

**MARIANAS PUBLIC LAND
TRUST
vs.
GOVERNMENT OF THE
COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS and Marianas Public
Land Corporation**

**DCA No. 85-9006
CTC Civ. No. 84-379
District Court NMI
Appellate Division**

Decided February 3, 1987

1. Appellate Procedure - Stays

The standard for evaluating stays pending appeal to the Ninth Circuit is similar to that employed by district courts in deciding whether to grant a preliminary injunction.

2. Injunction - Preliminary

There are two interrelated legal tests for the issuance of a preliminary injunction: at one end of the continuum, the moving party is required to show both a probability of success on the merits and the possibility of irreparable injury, and at the other end of the continuum, the moving party must demonstrate that serious legal questions are raised and that the balance of hardships tips sharply in its favor.

3. Appellate Procedure - Stays

The relative hardship to the parties is the critical element in deciding at which point along the continuum a stay is justified.

4. Appellate Procedure - Stays

In deciding whether a stay on appeal is justified, the public interest is a factor to be strongly considered.

5. Appellate Procedure - Stays

Where party seeks a stay of a decision of the Appellate Division of the District Court pending appeal to the Ninth Circuit, standards of the Ninth Circuit, not local rules, apply. Fed.R.App.Proc. 8; D.C.R. App.Proc. 5.

6. Appellate Procedure - Stays

Party moving for a stay on appeal has a substantial burden to show the substantial questions of law it perceives and what factors point toward a probability of success on appeal.

7. Appellate Procedure - Stays

Allegations of unidentified serious financial ramifications to a party are insufficient to grant a stay on appeal.

8. Appellate Procedure - Stays

Where to maintain the status quo pending the decision of the Ninth Circuit will not demonstrably prejudice either party, much of the money involved is safely deposited and, if the party prevailing in the District Court Appellate Division is ultimately determined to be entitled to the money in dispute, it is unlikely the other party will be unable to pay or that it will choose to disregard a court decision, court would grant request for stay pending appeal.

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN MARIANA ISLANDS

5 APPELLATE DIVISION

6 MARIANAS PUBLIC LAND TRUST,)
7 Plaintiff-Appellant,)
8 vs.)
9 GOVERNMENT OF THE COMMONWEALTH)
10 OF THE NORTHERN MARIANA ISLANDS)
11 and MARIANAS PUBLIC LAND)
12 CORPORATION,)
13 Defendants-Appellees.)

DCA NO. 85-9006
CTC CIV.NO. 84-379

DECISION AND ORDER

FILED
Clerk
District Court

FEB 03 1987

For The Northern Mariana Islands

By [Signature]
(Deputy Clerk)

14 THIS MATTER came before the Court on January 28, 1987,
15 for hearing of defendant-appellee Commonwealth of the Northern
16 Mariana Islands' (CNMI) motion to stay this Court's October 16,
17 1986, decision pending appeal to the U.S. Court of Appeals for
18 the Ninth Circuit. Marianas Public Land Corporation (MPLC) joins
19 the CNMI in this motion. Marianas Public Land Trust (MPLT)
20 opposes a stay.

21 Movant seeks a stay pursuant to Federal Rule of
22 Appellate Procedure 8, which requires that, prior to application
23 to the Ninth Circuit, movant must first request in this Court a
24 stay of its order. This Court is subject to Rule 8 whether it is
25 sitting as an appellate court or district court. No time
26 limitation is imposed upon movant by Rule 8.

1 The Appellate Division of this Court, situated as it is
2 between the Commonwealth Trial Court and the Ninth Circuit,
3 occupies a near-unique niche in American jurisprudence. An
4 unfortunate by-product of its position is that much confusion --
5 whether real, perceived, or contrived by those practicing before
6 it or subject to its decisions -- is engendered by the interplay
7 between the various court rules. Appeals from the Commonwealth
8 Trial Court to the Appellate Division of this Court are governed
9 by the local rules of appellate procedure. Appeals from
10 decisions of the Appellate Division or, of course, from judgments
11 rendered by this Court sitting as a trial court, are governed by
12 the Federal Rules of Appellate Procedure and the appellate rules
13 of the Ninth Circuit.

14 Part of the confusion in the instant case stems from
15 the fact that there is no local appellate rule analogous to Rule
16 41(b) of the federal appellate rules. That rule provides that a
17 motion to stay the mandate may be made. The trial court
18 correctly recognized the anomaly created by this omission.
19 However, rather than merely conclude that its order following
20 remand was effectively stayed from enforcement by the CNMI's
21 notice of appeal to the Ninth Circuit, the trial court chose to
22 vacate its order.^{1/} This was unnecessary and merely added

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24 ^{1/} This act appears to have been at least partially motivated by
25 the trial court's repeated references to procedural difficulties
26 it expected to encounter while enforcing the decision of this
Court. This Court assumes its decision, by its mandate, will be
carried out. In light of the difficulties expressed, the Court

1 another layer of confusion to an already confusing procedural
2 problem. A notice of appeal from a decision of this Court's
3 Appellate Division is required to be filed within thirty days of
4 the date of decision. Fed.R.Civ.P. 4(a). Movant complied with
5 this rule by filing its notice on November 14, 1986. Now a stay
6 is sought.

