

IN THE SUPREME COURT OF GUAM

**IN RE: REQUEST OF THE TWENTY-FOURTH
GUAM LEGISLATURE FOR DECLARATORY
JUDGMENT AS TO THE IMPLEMENTATION
OF THE INITIATIVE ORDER OF DISMISSAL
REDUCING MEMBERS OF THE TWENTY-FIFTH
GUAM LEGISLATURE**

Supreme Court Case
No. CRQ97-001
Filed: November 5, 1997
Cite as: 1997 Guam 15

MOTION TO DISMISS
Argued and Ruled Upon 19 September 1997
Agana, Guam

**Appearing for Respondent,
Twenty-Fourth Guam Legislature**
DOUGLAS B. MOYLAN
Office of the Legislative Counsel
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

**Appearing for Respondent,
Governor of Guam**
KENNETH D. ORCUTT
Assistant Attorney General
Suite 2-200E, Judicial Center Bldg.
120 West O'Brien Drive
Agana, Guam 96910

**Attorney for Respondent,
Minority Senators,
Twenty Fourth Guam Legislature**
THERESE M. TERLAJE
Barcinas and Terlaje, P.C.
Suite 216, Union Bank Building
194 Hernan Cortes Avenue
Agana, Guam 96910

ORDER OF DISMISSAL

BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and JOAQUIN C. ARRIOLA, Associate Justices.

WEEKS, J.:

[1] This matter comes before the Court on Motion of counsel for the 24th Guam Legislature to withdraw and dismiss¹ the Legislature's Request for Declaratory Judgment (Resolution 97-77) filed on 12 June 1997. The Motion to Dismiss was heard on 19 September 1997. Douglas Moylan appeared on behalf of the movant, 24th Guam Legislature; Therese Terlaje, counsel for the minority party of the 24th Guam Legislature opposed the motion. Assistant Attorney General Kenneth Orcutt, representing the Governor, did not object to the motion. After hearing the arguments of counsel, the Court issued an oral ruling dismissing the Request for Declaratory Judgment. The Court indicated that this written order setting forth the basis for the dismissal would follow.

¹The motion was filed on 12 September 1997 as a Motion to Withdraw, but under both the Supreme Court Rules of Appellate Procedure and 7 GCA § 4104, as amended, it is more appropriately titled a Motion to Dismiss.

**JURISDICTION PURSUANT TO
7 GCA § 4104**

[2] In the Frank G. Lujan Memorial Court Reorganization Act of 1992, the Guam Legislature statutorily vested this Court with authority to hear abstract questions of law, disassociated from a case or controversy then before the courts, where these questions bore on the duties and authority of the other two branches of our government. 7 GCA § 4104 (1995). As enacted by Public Law 21-147 this provision read as follows:

§ 4104. Governor and Legislature may request declaratory judgments.

The Governor, in writing, or the Legislature, by resolution, may request declaratory judgments from the Supreme Court as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of the

Governor and the operation of the Executive Branch, or of the Legislature, respectively. The declaratory judgments may be issued **only where it is a matter of great public interest and the normal processes of law would cause undue delay**. Such declaratory judgments shall not be available to private parties. The Supreme Court shall, pursuant to its rules of procedure, permit interested parties to be heard on the questions presented and shall render its written judgment thereon. (Emphasis added)

It is this procedure which was invoked by Resolution 97-77.

PROCEDURAL AND FACTUAL HISTORY OF RESOLUTION 97-77

[3] The 23rd Guam Legislature, through Public Law 23-01 (as amended by Public Law 23-99), had submitted an initiative to the voters of Guam which would reduce the size of the Guam Legislature from twenty-one (21) members to fifteen (15). In November of 1996 the voters ratified that initiative. However, the initiative itself did not address the quorum and voting requirements imposed upon the

Guam Legislature by Guam law and the Organic Act of Guam. There came to light an apparent conflict between the adopted laws of the Territory and the provisions of the Organic Act of Guam which relate to Guam Legislatures.

