

**Calistro M. IZUKA, individually
and in his capacity as a former
Director and Vice Chairman of the
Economic Development Loan
Fund of the Commonwealth of the
Northern Mariana Islands**

vs.

**Carlos S. CAMACHO,
individually and in his capacity as
Governor of the Commonwealth
of the Northern Mariana Islands.**

**Civil Action No. 81-0036
District Court NMI**

Decided September 6, 1983

**1. Civil Procedure - Summary
Judgment**

In considering defendant's 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. Public Officers & Employees -
Immunity - Absolute
Defamation and Slander- Defenses
- Immunity**

An absolute immunity defeats a suit for defamation at the outset, so long as the official's actions were within the scope of the immunity.

**4. Civil Procedure - Summary
Judgment - Particular Actions**

The type of limited inquiry required to dispositively answer the question of what constitutes the outer perimeter of an official's duties, in order to determine whether there is an immunity defeating a suit for defamation, may typically be dealt with on a motion for summary judgment. Fed.R.Civ.P. 56.

**5. Public Officers & Employees -
Immunity - Absolute**

As the chief executive officer of the Commonwealth, the governor was acting within the outer perimeter of his official duties at the time he wrote the allegedly defamatory letter purporting to remove the plaintiff as Director of the Economic Development Loan Fund and thus the governor is entitled to absolute immunity from civil liability.

**6. Public Officers & Employees -
Immunity - Absolute**

Superior executive officers and department heads are immune to liability in a civil suit for damages for acts undertaken or official communications made by them in the line of official duty. This rule has not been limited by providing the privilege solely as a badge or emolument of exalted office, but has been extended to provide official immunity to virtually all federal executive and administrative officers.

**7. Public Officers & Employees -
Immunity - Absolute**

Defamatory act complained of need only have some reasonable connection to official duties in order to invoke absolute immunity and no action for defamation can be maintained against any one of the designated executive officers irrespective of his purpose in making the publication.

**8. Constitution (NMI) -
Executive**

The duties of the Office of the Governor encompass the broadest range of discretionary and policy-making functions of any official in the Commonwealth. NMI Const., Art. III, §1.

9. Public Officers & Employees - Immunity - Absolute

Although Governor was wrongly advised, and in fact lacked the unfettered power to remove plaintiff, he retained his official immunity from suit for defamation based on letter of discharge containing statements explaining the reasons for the discharge.

FILED
Clerk
District Court

SEP 06 1983

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

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IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

CALISTRO M. IZUKA, individually)
and in his capacity as a former)
Director and Vice Chairman of)
the Economic Development Loan)
Fund of the Commonwealth of)
the Northern Mariana Islands,)

CIVIL ACTION NO. 81-0036

Plaintiff,

vs.

MEMORANDUM OPINION

CARLOS S. CAMACHO, individually)
and in his capacity as Governor)
of the Commonwealth of the)
Northern Mariana Islands,)

Defendant.

I. STATEMENT OF THE CASE

Plaintiff Calistro M. Izuka filed a complaint with this Court on June 29, 1981, charging that the defendant, then Governor Carlos S. Camacho, wrongfully attempted to remove the plaintiff from his position as Director of the Economic Development Loan Fund on June 4, 1981. The plaintiff sought both declaratory relief invalidating his removal from office and damages for defamation resulting from a letter of discharge, sent by the defendant to the plaintiff, containing statements explaining the reasons for the discharge.

1 Defendant has now moved the court for an order granting
2 him summary judgment on plaintiff's second cause of action.
3 Defendant contends that as the chief executive officer of the
4 Commonwealth, acting within the outer perimeter of his official
5 duties at the time he wrote the allegedly defamatory letter
6 purporting to remove plaintiff, he is entitled to absolute immunity
7 from civil liability. Defendant claims that in view of his
8 status as governor at the time of the events in issue, the law
9 compels dismissal of the defamation count.

10 We agree with defendant, that as a matter of law, he is
11 absolutely immune from civil liability for actions undertaken in
12 his official capacity as Governor of the Commonwealth of the
13 Northern Mariana Islands. For the reasons stated herein, defen-
14 dant's motion for summary judgment on plaintiff's second cause of
15 action is granted.