7 [1-4] The standard for evaluating stays pending appeal to the
8 Ninth Circuit is similar to that employed by district courts in
9 deciding whether to grant a preliminary injunction. See Nevada
10 Airlines, Inc. v. Bond, 622 F.2d 1017, 1018 n. 3 (9th Cir. 1980).

11 In this circuit there are two interrelated legal tests for the
12 issuance of a preliminary injunction. These tests are "not
13 separate" but rather represent "the outer reaches 'of a single
14 continuum.'" Los Angeles Memorial Coliseum Commission v.
15 National Football League, 634 F.2d 1197, 1201 (9th Cir. 1980).

16 At one end of the continuum, the moving party is required to show
17 both a probability of success on the merits and the possibility
18 of irreparable injury. Id. See, also Miss Universe, Inc. v.
19 Flesher, 605 F.2d 1130, 1134 (9th Cir. 1979). At the other end
20 of the continuum, the moving party must demonstrate that serious

21 _____
22 (Con't. of footnote 1/):

23 offers the following:

24 The appellate decision held that the \$6,565,800 received
25 from the U.S. government was rent derived from public land, i.e.,
26 the lands on Tinian leased to the United States. As such, this
money was required to be transferred to MPLT, after having passed
first through MPLC, which could deduct only an amount "necessary

1 legal questions are raised and that the balance of hardships tips
2 sharply in its favor. Los Angeles Memorial Coliseum Commission,
3 634 F.2d at 1201; Miss Universe, 605 F.2d at 1134. "[T]he
4 relative hardship to the parties" is the "critical element" in
5 deciding at which point along the continuum a stay is justified.
6 Benda v. Grand Lodge of International Association of Machinists,
7 etc., 584 F.2d 308, 314-15 (9th Cir. 1978), cert. dismissed, 441
8 U.S. 937, 99 S.Ct. 2065, 60 L.Ed.2d 667 (1979). In addition, in
9 cases such as the one before us, the public interest is a factor
10 to be strongly considered. See Warm Springs Dam Task Force v.
11 Gribble, 565 F.2d 549, 551 (9th Cir. 1977); Lopez v. Heckler, 713
12 F.2d 1432, 1435 (9th Cir. 1983); rev'd in part on other grounds,
13 463 U.S. 1328 (1983).

14 [5] Because Rule 8 requires movant first to apply to this
15 Court for a stay, we use the standard followed in the Ninth
16 Circuit. Rule 5 of the local appellate rules applies only to
17 appeals from the trial court to the Appellate Division of this
18 Court, and requires for a stay only that a substantial question
19 of law exist.

20 _____
21 (Con't. of footnote 1/):

22 to meet reasonable expenses of administration." CNMI
23 Constitution, Art. XI, §5(g).

24 Upon receipt, MPLT will be required to turn over to the CNMI
25 general revenues fund all interest which accrued while the money
26 was in the certificates of deposit. CNMI Constitution, Art. XI,
§6(d). The Constitution directs MPLT to invest the principal
and, again, periodically turn over to the CNMI general revenues
fund all interest earned. MPLT may also first deduct an amount
"necessary to meet reasonable expenses of administration."

1 [6.7] Movant asserts rather conclusively that substantial
2 questions of law are raised by the appeal but fails to identify
3 them in any but the most cursory fashion. Nor is it demonstrated
4 that there is a probability of success on appeal. "Serious
5 financial ramifications" to the Commonwealth are alleged, but not
6 specified. This Court believes movant has a substantial burden
7 to elucidate the substantial questions of law it perceives and
8 what factors point toward a probability of success on appeal. If
9 mere allegations were sufficient the balancing process required
10 by Lopez v. Heckler would be pointless. Nor can this Court
11 accept that the "relative hardship" to the CNMI is so great as to
12 justify a stay. Were this Court to accept unidentified serious
13 financial ramifications to a party as sufficient to grant a stay
14 then it would ever after hear this plaintive cry from losing
15 parties.

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19 (Con't. of footnote 1/):

20 The certificates of deposit should of course be allowed to
21 mature. However, it was necessary only for the trial court to
order that custody and control be given to MPLT until that time.

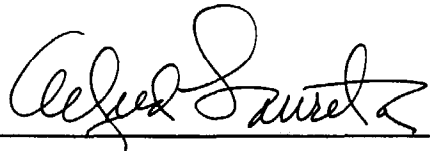
22 A portion of the \$6,565,800 was used to purchase private
23 land interests on Tinian. The CNMI is responsible to MPLT for
24 that sum. MPLT has represented in open court that it is willing
to accept payment in a reasonable manner and time, so as not to
unduly affect the operation of the government.

25 The trial court may still request clarification should it
26 feel the need to do so.

1 [8] A final consideration from Lopez v. Heckler is the
2 public interest. Clearly, the public has a strong interest in
3 the efficient administration of justice. This Court believes
4 that a stay is justified to stop the thickening procedural morass
5 occasioned by differences in the appellate rules.^{2/} To maintain
6 the status quo pending the decision of the Ninth Circuit will not
7 demonstrably prejudice either party. Much of the money is safely
8 deposited and, if MPLT is ultimately determined to be entitled to
9 the money in dispute, it is unlikely the CNMI will be unable to
10 pay or that it will choose to disregard a court decision.

11 Therefore, movant's request for a stay is GRANTED.

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13 DATED this 3rd day of February, 1987.

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18 JUDGE ALFRED LAURETA

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25 ^{2/} This Court's appellate rules are currently being revised to
26 eliminate these difficulties.