[4] On 6 May 1997, pursuant to 7 GCA § 4104, the 24th Guam Legislature passed Resolution 97-77 which requested a declaratory judgment on several issues of law. The Legislature represented that the issues were of great public interest and the normal processes of law would cause undue delay. Specifically, the 24th Guam Legislature asked this Court to answer the following questions:

- 1) How many affirmative votes will be necessary for the Twenty-fifth Guam Legislature to pass a Bill? How many of the fifteen (15) members constitutes a quorum? Can a quorum consist of more than a majority of the members?
- 2) Is 2 GCA §2104 in violation of the Organic Act?

Resolution 97-77 noted two provisions of law which are in apparent conflict. 48 U.S.C. § 1423b, is a part of the Organic Act of Guam enacted by Congress, which states in relevant part:

The quorum of the Legislature shall consist of eleven of its members. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays.

2 GCA § 2104 is a law of Guam and reads: “No bill shall be passed by the Legislature with less than eleven (11) affirmative votes.”

[5] As the Legislature discerned in Resolution 97-77, the earlier provision appears to indicate that the Guam Legislature may act with as few as eleven (11) members present and that a bill may become law based upon the assent of a majority of “those present and voting.” For example, if there were only eleven (11) senators present, then only six (6) yeas would be sufficient to pass a bill. Still fewer votes would be necessary if one or more of the eleven (11) member quorum were permitted to abstain. An extreme example would be as follows: if there were eleven (11) members present and eight (8) abstained from voting, then it would take only two (2) affirmative

votes to pass a measure.²

[6] On 12 June 1997 the Resolution was filed with the Supreme Court of Guam, an act which formalized the Legislature’s request that this Court resolve the legal questions presented. Resolution 97-77 was certified by the Chief Justice as appropriate for declaratory judgment after he determined that the issues presented were of great public interest and that the normal processes of law would cause undue delay.

[7] On 15 July 1997, following certification that the issues were appropriate for consideration, the Chief Justice ordered that all persons, as individuals or in their representative capacities, who wished to be designated as interested parties submit statements supporting such claim. (*See* Order dated 15 July 1997, CRQ 97-001). The notice to interested parties was duly published in the Pacific Daily News. In response, five

²A corollary issue raised by the Governor relates to the number of votes required to override a gubernatorial veto which is set forth at 48 USC §1423i, which requires a two-thirds vote of its members to pass a bill into law over the governor’s veto. In the case of a 21 member legislature this number would be 14, in a 15 member legislature it would require 10 votes.

(5) filings for interested party status were received. These were the Governor of Guam (represented by the Attorney General of Guam), the 24th Guam Legislature (represented by counsel for the Legislative Majority), Senator V.C. Pangelinan, as both an elected Senator and as the representative head of the Legislative Minority, and Senators Elizabeth Barrett-Anderson and Mark Forbes on behalf of themselves as duly elected Senators.

[8] On 22 August 1997, the Chief Justice issued an order identifying the 24th Guam Legislature, the Governor of Guam and Senator Pangelinan, solely in his capacity as the Minority Leader of the 24th Guam Legislature, as interested parties and directing that they file briefs. Senators Mark Forbes and Elizabeth Barrett Anderson, who sought interested party status based on their positions as elected senators, and Sen. V.C. Pangelinan in his individual senatorial capacity, were disapproved as such. On 12 September 1997 the interested parties were informed that the Request for Declaratory Judgment was scheduled to be heard on 19 September 1997.

**PROCEDURAL AND FACTUAL
HISTORY OF RESOLUTION 97-155
AND SUBSTITUTE BILL 220**

[9] On 12 September 1997, Resolution Number 97-155, principally authored by Senators Elizabeth Barrett-Anderson, Mark Forbes and F.B. Aguon, Jr., was adopted by the 24th Guam Legislature. Resolution 97-155 sought the withdrawal of the Request for Declaratory Judgment transmitted in Resolution 97-77. The newer Resolution stated that the issues previously addressed to the Court were matters that the Legislature could deal with internally and which, if left in the hands of the Supreme Court, might result in a determination which had an “unintended and undesirable impact” for the 24th Guam Legislature. The Legislature further noted that the Request for Declaratory Judgment had been premature because remedial legislation, both at the federal and local level, could be obtained before the convening of the 25th Guam Legislature.³ Counsel for the Legislature attached Resolution 97-155 to a Motion to Withdraw CRQ 97-001

³The Legislative Counsel filed with the Court a copy of Resolution No.97-37, which directed the submission to Congress of a proposed amendment to the Organic Act. This proposal called for the legislative quorum to be defined as a majority of the legislators and the number of votes required to pass Guam’s laws to be that set by Guam lawmakers.

which was then filed on 12 September 1997.

