

Juan T. LIZAMA, et al.
vs.
Jose S. RIOS, individually and as
Mayor of Saipan;

Jose S. Rios
vs.
Marianas Public Land
Corporation, et al.; Marianas
Public Land Trust

Civil Action No. 85-0011
District Court NMI

Decided May 22, 1986

1. Taxpayers Suits - Standing

Status as a federal taxpayer, standing alone, does not show a sufficiently concrete interest to give standing to challenge expenditures of federal funds.

2. Taxpayers Suits - Standing

Unlike federal taxpayers, municipal taxpayers may sue to enjoin municipal corporations from illegally expending public funds.

3. Taxpayer Suits - Standing

Commonwealth taxpayers have standing to challenge the unlawful expenditure of public funds.

4. Taxpayer Suits - Standing

Though arguably no public funds are lost when, as defendant alleges, public land corporation exchanges public lands for private lands of lesser value, ultimately there is harm suffered by the taxpayers and a taxpayer action is appropriate.

5. Trusts - Beneficiaries

**Public Land Corporation - Board -
Fiduciary Duties**

Where public land corporation was established under constitution to manage

public lands for the benefit of the people of the Commonwealth who are of Northern Marianas descent, such persons are beneficiaries of a trust and can sue to redress alleged breaches of the trust.

6. Civil Procedure - Summary Judgment

For purposes of summary judgment, a material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the parties' differing version of the truth. Fed. R. Civ. P. 56.

7. Civil Procedure - Summary Judgment

When reviewing the record on a motion for summary judgment the court views the evidence in a light most favorable to the party opposing the motion. Fed. R. Civ. P. 56.

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN MARIANA ISLANDS

3 JUAN T. LIZAMA, et al.,)
4 Plaintiffs,)
5 vs.)

CIVIL ACTION NO. 85-0011

6 JOSE S. RIOS, individually)
7 and as Mayor of Saipan,)
8 Defendant,)

DECISION AND ORDER

9 JOSE S. RIOS,)
10 Third-Party Plaintiff,)

FILED
Clerk
District Court

11 vs.)
12 MARIANAS PUBLIC LAND CORPO-)
13 RATION, et al.,)

MAY 22 1986

14 Third-Party Defendants,)
15 MARIANAS PUBLIC LAND TRUST,)
16 Applicant for Intervention.)

For The Northern Mariana Islands
By: [Signature]
(Deputy Clerk)

17
18 Plaintiffs, Juan T. Lizama and Jesus T. Lizama, filed a
19 complaint on August 28, 1985, pursuant to 42 U.S.C. §1983
20 alleging that defendant, Jose S. Rios, individually and as the
21 Mayor of Saipan, was interfering with their right to possess Lot
22 001 D 27 (hereinafter the "Hyatt lot") in violation of the fifth
23 and Fourteenth Amendments to the United States Constitution. On
24 October 17, 1985, Rios counterclaimed^{1/} under 42 U.S.C. §1983

25
26 ^{1/} Initially, Rios couched this action in terms of a "cross-
claim" but he later amended it to read "counterclaim."

1 against the Lizamas joining the Marianas Public Land Corporation
2 and its officers (hereinafter collectively referred to as MPLC)
3 alleging that MPLC violated the Fourteenth Amendment by treating
4 Rios and others arbitrarily and capriciously when it exchanged
5 public lands without notice and a hearing. The counterclaim
6 further alleged fraud, breach of trust, and a gift of public
7 lands. Rios sought \$9,500,000 in compensatory and punitive
8 damages and injunctive and declaratory relief aimed at reversing
9 past exchanges, including the Hyatt exchange, and preventing
10 future similar exchanges. On January 6, 1986, Rios filed a
11 motion for summary judgment on his counterclaim. On January 15,
12 1986, the Lizamas filed a motion to dismiss the counterclaim. On
13 March 11, 1986, Rios and MPLC entered into a stipulated permanent
14 injunction in which MPLC agreed to adopt regulations and
15 procedures to insure that future exchanges resulted in equal
16 exchanges of land values. Pursuant to this stipulation, Rios
17 dropped his claims against MPLC. After carefully considering
18 the moving papers and the arguments of both counsel the Court now
19 denies both motions for the reasons stated herein.

20 Prior to July 25, 1984, MPLC held title to the Hyatt
21 lot. On several occasions Rios attempted to acquire title to
22 this lot; however, MPLC informed him that the lot was not
23 available for sale or exchange. Rios then sought, and on October
24 14, 1982, obtained, a license from MPLC to clear, clean, and
25 maintain the Hyatt lot.

26 On July 25, 1984, MPLC exchanged the Hyatt lot for two

1 lots on Tinian owned by the Lizamas. At all relevant times, Juan
2 T. Lizama, plaintiff and counter-defendant herein, served as
3 legal counsel to MPLC.