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1 II. STANDARD OF REVIEW

2 [1,2] In considering defendant's motion for summary judgment
3 the Court must determine whether there exists any genuine issue
4 of material fact. U.S. v. First National Bank, 652 F.2d 882, 887
5 (9th Cir. 1981); 10 C. Wright and A. Miller, Federal Practice and
6 Procedure, § 2725 at 496 (1973). Summary judgment is proper if,
7 when viewing the evidence in the light most favorable to the
8 party opposing the motion, the movant is clearly entitled to
9 judgment as a matter of law. Adickes v. S.H. Kress & Co., 398
10 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); Radobenko v.
11 Automated Equipment Corp., 520 F.2d 540 (9th Cir. 1975).

12 In this case the only issue to be resolved is whether
13 defendant Governor is liable for defamation for statements made
14 in a letter of dismissal to plaintiff. This question is not con-
15 tingent upon any genuine issue of material fact and, as a result,
16 the Court can determine the relevant issues of law raised in the
17 present motion for summary judgment.

18 [3,4] As a matter of law, an absolute immunity defeats a suit
19 for defamation at the outset, so long as the official's actions
20 were within the scope of the immunity. The type of limited
21 inquiry required to determine the dispositive question of what
22 constitutes the outer perimeter of an official's duties may
23 typically be dealt with on a motion for summary judgment.
24 Expeditions Unlimited v. Smithsonian Institution, 566 F.2d 289
25 (C.A.D.C. 1977)(en banc) cert. denied 438 U.S. 915.

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1 III. DECISION

2 [5] As the chief executive officer of the Commonwealth, the
3 governor was acting within the outer perimeter of his official
4 duties at the time he wrote the allegedly defamatory letter
5 purporting to remove plaintiff, and is thus entitled to absolute
6 immunity from civil liability. Because defendant possessed dis-
7 cretionary functions ex officio and acted in the line of his
8 official duties in publishing the alleged libel, the law compels
9 that we grant defendant's motion for summary judgment and dismiss
10 plaintiff's cause of action.

11 [6] The rule is well established that superior executive
12 officers and department heads are immune to liability in a civil
13 suit for damages on account of acts undertaken or official communi-
14 cations made by them in the line of official duty. Spalding v.
15 Vilas, 161 U.S. 483, 498, 4 L.Ed. 780, 785, 16 S.Ct. 631 (1896);
16 Saroyan v. Burkett, 21 Cal.Rptr. 557, 371 P.2d 293 (1962);
17 Colaizzi v. Walker, 542 F.2d 969 (C.A. 7 1976), cert. denied, 430
18 U.S. 960; Barr v. Matteo, 360 U.S. 564, 3 L.Ed.2d 1434 (1959);
19 Gregoire v. Biddle, 177 F.2d 579, (C.A. 2 1949).

20 Indeed, the rule has not been limited by providing the
21 privilege solely as a "badge or emolument of exalted office,"
22 Barr v. Matteo, 360 U.S. 564, supra at 573-74, but has been
23 extended to provide official immunity to virtually all federal
24 executive and administrative officers. It is the legal expression
25 of a policy designed to aid in the effective functioning of
26 government.

1 This policy was well expressed by Learned Hand, J., in
2 Gregoire v. Biddle, 177 F.2d 579, 581 (C.A. 2 1949):

3 It does indeed go without saying
4 that an official who is in fact
5 guilty of using his powers to vent
6 his spleen upon others, or for any
7 other personal motive not connected
8 with the public good, should not
9 escape liability for the injuries
10 he may so cause; and, if it were
11 possible in practice to confine
12 such complaints to the guilty, it
13 would be monstrous to deny recovery.
14 The justification for doing so is
15 that it is impossible to know
16 whether the claim is well founded
17 until the case has been tried, and
18 that to submit all officials, the
19 innocent as well as the guilty, to
20 the burden of its outcome, would
21 dampen the ardor of all but the
22 most resolute, or the most irrespon-
23 sible, in the unflinching discharge
24 of their duties. Again and again
25 the public interest calls for action
26 which may turn out to be founded on
 a mistake, in the face of which an
 official may later find himself hard
 put to it to satisfy a jury of his
 good faith... [I]t has been thought
 in the end better to have unredressed
 the wrongs done by dishonest officers
 than to subject those who try to do
 their duty to the constant dread of
 retaliation.

