

ISLAND AVIATION, INC.
vs.
MARIANA ISLANDS AIRPORT
AUTHORITY, et al.

Civil Action No. 81-0069
District Court NMI

Decided May 26, 1983

1. Civil Procedure - Summary Judgment

In considering a motion for summary judgment the Court must determine whether there exists any genuine issue of material fact. Fed. R.Civ.P. 56.

2. Civil Procedure - Summary Judgment

Summary judgment is proper if, when viewing the evidence in the light most favorable to the party opposing the motion, the movant is clearly entitled to judgment as a matter of law. Fed.R.Civ.P. 56.

3. Civil Procedure - Summary Judgment

The Court and the parties have great flexibility with regard to evidence that may be used in a summary judgment proceeding. Fed.R.Civ.P. 56.

4. Civil Procedure - Summary Judgment

That both parties have moved simultaneously for summary judgment does not, standing alone, empower Court to enter judgment as it sees fit without determining independently whether a genuine issue of material fact is present. Fed. R. Civ. Proc. 56.

5. Civil Rights - Liability

Liability pursuant to the Civil Rights Act arises when one person causes any other person to be deprived of any rights, privileges or immunities secured by the Constitution and laws; such liability arises not only in the context of one person who "subjects" another to the deprivation of a constitutional right through an affirmative act but also if he omits to perform an act which he is legally required to do that causes the deprivation for which complaint is made. 42 U.S.C. §1983.

6. Constitutional Law - Due Process - Requirements

The fourteenth amendment forbids the denial of an individual's constitutional rights absent reasonable notice and an opportunity to be heard. U.S. Const., Amend. XIV.

7. Constitutional Law - Due Process - Particular Cases

Where the defendant agencies with authority over airport operations not only failed to afford the plaintiff the mandatory judicial proceeding in which to contest the seizure as required by law but also failed to afford the plaintiff any reasonable notice or opportunity for an administrative hearing before initiating the seizure of plaintiff's aircraft, the conduct falls below any acceptable standard of due process and, as such, liability must attach to the conduct of the defendants under the Civil Rights Act. 42 U.S.C. §1983.

8. Public Officers & Employees - Immunity - Qualified

The good faith defense under the Civil Rights Act represents an element of qualified immunity that public officers enjoy if they act in compliance with a valid statute. 42 U.S.C. §1983.

9. Public Officers & Employees - Immunity - Qualified

To determine if liability attaches under the Civil Rights Act to public officers with qualified immunity the test is whether the public officer knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of plaintiff, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to plaintiff. 42 U.S.C. §1983.

10. Public Officers & Employees - Immunity - Qualified

Where Executive Director of Airport Authority chose to ignore both the statutorily mandated enforcement procedures and the enforcement procedures provided for by the regulations of the Airport Authority and the Ports Authority, his decision to seize the plaintiff's aircraft was clearly unreasonable and in contravention of valid statutory authority. Such conduct cannot be characterized as having been performed in good faith nor can it be said that his action would not cause injury to the plaintiff. Having failed to establish either reasonableness or good faith in defense of his conduct, he cannot avail himself of the qualified immunity defense. 42 U.S.C. §1983.

11. Civil Rights - Persons Liable - Official Policy

Where the executive director of the Airport Authority possessed: (1) full charge and control of the operations of the airports (2) power to ensure that all of the rules and regulations of the Authority were enforced; (3) authority to organize, coordinate, and control the services of the Authority employees; and (4) ex-officio membership in the Board of Trustees for

the Authority, his acts unquestionably involved official policy, especially where, in view of the expansive authority that is conferred upon the executive director by statute and by regulation, as a practical matter, the principal way that MIAA and CPA conduct their official business is by and through their executive director.

12. Civil Rights - Persons Liable - Government

States are not persons within the meaning of the Civil Rights Act because the Eleventh Amendment bars suits against states and their "alter ego" agencies when they are sued directly in federal court either for damages or for declaratory and injunctive relief. 42 U.S.C. §1983; U.S. Const., Amend. XI.

13. Statutes - Construction - Plain Meaning

The starting point in interpreting any given statutory scheme is to look to the language of the statute itself; the plain language of the statute controls its interpretation and, absent any ambiguity, the language of the statute itself should ordinarily be regarded as conclusive.

14. Statutes - Construction - Legislative Intent

In construing a statute the views of the Court may not be substituted for the clearly delineated intent of the Legislature.

15. Statutes - Construction - Plain Meaning

A statute must be applied in its present form unless doing so would result in "manifest injustice" or unless there is statutory direction or legislative history to the contrary; the Court may only look beyond the express language of the statute where the literal interpretation thwarts the purpose of the overall

statutory scheme or leads to an absurd result.

**16. Constitutional Law -
Eleventh Amendment**

The Eleventh Amendment to the United States Constitution has no application in the CNMI. Covenant, §501.

FILED
Clerk
District Court

MAY 26 1983

For The Northern Mariana Islands
By Charles A. Shoda
(Deputy Clerk)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS
TRIAL DIVISION

ISLAND AVIATION, INC.,)

CIV. ACTION NO. 81-0069

Plaintiff,)

vs.)

MEMORANDUM OPINION

MARIANA ISLANDS AIRPORT)
AUTHORITY, and CARLOS A.)
SHODA, its Executive)
Director; and the)
COMMONWEALTH PORTS AUTHORITY)
and CARLOS A. SHODA, its)
Executive Director,)

Defendants.)

MEMORANDUM OPINION

The Plaintiff filed a Motion For Partial Summary Judgment with this Court on March 22, 1982 seeking to establish liability on the part of the Defendants under 42 U.S.C. § 1983. The Defendants filed a Cross Motion For Summary Judgment with this Court on August 6, 1982, denying liability and alleging that the Defendants are immune from suit under 42 U.S.C. § 1983.

1 and MIAA relative to certain delinquent airport user fees that
2 had not been paid by Island to MIAA.

