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Clerk
District Court

SEP 14 1999

For The Northern Mariana Islands
By _____ JJK
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

THE COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS,)

Plaintiff)

v.)

UNITED STATES OF AMERICA,)

Defendant)
_____)

Civil Action Nos. 97-0036
99-0028

ORDER DENYING MOTION
TO CONSOLIDATE AND
DISMISSING THE COMPLAINT
AND COUNTERCLAIM IN
CIVIL ACTION NO. 99-0028

THESE MATTERS came before the court on Thursday, September 9, 1999,
for hearing of plaintiff's motion to consolidate the two lawsuits. Plaintiff appeared
by and through its attorneys, Daniel H. MacMeekin and Donald C. Woodworth
(both by telephone), and Commonwealth Assistant Attorneys General Richard Folta
and David Sosebee; defendant appeared by and through its attorneys, Paul F.
Holleman, Trial Attorney with the United States Department of Justice (by
telephone) and Assistant United States Attorney Gregory Baka.

1 For the reasons stated below, plaintiff's motion to consolidate is denied and,
2 as a consequence thereof, the complaint and counterclaim in Civil Action No. 99-
3 0028 are dismissed.
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5 Plaintiff Commonwealth of the Northern Mariana Islands (CNMI) filed Civil
6 Action No. 97-0036 on July 31, 1997. In the first amended complaint filed August
7 21, 1997, plaintiff seeks, *inter alia*, "a declaration under the Federal Quiet Title Act,
8 28 U.S.C. § 2409a, that it is the owner of the submerged lands in the Northern
9 Mariana Islands[.]" The court's jurisdiction is invoked under 28 U.S.C. § 1346(f),
10 which provides: "The district courts shall have exclusive original jurisdiction of civil
11 actions under [28 U.S.C.] section 2409a to quiet title to an estate or interest in real
12 property in which an interest is claimed by the United States." Thereafter, on April
13 30, 1999, plaintiff filed Civil Action 99-0028, seeking the same relief and asserting the
14 same basis for the court's jurisdiction. Plaintiff acknowledges that the second
15 lawsuit was filed "because of the uncertainty as to whether the Commonwealth is a
16 State for purposes of section 2409a."
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21 Defendant United States filed a counterclaim in each lawsuit, seeking a
22 judgment that, as sovereign, it is the "owner in fee simple" of the lands in question.

23 Title 28 U.S.C. § 2409a(m) provides two procedures, one for use by States
24 filing suit under the statute and one for non-State plaintiffs filing suit. If plaintiff
25 here is not treated as a State for purposes of § 2409a, one effect would be to make it
26

1 subject to the twelve-year statute of limitations imposed by § 2409(g), from which
2 States are exempt. Because the court's determination of the Commonwealth's
3 State/non-State status will be critical to the decision of this motion and the fate of
4 one or the other of the two lawsuits, the court invited the parties to brief the issue,
5 which they did.
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8 Plaintiff Commonwealth's position is that because Covenant¹ § 502(a)(2)²
9 states that all laws applicable to Guam and of general application to the several
10 States apply to the Commonwealth "as they are applicable to the several States," §
11 2409a must be applied to plaintiff as if it were one of the fifty States.³
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13 Defendant responds that statutes must be strictly construed as written and
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15 ¹ "The Covenant to Establish the Commonwealth of the Northern Mariana Islands
16 in Political Union with the United States of America," Pub.L. 94-241, 90 Stat. 263
17 (1976), *reprinted in* 48 U.S.C. § 1801 note.

18 ² Covenant § 502(a) provides in relevant part:

19 The following laws of the United States in existence on the effective
20 date of this Section and subsequent amendments to such laws will
21 apply to the Northern Mariana Islands, except as otherwise provided in
22 this Covenant:

23 * * *

24 (2) those laws not described in paragraph (1) which are applicable to
25 Guam and which are of general application to the several States as they
26 are applicable to the several States....

³ Plaintiff takes no issue with defendant's general arguments that statutes must be read as written and that waivers of sovereign immunity must be strictly construed; rather, plaintiff argues generally that the language of the Covenant overrides the customary rules of statutory construction.