4 Rios was informed by a letter dated August 7, 1984,
5 from Jesus G. Villagomez, Executive Director of MPLC, that the
6 exchange had been consummated and that his license was
7 terminated. Rios refused to vacate the Hyatt lot. This action
8 followed.

9 The Lizamas now move to dismiss Rios' counterclaim
10 based on their asseertion that he lacks standing. Rios claims he
11 has standing in his capacity as a taxpayer and as a beneficiary
12 of a public trust. He bases this claim on both general
13 principles of law and Amendment 31 to the Commonwealth of the
14 Northern Mariana Islands Constitution.

15
16 I. MOTION TO DISMISS

17 a. Taxpayer's Standing

18 [1] The Lizamas' motion to dismiss is grounded on the
19 general rule adhered to by federal courts in federal taxpayer
20 lawsuits that federal taxpayers do not have standing to challenge
21 expenditures of federal funds. United States v. Richardson, 418
22 U.S. 166, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974). This rule is
23 premised on Article III of the United States Constitution which
24 grants federal courts jurisdiction to adjudicate suits involving
25 actual cases or controversies. Id. 94 S.Ct. at 2943. The
26 federal courts have consistently held that the interest of a

1 federal taxpayer in federal monies is infinitesimal and the
2 effect on a single taxpayer of monies spent does not rise to a
3 level that would support a finding of the requisite direct injury
4 necessary to establish a case or controversy. Massachusetts v.
5 Melon, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078 (1923).

6 [2] Unlike federal taxpayers, municipal taxpayers may sue
7 to enjoin municipal corporations from illegally expending public
8 funds. Id. 43 S.Ct. at 601. In this situation the taxpayers'
9 interest is direct and immediate. Id. The Ninth Circuit has
10 adopted this reasoning in Reynolds v. Wade, 249 F.2d 73 (9th Cir.
11 1957). In Reynolds, an Alaskan taxpayer sued to enjoin Alaskan
12 officials from making alleged unlawful expenditures of
13 territorial funds. The District Court of Alaska dismissed the
14 action finding that the taxpayer lacked standing. The Ninth
15 Circuit reversed, reasoning that although a federal taxpayer, who
16 is one in 160 million, does not have standing to challenge
17 federal expenditures, an Alaskan taxpayer, who is one in 130,000,
18 does. Id.

19 [3] This reasoning is even more compelling here in the
20 Commonwealth which has only a fraction of the taxpayers that
21 existed in Alaska in 1957. Both the Commonwealth Trial Court and
22 this Court's appellate division have previously held that
23 Commonwealth taxpayers have standing to sue. See Romisher v.
24 MPLC, Civ.No. 83-401 (Tr.Ct. Decision filed Nov. 25, 1983); and
25 Manglona v. Camacho, DCA No. 82-9009 (D.N.M.I.(App.Div.) Nov. 10,
26 1983). The Lizamas have not presented this Court with any reason

1 to retreat from these precedents.

2 [4] The Lizamas contend that there was no expenditure of
3 public funds, merely an exchange of public lands, and therefore
4 there is no basis for a taxpayer action. Where a municipality
5 surrenders something of value to the detriment of its taxpayers,
6 a taxpayer action is appropriate. In re Cole's Estate, 102 Wis.
7 1, 78 N.W. 402 (1899). In Cole's Estate, Cole bequeathed a life
8 estate in his property to his wife and son, the remainder to the
9 town of Watertown. When the trustees, officials of Watertown,
10 sold a portion of the property to cover administrative and repair
11 costs, a taxpayer sued to recover the property. The court found
12 that there was standing despite the fact that no municipal funds
13 had been expended and that in fact the property had been received
14 as a gift. Id. 78 N.W. at 404. Here too, though arguably no
15 public funds are lost when, as Rios alleges, MPLC exchanges
16 public lands for private lands of lesser value, ultimately there
17 is harm suffered by the taxpayers and one which this Court will
18 address.

19
20 b. Beneficiary Standing

21 Rios claims standing as a beneficiary of a public
22 trust. Article XI, §4, of the Commonwealth Constitution
23 establishes MPLC for the "benefit of the people of the
24 Commonwealth who are of Northern Marianas descent."

25 The Lizamas argue that Rios does not have standing as a
26 beneficiary of a trust to bring this action. The Lizamas concede

1 that MPLC holds public lands in trust for the people of the
2 Commonwealth who are of Northern Marianas descent. Sec., Memo-
3 randum of Law in Support of Plaintiffs' Motion to Dismiss
4 Counterclaimants' Counterclaim, at p. 7. However, they contend
5 that the trust is a public trust and, according to the Lizamas, a
6 beneficiary of a public trust cannot sue for breach of a
7 fiduciary duty absent a showing of a particularized injury
8 different in kind from that suffered by the public at large.
9 See, e.g., Burgess v. M/V Tamano, 370 F.Supp. 247 (1973).