3 On May 19, 1981, Shoda ordered that MIAA vehicles be
4 parked in front of and behind of Island's aircraft that were
5 located on the apron of the airport and thereby prevented Island's
6 aircraft from taking off. Subsequent to the incident on May 19,
7 1981, Shoda and Island attempted to reach an accord on the disputed
8 fees and the manner in which the fees would be collected. The
9 negotiations between Shoda and Island failed however to produce a
10 mutually acceptable resolution of the controversy concerning the
11 airport user fees.

12 Thereafter, on October 30, 1981, Shoda again ordered
13 that Island's aircraft be blockaded with CPA vehicles. As a
14 result of this action Island filed the present case on October
15 30, 1981. In its complaint Island charged that Shoda and CPA did
16 not have the authority to "seize"^{2/} Island's aircraft in an attempt
17 to compel payment of the disputed airport user fees. Moreover,
18 Island argued that Shoda and MIAA could only compel payment of such
19 fees through judicial action as provided in the enabling legisla-
20 tion which created MIAA together with the rules and regulations
21 promulgated by MIAA. Island sought both injunctive relief and
22 damages for the seizure of its aircraft.

23 -----

24 ^{2/} Defendants conceded in oral argument that there exists no
25 factual dispute as to the manner in which the aircraft were
26 blockaded and that such blockades effectively prevented the
aircraft from taking off from the Airport. Consequently,
it is clear that the blockades constituted a seizure.

1 On November 2, 1981, this Court issued a Temporary
2 Restraining Order which restrained Shoda and MIAA from interfering
3 with Island's use of the Airport.

4 In their Answer the Defendants argued in relevant part
5 that they were immune from such suit because neither MIAA nor CPA
6 were "persons" within the meaning of 42 U.S.C. § 1983.

7 On March 22, 1982, the Plaintiff filed a Motion for
8 Partial Summary Judgment on the issue of liability arguing in
9 essence that the Defendants seizure of Island's aircraft amounted
10 to a taking of property without due process of law in violation of
11 42 U.S.C. § 1983. The issue of damages was reserved for trial.

12 On August 6, 1982, the Defendants filed a Cross Motion
13 for Partial Summary Judgment claiming that MIAA and CPA are agen-
14 cies of the Government of the Commonwealth of the Northern Mariana
15 Islands and, as such, are not "persons" suable under 42 U.S.C.
16 § 1983. Moreover, the Defendants argue that Shoda is shielded by
17 common law immunity and qualified immunity.