1 that waivers of sovereign immunity (as evidenced in § 2409a by the lack of a statute
2 of limitations for State-brought lawsuits) in particular must be narrowly construed.
3 Also, § 2409a does not explicitly exempt U.S. territories from the statute of
4 limitations, even though two years before § 2409a was amended the U.S. Court of
5 Appeals for the Ninth Circuit issued a decision⁴ barring a § 2409a claim by the
6 Territory of Guam on statute of limitations grounds. Defendant argues that
7 Congress must surely have been aware of that decision, and yet still did not amend §
8 2409a to include territories within the definition of “State.” While defendant agrees
9 that the court has jurisdiction, it maintains that the court must apply the statute as
10 written, it applies only to States, and the Commonwealth is not a state. And,
11 because the Commonwealth is not a State, the motion to consolidate should be
12 denied and Civil Action No. 99-0028 should be dismissed.

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14 The court finds more persuasive the argument that the CNMI is *not* a state
15 under 28 U.S.C. § 2409a. In United States of America, ex rel. James R. Richards v.
16 Lorenzo De Leon Guerrero, Misc. No. 92-00001 (D.N.M.I. July 24, 1992), *aff'd* 4
17 F.3d 749 (9th Cir. 1993), this court held that Covenant § 502 provided an interim
18 formula for determining the applicability of federal laws within and to the
19 Commonwealth, and that § 502 ceased to have effect upon full implementation of
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26 ⁴ Government of Guam v. United States, 744 F.2d 699 (9th Cir. 1984) (Guam’s
claim under former 28 U.S.C. § 2409a time-barred by twelve-year statute of limitations).

1 the Covenant in 1986.⁵ As stated in that decision:

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3 The CNMI has a uniquely negotiated agreement defining its
4 relationship with the United States, the Covenant. Prior to the
5 termination of the TTPI on November 3, 1986, Covenant § 502(a)(3)
6 expressly permitted the U.S. Congress to make amendments to laws
7 that applied on January 9, 1978 to the Trust Territory specifically
8 applicable to the CNMI. This subsection would seem to apply to
9 48 U.S.C. § 1681b (1988). *However, Section 502 was an interim formula,⁶*
10 *valid until the assumption of full sovereignty by the United States when all United*
11 *States laws applicable to the several States would be in effect of their own force,*
12 *unless elsewhere excluded by the Covenant or by Congress. * * * Covenant § 502*
13 *is no longer in effect.* (Emphasis added.)

14 While at first reading this language may appear to support plaintiff's
15 interpretation, the court does not believe that it is inconsistent to adhere to the
16 general rule that "all federal laws applicable to the several States apply to the CNMI"
17 and still find that the CNMI is not a State for purposes of § 2409a. There is no

18 ⁵ Covenant § 105 now controls the applicability of federal laws within and to the
19 Commonwealth:

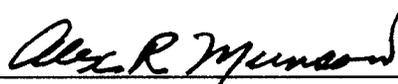
20 The United States may enact legislation in accordance with its
21 constitutional processes which will be applicable to the Northern
22 Mariana Islands, but if such legislation cannot also be made applicable
23 to the several States the Northern Mariana Islands must be specifically
24 named therein for it to become effective in the Northern Mariana
25 Islands.

26 ⁶ Howard P. Willens & James M. Wilson, Jr., Memorandum for Chairman, MPSC,
and the President's Personal Representative, "Report of the Joint Drafting Committee
on the Negotiating History" (Feb. 15, 1975) (authored by MPSC Counsel and U.S.
Deputy Representative, respectively, "to record the intention of the parties regarding
certain provisions of the Covenant"), reprinted in Northern Mariana Islands: Hearing
before the Senate Committee on Interior and Insular Affairs on S.J. Res. 107, 94th
Cong. 1st Sess. 787 (July 24, 1975).

1 indication that Congress intended the Commonwealth to be treated as a State for all
2 purposes, only that all federal laws would apply within and to the CNMI the same
3 way they apply to other States. There is a difference between a blanket statement
4 that all federal laws now apply to the Commonwealth as they do to a State, and
5 construing that to mean the CNMI *is* a State in every statute which by its terms
6 involves or, as here, applies *especially* to a State because of its status *as* a State. In
7 other words, if a statute specifically distinguishes States from other persons or
8 entities, and by its terms applies *only* to States, the Commonwealth would not be
9 included in its terms as a State absent an express statement of inclusion by Congress.
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12 FOR THE FOREGOING REASONS, the court finds that plaintiff
13 Commonwealth of the Northern Mariana Islands is not a State for purposes of 28
14 U.S.C. § 2409a. Accordingly, plaintiff's motion to consolidate these two lawsuits is
15 denied and Civil Action No. 99-0028 is dismissed in its entirety as unnecessary and
16 redundant.
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19 DATED this 14th day of September, 1999.
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24 _____
25 ALEX R. MUNSON
26 Judge