20 Following the policy set forth in Gregoire, supra, the
21 Supreme Court in Barr v. Matteo, supra, stated:

22 "[i]t is not the title of his office
23 but the duties with which the ...
24 officer is entrusted--the relation
25 of the act complained of to 'matters
26 committed by law to his control or
 supervision' [citation]--which must
 provide the guide in delineating the
 scope of the rule which clothes the
 official acts of the executive

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officer with immunity from civil
defamation suits." 3 L.Ed.2d at
1441-1442).

The Court went on to provide a test for application of
the immunity doctrine. At 3 L.Ed.2d 1443, the Court stated:

that [defendant] was not required
by law or by direction of his
superiors to speak out cannot be
controlling in the case of an
official of policy-making rank,
for the same considerations which
underlie the recognition of the
privilege as to acts done in
connection with a mandatory duty
apply with equal force to discre-
tionary acts at those levels of
government where the concept of duty
encompasses the sound exercise of
discretionary authority.

The fact that the action here taken
was within the outer perimeter of
[defendant's] line of duty is
enough to render the privilege
applicable, despite the allegations
of malice in the complaint... Ibid.
(footnote omitted; emphasis in
original)

[7] What has emerged from the post-Barr cases is a general
rule that the act complained of need only have some reasonable
connection to official duties in order to invoke absolute immunity
Indeed, the Restatement 2d, Torts, has stated the rule set forth
in Barr and Gregoire as follows:

§ 591. Executive and Administrative Officers

An absolute privilege to publish
defamatory matter concerning another
in communications made in the per-
formance of his official duties
exists for:

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- (a) any executive or administrative officer of the United States; or
- (b) a governor or other superior executive officer of a state.

The immunity (or privilege) thus accorded is absolute:
 "[N]o action for defamation can be maintained against any one of the designated executive officers, irrespective of his purpose in making the publication." Comment d. to § 591 Restatement 2d, Torts.

[8] The duties of the Office of the Governor encompass the broadest range of discretionary and policy-making functions of any official in the Commonwealth. Section I of Article III of the Commonwealth Constitution provides that "[t]he executive power of the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution of the laws." The very brevity with which the Governor's constitutional powers are defined is an indication of the sweeping nature of his discretionary functions. Comment c to § 591, Restatement 2d, Tort, states:

All of the state courts that have considered the question have agreed that the absolute privilege... protects the superior officers of the State governments,¹ including at least the governor....

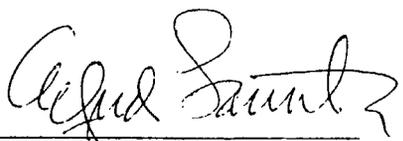
¹This jurisdiction has by statute adopted the "rules of the common law, as expressed in the restatements of the law approved by the American Law Institute [,]" as the rule of decision in the courts..." (1 TTC § 103)

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The broad discretion accompanying the office of Governor being clear, the question becomes whether publication of the allegedly defamatory letter in issue was "within the outer perimeter of [defendant's] line of duty..." Barr v. Matteo, supra, 3 L.Ed.2d at 1443. To find that the governor was acting outside the perimeter of his line of duty, in setting forth to plaintiff the reasons for his discharge, would be to completely disregard the fundamental policy underlying the doctrine of official immunity.

[9] The letter in suit was well within the outer perimeter of defendant's line of duty. The Governor thought it was within his executive powers to dismiss plaintiff from his appointed position; he had sought the advice and been assured by the Commonwealth's chief legal officer that this was so. That in the final analysis the Governor was wrongly advised, and in fact lacked the unfettered power of removal, does not serve to divest him of the immunity. To hold otherwise would contradict the fundamental rational of the Barr rule.

DATED this 6th day of ~~August~~^{SEPT}, 1983.


ALFRED LAURETA
United States District Judge