18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///
29 ///
30 ///
31 ///
32 ///
33 ///
34 ///
35 ///
36 ///
37 ///
38 ///
39 ///
40 ///
41 ///
42 ///
43 ///
44 ///
45 ///
46 ///
47 ///
48 ///
49 ///
50 ///
51 ///
52 ///
53 ///
54 ///
55 ///
56 ///
57 ///
58 ///
59 ///
60 ///
61 ///
62 ///
63 ///
64 ///
65 ///
66 ///
67 ///
68 ///
69 ///
70 ///
71 ///
72 ///
73 ///
74 ///
75 ///
76 ///
77 ///
78 ///
79 ///
80 ///
81 ///
82 ///
83 ///
84 ///
85 ///
86 ///
87 ///
88 ///
89 ///
90 ///
91 ///
92 ///
93 ///
94 ///
95 ///
96 ///
97 ///
98 ///
99 ///
100 ///
101 ///
102 ///
103 ///
104 ///
105 ///
106 ///
107 ///
108 ///
109 ///
110 ///
111 ///
112 ///
113 ///
114 ///
115 ///
116 ///
117 ///
118 ///
119 ///
120 ///
121 ///
122 ///
123 ///
124 ///
125 ///
126 ///
127 ///
128 ///
129 ///
130 ///
131 ///
132 ///
133 ///
134 ///
135 ///
136 ///
137 ///
138 ///
139 ///
140 ///
141 ///
142 ///
143 ///
144 ///
145 ///
146 ///
147 ///
148 ///
149 ///
150 ///
151 ///
152 ///
153 ///
154 ///
155 ///
156 ///
157 ///
158 ///
159 ///
160 ///
161 ///
162 ///
163 ///
164 ///
165 ///
166 ///
167 ///
168 ///
169 ///
170 ///
171 ///
172 ///
173 ///
174 ///
175 ///
176 ///
177 ///
178 ///
179 ///
180 ///
181 ///
182 ///
183 ///
184 ///
185 ///
186 ///
187 ///
188 ///
189 ///
190 ///
191 ///
192 ///
193 ///
194 ///
195 ///
196 ///
197 ///
198 ///
199 ///
200 ///
201 ///
202 ///
203 ///
204 ///
205 ///
206 ///
207 ///
208 ///
209 ///
210 ///
211 ///
212 ///
213 ///
214 ///
215 ///
216 ///
217 ///
218 ///
219 ///
220 ///
221 ///
222 ///
223 ///
224 ///
225 ///
226 ///
227 ///
228 ///
229 ///
230 ///
231 ///
232 ///
233 ///
234 ///
235 ///
236 ///
237 ///
238 ///
239 ///
240 ///
241 ///
242 ///
243 ///
244 ///
245 ///
246 ///
247 ///
248 ///
249 ///
250 ///
251 ///
252 ///
253 ///
254 ///
255 ///
256 ///
257 ///
258 ///
259 ///
260 ///
261 ///
262 ///
263 ///
264 ///
265 ///
266 ///
267 ///
268 ///
269 ///
270 ///
271 ///
272 ///
273 ///
274 ///
275 ///
276 ///
277 ///
278 ///
279 ///
280 ///
281 ///
282 ///
283 ///
284 ///
285 ///
286 ///
287 ///
288 ///
289 ///
290 ///
291 ///
292 ///
293 ///
294 ///
295 ///
296 ///
297 ///
298 ///
299 ///
300 ///
301 ///
302 ///
303 ///
304 ///
305 ///
306 ///
307 ///
308 ///
309 ///
310 ///
311 ///
312 ///
313 ///
314 ///
315 ///
316 ///
317 ///
318 ///
319 ///
320 ///
321 ///
322 ///
323 ///
324 ///
325 ///
326 ///
327 ///
328 ///
329 ///
330 ///
331 ///
332 ///
333 ///
334 ///
335 ///
336 ///
337 ///
338 ///
339 ///
340 ///
341 ///
342 ///
343 ///
344 ///
345 ///
346 ///
347 ///
348 ///
349 ///
350 ///
351 ///
352 ///
353 ///
354 ///
355 ///
356 ///
357 ///
358 ///
359 ///
360 ///
361 ///
362 ///
363 ///
364 ///
365 ///
366 ///
367 ///
368 ///
369 ///
370 ///
371 ///
372 ///
373 ///
374 ///
375 ///
376 ///
377 ///
378 ///
379 ///
380 ///
381 ///
382 ///
383 ///
384 ///
385 ///
386 ///
387 ///
388 ///
389 ///
390 ///
391 ///
392 ///
393 ///
394 ///
395 ///
396 ///
397 ///
398 ///
399 ///
400 ///
401 ///
402 ///
403 ///
404 ///
405 ///
406 ///
407 ///
408 ///
409 ///
410 ///
411 ///
412 ///
413 ///
414 ///
415 ///
416 ///
417 ///
418 ///
419 ///
420 ///
421 ///
422 ///
423 ///
424 ///
425 ///
426 ///
427 ///
428 ///
429 ///
430 ///
431 ///
432 ///
433 ///
434 ///
435 ///
436 ///
437 ///
438 ///
439 ///
440 ///
441 ///
442 ///
443 ///
444 ///
445 ///
446 ///
447 ///
448 ///
449 ///
450 ///
451 ///
452 ///
453 ///
454 ///
455 ///
456 ///
457 ///
458 ///
459 ///
460 ///
461 ///
462 ///
463 ///
464 ///
465 ///
466 ///
467 ///
468 ///
469 ///
470 ///
471 ///
472 ///
473 ///
474 ///
475 ///
476 ///
477 ///
478 ///
479 ///
480 ///
481 ///
482 ///
483 ///
484 ///
485 ///
486 ///
487 ///
488 ///
489 ///
490 ///
491 ///
492 ///
493 ///
494 ///
495 ///
496 ///
497 ///
498 ///
499 ///
500 ///
501 ///
502 ///
503 ///
504 ///
505 ///
506 ///
507 ///
508 ///
509 ///
510 ///
511 ///
512 ///
513 ///
514 ///
515 ///
516 ///
517 ///
518 ///
519 ///
520 ///
521 ///
522 ///
523 ///
524 ///
525 ///
526 ///
527 ///
528 ///
529 ///
530 ///
531 ///
532 ///
533 ///
534 ///
535 ///
536 ///
537 ///
538 ///
539 ///
540 ///
541 ///
542 ///
543 ///
544 ///
545 ///
546 ///
547 ///
548 ///
549 ///
550 ///
551 ///
552 ///
553 ///
554 ///
555 ///
556 ///
557 ///
558 ///
559 ///
560 ///
561 ///
562 ///
563 ///
564 ///
565 ///
566 ///
567 ///
568 ///
569 ///
570 ///
571 ///
572 ///
573 ///
574 ///
575 ///
576 ///
577 ///
578 ///
579 ///
580 ///
581 ///
582 ///
583 ///
584 ///
585 ///
586 ///
587 ///
588 ///
589 ///
590 ///
591 ///
592 ///
593 ///
594 ///
595 ///
596 ///
597 ///
598 ///
599 ///
600 ///
601 ///
602 ///
603 ///
604 ///
605 ///
606 ///
607 ///
608 ///
609 ///
610 ///
611 ///
612 ///
613 ///
614 ///
615 ///
616 ///
617 ///
618 ///
619 ///
620 ///
621 ///
622 ///
623 ///
624 ///
625 ///
