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

AMBROSIO S. RUBEN, Contestant, v. JOSEPH T. OGUMORO, Defendant.	Civil Action No. 94-14 **MEMORANDUM DECISION ON MOTION TO DISMISS; FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came before the Court on February 4, 1994, on Defendant Joseph T. Ogumoro's motions to dismiss and for summary judgment in an election contest concerning the office of Mayor of the Northern Islands. The basis for Contestant Ambrosio S. Ruben's contest is that Mr. Ogumoro's presence on Saipan since 1989 renders him ineligible for the office. At the hearing, the Court took Defendant's motions under advisement, and the parties proceeded to present testimony on the merits of the contest.

FOR PUBLICATION

I. DEFENDANT'S MOTION TO DISMISS

A. FACTS

According to the papers submitted by the parties prior to the hearing, neither Mr. Ogumoro (the winning candidate) nor Mr. Ruben (the defeated incumbent) have lived in the Northern Islands for some time. Mr. Ogumoro's Declaration states that he started living on Anatahan in 1981 and moved there permanently in 1985. Declaration of Joseph T. Ogumoro (*hereinafter* "Ogumoro Decl."). He left for Saipan in 1989 to campaign for mayor of the Northern Islands but lost the election. He intended to return after the election, but the volcanic activity on the island prevented his return. He still professes an intent to return to Anatahan. After winning the 1993 election, he has pledged to reopen the island for settlement and to move the mayor's office there, with a field office on Saipan. *Id.*

Mr. Ruben's Declaration states that he was born on Agrigan and lived there, aside from an absence to attend school, until 1987. Declaration of Ambrosio S. Ruben (*hereinafter* "Ruben Decl."). In 1987 his employer, PSS, required him to move to Saipan for work. He was elected Mayor of the Northern Islands in 1989 and has worked out of the Saipan field office since that time. According to his Declaration, Mr. Ruben stayed on Agrigan for three or four months in 1991, four or five months in 1992 and several weeks at the beginning of 1993. He has also flown to the Northern Islands by helicopter four or five times over the past few years on trips of less than one day's duration. Mr. Ruben also professes an intent to return to Agrigan to teach school. *Id.*

Mr. Ruben's eligibility for the Mayor's office was contested after the 1989 election on the grounds that he had not lived in the Northern Islands for two years prior to the time of the election. *See Aldan v. Ruben*, Civil Action No. 89-1134 (N.M.I. Super. Ct., Dec. 29, 1989). In ruling on the contest, the Court concluded that "[w]ithout specific guidance in Art. VI, Section 2(a) [of the Constitution] it must be concluded that the term 'resident' is subsumed into 'domiciliary' as the latter is inclusive of residence." *Id* , slip op at 4. Finding that Mr. Ruben was required by his employer to live on Saipan and that he intended to return to Agrigan, the Court held that he was a domiciliary of the Northern Islands and thus eligible for the office of Mayor.

On September 28, 1993, Mr. Ogumoro was certified as a candidate for election to the office of Mayor of the Northern Islands. *See* Ogumoro Decl., Exh. A. The election was held on November 6, 1993. Voter challenges were subsequently filed against forty-one of the votes cast in the district of the Northern Islands. On December 20, 1993, the Board released an "unofficial" result indicating that Mr. Ogumoro had won the election. The Board certified the final result on January 6. Mr. Ogumoro was sworn into office and assumed his duties as Mayor on January 10, 1994. Mr. Ruben filed this election contest on January 11, 1994.