10 Though this was the general rule, this concept was
11 eroded in United States v. Mitchell, 463 U.S. 206, 103 S.Ct.
12 2961, 7 L.Ed.2d 580 (1983). In Mitchell, the Quinault Indian
13 Tribe and individual Indians brought suit seeking damages for
14 alleged mismanagement of Indian timber lands claiming that the
15 mismanagement constituted a breach of the fiduciary duty owed to
16 the Indians by the United States as trustee of the lands.
17 Mitchell involved a series of agreements between the United
18 States, through the Secretary of the Interior, and the Quinault
19 Indian Tribe. These agreements provided that the Secretary of
20 the Interior would manage the timber resources on Indian lands
21 for the benefit of the Indians. Management of these resources
22 included cutting down the timber, removing it from the land, and
23 selling it. The Secretary was required to manage the timber
24 resources in a manner which would yield the greatest revenue for
25 the Indians. The proceeds from the timber sales were to be used
26 for the benefit of the Indians. The Secretary of the Interior

1 exercised daily supervision over the harvesting and management of
2 the timber and was authorized to collect reasonable fees from the
3 timber sales to cover the costs incurred in the management and
4 sale of the timber. Id.

5 The plaintiff's suit in Mitchell alleged, inter alia,
6 that in its management of the timber the Secretary, in some
7 cases, had failed to obtain the fair market value for the timber
8 and, in others, had failed to obtain any payment at all. The
9 Indians sought monetary damages to compensate them for these past
10 wrongs.

11 The United States Supreme Court had little difficulty
12 in applying general trust law and finding a trust existed. As
13 the Court pointed out, the Secretary had full responsibility to
14 manage the Indians' resources for their benefit and this in
15 itself established a fiduciary relationship which necessarily
16 arises when the government assumes such elaborate control over
17 the property of the Indians. Id. "All of the necessary elements
18 of a common-law trust [were] present: a trustee (the United
19 States), a beneficiary (the Indian allottees), and a trust corpus
20 (Indian timber, lands and funds)." Id. 103 S.Ct. at 2972.

21 The only remaining issue for the Mitchell court was
22 the question of compensation. The court concluded that "[g]iven
23 the existence of a trust relationship, it naturally follows that
24 the Government should be liable in damages for breaches of a
25 trust." Id. (citations omitted). The Court further noted that a
26 fundamental incident of a trust relationship was the "right of an

1 injured beneficiary to sue the trustee for damages resulting from
2 a breach of a trust." Id. (footnote omitted).

3 [5] The facts in Mitchell are aligned with the facts
4 herein. MPLC was established to manage and dispose of public
5 lands for the "benefit of the people of the Commonwealth who are
6 of Northern Marianas descent." CNMI Const., Art. XI. As pointed
7 out supra, the Lizamas do not question the existence of a trust,
8 they challenge Rios' ability to redress alleged wrongs by the
9 trustee. The Court follows the reasoning in Mitchell and now
10 holds that beneficiaries of a public trust have the right to sue
11 the trustee to redress alleged wrongs committed in breach of the
12 trust. This furthers the purpose of the trust which is to manage
13 the public lands in the best interests of the beneficiaries.
14 Without granting Rios, and others similarly situated, the oppor-
15 tunity to challenge alleged wrongs MPLC would be left to squander
16 public lands leaving the beneficiaries no recourse in the courts.
17 That defeats the purpose of MPLC and violates the very nature of
18 a "trust." Where a breach of a trust is alleged the Court will
19 not allow the trustees to use the existence of a public trust as
20 a shield to preclude the beneficiaries - the very persons for
21 whom the trust was established - from challenging such actions.

22 Rios also asserts that he has standing based on Amend-
23 ment 31 to the Commonwealth Constitution. This amendment,
24 entitled, "Taxpayer's Right of Action," specifically provides for
25 taxpayer's standing where there has been an expenditure of public
26 funds for other than public purposes or for a breach of a fiduci-

1 ary duty. Though Amendment 31 came into effect after Rios'
2 counterclaim was filed, Rios argues it should be applied
3 retroactively. Lizama argues it should be applied prospectively
4 only. Because there are sufficient grounds for standing based on
5 Rios' status as a taxpayer and as a beneficiary the Court need
6 not now address the question of the retroactivity of amendment
7 31. For these reasons the Lizamas' motion to dismiss Rios'
8 counterclaim is denied.

9
10 II. MOTION FOR SUMMARY JUDGMENT

11 [6] Federal Rule of Civil Procedure 56(c) provides that a
12 court shall render summary judgment in favor of the moving party:

13 if the pleadings, depositions, answers to
14 interrogatories, and admissions on file,
together with the affidavits, if any, show
15 that there is no genuine issue as to any
material fact and that the moving party is
16 entitled to judgment as a matter of law.