626 ///
627 ///
628 ///
629 ///
630 ///
631 ///
632 ///
633 ///
634 ///
635 ///
636 ///
637 ///
638 ///
639 ///
640 ///
641 ///
642 ///
643 ///
644 ///
645 ///
646 ///
647 ///
648 ///
649 ///
650 ///
651 ///
652 ///
653 ///
654 ///
655 ///
656 ///
657 ///
658 ///
659 ///
660 ///
661 ///
662 ///
663 ///
664 ///
665 ///
666 ///
667 ///
668 ///
669 ///
670 ///
671 ///
672 ///
673 ///
674 ///
675 ///
676 ///
677 ///
678 ///
679 ///
680 ///
681 ///
682 ///
683 ///
684 ///
685 ///
686 ///
687 ///
688 ///
689 ///
690 ///
691 ///
692 ///
693 ///
694 ///
695 ///
696 ///
697 ///
698 ///
699 ///
700 ///
701 ///
702 ///
703 ///
704 ///
705 ///
706 ///
707 ///
708 ///
709 ///
710 ///
711 ///
712 ///
713 ///
714 ///
715 ///
716 ///
717 ///
718 ///
719 ///
720 ///
721 ///
722 ///
723 ///
724 ///
725 ///
726 ///
727 ///
728 ///
729 ///
730 ///
731 ///
732 ///
733 ///
734 ///
735 ///
736 ///
737 ///
738 ///
739 ///
740 ///
741 ///
742 ///
743 ///
744 ///
745 ///
746 ///
747 ///
748 ///
749 ///
750 ///
751 ///
752 ///
753 ///
754 ///
755 ///
756 ///
757 ///
758 ///
759 ///
760 ///
761 ///
762 ///
763 ///
764 ///
765 ///
766 ///
767 ///
768 ///
769 ///
770 ///
771 ///
772 ///
773 ///
774 ///
775 ///
776 ///
777 ///
778 ///
779 ///
780 ///
781 ///
782 ///
783 ///
784 ///
785 ///
786 ///
787 ///
788 ///
789 ///
790 ///
791 ///
792 ///
793 ///
794 ///
795 ///
796 ///
797 ///
798 ///
799 ///
800 ///
801 ///
802 ///
803 ///
804 ///
805 ///
806 ///
807 ///
808 ///
809 ///
810 ///
811 ///
812 ///
813 ///
814 ///
815 ///
816 ///
817 ///
818 ///
819 ///
820 ///
821 ///
822 ///
823 ///
824 ///
825 ///
826 ///
827 ///
828 ///
829 ///
830 ///
831 ///
832 ///
833 ///
834 ///
835 ///
836 ///
837 ///
838 ///
839 ///
840 ///
841 ///
842 ///
843 ///
844 ///
845 ///
846 ///
847 ///
848 ///
849 ///
850 ///
851 ///
852 ///
853 ///
854 ///
855 ///
856 ///
857 ///
858 ///
859 ///
860 ///
861 ///
862 ///
863 ///
864 ///
865 ///
866 ///
867 ///
868 ///
869 ///
870 ///
871 ///
872 ///
873 ///
874 ///
875 ///
876 ///
877 ///
878 ///
879 ///
880 ///
881 ///
882 ///
883 ///
884 ///
885 ///
886 ///
887 ///
888 ///
889 ///
890 ///
891 ///
892 ///
893 ///
894 ///
895 ///
896 ///
897 ///
898 ///
899 ///
900 ///
901 ///
902 ///
903 ///
904 ///
905 ///
906 ///
907 ///
908 ///
909 ///
910 ///
911 ///
912 ///
913 ///
914 ///
915 ///
916 ///
917 ///
918 ///
919 ///
920 ///
921 ///
922 ///
923 ///
924 ///
925 ///
926 ///
927 ///
928 ///
929 ///
930 ///
931 ///
932 ///
933 ///
934 ///
935 ///
936 ///
937 ///
938 ///
939 ///
940 ///
941 ///
942 ///
943 ///
944 ///
945 ///
946 ///
947 ///
948 ///
949 ///
950 ///
951 ///
952 ///
953 ///
954 ///
955 ///
956 ///
957 ///
958 ///
959 ///
960 ///
961 ///
962 ///
963 ///
964 ///
965 ///
966 ///
967 ///
968 ///
969 ///
970 ///
971 ///
972 ///
973 ///
974 ///
975 ///
976 ///
977 ///
978 ///
979 ///
980 ///
981 ///
982 ///
983 ///
984 ///
985 ///
986 ///
987 ///
988 ///
989 ///
990 ///
991 ///
992 ///
993 ///
994 ///
995 ///
996 ///
997 ///
998 ///
999 ///
1000 ///
1001 ///
1002 ///
1003 ///
1004 ///
1005 ///
1006 ///
1007 ///
1008 ///
1009 ///
1010 ///
1011 ///
1012 ///
1013 ///
1014 ///
1015 ///
1016 ///
1017 ///
1018 ///
1019 ///
1020 ///
1021 ///
1022 ///
1023 ///
1024 ///
1025 ///
1026 ///
1027 ///
1028 ///
1029 ///
1030 ///
1031 ///
1032 ///
1033 ///
1034 ///
1035 ///
1036 ///
1037 ///
1038 ///
1039 ///
1040 ///
1041 ///
1042 ///
1043 ///
1044 ///
1045 ///
1046 ///
1047 ///
1048 ///
1049 ///
1050 ///
1051 ///
1052 ///
1053 ///
1054 ///
1055 ///
1056 ///
1057 ///
1058 ///
1059 ///
1060 ///
1061 ///
1062 ///
1063 ///
1064 ///
1065 ///
1066 ///
1067 ///
1068 ///
1069 ///
1070 ///
1071 ///
1072 ///
1073 ///
1074 ///
1075 ///
1076 ///
1077 ///
1078 ///
1079 ///
1080 ///
1081 ///
1082 ///
1083 ///
1084 ///
1085 ///
1086 ///
1087 ///
1088 ///
1089 ///
1090 ///
1091 ///
1092 ///
1093 ///
1094 ///
1095 ///
1096 ///
1097 ///
1098 ///
1099 ///
1100 ///
1101 ///
1102 ///
1103 ///
1104 ///
1105 ///
1106 ///
1107 ///
1108 ///
1109 ///
1110 ///
1111 ///
1112 ///
1113 ///
1114 ///
1115 ///
1116 ///
1117 ///
1118 ///
1119 ///
1120 ///
1121 ///
1122 ///
1123 ///
1124 ///
1125 ///
1126 ///
1127 ///
1128 ///
1129 ///
1130 ///
1131 ///
1132 ///
1133 ///
1134 ///
1135 ///
1136 ///
1137 ///
1138 ///
1139 ///
1140 ///
1141 ///
1142 ///
1143 ///
1144 ///
1145 ///
1146 ///
1147 ///
1148 ///
1149 ///
1150 ///
1151 ///
1152 ///
1153 ///
1154 ///
1155 ///
1156 ///
1157 ///
1158 ///
1159 ///
1160 ///
1161 ///
1162 ///
1163 ///
1164 ///
1165 ///
1166 ///
1167 ///
1168 ///
1169 ///
1170 ///
1171 ///
1172 ///
1173 ///
1174 ///
1175 ///
1176 ///
1177 ///
1178 ///
1179 ///
1180 ///
1181 ///
1182 ///
1183 ///
1184 ///
1185 ///
1186 ///
1187 ///
1188 ///
1189 ///
1190 ///
1191 ///
1192 ///
1193 ///
1194 ///
1195 ///
1196 ///
1197