B. ANALYSIS

Defendant argues that Mr. Ruben should have appealed Mr. Ogumoro's initial certification as a candidate, rather than

waiting until after the election to file this contest. The statute, 1 CMC § 6311 *et seq.*, requires the Board of Elections, upon presentation of the party nominations for Mayor and their supporting petitions, to "[d]etermine whether all the requirements of the election law have been complied with and that the signatures on the petition are genuine signatures of registered voters." 1 CMC § 3613.[1] The statute does not explicitly provide a vehicle for challenging a candidate at the certification stage. However, Mr. Ruben could have sought judicial review of the Board's certification pursuant to the Administrative Procedures Act, 1 CMC § 9101 *et seq*. Section 9112 provides for judicial review of all agency actions unless the statute governing the agency action explicitly precludes such review, and nothing in 1 CMC § 6311 *et seq*. precludes judicial review of the nomination certifications. Thus, Mr. Ruben is not correct in asserting that his only remedy was to wait until the election was held and then file a contest, as he did here.

However, Mr. Ruben's failure to file such administrative appeal does not bar his contest action. As both parties point out, election contest statutes must be construed strictly. *Seman v. Aldan*, 2 C.R. 916 (N.M.I. Tr. Ct. 1986), *aff'd*, 3 C.R. 152 (D.N.M.I. App. Div. 1987). The Commonwealth's contest statute, 1 CMC § 6421 *et seq.*, does not require a contestant to exhaust

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[1] At the February 4, 1994 hearing, Juan M. Diaz, the Executive Director of the Board of Elections, testified that the Board inspected the signatures on the petitions supporting the candidates' nominations and verified that both the petitioners and the candidates themselves were registered to vote on the Northern Islands. He stated that the Board's certification constituted a finding that both candidates were eligible for the office. However, he also testified than the Board conducted no hearings or investigation on the question of eligibility at that time.

administrative remedies before filing a contest. Section 6423(b) does require the contestant to file his contest "within seven days of discovery of the fact supporting the contest," and Mr. Ruben knew of Mr. Ogumoro's residency on Saipan well before the election. However, Mr. Ogumoro's residency or lack thereof is not the only "fact" necessary to support Mr. Ruben's contest. Section 6421(a) specifies that the candidate whose eligibility is challenged must have been already "declared elected to an office." Thus, Board certification of the results is an essential "fact supporting the contest," and the seven-day period of section 6423(b) did not begin to run until the time certification was announced. *Accord, Aldan v. Ruben, supra,* (contest filed after election certification decided on merits of residency). Mr. Ogumoro was declared elected on January 6, 1994, and this contest was filed January 11, 1994. The filing is timely.[2]

Defendant also asserts that, once a candidate assumes office, he or she is immune from an "eligibility" contest because section 6421(a) is limited to actions against candidates who "will not be eligible for [an] office at the beginning of its term" (emphasis added). True, the Legislature appears not to have foreseen a case where the volume of voter challenges would delay the Board's certification of the results until the Thursday prior to a Monday inauguration, as occurred in the 1993 election. However, the Court cannot deny a contestant the opportunity to assert a

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[2] The Court rejects Defendant's claim that the Board's December 20, 1993 announcement of the election results started the seven-day period running. In his testimony, Mr. Diaz emphasized the interim nature of the December 20 announcement. Such an unofficial act could not have constituted the "declaration" called for in the contest statute.

challenge on a ground provided in the statute simply because the government's procedures were so slow as to reduce the three-month window between election and inauguration to a mere three days, two of them falling on a weekend. Strict construction has its limits, especially when the procedural defect asserted could not have been remedied by the contestant. As the California Supreme Court stated in *O'Dowd v. Superior Court*, 111 P. 751, 753 (Cal. 1910):

> It is the wholesome purpose of the statute to invite inquiry into the conduct of popular elections. [...] With this view it has provided the means of contesting the claims of persons asserting themselves to have been chosen to office by the people. When such a statement is presented by an elector to the tribunal whose duty it is to investigate its merits, it should not be received in a spirit of captiousness, nor put aside on mere technical objections designed to defeat the very search after truth which the statute intended to invite.

See also Diaz v. Superior Court, 579 P.2d 605 (Ariz. App. Ct. 1978) (procedural defect caused by government did not defeat jurisdiction over election contest).

