

**MUNICIPALITY OF DARRIT, ULIGA, DALAP,
Plaintiff-Appellant**

v.

**ALTHEA BING & CO., INC., Defendant-Appellee
Civil Appeal No. 394**

**MUNICIPALITY OF DARRIT, ULIGA, DALAP,
Plaintiff-Appellant**

v.

**JOHN DOE, d/b/a TREASURE ISLE, Defendant-Appellee
Civil Appeal No. 395**

**MUNICIPALITY OF DARRIT, ULIGA, DALAP,
Plaintiff-Appellant**

v.

**ATOLLS UNLIMITED, INC., Defendant-Appellee
Civil Appeal No. 396**

Appellate Division of the High Court

Marshall Islands District

January 19, 1984

Three consolidated appeals addressing the issue of effect of Local Government Act of 1980 on taxes imposed by Municipalities. The Appellate Division of the High Court, Hefner, Associate Justice, held that even though Cabinet had ordered Municipalities to amalgamate pursuant to the Local Government Act of 1980, where neither the Municipalities nor the Cabinet had taken action to complete the amalgamation, and the effective date of new constitution had not yet arrived, Municipalities retained their taxing powers, and therefore decisions of trial court were reversed and remanded.

Municipalities—Powers

Even though Cabinet ordered Municipalities to amalgamate pursuant to Local Government Act of 1980, where neither the Municipalities nor the Cabinet had taken action to complete the amalgamation, and the effective date of the new constitution had not yet arrived, Municipalities retained their taxing powers.

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Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate
Justice*, and HEFNER*, *Associate Justice*

HEFNER, *Associate Justice*

These three appeals are consolidated as they all address the same basic issue. Finding that the trial court erred in considering the applicable law, we reverse.

BACKGROUND

In each case the appellant is the Municipality of Darrit, Uliga, Dalap (Municipality). The appellees are three different taxpayers. In October, 1980, the Municipality filed these suits for certain taxes due from the appellees. Before the matters came on for trial, the Local Government Act 1980 became law on February 18, 1981. This law, passed by the Marshall Islands Nitijela, provided for the amalgamation of certain local governments. To implement the amalgamation, the law provided that the Cabinet of the Government of the Marshall Islands could order the Municipality to join with another municipality. On August 13, 1981, the Cabinet ordered the appellant to amalgamate with the Municipality of Laura, Majuro Atoll. The amalgamation was to be effected within six months or else the Cabinet would form the local government.¹

* Chief Judge of the Commonwealth Trial Court, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by Secretary of Interior.

¹ Suit to enjoin the amalgamation was filed on January 15, 1983, as Civil Action 12-82. A preliminary injunction was issued on February 19, 1982, stay-

When this matter came on for trial in February, 1983, the appellant proved up the taxes claimed but the trial court ruled that the Municipality had no further governmental functions after February 18, 1981, because of the Local Government Act 1980, and any taxes imposed by it after February 18, 1981, were invalid.

DISCUSSION

It is clear from the provisions of the Local Government Act 1980 (the Act) that without a Cabinet direction to amalgamate, the Municipality could have proceeded to exist as it previously had. The discretion was given to the Cabinet to order two governments to join. It was not until August 13, 1981, that the Cabinet brought the Act into play insofar as the appellant is concerned. However, the August 13th Cabinet order gave the Municipality of DUD (appellant) and Laura six months to accomplish the amalgamation "voluntarily." Pursuant to Section 21(8) and (9) of the Act, if the two municipalities failed to amalgamate by the time six months expired, the Cabinet could perform the task. It is uncontradicted that neither the local governments nor the Cabinet had taken action to complete the amalgamation. Indeed, pursuant to Section 21(8) and (9) of the Act, it appears that only upon the effective date of the new constitution² would the appellant be abolished.²

ing the amalgamation but on December 1, 1982, the injunction was lifted. However, the Appellate Division in Civil Appeal 388 stayed further proceedings. Thus to this date no amalgamation has actually taken place. Civil Appeal 388, *Joash & DUD v. GOM* tests the constitutionality of the Local Government Act 1980.

² Section 21(8) and (9) (a) provides:

(8) If at the end of the period referred to in Subsection (7) the local governments have not amalgamated, the Cabinet may, by order to each of them, declare that the provisions of the Schedule, with such modifications to meet local requirements as the Minister, after consultation with the Attorney General, by order determines, apply in respect of the atoll or island.

(9) In a case to which Subsection (8) applies, on the effective date of the new constitution—

(a) The former local governments are abolished; and

Since neither of these events has occurred, the conclusion is inescapable that the appellant remains a viable municipality with taxing powers.

Since each appellee has different tax liabilities to be reduced to judgment, each case is reversed and remanded for the trial court to enter an appropriate judgment consistent with this Opinion.

The decisions of the trial court are reversed and remanded.

TAKI KOMANTA, Plaintiff-Appellant

v.

GLOBAL ASSOCIATES, INC., Defendant-Appellee

Civil Appeal No. 372

Appellate Division of the High Court

Marshall Islands District

January 19, 1984

Appeal from judgment for defendant in negligence action brought by crew-member of tugboat for injuries occurring while tug was being maneuvered into dock. The Appellate Division of the High Court, Hefner, Associate Justice, held that though the trial court gave an erroneous reason for granting its judgment, since the plaintiff could not prevail in a negligence action, as the cause of action arose in admiralty, and even if construed as a maritime "unseaworthiness" claim, the proper action was against the owner of the ship, as opposed to its operator, therefore the judgment for defendant was affirmed.

1. Admiralty—Unseaworthiness—Generally

The term "unseaworthiness", in the context of suits to recover for personal injuries, is broad enough to include almost all types of operating negligence in the navigation and management of the ship.

2. Admiralty—Unseaworthiness—Generally

An "unseaworthiness" claim must be brought against the owner of a vessel and not the shipowner's agent.

3. Admiralty—Unseaworthiness—Generally

"Unseaworthiness" claim may be brought against charterer and not owner of a vessel, only if the owner had completely and exclusively relinquished possession, command, and navigation to the charterer, and the charterer was in effect a demise or bareboat charterer.