession of the land; and 3. Compensation for use of the land from 1944 to 1980.

Before the trial, the Trust Territory Government dismissed its complaint for ejectment and the case proceeded to trial only on the claims encompassed in the counterclaim. The trial court held the Land Settlement Agreement of 1964 was invalid because all landowners had not agreed to it pursuant to Marshallese custom and that the landowners were entitled to \$2,500,000 for use of the land.

The Trust Territory Government appealed the decision primarily on the issue of the statutes of limitations.¹ It does not contest the invalidity of the 1964 Land Settlement Agreement. The landowners cross-appealed on the amount of damages. We reverse the trial court on the ground that under any theory of recovery of the landowners, the statutes of limitations bar recovery.

If the appellees' claim can be termed as one for recovery of land, the 20-year period prescribed by 6 TTC § 302 would

¹ The Government also appeals the amount of the damages and the method by which the trial court arrived at the figure of \$2,500,000. Since we find that the statutes of limitations bar any recovery of the landowners, we need not dwell on this subject. Suffice to say that the award was clearly based on the trial court's personal "guess" after rejecting the opinions and appraisals of the experts of both parties. Such an award cannot stand. *Kuecks v. Cowell*, 97 N.W.2d 849 (N.D. 1959).

apply.² Although the taking of the land was in 1944, 6 TTC § 310 provides a grace period until May 28, 1951. Thus, any suit to recover the land would had to have been commenced by 1971. Since neither the complaint nor the counterclaim was filed by that time, the statute of limitation bars recovery on that theory.

[1, 2] The appellees fare no better on their claim for compensation for the use of their land. The applicable statute of limitation in such a case is 6 TTC § 305 which provides six years in which to file suit. *See Kabua v. United States*, 546 F.2d 381 (Ct. Cl. 1976); 27 Am. Jur. 2d Eminent Domain § 499. Once the statutory period of six years had expired, the appellees were barred from recovering compensation from the appellant. In applying the statutes of limitations, we recognize the effect may be to close off litigation of formerly meritorious claims. While statutes of limitations are intended to be somewhat mechanical in their application, they represent a considered policy decision on the part of the legislature that “the right to be free of stale claims in time comes to prevail over the right to prosecute them.” *United States v. Kubrick*, 444 U.S. 111, 117, 100 S. Ct. 352, 357 (1979), quoting *Railroad Telegraphers v. Railway Express Agency*, 321 U.S. 342, 64 S. Ct. 582 (1944). Once the legislature has spoken, it is not our function to inquire as to the individual fairness of the statute’s application, since the “courts cannot dissolve the statute of limitations into a doctrine of laches.” *Steele v. United States*, 599 F.2d 823, 829 (7th Cir. 1979).

² It was not clear at argument if the landowners are actually seeking the return of their land. The main thrust of their claim appears to be an assertion to “. . . a right to compensation for the use of their land from 1944 to 1980 when the land was returned.” *Appellees’ Opening Brief*, page 4. However, to dispel any doubt as to the viability of any claim to recover land, we have decided to put the issue to rest. It does appear that the Government has returned most of the 68 acres to the landowners but retains portions of it for a school, road, and weather station.

[3] Further, we hold that the trial judge erred when he determined that the statute was tolled. The trial judge stated:

Given the facts as I find them, government's claims, as to statutes of limitation and sovereign immunity are without substance. The evidence clearly shows continued discussion concerning this land, in an apparent effort to reach agreement as to compensation. There was an obvious understanding sufficient to prevent the statute of limitations from beginning to run.

It is well recognized that settlement negotiations do not prevent statutes of limitations from running. A case clearly on point is *Kabua v. United States*, 546 F.2d 381 (Ct. Cl. 1976). In *Kabua*, Marshallese landowners of Roi-Namur Island filed suit in the United States Court of Claims to recover just compensation from the United States for the alleged uncompensated taking of their land. The United States had been using the land with the TTPI's permission since 1960 for use as part of the Kwajalein missile-testing range. In 1965, the landowners instituted negotiations with the federal government for compensation and for a long term lease. Ten years later in 1975, negotiations broke off and the landowners filed suit for just compensation. The United States raised the applicable federal statute of limitation of six years, 28 U.S.C. § 2501,³ and moved for summary judgment. In granting the motion, the court dismissed the case and expressly stated that mere settlement negotiations could never act to toll the statute of limitation. The holding in *Kabua* is equally applicable to the case at bar. Negotiations between the parties as to the amount of compensation will not toll the statutory period for filing a claim for just compensation.

³ Title 28 U.S.C. § 2501 provides in pertinent part: "Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues."

[4] The appellees urge that the government cannot assert the defense of statutes of limitations because it stood in a trust relationship with the Marshallese landowners. This court has ruled on several occasions that statutes of limitations bar recovery where Trust Territory citizens wait too long to file a claim against the government.⁴ *Royse v. TTPI*, 8 T.T.R. 189 (App. Div. 1981); *Castro v. TTPI*, 8 T.T.R. 194 (App. Div. 1981); *Crisostimo v. TTPI*, 7 T.T.R. 375, 385 (App. Div. 1976); for trial division cases, see *Kanser v. Pitor*, 2 T.T.R. 481 (Tr. Div. 1963); *Santos v. TTPI*, 1 T.T.R. 463 (Tr. Div. 1958).