Weighing this authority, the Court finds that the use of the future tense in section 6421(a) does not obscure the statute's obvious goal of allowing a voter to contest a candidate's eligibility once the candidate has been elected, so long as the seven-day time limit of section 6423(b) has been observed. The motion to dismiss is denied.[3]

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[3] Similarly, the Court rejects the contention that Mr. Ruben is estopped from contesting the election after he has "relinquished" his office to Mr. Ogumoro. It is not clear what Defendant would have had Mr. Ruben do to prevent Mr. Ogumoro from taking office. Filing this contest on January 6 or 7, 1994, prior to the inauguration, would not have prevented Mr. Ogumoro's swearing-in. As noted above, Mr. Ruben could have tried to invalidate Mr. Ogumoro's nomination through a judicial appeal. But this Court cannot penalize him for waiting to avail himself of an election contest when its grounds are expressly authorized in the contest statute.

II. FINDINGS AND CONCLUSIONS ON THE MERITS

Defendant also moved for summary judgment on the grounds that, as a matter of law, Mr. Ogumoro meets the residency and domicile requirements of the Constitution. However, a full hearing on the merits of Contestant's claims was held after the parties finished arguing the motions, due to the expedited timetable governing election contests. 1 CMC § 6424. Thus, the complete evidentiary record is now before the Court, and it is unnecessary to decide these issues purely as a matter of law. Accordingly, the Court will weigh the evidence presented at the hearing in reaching its conclusions.

A. FACTS

The testimony presented at the February 4, 1994 hearing was strikingly clear; the evidence strongly corroborated Mr. Ogumoro's statements of intention to return to Anatahan and to make the island his permanent home. Mr. Ogumoro testified that he first came to Anatahan in 1975, a year after marrying an Anatahan woman, and that in his words the island "captured my heart." He stayed on the island for a year in 1980-81 and built a house there. He returned to Saipan in 1981 in order for his second daughter to attend school, but returned to Anatahan with his family in 1984. In 1985, he built a larger house. In 1988, he helped build a school on Anatahan and was instrumental in obtaining a teacher to work there. He also testified that he was involved in building virtually every house on the island. Recent photographs were admitted showing that several structures, including Mr. Ogumoro's house and the school building, are still standing. One photograph

showed numerous personal effects and furniture in a building identified as Mr. Ogumoro's house. The Court finds this evidence to be credible and highly probative of the claim that Mr. Ogumoro maintains a dwelling on Anatahan.

Mr. Ogumoro further testified that he left Anatahan in September 1989 to run for the office of Mayor, and that after he lost the election he immediately took steps to return to Anatahan by winding up his personal affairs on Saipan and petitioning then-Mayor Ruben for transportation home. Mr. Ogumoro testified that the Mayor did not provide such transportation; in March 1990, the island was closed due to seismic disturbance and has remained closed. Mr. Ruben contradicted the assertion that no transportation was provided, but his statements under cross-examination were evasive and lacked credibility. The Court therefore finds that Mr. Ogumoro was physically prevented from returning to Anatahan in late 1989 and early 1990, and has been prevented from living there ever since.

Finally, Mr. Ogumoro gave highly credible testimony as to his efforts to secure the reopening of Anatahan since 1990, as well as his status of "Anatahan resident" in the eyes of the C.N.M.I. government. In particular, he offered testimony and documents showing that the office of the Mayor of the Northern Islands considered him a resident of the Northern Islands for the purposes of obtaining government housing, and that the Governor's office considered him a spokesperson for the displaced residents of Anatahan. *See* Defendant's Exhibits L-N. Again, Mr. Ruben contradicted this testimony, stating that he considered Mr.

Ogumoro's family Anatahan residents, but not Mr. Ogumoro himself. Mr. Ruben's statements lacked credibility.