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. ISSUES

The facts as presented clearly frame the two critical issues which must be resolved by the Court. The first issue is whether the Defendants' seizure of the Plaintiff's aircraft is actionable pursuant to 42 U.S.C. § 1983. In the event that the first issue is answered in the affirmative, the second concomitant issue is whether the Defendants are immune from liability arising from the illegal seizure of the aircraft pursuant to 42 U.S.C. § 1983.

III. STANDARD OF REVIEW

[1] In considering Island's motion for partial summary judgment together with the Authority's cross motion for summary judgment the Court must determine whether there exists any genuine issue of material fact. U.S. v. First National Bank, 652 F.2d 882, 887 (9th Cir. 1981) 10 C. Wright & A. Miller, Federal Practice and Procedure, § 2725 at 496 (1973).

[2] Summary judgment is proper if, when viewing the evidence in the light most favorable to the party opposing the motion, the movant is clearly entitled to judgment as a matter of law. Adickes v. S.H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); Radobenko v. Automated Equipment Corp., 520 F.2d 540 (9th Cir. 1975).

///

1 [3] Further, the Court and the parties have great flexibility
2 with regard to evidence that may be used on a summary judgment
3 proceeding. 10 C. Wright & A. Miller, Federal Practice and Proce-
4 dure, § 2721 at 472 (1973).

5 [4] In this case both parties have moved for summary judgment
6 and, as such, the parties have substantially agreed upon all of
7 the material facts necessary for a final disposition of the case
8 on the legal issues presented in the respective motions. However,
9 simply because both parties have moved simultaneously for summary
10 judgment does not, standing alone, empower this Court to enter
11 judgment as it sees fit without determining independently whether
12 a genuine issue of material fact is present. United States v. Fred
13 A. Arnold, Inc., 573 F.2d 605, 606 (9th Cir. 1978); Brawner v.
14 Pearl Assurance Co., 267 F.2d 45, 46 (9th Cir. 1958). 10 C. Wright
15 & A. Miller, Federal Practice and Procedure, § 2720 at 459-461
16 (1973).

17 The principal dispute between the parties concerns the
18 pivotal issues of whether the stated facts give rise to a depriva-
19 tion of constitutional rights for which relief can be granted
20 pursuant to 42 U.S.C. § 1983 and whether MIAA and CPA are immune
21 from liability. These questions are not contingent upon any
22 genuine issue of material fact and, as a result, the Court can
23 determine the relevant issues of law raised in the present motions
24 by entry of summary judgment.

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV. LIABILITY

The threshold issue as correctly stated by the Plaintiff is whether the acts of the Defendants in seizing the Plaintiff's aircraft constitute an actionable wrong within the context of 42 U.S.C. § 1983.

Section 1983 provides, in pertinent part, that "...[e]very person who, under color of any statute, ordinance, regulation, custom or usage, of any state..., subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured..." (42 U.S.C. § 1983).

The Plaintiff alleges that the Defendant's seizure of the Plaintiff's aircraft did not comport with Fourteenth Amendment due process requirements in that the seizure of the aircraft for nonpayment of airport user fees deprived the Plaintiff of certain property interests encompassed by the Fourteenth Amendment's protection of liberty and property. Specifically, the Plaintiff charges that the Defendants failed to afford the Plaintiff the requisite notice and an opportunity for hearing as required by statute and the rules and regulations of MIAA and CPA.

It is significant that Public Law 6-58^{3/} was promulgated by the Congress of Micronesia in 1975 for the purpose of estab-

^{3/} Public Law 2-48 superseded Public Law 6-58 by establishing the Commonwealth Ports Authority. The provisions of Public Law 2-48 relative to judicial appeal remain identical to the corresponding provisions of Public Law 6-58.

1 lishing the Mariana Islands Airport Authority. Within Public Law
2 6-58 are express provisions providing for the enforcement of
3 penalties, fines, liens and other charges by MIAA. Public Law 6-58
4 provides, in relevant part, as follows:

5 Section 5.(3): ... It [the Authority] shall
6 determine the charges of rentals for the
7 use of any property under its management
8 and control, and the terms and conditions
9 under which the property may be used. ...
10 The Authority shall have and may enforce
11 liens to enforce the payment of any such
12 charges through appropriate judicial
13 proceedings. (Emphasis added)

* * *

14 Section 17. Penalties. Any person who
15 violates any provisions of this Chapter,
16 or any valid rule or regulation promul-
17 gated under this Chapter, or who refuses
18 or neglects to comply with any lawful
19 order given by the Manager or his delegate
20 concerning the operation of the airports
21 under the control of the Authority, is
22 punishable by a fine of not to exceed
23 \$1,000, or by imprisonment not to exceed
24 three months, or both, upon conviction by
25 a court of competent jurisdiction. (Emphasis
26 added)

* * *

(5) The Manager of the Authority shall
establish rules and regulations
governing the assessments of civil
penalties.

* * *

(b) Said rules and regulations shall also
provide notice that failure to pay
the final civil penalty assessed by
the time set in the rules and regula-
tions may result in collection of said
penalty through the High Court of the
Territory, or its successor court.
(Emphasis added)

1 It is clear from the foregoing statutory scheme that
2 the legislature expressly structured the enforcement authority of
3 MIAA in such a way that MIAA would be strictly limited in the
4 manner in which it could assess penalties, fines, liens and other
5 charges. In apparent response to this unequivocal legislative
6 mandate, Shoda and MIAA adopted a general provision relating to
7 the imposition of penalties which reads as follows:

8 11.6 Penalties

9 (a) The violation of these regulations
10 is punishable by a fine of not to
11 exceed one thousand dollars (\$1,000)
12 or by imprisonment not to exceed three
13 (3) months, or both upon conviction by
a court of competent jurisdiction.
Each violation shall constitute a
separate enforceable offense. (Emphasis
added)

14 [5] It is well established that liability pursuant to
15 42 U.S.C. § 1983 arises when one person causes any other person
16 to be deprived of any rights, privileges or immunities secured by
17 the Constitution and laws. Such liability arises not only in the
18 context of one person who "subjects" another to the deprivation
19 of a constitutional right through an affirmative act but also if
20 he omits to perform an act which he is legally required to do
21 that causes the deprivation of which the complaint is made.
22 Johnson v. Duffy, 588 F.2d 740 (9th Cir. 1978); Sims v. Adams,
23 537 F.2d 829 (5th Cir. 1976).

24 Defendants Shoda, MIAA and CPA were required by both
25 statute and regulation to enforce penalties, fines, liens and
26 other charges only through appropriate judicial proceedings.

1 Having failed to do so their seizure of the Plaintiff's aircraft
2 is deemed to be unlawful because administrative actions which are
3 taken in violation of statutory authorization or requirement are
4 void and of no effect. Utah Power & Light Co. v. United States,
5 243 U.S. 389, 410, 37 S.Ct. 387, 61 L.Ed. 791 (1917); Federated
6 Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384, 68 S.Ct. 1,
7 92 L.Ed. 10 (1947). Federated Maritime Commission v. Anglo-
8 Canadian Shipping Co., 335 F.2d 255, 258 (9th Cir. 1964); City of
9 Santa Clara, California v. Andrus, 572 F.2d 660 (9th Cir. 1978).

