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ATTORNEY GENERAL'S OFFICE

No. 72-2259

United States Court of Appeals
For the Ninth Circuit

PAUL J. BORDALLO,
Plaintiff-Appellant,
vs.
CARLOS G. CAMACHO,
Defendant-Appellee.

On Appeal from the District Court of Guam

PLAINTIFF-APPELLANT'S BRIEF

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THE ISSUE

Is the concurrence of the Guam Legislature required for an exchange of land owned by the government of Guam for land owned by the United States?

THE CASE

Nature of case.

This is an action brought by Bordallo as a resident, citizen, elector, and taxpayer of Guam and as a member of the Guam Legislature for an injunction enjoining and restraining Camacho as the Governor of Guam from exchanging certain lands owned by the government of Guam for certain lands owned by the United States.

Course of proceedings.

A temporary restraining order was granted enjoining and restraining the Governor "from in any

manner either directly or indirectly taking any measure whatsoever to effect said exchange." Temporary Restraining Order, Record p. 14. The trial court ordered the trial of the action on the merits to be advanced and consolidated with the hearing of Senator Bordallo's application for a preliminary injunction. Transcript p. 71.

Disposition in court below.

Judgment was entered in favor of the Governor and against Senator Bordallo. Judgment, Record p. 51.

Facts relevant to issues.

Senator Bordallo is a resident, citizen, elector, and taxpayer of Guam and a member of the Guam Legislature. Transcript pp. 3-4, 6-7.

"[Senator Bordallo] owns real estate in various parts of Guam, including real properties in the Municipality of Umatac in the vicinity of the Sella Bay area, wherein Government of Guam land, the subject matter of this controversy, is also located." Findings of Fact and Conclusions of Law, Record p. 38.

Camacho is the Governor of Guam. Transcript p. 4.

On April 26, 1972, the Governor entered into an agreement to exchange certain lands owned by the government of Guam for certain lands owned by the United States. Agreement between the United States of America and the government of Guam, Transcript pp. 11-13; Complaint, Record pp. 4-10. *The Guam Legislature has never, by resolution or otherwise, concurred in the exchange.* Transcript p. 15. And the

Governor will carry out the exchange unless he is enjoined from doing so:

"This Agreement entered into by and between the United States of America, hereinafter called the 'Government', acting by and through the Department of the Navy, represented by the Commander Naval Forces Marianas, and the Government of Guam, hereinafter called 'Guam', acting by and through its Governor.

"WITNESSETH THAT:

"Whereas, the Government and Guam *each have needs for land* in the Territory of Guam; and

". . . .

"Whereas, the Governor of Guam represents that *he has authority to enter into agreements to dispose of lands and interests in lands owned by Guam by exchange for lands and interests in lands owned by the Government and to execute valid deeds to effect such exchanges; and*

". . . .

"Whereas, Guam is agreeable to disposing of the fee to a small portion of its lands in the vicinity of Sella Bay . . . *in exchange for the fee to lands owned by the Government; . . .*

". . . .

"NOW, THEREFORE, the parties agree as follows:

"1. Guam will grant and convey to the Government by warranty deeds the fee title to its lands . . . *in exchange for the lands . . . owned by the Government . . .*" Agreement between the United States of America and the Government of Guam, Transcript pp. 11-13; Complaint, Record pp. 4-6 (emphasis added).

ARGUMENT

AN EXCHANGE OF LAND OWNED BY THE GOVERNMENT OF GUAM FOR LAND OWNED BY THE UNITED STATES REQUIRES THE CONCURRENCE OF THE GUAM LEGISLATURE.

“(c) Whenever lands owned by the United States of America are required by the government of Guam for a program or project specifically authorized by law, the Director of Land Management, with the approval of the Governor and *the concurrence of the Legislature by resolution*, may exchange such lands with lands owned by the Government of Guam and cash as to equalize respective values of such properties.” GUAM GOV. CODE § 13525 (1970), as amended, GUAM PUB. L. No. 11-93 (1971) (emphasis added).

CONCLUSION

The judgment should be reversed with instructions to enter judgment granting Senator Bordallo a permanent injunction enjoining and restraining the Governor from carrying out the exchange.

Dated, Agana, Guam,
August 31, 1972.

Respectfully submitted,
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