B. ANALYSIS: RESIDENCE AND DOMICILE

Despite the factual simplicity of this case, the legal issues it raises are far from simple. Article VI, Section 2(a) of the Commonwealth Constitution provides, *inter alia*, that an eligible candidate for Mayor must be "a resident and domiciliary of the island or islands served by the Mayor for at least three years immediately preceding the date on which the Mayor takes office. . . ." The Superior Court has construed the term "residency" to be subsumed within the term "domicile" in this context. *See Aldan v. Ruben, supra*, slip op. at 4; *accord, Allan-Agoncillo v. Agoncillo*, Civil Action No. 93-765 (N.M.I. Super. Ct., Oct. 12, 1993), *citing Manansala v. Manansala*, 1 C.R. 160, 162 (N.M.I. Tr. Ct. 1981). According to the *Restatement (Second) of Conflicts*, § 11, cmt. *k*, absent a contrary legislative intent, "residence" is interpreted "[a]s being the equivalent of domicil in statutes relating to judicial jurisdiction, *voting, [and] eligibility to hold office* . . ." (emphasis added).

While persuasive, none of these authorities are binding on this Court. Moreover, Contestant makes a cogent argument in support of a finding that residence is <u>not</u> subsumed within domicile. He points out that Article VI, § 2(a) mentions both domicile and residence, suggesting that the terms were intended to have separate meanings. In general, a statute should not be construed so as to render any of its terms superfluous. *See* 2A

Sutherland, *Statutory Construction*, § 46.06; *Nehmer v. U.S. Veterans' Admin.*, 712 F. Supp. 1404, 1421 (N.D. Cal. 1989).

Article VI, § 2(a) originally required only residence and domicile *in the Commonwealth* for three years, and did not mention residence in a particular election district.[4] Moreover, the terms residence and domicile were intentionally left undefined in the Constitution. As the Report of the Committee on Personal Rights and Natural Resources to the Constitutional Convention of 1976 stated, in the context of eligibility to vote:

> The Committee's recommended provision includes requirements for domicile and residence, as explained above, but does not define either of these terms. The Committee believes that it is appropriate to leave these definitions to the Legislature because the criteria for determining domicile or residence may change over time.

1 *Journal of the Northern Mariana Islands Constitutional Convention*, (1976) at 457. The Committee delegated the definitions of these terms to the Legislature partly out of concern that residency requirements have been subject to Constitutional attack. *Id.* at 458. A committee report such as this is considered highly persuasive indicia of legislative, or in this case, constitutional, intent. 2A Sutherland, *supra*, § 48.05. Although this Committee was addressing the related topic of voter eligibility, statutory language must be construed in the context of the entire act in order to achieve harmony among related provisions. *See People v. Morris*, 756 P.2d 843, 852 (Cal. 1988). Absent any indication to the contrary, the Court must assume that the words "domicile" and "residence" were intended to have the

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[4] The requirement of residence on "the island or islands served" was added by Legislative Initiative No. 1, passed by the electorate on November 7, 1987.

same meanings in provisions relating to candidate eligibility as in provisions relating to voter eligibility.

This leads the Court back to the Commonwealth Code, in which the Legislature has in fact defined the terms at issue. Title 1 CMC § 6202 (again in the context of voter eligibility) defines domicile as:

> that place where a person maintains a residence with the intention of continuing that residence for an indefinite period and to which that person has the intention of returning whenever absent, even for an extended period.

This provision clearly contemplates that a person might "maintain a residence" and yet be absent from it for an "extended period of time." On the other hand, 1 CMC § 6205(b)(1) describes residence as follows:

> [N]o person may register to vote or vote in an election district other than that in which he is a resident. A person has a residence in, or is a resident of, the election district where that person is factually living and has an abode.

Here, the Legislature appears to have intended "residence" to mean something more than owning a dwelling such as a vacation home; indeed, it is clear that under section 6205(b)(1), it would be unusual for a person to have more than one "residence," since most people are not "factually living" in more than one place at once.

A strict reading of the definitions provided by the Legislature in the above statutes suggests that domicile means the place where one intends to live permanently, and residency means the place where one actually does live most of the time. Under this formulation, residency is something less than domicile, since residency lacks the requirement of intent to remain; but in another respect it is more than domicile, since residency requires a greater degree of physical presence than domicile does.