10 It follows, therefore, that the failure of Shoda, MIAA
11 and CPA to act in accordance with the judicial hearing requirements
12 set forth in the applicable statutes and regulations constitute a
13 violation of law that subjects the Defendants to liability under
14 Section 1983. Indeed, the omissions of Shoda, MIAA and CPA
15 betray the conclusion that the Plaintiff was not afforded the
16 minimal protections of due process as expressly provided for by
17 law and, in fact, it is apparent from the record that the Plaintiff
18 was not accorded any due process at all when Plaintiff's aircraft
19 were seized.

20 [6] The total failure of the Defendants to afford the
21 Plaintiff the necessary judicial forum in which to contest the
22 seizure of its aircraft prior to such seizure compels this Court
23 to find that the Defendants violated the Plaintiff's right to due
24 process. It is a fundamental tenant of constitutional law that
25 no person shall be deprived of property without due process of
26 law as provided in the Fourteenth Amendment to the United States

1 Constitution. The legal authority and precedent are legion in
2 holding that the constitutional rights of any person shall not be
3 abridged without first affording that person the right to reason-
4 able notice and an opportunity to be heard. Memphis Light, Gas &
5 Water Division v. Craft, 436 U.S. 1, 56 L.Ed.2d 30, 98 S.Ct. 1554
6 (1978); North Georgia Finishing, Inc. v. D. Chem., Inc., 419 U.S.
7 601, 42 L.Ed.2d 751, 95 S.Ct. 719 (1975); Fuentes v. Shevin, 407
8 U.S. 67, 32 L.Ed.2d 556, 92 S.Ct. 1983, reh. denied 409 U.S. 902
9 (1972); Sniadach v. Family Finance Corp., 395 U.S. 337, 23 L.Ed.2d
10 349, 89 S.Ct. 1820 (1969); Mullane v. Central Hanover Trust Co.,
11 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

12 [7] In the present case the Defendants not only failed to
13 afford the Plaintiff the mandatory judicial proceeding in which
14 to contest the seizure as required by law but they also failed to
15 afford the Plaintiff any reasonable notice or opportunity for an
16 administrative hearing before Shoda, MIAA and CPA initiated the
17 seizure of Plaintiff's aircraft. This conduct clearly falls
18 below any acceptable standard of due process and, as such, liability
19 must attach to the conduct of the Defendants under 42 U.S.C.
20 § 1983.

21 A. Liability of Shoda

22 [8] Defendant Shoda contends that he should not be held liable
23 because he is entitled to the defense of good faith. The good
24 faith defense represents an element of qualified immunity from
25 Section 1983 liability that public officers enjoy if they act in
26 compliance with a valid statute. See Procurier v. Navarette, 434

1 U.S. 555, 98 S.Ct. 855, 55 L.Ed.2d 24 (1977); Wood v. Strickland,
2 420, U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975); Schener v.
3 Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974);
4 Johnson v. Duffy, 588 F.2d 740 (9th Cir. 1978).

5 [9] To determine if liability attaches under Section 1983
6 the test is whether the public officer "knew or reasonably should
7 have known that the action he took within his sphere of official
8 responsibility would violate the constitutional rights of [Plain-
9 tiff], or if he took the action with the malicious intention to
10 cause a deprivation of constitutional rights or other injury to
11 [Plaintiff]." Harlow v. Fitzgerald, ___ U.S. ___, 73 L.Ed.2d
12 396, 102 S.Ct. ___ (1982); O'Conner v. Donaldson, 422 U.S. 563,
13 95 S.Ct. 2486, 45 L.Ed.2d (1975); Wood v. Strickland, supra.

14 Shoda claims that he was only motivated to seize the
15 Plaintiff's aircraft by official policy as reflected in Section
16 1.11 of the regulations which provides, that, "No person shall
17 land an aircraft or take off from the airport or use the opera-
18 tional area except upon the payment of such fees and charges as
19 may from time to time be approved and published by the Authority..."
20 Thus, Shoda argues that he was "just following the rules". Shoda
21 argues further that the enforcement of such a policy cannot be
22 fairly construed as causing a violation of Plaintiff's constitu-
23 tional rights. The Court agrees that the enforcement of such a
24 policy does not create a per se violation of the Plaintiff's
25 constitutional rights. Rather, it is the manner in which the
26 Defendant chose to enforce the policy that gives rise to a violation

1 of Plaintiff's constitutional rights. Consequently, if Shoda had
2 simply followed the enforcement procedures as provided for in
3 P.L. 2-48 and P.L. 6-58 by first seeking relief in a judicial
4 proceeding the due process rights of the Plaintiff would have
5 been secured and no constitutional violation would exist.

6 [10] Shoda chose, however, to ignore both the statutorily
7 mandated enforcement procedures and the enforcement procedures
8 provided for in the regulations of MIAA and CPA. Shoda attempts
9 to excuse his failure to comply with the statute and the regula-
10 tions by explaining that he knew of no other way "short of judicial
11 action" to enforce the claims of MIAA and CPA. Moreover, in his
12 deposition taken in this action Shoda made the following statement
13 in response to a question by counsel for Plaintiff:

14 "Q. Did you ever consider taking them
15 to court and suing them for the
16 money or seeking judicial inter-
17 vention in the whole matter?

18 A. No. They used the facilities.
19 They don't expect a free lunch on
20 these facilities."

21 Based upon the foregoing statements of Defendant Shoda,
22 the Court finds the conclusion inescapable that Shoda's decision
23 to seize the Plaintiff's aircraft on May 19, 1981 and October 31,
24 1981 was clearly unreasonable and in contravention of valid
25 statutory authority. Such conduct cannot be characterized as
26 having been performed in good faith nor can it be said that
Shoda's action would not cause injury to the Plaintiff. Having
failed to establish either reasonableness or good faith in defense

1 of his conduct, the Defendant Shoda cannot avail himself of the
2 qualified immunity defense and thereby insulate his actions from
3 liability under 42 U.S.C. § 1983. The Court, therefore, holds
4 that the Defendant Shoda is liable to the Plaintiff under Section
5 1983 for the unlawful seizures of Plaintiff's aircraft.