17 "A material issue of fact is one that affects the outcome of the
18 litigation and requires a trial to resolve the parties' differing
19 version of the truth." Admiralty Fund v. Jones, 677 F.2d 1289,
20 1293 (9th Cir. 1982)(citation omitted).

21 Rios' counterclaim contains three counts: (1) violation
22 of equal protection and due process rights; (2) fraud; and (3)
23 gift of public funds. The first count charges that MPLC has no
24 criteria or standards for exchanges and that consequently the
25 exchanges are conducted in an arbitrary and capricious manner.
26 In addition, Rios alleges that MPLC gave special consideration to

1 the Lizamas because Juan Lizama was its employee and that the
2 executive director authorized the exchange on his own when the
3 entire board of directors should have been consulted. These
4 acts, according to Rios, were the result of a conspiracy between
5 MPLC and the Lizamas. These assertions are supported by
6 affidavits filed by Rios and his attorney, Robert J. O'Connor.
7 The O'Connor affidavit sets out excerpts from conversations he
8 had with Executive Director Villagomez in which Villagomez
9 purportedly told O'Connor that he went to the board of directors
10 on behalf of Juan Lizama to effectuate the Hyatt exchange. The
11 affidavit further sets out a conversation O'Connor had with
12 Lizama in which Lizama told O'Connor that the Lizamas received
13 the Hyatt lot because Juan worked for MPLC.

14 [7] Filed with Lizamas' opposition to Rios' motion for
15 summary judgment are affidavits of Juan Lizama and Jesus
16 Villagomez. In his affidavit Juan Lizama states that he was
17 never involved directly or indirectly with the board's decision
18 to exchange his land. This counters Rios' allegation of a
19 conspiracy between Lizama and MPLC. When reviewing the record on
20 a motion for summary judgment the court views the evidence in a
21 light most favorable to the party opposing the motion. Poller v.
22 Columbia Broadcasting Systems, Inc., 368 U.S. 464, 82 S.Ct. 486,
23 7 L.Ed.2d 458 (1962). In this light, there exists a question of
24 fact as to the existence of a conspiracy between MPLC and Juan
25 Lizama.

26 O'Connor's affidavit states that Villagomez told

1 O'Connor that he went to the Board seeking the Hyatt Lot "for
2 Juan." A subsequent declaration of O'Connor recites questions
3 posed to Jesus Villagomez and responses made by him during a
4 deposition. This declaration indicates that Villagomez stated
5 that MPLC had no rules or regulations and that it did not
6 appraise lots before it exchanged them. Attached to Lizamas'
7 opposition to this motion is Villagomez' affidavit which, after
8 stating that MPLC has policies and procedures for land exchanges,
9 sets them out. These conflicting affidavits present material
10 questions of fact that can only be resolved in trial, making
11 summary judgment inappropriate.

12 Rios' second count, fraud, is based on his assertion
13 that MPLC caused the dissipation of public lands when it
14 exchanged lands without appraisals. Attached to Rios' reply
15 brief in support of his motion for summary judgment is a
16 declaration by Manuel A. Sablan, a certified real estate
17 appraiser, who opines that the Lizamas' land is worth between
18 \$7,300 and \$16,400 and the Hyatt lot is worth between \$31,400 and
19 \$42,800. Villagomez' affidavit states that MPLC offered the
20 Lizamas \$5.00 per square meter for the Lizamas' 6,000-plus square
21 meters of land. Accordingly, the value MPLC had placed on the
22 Lizamas' land was in excess of \$30,000. Villagomez' affidavit
23 sets out several factors that were taken into consideration when
24 exchanging lands. First, MPLC had an obligation to acquire these
25 lands. Also, due to the scarcity of land in the Commonwealth,
26 MPLC had a policy of exchanging lands on a one-to-one basis.

1 There remains a question of fact as to the value of the lands
2 exchanged in the Lizama exchange. A further question of fact,
3 assuming the exchange values were disproportionate, is whether an
4 unequal exchange was justified by the limitations imposed on MPLC
5 combined with its policy to preserve the greatest amount of land
6 possible.

7 The final count of Rios' counterclaim is that by
8 exchanging public lands of significantly greater value than the
9 private lands it received MPLC has made a gift of public lands.
10 As set out above, there is still an issue of the value of the
11 lands exchanged and this issue must be resolved at trial.

12 For these reasons, the Lizamas' motion to dismiss Rios'
13 counterclaim is denied as is Rios' motion for summary judgment.

14 IT IS SO ORDERED.

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16 DATED this 22nd day of May, 1986.

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21 JUDGE ALFRED LAURETA
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