However, returning to Article VI, § 2(a), applying these definitions would require any candidate for Northern Islands Mayor to have been physically living on the Northern Islands for the three years prior to the November 6, 1993 election. This result would bar both candidates in the 1993 election from holding office. By implication, it would also bar all of the Anatahan voters from voting in the Northern Islands district, since they have not been living on Anatahan either, and they are also subject to a residency requirement.

The Court fully agrees with Defendant that this provision would be unconstitutional as applied to Mr. Ogumoro, and by implication the Anatahan electorate, if so interpreted, since all residents of that island have been prevented by acts of nature from returning to Anatahan since 1990. *Johnson v. Hamilton*, 541 P.2d 881, 884 (Cal. 1975) held that residency requirements for holding office burden the rights to candidacy for public office, voting, and travel, and must therefore be subjected to "strict scrutiny." *See also Gilbert v. State*, 526 P.2d 1131, 1135 (Alaska 1974) (applying strict scrutiny to state senate residency requirement); *Sununu v. Stark*, 383 F. Supp. 1287, *aff'd,* 95 S.Ct. 1346 (1975) (same). There is no compelling interest in favor of barring Mr. Ogumoro, a man who has convincingly demonstrated a commitment to the people of the Northern Islands and who wishes to live there, from being elected Mayor because the island has been evacuated. Indeed, the Commonwealth's interest in protecting the cultural and political rights of the people of the Northern Islands favors the opposite result.

The Court notes that, until now, the Board of Elections has avoided the harsh result of unconstitutionality in its adjudication of voter challenges through a careful interpretation of the word residence as used in section 6205(b)(1). *See In the Matter of the Election Challenges to the 1993 General Election for the Northern Islands*, slip op. at 1 (N.M.I. Board of Elections, Feb. 3, 1994). While asserting that the statute requires voting in the election district where a person "is actually living and sleeping most of the time," the Board has made exceptions for those voters temporarily residing out of the district for the following reasons: 1) to pursue full-time or part-time studies; 2) to work under a contract which provides housing and transportation allowances to and from the district of registration; 3) to comply with military assignment; 4) to attend to medical needs. The Board also recognized that the Northern Islands present "further peculiarities" due to the closure of some islands and the difficulty of getting transportation to and from the others. *Id.* at 2-3.

This list of exceptions is eminently sensible. However, it is not found in the terms of section 6205(b)(1), nor is it found in Article VI, § 2(a) of the Constitution. In general, neither an administrative agency nor a court has the power to infer an exception to a legislative pronouncement when none exists on its face. 2a Sutherland, *supra*, § 47.11. However, if an absurd result is reached by a literal construction of a statute, an exception is presumed to have been intended. *Id.*; *Kempf v. Michigan Bell Telephone Co.*, 358 N.W.2d 378, 383 (Mich. Ct. App. 1984); *see also Morris, supra*, 756 P.2d at 851 ("[I]t is

fundamental that a statute should not be interpreted in a manner that would lead to absurd results"). Here, an interpretation of Article VI, § 2(a) which disqualified both candidates for Mayor of the Northern Islands and by implication barred the entire population of Anatahan from voting in the Northern Island election would be, to say the least, absurd.

More fundamentally, when a court is considering competing constructions of a statute or constitutional provision, the fact that one interpretation involves serious constitutional difficulties is reason to reject that interpretation in favor of the other. As the U.S. Supreme Court stated in *DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 108 S.Ct. 1392, 1397 (1988), "[t]he elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality" (citations omitted); *accord In re Seman*, 3 N.M.I. 57, 73 (1992).

This rule of construction applies even more strongly to the interpretation of the Commonwealth Constitution. It is clear that the Convention's Committee on Personal Rights and Natural Resources was aware of constitutional problems arising from certain residency requirements as applied in the area of voting. 1 *Journal, supra*, at 458. Indeed, the intent to avoid those constitutional difficulties was part of the reason the Convention left the definition of these terms to the Legislature. Thus, it cannot be presumed the Convention intended the term residence to be construed so strictly as to violate some citizens' rights to vote, travel, and stand for office, even though the Legislature's definition points to such a construction.

