

JUN 07 2000

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JAMES E. HOLLMAN, in his capacity as guardian *ad litem* for VO MINH TAN, a minor child,

Plaintiff

v.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Defendant

Civil Action No. 00-0012

DECISION AND ORDER
DECLARING COMMONWEALTH
P.L. 11-105 § 3 UNCONSTITUTIONAL IN PART

THIS MATTER came before the court on Thursday, May 25, 2000, for hearing of plaintiff's motion for summary judgment that Commonwealth Public Law 11-105 is unconstitutional, and defendant's motion to dismiss the complaint on grounds of mootness. Plaintiff appeared personally and by and through his attorney, Bruce L. Jorgensen (by telephone); defendant appeared by and through its attorney, Assistant Attorney General L. David Sosebee. At the conclusion of the hearing the court

1 entered an order taking both motions under advisement for a period of ten days to
2 enable the parties to resolve this issue without the necessity of further court action by
3 this court. That time now having passed, and the issue before the court still being
4 unresolved; NOW, THEREFORE,

6 IT IS ORDERED, ADJUDGED, AND DECREED that Commonwealth of
7 the Northern Mariana Islands Public Law 11-105 § 3¹ be and hereby is declared
8 unconstitutional in part, *nunc pro tunc* to the date of its enactment.² Section 3 of P.L.
9 11-105 is unconstitutional to the extent that it approves retention by the Superior
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13 Section 3 of Public Law 11-105 provides:

14 Expenditure of Funds. Monies generated from the interest bearing
15 accounts will be used to cover the costs necessary to maintain the
16 accounts, including administrative expenses. Any amounts which
17 remain above such costs may be expended for other legitimate
18 purposes of the Superior Court.

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20 Defendant's motion to dismiss on grounds of mootness is denied. The party
21 arguing mootness has a heavy burden of persuasion. Adarand Constructors, Inc. v.
22 Slater, 120 S.Ct. 722, 725 (2000). The Presiding Judge of the Superior Court (who
23 was limited in his actions by the fact that he was never presented with an active case
24 or controversy to address the constitutionality issue) indicated in a letter that he
25 would take no steps to enforce Public Law 11-05. However, voluntary cessation of
26 challenged conduct will moot a case only if it is absolutely clear that the alleged
wrongful behavior could not reasonably be expected to recur. *Id.* In the absence of
definitive action by the legislative or judicial branches of the Commonwealth
government to address the constitutionality of P.L. 11-05 (despite advice by
legislative counsel and the Office of the Attorney General), this court cannot say
with certainty that there is no reasonable expectation that the law, even though it
clearly will not be enforced by the current Presiding Judge of the Superior Court,
might not be enforced by a future Presiding Judge.

1 Court, "for other legitimate purposes of the Superior Court," monies generated from
2 interest-bearing accounts established by that court in excess of amounts strictly
3 necessary to administer and maintain the accounts.
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5 Two fundamental tenets of our form of government are that a person cannot
6 be deprived of life, liberty, or property without due process of law and that private
7 property may not be taken for a public use without just compensation. Those
8 principles find their expression in the Fifth Amendment³ to the United States
9 Constitution and, as to the former, in Article I, § 5 of the Commonwealth
10 Constitution. Here, Public Law 11-05 § 3 purported to take property from plaintiff
11 without due process of law; that is, all interest earned on money deposited into the
12 Superior Court for plaintiff's benefit as part of the Hillblom probate proceedings was
13 to be retained by the Superior Court, rather than be distributed to plaintiff. This was
14 clearly a taking without due process. As stated in Webb's Fabulous Pharmacies, Inc.
15 v. Beckwith, 449 U.S. 155, 165, 101 S.Ct. 446, 451-452 (1980):
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19 To put it another way: a State, by *ipse dixit*, may not transform private
20 property into public property without compensation, even for the
21 limited duration of the deposit in court. That is the very kind of thing
22 that the Taking Clause of the Fifth Amendment was meant to prevent.
23 That Clause stands as a shield against the arbitrary use of governmental
24 power.

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26 Applicable to the States through the Fourteenth Amendment and to the
Commonwealth pursuant to Covenant § 501(a).

1 Here, as in Webb's Fabulous Pharmacies, neither the legislature nor the courts
2 by judicial decree may characterize private money held temporarily by a court as
3 "public money," with the intent of arrogating the interest earned therefrom for public
4 purposes. Indeed, to enact a law allowing courts to take property for their *own* use
5 from litigants appearing before them would be a betrayal of the very trust which
6 society places in courts as neutral, independent forums for the resolution of disputes.
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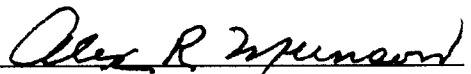
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9 FOR THE FOREGOING REASONS, Section 3 of Commonwealth Public
10 Law 11-105 is declared unconstitutional to the extent that it provides that the
11 Commonwealth Superior Court may keep monies generated by interest-bearing
12 accounts established by that court, over and above those monies strictly necessary to
13 administer and maintain such accounts.
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15 Here, despite the expressed concerns of the Commonwealth Senate's Legal
16 Counsel, the Office of the Attorney General, and the Presiding Judge of the
17 Commonwealth Superior Court as to the constitutionality of Public Law 11-05,
18 plaintiff was required to bring suit to protect his fundamental constitutional right to
19 not be deprived of his property without due process of law. That right has now been
20 vindicated and plaintiff was given leave to amend the complaint to add a request for
21 attorney fees and costs. However, other than invoking the court's federal question
22 jurisdiction under 28 U.S.C. § 1331, plaintiff identified no statute entitling him to an
23 award of attorney fees. Attorney fees are typically not awarded to the prevailing party
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1 unless Congress has so provided. Accordingly, plaintiff is given until 3:30 p.m.,
2 Friday, June 16, 2000, to provide authority for an award of attorney fees and, if he is
3 able to provide such authority, he shall also file with the court by that time and date a
4 statement of all costs and attorney fees reasonably incurred in this action. Defendant
5 shall have until 3:30 p.m., Thursday, June 22, 2000, to file written objections to the
6 legal authority for an award, as well as any objections to the costs and attorney fees
7 claimed by plaintiff. The court shall decided the matter without the necessity of a
8 hearing, unless it appears that a hearing would assist the court to resolve any questions
9 about the basis for the award of the reasonableness of the amounts sought.
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13 IT IS SO ORDERED.

14 DATED this 7th day of June, 2000.
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18 ALEX R. MUNSON
19 Judge
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