In *Royse v. TTPI*, *supra*, and its companion case, *Castro v. TTPI*, *supra*, appellants, Micronesian landowners, filed actions in 1974 seeking specific performance by the TTPI based on a 1956 land exchange agreement. The appellate court relied on the TTPI six-year statute of limitation in both cases, and dismissed the parties' land claims. The *Royse* court quoted with approval from the trial court's holding that:

. . . the Court is satisfied that the Trusteeship Agreement does not preclude enactment of a statute of limitations or the application of such a statute against the inhabitants of Micronesia. Such statutes have long been recognized by the Courts of the Trust Territory. [Citations omitted.]

⁴The dissent cites an unpublished opinion of the Appellate Division of the District Court of the Northern Mariana Islands, *Palacios v. CNMI, et al.*, Civil Appeal No. 81-9017 which held that the Trust Territory Government is a trustee and cannot defend claims against it on the basis of the statute of limitation.

This is the only case which has held that the United Nations Trusteeship Agreement created an express trust to land in Micronesia. It is contrary to all the Trust Territory cases cited herein. The express trust theory is not supported by any U.S. Federal Circuit Court cases nor any Court of Claims cases. (See, for example, *Kabua v. United States*, 546 F.2d 381, which rejected the express trust theory and classified the Trusteeship Agreement as a treaty.)

The underpinning of *Palacios* is *The People of Saipan v. U.S. Department of Interior*, 502 F.2d 90 (9th Cir. 1974). However, a reading of that case provides no support for (nor does it even discuss) the express trust theory or the statute of limitation defense.

The court acknowledged that if a strict formal trust relationship existed between the parties, the statute of limitation could not be used as a defense. The court concluded, however, that this was not the case with Micronesian landowners and the TTPI, as "the rule appears to be in effect only where there is a formal trust relationship." Since there was no such relationship in *Royse* or *Castro*, the court barred the applicants from filing their land claims under the statute of limitation. In the present case, there is no classical trust that would prevent the appellant from asserting statutes of limitations as a defense. This court has previously held that the United Nations Trusteeship Agreement does not create a trust capable of judicial enforcement. *TTPI v. Lopez*, 7 T.T.R. 447, 454 (App. Div. 1976); *Aliq v. TTPI*, 3 T.T.R. 603 (App. Div. 1967). The appellees are therefore barred by the statutes of limitations from recovering any compensation from the appellant.

[5] Accordingly, any claims of the appellees are time-barred and the judgment of the trial court is REVERSED.

LAURETA, *Associate Justice*, dissenting.

I respectfully dissent from the opinion of the majority which holds that the Trust Territory of the Pacific Islands (TTPI) may assert the statute of limitations as a defense. The Appellate Division of the District Court for the Northern Mariana Islands, on June 27, 1983, in the case of *Palacios v. CNMI, et al.*, Civil Appeal No. 81-9017, rendered an Opinion completely at odds with the opinion of the majority in this case. The appellate panel consisting of the undersigned Judge, Judge Earl B. Gilliam of the District Court of Southern California, and Judge Herbert D. Soll, Associate Judge of the Commonwealth Trial Court, held:

“. . . as we find that the TTPI stands in a fiduciary relationship as trustee to the people of the Trust Territory, we hold that the TTPI is barred from asserting the statute of limitations as a defense in this case.”

This 20-page opinion devotes approximately 14 pages on the issue of “whether the TTPI is precluded from asserting a statute of limitations defense because of its ‘trustee’ relationship with the corresponding obligations to plaintiff under the trusteeship agreement.”

Since *Palacios* was never a published opinion, nor was it ever appealed to the 9th Circuit, and in the interest of brevity in this dissent, I respectfully attach a copy of the *Palacios* opinion which I believe correctly states the law as it applies to the TTPI.⁵

ALTHEA BING & CO., INC., Defendant-Appellant
v.
MUNICIPALITY OF DARRIT, ULIGA, DALAP, Plaintiff-Appellee
Civil Appeal No. 410
Appellate Division of the High Court
Marshall Islands District
April 28, 1986

Action for unpaid sales taxes filed by municipality against corporation doing business in the Marshall Islands and engaged in selling alcoholic beverages. The Appellate Division of the High Court, Munson, Chief Justice, affirmed the trial court's judgment on remand in favor of the municipality, holding that the trial court properly had subject matter jurisdiction to hear the case and properly limited its hearing on remand from an appellate court to the amount of tax owed.

⁵ The original opinion of the aforementioned case attached is not published herein due to limited space, but it is available for review on Saipan at the United States District Court for the Northern Mariana Islands, the Commonwealth of the Northern Mariana Islands Trial Court and the High Court of the Trust Territory of the Pacific Islands.