Based on this understanding of the intent of the framers of the Commonwealth Constitution, the Court interprets the term "residence" to mean the place where one lives and sleeps most of the time, except in circumstances where one is prevented by circumstances outside of one's control from living in the district of one's residence, or where one chooses *temporarily* to live in another district in order to pursue education or to earn a livelihood. This interpretation takes into account the specific exceptions enunciated by the Board in its adjudicative decisions as well as the purpose emanating from the relatively strict requirements of Article VI, § 2(a) and 1 CMC § 6205(b)(1). To the extent that this interpretation stands at odds with the Court's ruling in *Aldan v. Ruben, supra*, that decision is overruled.

In applying this interpretation of residence to the facts of Mr. Ogumoro's case, there is no doubt that he qualifies as a resident of the Northern Islands. The testimony at trial demonstrated that he left Anatahan for the sole purpose of running for office, and that his intention to return there immediately after the election was frustrated by events beyond his control. The photographs admitted at trial show that he still maintains a residence on Anatahan and his testimony amply demonstrates his desire to return there as soon as possible. In contrast, the testimony and other evidence submitted by Mr. Ruben lacked credibility.

1 C. COSTS

2 Title 1 CMC § 6428 requires this Court to assess all costs
3 against the contestant "[i]f the proceedings under this section
4 are dismissed for insufficient evidence." While this case
5 presents difficult legal issues, the facts relating to Mr.
6 Ogumoro's residency are glaring in clarity. Indeed, it is
7 difficult to discern how Mr. Ruben expected to show that Mr.
8 Ogumoro is ineligible for his office, except to argue for a legal
9 definition of residence so strict that it would render Mr. Ruben
10 likewise ineligible to run for Mayor. Under these circumstances,
11 the Court has no difficulty awarding the costs of this suit to
12 Defendant.
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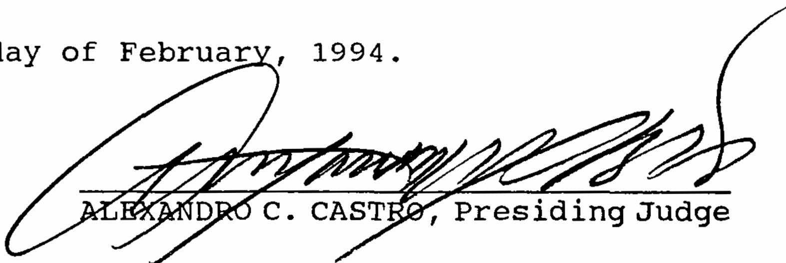
14 III. CONCLUSION

15 For the foregoing reasons, the Court hereby ORDERS:
16 1. Defendant Joseph T. Ogumoro's Motion to Dismiss is
17 DENIED.
18 2. Judgment in the Contest filed by Ambrosio S. Ruben for
19 the office of Mayor of the Northern Islands is rendered in favor
20 of Defendant Joseph T. Ogumoro.
21 3. Contestant Ambrosio S. Ruben shall reimburse Defendant
22 Joseph T. Ogumoro for costs incurred in the defense of this
23 litigation. Defendant shall submit to the Court within thirty
24 days a detailed accounting of such costs. Contestant shall file
25 any objection to this accounting within seven days of its filing.
26 If no objection is timely filed, the amounts in the accounting
27 shall constitute the amount of the Court's Judgment levied against
28 Contestant. If timely objection is made, the Court shall hear the

objection according to the normal law and motion rules. However, Contestant should be aware that the Court retains discretion to award costs from any further motions to Defendant should Contestant's objection be without foundation.

So ORDERED this 8th day of February, 1994.



ALEXANDRO C. CASTRO, Presiding Judge