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For Publication

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<p>BANK OF GUAM, Plaintiff, v. FIDEL MENDIOLA, JR. and D&J EQUIPMENT RENTAL, Defendants.</p>	<p>))))))))))))))))</p>	<p>CIVIL ACTION NO. 03-0636 ORDER GRANTING PLAINTIFF’S MOTION IN LIMINE TO SELECT THE JURY VENIRE FROM THE ENTIRE COMMONWEALTH VOTER REGISTRATION LIST</p>
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THIS MATTER was last before the Court on October 5, 2005 on Plaintiff’s motion *in limine* to select the jury venire from the entire Commonwealth Voter Registration List. Appearing at oral argument or on the briefs were Robert T. Torres for Plaintiff Bank of Guam; Antonio M. Atalig for Defendant Fidel Mendiola, Jr.; and Ramon K. Quichocho for Defendant D&J Equipment Rental. Having carefully considered the briefs and arguments, the Court is now prepared to rule.

I. BACKGROUND

The facts leading up to this case, which are not pertinent to the instant decision, are set forth in the Court’s July 8, 2005 ruling on the Bank of Guam’s motion for summary judgment on its claim of conversion. The only facts relevant to this decision are that on January 13, 2005, Defendants, residents of Rota, requested a jury trial. Plaintiff, who is not a citizen of the CNMI, then brought the

1 instant motion to avoid the seating of a jury of only Rota residents. Trial is currently set for January
2 23, 2006.

3 4 II. ANALYSIS

5 A. Jurors will be selected from the pool of registered voters throughout the 6 Commonwealth.

- 7 1. Standing alone, the fact that residents from a particular island are not represented in
8 the jury pool is insufficient to draw jurors from all the islands.

9 In its initial memorandum at 3, Plaintiff argues that failure to include residents from other
10 islands in the jury pool would result in an unconstitutional under-representation of these residents.
11 The Court agrees that under-representation resulting from a systematic exclusion of certain groups
12 violates a litigant's right to due process.¹ However, in order to establish a prima facie violation of
13 the equal protection component of the Fifth Amendment, a litigant "must show that the use of voter
14 registration lists resulted in the substantial underrepresentation over a significant period of time of
15 a recognizable, distinct class." *United States v. Gault*, 141 F.3d 1399, 1402 (10th Cir.1998), *cert.*
16 *denied*, 525 U.S. 910, 119 S.Ct. 253, 142 L.Ed.2d 208 (1998) (internal quotation omitted).

17 Although a jury composed of Rota voters alone would completely exclude residents of
18 Saipan, Tinian, and the Northern Islands, the Court is not convinced that residents of a particular
19 island comprise a "distinctive group." All of the jury selection challenges reviewed by the Court
20 pertain to the exclusion of "suspect" or "semi-suspect" classes (e.g., classes identified by race,
21 religion, and gender). *See, e.g., Cunningham v. Zant*, 928 F.2d 1006 (11th Cir. 1991) ("To establish
22 a prima facie case for equal protection violation in jury selection, petitioner must show that he or
23 she is a member of a group capable of being singled out for discriminatory treatment"). Only when
24 certain locales are alleged to have disparate numbers of suspect or semi-suspect classes is the
25 location of a juror's residence relevant. *See, e.g. Alston v. Lopes*, 621 F. Supp. 992, (D. Conn. 1985);
26 *see also N.C. v. McCoy*, 359 S.E. 2d 764 (N.C. 1987) (city residents of a county were not a

27 ¹ Because the instant case is a civil matter, it does not trigger the Sixth Amendment right to "an impartial
28 jury." However, the Fifth Amendment is still applicable. *See Morgan v. Illinois*, 504 U.S. 719, 726 (1992) ("[D]ue
process alone has long demanded that, if a jury is to be provided the defendant, regardless of whether the Sixth
Amendment requires it, the jury must stand impartial and indifferent to the extent commanded by the Sixth
Amendment.").

1 ~~“distinctive group” for the purpose of determining whether defendant had a right to be tried by a jury~~
2 selected from a representative cross section of the community).

3 Because the distinction between different groups of islanders in the Commonwealth is one
4 of geography and not race, exclusion of the residents of one island does not violate the Fifth
5 Amendment right to due process. Thus, the under-representation of residents from islands other than
6 Rota is insufficient to draw jurors from all the islands.

7 2. However, the likelihood of bias within a small geographic location *does* require an
8 expansion of the jury pool.