6
7 B. Liability of MIAA and CPA

8 The Plaintiff contends that the Defendants MIAA and CPA
9 are equally as liable as Defendant Shoda on the grounds that Shoda,
10 the highest executive of MIAA and CPA, is a public official whose
11 acts can fairly be said to represent the official policy of MIAA
12 and CPA. Defendants MIAA and CPA, on the other hand, contend that
13 MIAA and CPA are not responsible for the acts of an employee like
14 Shoda unless official policy was the moving force giving rise to
15 the constitutional violation.

16 Both Plaintiff and Defendants correctly cite the general
17 holding of Monell v. Department of Social Services, 436 U.S. 658,
18 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) that local government entities
19 are not liable for the constitutional torts of employees under the
20 theory of respondeat superior merely because they are employers.
21 The court in Monell stated, in relevant part as follows:

22 "We conclude, therefore, that a local govern-
23 ment may not be sued under § 1983 for an
24 injury inflicted solely by its employees or
25 agents. Instead, it is when execution of a
26 government's policy or custom, whether made
27 by its lawmakers or by those whose edicts
28 or acts may fairly be said to represent
official policy, inflicts the injury that
the government as an entity is responsible
under § 1983." (Emphasis added) 98 S.Ct. at
2037-38.

1 [11] Similarly, in the present case, the court concludes
2 that the acts of the Defendant Shoda were clearly intended to
3 represent the official policy of MIAA and CPA. This is particularly
4 true when one considers that Shoda as executive director of MIAA
5 and CPA possessed (1) full charge and control of the operations
6 of the airports^{4/}; (2) power to ensure that all of the rules and
7 regulations of the Authority were enforced^{5/}; (3) authority to
8 organize, coordinate and control the services of the Authority
9 employees^{6/}; and (4) ex-officio membership in the Board of Trustees
10 for the Authority^{7/}. Thus, this case unquestionably involves
11 official policy of MIAA and CPA as reflected in the "edicts and
12 acts" of its executive director.

13 To hold otherwise would be tantamount to insulating
14 MIAA and CPA from the responsibility to establish appropriate
15 procedures to insure that such serious violations of constitutional
16 rights as those present in the instant case are not repeated and
17 do not go unanswered. MIAA and CPA must be accountable for the
18 conduct of their chief executive. More importantly, in view of
19 the expansive authority that is conferred upon the executive
20 director by statute and by regulation it cannot be emphasized
21 enough that, as a practical matter, the principal way that MIAA

22 -----
23 ^{4/}P.L. 6-58, § 9

24 ^{5/}P.L. 6-58, § 10(1)

25 ^{6/}P.L. 6-58, § 10(6)

26 ^{7/}P.L. 6-58, § 10(7)

1 and CPA conduct their official business is by and through their
2 executive director. This is because the identity of MIAA and CPA
3 are so inextricably tied together with the identity of the
4 executive director that the division of authority between the two
5 entities is often blurred or non-existent. Consequently, the
6 Court finds that Defendant MIAA and CPA are liable under 42 U.S.C.
7 § 1983 for the unlawful seizures of the Plaintiff's aircraft.

8
9 V. ELEVENTH AMENDMENT IMMUNITY

10 Since it has been determined that the Defendants
11 violated the Plaintiff's right to due process by seizing the
12 Plaintiff's aircraft without availing themselves of the necessary
13 judicial proceedings as required by both statute and regulation,
14 the sole remaining issue is whether the Defendants are immune
15 from liability for such seizure pursuant to 42 U.S.C. § 1983.
16 The Court must decide whether the Eleventh Amendment is applicable
17 in the Commonwealth of the Northern Mariana Islands as it is in
18 the several states. Based on the discussion that follows the
19 Court concludes that the Covenant expressly rejects the proposition
20 that the Eleventh Amendment is applicable within the CNMI.^{8/}

21 -----
22 ^{8/} In view of the Court's holding that the Covenant interposes no
23 Eleventh Amendment immunity bar relative to claims brought
24 pursuant to 42 U.S.C. § 1983, the Court need not discuss
25 the alternate theory advanced by the parties to the effect
26 that MIAA and CPA are "state agencies" or "arms of the state"
for the purposes of 42 U.S.C. § 1983. See generally, Jackson
v. Hayakawa, 682 F.2d 1344 (9th Cir. 1982); Ronwin v. Shapiro,
657 F.2d 1071, 1073 (9th Cir. 1981), citing Edelman v. Jordan,
415 U.S. 651, 664, 94 S.Ct. 1347, 1356, 39 L.Ed.2d 662 (1974).
Accord: Rultedge v. Arizona Bd. of Regents, 660 F.2d 1345,
1349 (9th Cir. 1981).

1 [12] It is well established that states are not persons
2 within the meaning of 42 U.S.C. § 1983. Quern v. Jordan, 440
3 U.S. 332, 99 S.Ct. 1139, 59 L.Ed.2d 358 (1979). This is so
4 because the Eleventh Amendment bars suits against states and
5 their "alter ego" agencies when they are sued directly in federal
6 court either for damages or for declaratory and injunctive relief.
7 The Eleventh Amendment provides in relevant part that "the judicial
8 power of the United States shall not be construed to extend any
9 suit in law or equity, commenced or prosecuted against one of the
10 United States..."

11 Although it is clear that the Eleventh Amendment applies
12 to each of the several states the issue remains whether the
13 Eleventh Amendment applies to the Commonwealth of the Northern
14 Mariana Islands ("CNMI").

