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FOR PUBLICATION

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

**RAMON M. DELA CRUZ, Mayor-elect,
JUDE U. HOFSCHEIDER, Senator and
Senator-elect, FRANCISCO Q. CRUZ,
Senator-elect, AND TRENTON B.
CONNOR,
Representative-elect,**

Plaintiffs,

vs.

**JOSE P. SAN NICOLAS, JOSEPH M.
MENDIOLA, HENRY H. SAN NICOLAS,
EDWIN P. ALDAN, AND OFFICE OF THE
MAYOR OF TINIAN & AGUIGUAN,**

Defendants.

CIVIL ACTION NO. 09-0492(T)

**ORDER DENYING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

PROCEDURAL BACKGROUND

THIS MATTER came before the Court for a hearing on December 22, 2009, at 3:00 p.m. in courtroom 220A on the motion of Plaintiffs Ramon M. Dela Cruz, Jude U. Hofschneider, Francisco Q. Cruz, and Trenton B. Connor for the issuance of a preliminary injunction pursuant to Rule 65 of the Commonwealth Rules of Civil Procedure to restrain Defendants Jose P. San Nicolas, Joseph M. Mendiola, Henry H. San Nicolas, Edwin P. Aldan, and the Office of the Mayor of Tinian & Aguiguan from performing certain official actions pending the determination of Plaintiffs' action against Defendants for injunctive and declaratory relief. Plaintiffs appeared and were represented by attorney

1 Michael W. Dotts, Esq. Defendant Joseph M. Mendiola appeared with counsel Mark B. Hanson, Esq.;
2 and Defendants Jose P. San Nicolas and Office of the Mayor of Tinian & Aguiguan appeared through
3 counsel Matthew T. Gregory, Esq. with William M. Cing, Tinian Mayor's Office Chief Executive
4 Officer.¹

5 Plaintiffs' motion for a preliminary injunction was made concurrently with Plaintiffs' *ex parte*
6 application for a temporary restraining order on December 4, 2009 and is not supported by a separate
7 written memorandum of law.² As stated in Plaintiffs' *ex parte* application and in their verified
8 complaint and prayer for relief, Plaintiffs seek an order restraining and enjoining Defendants: (1) from
9 further pursuing a loan application with the Marianas Public Land Trust ("MPLT") on behalf of the
10 Municipality of Tinian as authorized by Tinian Local Ordinance 16-02, the validity of which is
11 contested by Plaintiffs in this action; and (2) to prevent Defendants "(a) from making any realignment,
12 reassignment, re-appointment, and repositioning of existing employees of the Municipality of Tinian to
13 other departments or division, as well as appointment of new employees therein; (b) from
14 reprogramming municipal funds; and (c) from entering into any unusual, non-regular, and non-
15 recurring business contracts involving the use, disposition, or commitment of the funds, resources, and
16 revenue of the Municipality of Tinian." (Pl.'s Motion, at 2). Plaintiffs claim irreparable injury if
17 Defendants are not restrained from completing these actions pending this Court's determination of
18 their legal and constitutional validity.

19 Prior to the hearing on this matter, the parties presented to the Court a stipulation between the
20 Plaintiffs and the remaining defendants, Senator Joseph M. Mendiola and Mayor Jose P. San Nicolas,

21
22 ¹ Defendants Henry H. San Nicolas and Edwin P. Aldan were dismissed by Plaintiffs on December 21, 2009 pursuant to
Com.R.Civ.P. 41(a)(1)(i).

23 ² Com. R. Civ. P. 7(b)(5) states: "A party making a motion may (and, if the motion involves a question of the interpretation
24 of law, shall) file together with the motion a separate memorandum of reasons, including citation of supporting authorities,
why the motion should be granted. Affidavits and other documents setting forth or evidencing facts on which the motion is
25 based shall be filed with the motion.

1 Defendants' opposition to the motion for preliminary injunction e-filed with the Court on December
2 18, 2009. Plaintiffs' fourth cause of action in the Verified Complaint cites to a violation of the CNMI
3 Civil Service Rules and Regulation (paragraph 99). On the other hand, Defendants' opposition brief
4 cites to Section 602 of Public Law 16-32 which states:

5 The Mayor of Tinian and Aguiguan may transfer FTEs and corresponding personnel
6 appropriation therefore from his office to resident departments of the Second Senatorial
7 District. All transferred FTEs shall be reclassified to positions within the civil service,
8 1 CMC section 8131(12) notwithstanding. Within 30 days after the effective date of
9 this section, the Office of Personnel Management shall commence a desk audit on all
10 positions to be filled by the transferred FTEs to determine the appropriate classification
11 or reclassification, provided that the compensation for any position shall not be higher
12 than the personnel appropriation corresponding to the FTE.

13 At the hearing, Plaintiffs made legal arguments against the applicability of Public Law 16-32 to the
14 facts of this case that were not supported by either citations to legal authority, or by affidavits or other
15 documents evidencing facts to support their contention, but generally referred to discovery information
16 they have received thus far. Arguments raised by Plaintiffs, such as the expiration of Public Law 16-
17 32 on September 30, 2009, and the effect of a continuing resolution on its status, were not fully
18 briefed, and Plaintiffs cited to additional legal grounds for alleged violations that were not alleged in
19 the complaint. Furthermore, despite the admission by the Mayor's Office that on December 2, 2009,
20 it executed one hundred twenty-four (124) requests for personnel actions and that there is no further
21 action required by the Mayor's Office on this matter (Amended Declaration of William M. Cing e-filed
22 Dec. 18, 2009, ¶¶ 17-19), Plaintiffs nevertheless assert that an injunction is still necessary against the
23 Mayor's Office rather than any other entity or individual. Given that the civil service rules and
24 regulations are applied by the Office of Personnel Management (OPM), any allegation of an actual
25 violation of the civil service regulations antecedently requires for its factual foundation that OPM has
actually approved the transaction without any legal basis.

1 Finally, Plaintiffs have failed to show a probability that Plaintiffs will suffer irreparable injury
2 if their request for a preliminary injunction is denied. *Cf., Villanueva v. Tinian Shipping and Transp.,*
3 *Inc., 2005 MP 12 ¶20.* The result of Plaintiffs prevailing on their claim for declaratory relief will be a
4 decree that invalidates and nullifies the Defendants' purported transfer of municipal employees to civil
5 service status. The administrative processing of these transfers may or may not proceed to completion
6 during the pendency of this action, but the officials, agencies and employees involved are aware that
7 they are proceeding under the present cloud of Plaintiffs' legal challenge.

8 **CONCLUSION**

9 If Plaintiffs are successful, the interim continuation of the conversion process and the undoing
10 of its results would arguably involve some waste of administrative resources, but this possibility does
11 not amount to an irreparable injury to Plaintiffs. The relief requested by Plaintiffs in their complaint
12 will remain fully available and Plaintiffs will suffer no prejudice to their rights if the Court does not
13 issue the requested preliminary injunction. Because Plaintiffs have failed to show the strong likelihood
14 of success on the merits; or the probability that, without preliminary injunctive relief, they will suffer
15 an irreparable injury or that the relative hardships faced by the parties favor such relief, Plaintiffs'
16 motion for a preliminary injunction is DENIED.

17 IT IS SO ORDERED this 28th day of December, 2009.

18
19 /s/ 
20 RAMONA V. MANGLOÑA, Associate Judge