9 Our American legal system recognizes a right to a fair trial at all levels. So important is this
10 right that we accord federal diversity jurisdiction to litigants who would otherwise argue in state
11 courts. Through 28 U.S.C. 1332, Congress has acknowledged that state courts, with their locally
12 drawn jurors, may be hostile to out-of state defendants. *See Davis v. Carl Cannon Chevrolet-Olds,*
13 *Inc.* 182. F.3d 792, 797 (11th Cir. 1999) (One of the primary historical reasons for diversity
14 jurisdiction "is the reassurance of fairness and competence that a federal court can supply to an out-
15 of-state defendant facing suit in state court.").

16 Because it is composed of several sparsely populated islands, the CNMI poses an even
17 greater problem to non-local litigants than would a state court.

18 The jury selection rules for the United States District Court for the Northern Mariana Islands
19 address this problem by drawing from residents of Tinian and Saipan, Rota and even the Northern
20 Islands. Contrarily, with respect to Superior Court trials, “the general practice within the
21 Commonwealth is to select jurors from Saipan for jury trials held on Saipan, from Rota for jury trials
22 held on Rota, and from Tinian for jury trials held on Tinian.” 1 CMC § 3107, Commission
23 Comment.

24 While this comment provides guidance, the Court considers compliance with the law itself
25 to be a priority. 7 CMC § 3107(a) provides:

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27 Jurors shall from time to time be selected *from such parts of the Commonwealth as*
28 *the court directs so as to be most favorable to an impartial trial* and not incur

1
2 unnecessary expense or unduly burden the residents of any part of the
3 Commonwealth with jury service.

4 (Emphasis added.) Further, 7 CMC § 3107 (b) allows the Court to direct jurors summoned for
5 service at one place to serve at another place. If the application of the general practice curtails the
6 possibility of an impartial trial, then the Court is willing to set this practice aside.
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8 There is no standard in the Commonwealth for evaluating whether the general practice of
9 jury selection is inappropriate in a particular case. The closest standard is that used in change-of-
10 venue analyses: “whether it is reasonably likely that prospective jurors would base their decision
11 in the case upon pretrial information rather than the evidence presented at trial and would be unable
12 to remove from their minds any preconceived impressions they might have formed.” *Bank of Guam*
13 *v. Guerrero*, No. 97-346 (Super. Ct. Oct. 18, 1998), *citing State v. Knight*, 459 S.E.2d 481,495 (N.C.
14 1995). The party moving for a change of venue has the burden of proving the existence of a
15 reasonable likelihood that he cannot receive a fair trial on account of prejudice. *Id.*
16

17 The Court is also guided by the tests set forth in state courts. *See, e.g. Scott v. Ball*, 595 So.2d
18 848, 850 (Miss.1992):
19

20 To the extent that any juror, because of his relationship to one of the
21 parties, his occupation, his past experience, or whatever, would
22 normally lean in favor of one of the parties, or be biased against the
23 other, or one’s claim or the other’s defense in the lawsuit, to this
24 extent, of course, his ability to be fair and impartial is impaired.

25 The Court agrees with Defendants that “The characteristics of surnames are unreliable for
26 jury selection.” Defendants’ Oppositional Memorandum at 6. The fact that there are numerous
27 individuals on Rota with the Defendants’ surnames is not enough to show that a Rota jury pool
28 would be biased. The Court further acknowledges Defendants’ argument that acquaintance with a

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2 litigant does not automatically result in disqualification from the jury. *See* Defendant’s Oppositional
3 Memorandum at 8, citing *Johnson v. State*, 502 So. 2d 877 (Ala. Cr. App. 1987).
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5 However, as Defendants acknowledge, Rota *is* a small, close-knit community. *See* Defendant
6 Mendiola’s Reply to Plaintiff’s Interrogatories, No. 23: “The plaintiff knew, Rota is a small Island.
7 It is comparable to everyone being your next door neighbor.” In such a community, jurors may be
8 swayed by extrajudicial information and personal considerations. This may make it difficult for the
9 Court to find a sufficient number of unbiased jurors.
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11 The Court also recognizes Defendants’ observation that “Defendants have no right to be tried
12 by a particular jury, only that they are entitled to a fair and impartial jury.” Defendants’ Oppositional
13 Memorandum at 3. *See also N.C. v. Lee*, 234 S.E.2d 574 (N.C. 1977) (party does not have right to
14 select juror prejudiced in his favor, but only to reject one prejudiced against him). However, the
15 argument serves to advance Plaintiff’s position more so than Defendants’. While Defendants have
16 a right to a jury trial, they don’t have the right to be tried by a particular group of people—the
17 residents of Rota.
18