15 Article V, Section 501(a) of the Covenant entitled
16 "Applicability of Laws" expressly sets forth those provisions of
17 the Constitution of the United States which are applicable to the
18 CNMI. Section 501(a) reads as follows:

19 "(a) To the extent that they are
20 not applicable of their own force, the
21 following provisions of the Constitution
22 of the United States will be applicable
23 within the Northern Mariana Islands as if
24 the Northern Mariana Islands were one of
25 the several States: Article I, Section
26 9, Clauses 1.2 and 8; Article I, Section
10, Clauses 1 and 3; Article IV, Section
1 and Section 2, Clauses 1 and 2; Amend-
ments 1 through 9, inclusive; Amendment
13; Amendment 14; Section 1; Amendment
15; Amendment 19; and Amendment 26;
provided, however, that neither trial by
jury nor indictment by grand jury shall

1 be required in any civil action or criminal
2 prosecution based on local law, except
3 where required by local law. Other provi-
4 sions of or amendments to the Constitution
5 of the United States, which do not apply
6 of their own force within the Northern
7 Mariana Islands, will be applicable within
8 the Northern Mariana Islands only with
9 the approval of the Government of the
10 Northern Mariana Islands and of the Govern-
11 ment of the United States."

12 Based on the foregoing language of Section 501(a), it
13 is clear that the Eleventh Amendment is not expressly enumerated
14 as one of the amendments that is to be applicable within the CNMI
15 as if the CNMI were one of the several states. Further, there is
16 no question that neither the Government of the CNMI nor the
17 Government of the United States has approved any law, compact or
18 treaty that would otherwise have the effect of making the Eleventh
19 Amendment applicable to the CNMI.

20 More importantly, the Court rejects any argument that
21 the Eleventh Amendment may be applicable of its own force without
22 being expressly provided for in the Covenant. There is certainly
23 no merit to the claim that the Eleventh Amendment applies of its
24 own force because it constitutes a fundamental right. See
25 Commonwealth of the Northern Mariana Islands v. Atalig, DCA No.
26 82-9003, Decided March 31, 1983. No authority has been cited
that would elevate the Eleventh Amendment to the stature of
other amendments that seek to preserve or promote similar funda-
mental rights. To the contrary, the Eleventh Amendment functions
to restrict the "rights" of persons to sue the state in federal
court.

1 This Court cannot, therefore, conclude that the Eleventh
2 Amendment operates of its own force within the CNMI. The Court
3 reaches this conclusion after carefully reviewing the express
4 language of Section 501(a) together with the applicable legislative
5 history of the Covenant. The Court is also mindful of its role
6 of construing the relevant rules of statutory construction within
7 the context of Section 501(a).

8 [13] The starting point in construing any given statutory
9 scheme is to look to the language of the statute itself. U.S.
10 Lines Inc. v. Boldridge, 677 F.2d 940 (C.A.D.C. 1982). The plain
11 language of the statute controls its interpretation. Escondido
12 Mut. Water Co. v. F.E.R.C., 692 F.2d 1223 99th Cir. 1982).
13 Absent any ambiguity the language of the statute itself should
14 ordinarily be regarded as conclusive. U.S. v. Mehrmanesh, 689
15 F.2d 822 (9th Cir. 1982).

16 [14] In construing a statute the views of the Court may not
17 be substituted for the clearly delineated intent of the legis-
18 lature. State of Israel v. Motor Vessel Nili, 435 F.2d 242,
19 certiorari denied 91 S.Ct. 1232, 401 U.S. 994, 28 L.Ed.2d 532
20 (5th Cir. 1970). Commenting on the duty to exercise judicial
21 restraint Mr. Justice Cardozo wrote: "We do not pause to consider
22 whether a statute differently conceived and framed would yield
23 results more consonant with fairness and reason. We take this
24 statute as we find it." Anderson v. Wilson, 289 U.S. 20, 27, 53
25 S.Ct. 417, 420, 77 L.Ed. 1004 (1933).

26 ///

1 [15] Finally, the statute must be applied in its present
2 form unless doing so would result in "manifest injustice" or
3 unless there is statutory direction or legislative history to the
4 contrary. Scarboro v. First American Natl. Bank of Nashville,
5 619 F.2d 621, certiorari denied 101 S.Ct. 572, 449 U.S. 1014, 66
6 L.Ed.2d 472 (6th Cir. 1980). The Court may only look beyond the
7 express language of the statute where the literal interpretation
8 thwarts the purpose of the overall statutory scheme or leads to
9 an absurd result. Trailor Train Co. v. State Board of Equalization,
10 697 F.2d 800 (9th Cir. 1983).

11 [16] Where, as in the present case, the language of the
12 Covenant is clear and unambiguous the Court finds that it cannot
13 look beyond the language of the Covenant to conclude that the
14 framers of the Covenant intended a different result. The Court
15 will not intervene and substitute a contrary view for what was
16 clearly expressed in the Covenant. Moreover, the Court can find
17 no support for the argument that upholding the literal interpreta-
18 tion of the Covenant would frustrate the legislative intent
19 underlying the Covenant or lead to an absurd result. As such,
20 the Court holds that the Eleventh Amendment has no application in
21 the CNMI and may not defeat an otherwise valid claim brought
22 pursuant to 42 U.S.C. § 1983.

23 ///
24 ///
25 ///
26 ///

VI. CONCLUSION

1 For the reasons stated hereinabove, the Court grants
2 Plaintiff's motion for partial summary judgment and denies Defen-
3 dants' cross-motion for partial summary judgment. The Court
4 finds that the Defendant Shoda is liable in his official capacity
5 as executive director of MIAA and CPA to the Plaintiff in an
6 amount to be determined at trial under 42 U.S.C. § 1983. The
7 Court further finds that Defendants MIAA and CPA are liable to
8 the Plaintiff in an amount to be determined at trial under 42 U.S.C.
9 § 1983. The Court concludes that Defendants Shoda, MIAA and CPA
10 violated Plaintiff's constitutional rights to due process by
11 seizing Plaintiff's aircraft without affording Plaintiff a hearing
12 before a judicial tribunal as required by P.L. 2-48 and P.L. 6-58
13 together with the applicable provisions of the rules and regula-
14 tions of MIAA and CPA.

15 Defendants Shoda, MIAA and CPA are hereby enjoined from
16 seizing or otherwise interfering with the Plaintiff's aircraft
17 without first affording the Plaintiff an opportunity for a judicial
18 hearing in accordance with the applicable provisions of P.L. 2-48,
19 P.L. 6-58 and the rules and regulations of MIAA and CPA.
20

21
22
23 May 26, 1983

24 Date

25 Alfred Laureta
26 ALFRED LAURETA
United States District Judge