19 The Court disagrees with Defendants’ argument that “If Plaintiff desired a larger pool of
20 juror [sic] to best defend her client, she could have easily filed her complaint in Saipan where a
21 larger jury pool exists or she could filed [sic] her complaint at the federal District Court in Saipan
22 where jurors are summoned from the entire Commonwealth voters registration list.” Defendants’
23 Oppositional Memorandum at 10. Although CNMI statutes do not set forth the requirements for
24 venue in civil cases, court rules clearly contemplate the idea of improper venue. *See* Com. R. Civ.
25 P. 12(b)(3) (permitting dismissal for improper venue). The vast majority of venue statutes set trial
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2 in the place where the claim or cause of action “arose.” *See* 53 A.L.R.4th 1104. Further, complaints
3 can only be placed in the District Court if there is federal subject matter jurisdiction. In this case,
4 there is no federal jurisdiction. Thus, Plaintiff could not have filed its complaint in a jurisdiction
5 with a larger jury pool. It is also unlikely that Plaintiff would have been granted a change in venue,
6 as all the subject property, litigants, and witnesses are in Rota. The most practical method of
7 ensuring a sufficiently large jury pool is to draw jurors from all the islands.
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10 3. The need for judicial economy weighs in favor of having a larger jury pool.

11 While the number of peremptory challenges is set by 7 CMC § 3102, the decision to exclude
12 jurors for cause ultimately belongs to the Court. *See* 7 CMC § 3102; Com. R. Civ. P. 47. As both
13 Plaintiff and Defendants have pointed out, the trial judge will bear the burden of evaluating whether
14 each potential juror’s relationship with a litigant or counsel is grounds for exclusion. *See also United*
15 *States v. Jones*, 608 F.2d 1004, 1007 (4th Cir.1979), cert. denied, 444 U.S. 1086, 100 S.Ct. 1046,
16 62 L.Ed.2d 773 (1980).
17

18 Although the number of residential voters in Rota is more than fourteen times the number
19 of names from which the jury pool must be selected, *see* 7 CMC § 3106, Plaintiff has suggested that
20 the number of eligible jurors will substantially decrease as those with potential biased are excused.
21 The Court may have to summon, interview, and excuse numerous residents before an unbiased jury
22 can be seated. Selecting jurors from a larger pool of residents, who are less likely to have close ties
23 to the parties, will significantly decrease the time the court would have to spend evaluating potential
24 jurors.
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2 Judicial economy compels this Court to *prevent* the possibility of being overturned on
3 grounds of a biased jury. The Court is aware of a number of cases in which appeals courts have
4 overturned verdicts reached by apparently biased jurors. *See Toyota Motor Corp. v. McLaurin*, 642
5 So.2d 351 (Miss. 1994); *Mhoon v. State*, 464 So.2d 77 (Miss.1985); *General Motors Corp. v.*
6 *Jernigan*, 883 So.2d 646 (Ala. 2003). Defendant distinguishes these cases by suggesting that said
7 cases had already been tried (improperly), while the instant case has yet to be tried. *See* Defendant's
8 Opposition at 24. However, the fact that the instant case has not yet been tried by a biased jury
9 provides no justification for venturing down the path towards an unfair trial. It is far more practical
10 to prevent the possibility of a biased jury than to ask ourselves afterwards whether the jury was, in
11 fact, biased.
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14 **B. The petitioner for the jury trial will pay the expenses associated with the general**
15 **practice of selecting jurors, while the petitioner for the Commonwealth-wide pool of**
16 **jurors will pay the additional expenses.**

17 In a civil case involving a matter at law, both litigants have the right to increase the
18 likelihood of an impartial decision by requesting a jury trial. The party who chooses to exercise this
19 right is the party who pays for the expenses of a jury trial. *See* 7 CMC § 3101(2). In the instant case,
20 Defendant, having requested a jury trial, will be responsible for the standard costs associated with
21 a jury trial. The standard costs are those incurred by the seating of a local (one-island) jury.
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23 Plaintiff, also seeking to exercise its right to a fair trial, has moved for an expanded jury pool.
24 Accordingly, Plaintiff will be responsible for the costs of the jury trial that are above and beyond
25 the standard costs. In other words, Plaintiff will pay the costs of transporting jurors between the
26 islands.
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III. CONCLUSION

Plaintiff's motion *in limine* to select the jury venire from the entire Commonwealth Voter Registration List is GRANTED, with the additional costs of this selection to be paid by Plaintiff. The Court requests that counsel for all parties stipulate as to the number of jurors to be selected from each island and/or the manner by which the jurors will be selected.

The Court recognizes that, due to the issuance of this order, the parties may require additional time to prepare for trial. The Court requests that counsel for all parties attend a scheduling conference as soon as possible to select the appropriate trial date.

SO ORDERED this 6th day of January 2006.

/s/
JUAN T. LIZAMA, Associate Judge