[10] On 15 September 1997, four days before the oral arguments for the Motion to Dismiss the Request for Declaratory Judgment and the oral arguments addressing the Request for Declaratory Judgment itself, the Guam Legislature considered and passed Substitute Bill 220. Substitute Bill 220, although deemed an appropriations bill, included a section 3 which amended 7 GCA § 4104⁴

⁴ The amended portion of 7 GCA § 4104, now reads as follows:

“Upon a writing, or resolution in the case of the Guam Legislature, by the party submitting the request for the declaratory judgment that the party wishes the Supreme Court to dismiss its petition for declaratory judgment, the Supreme Court shall no longer have jurisdiction and shall dismiss without prejudice the declaratory judgment case, provided that the request is filed with the Supreme Court at any time before the Court renders its written

to cause the loss of jurisdiction over Requests for Declaratory Judgment where (for purposes of a request from the Guam Legislature) the Legislature adopts a resolution requesting dismissal. The original version of Bill 220 was an appropriations bill for a public works project involving road construction in Talofofo.⁵ Section 3 of Substitute Bill 220 was considered and approved by the Legislature without a public hearing.

DISCUSSION

[11] The effect of the new law providing for a procedure to remove the Court’s jurisdiction (Guam Pub. L. No. 24-61(1997)) on the already pending Request for Declaratory Judgment was not

decision.”

⁵Bill 220 was reported out of the Committee on Finance and Taxation after a hearing on 25 June 1997. Section 3 of Substitute Bill 220 was never given a public hearing. The committee report for Substitute Bill 220 failed to discuss, at all, the intent of the committee in inserting Section 3 relating to the amendment of 7 GCA § 4104. The jurisdiction-stripping provision was introduced, considered and passed on the same day without public notice, hearing or input.

absolutely clear. Public Law 24-61 was not made expressly retroactive. Also, even if the public law were found to be retroactive, would the new law require dismissal of a Request for Declaratory Judgment where the Resolution requesting Dismissal (e.g., Resolution 97-155) preceded the effective date of the statute?⁶

[12] This Court has already determined that the issues presented are of great public interest and that the failure to address these concerns here and now would result in undue delay that may prejudice the public interest. Therefore, we abandon our consideration of the issues only if it is clear in law that we are compelled to do so.

[13] The issue now before the Court is whether, despite the absence of a retroactivity provision, the Guam Legislature intended that Public Law 24-61 and Resolution 97-155 operate in conjunction to compel the dismissal of CRQ 97-001. If the Guam Legislature

⁶It is not apparent that, at the time the Resolution seeking withdrawal was entertained, that those voting upon it imagined that it might be given the force of law by a subsequent statutory provision.

intended the amendment to apply retroactively to the present matter, we must, regardless of our concern for resolving the important legal questions before us, comply with that mandate. Judicial officers are limited to considering only those questions which are properly before them under the relevant jurisdictional provisions, be they statutory in nature, as in 7 GCA § 4104, or organic or constitutional in origin, as in 48 U.S.C. § 1424-3(a) and (d).⁷

[14] A hallmark of judicial integrity is the discipline to exercise only that authority which the Court inherently, statutorily or constitutionally possesses. As we noted in *Taisipic v. Marion*, 1996 Guam 9, ¶ 33, this Court is reluctant to allow the Judiciary to intrude upon the functions of the other branches. Therefore, this Court's exercise of statutory jurisdiction could not be justified solely on the basis, for example, that it is necessary to determine whether the 24th Guam Legislature is intentionally or unintentionally misapplying its own powers under the Organic Act, especially where other, albeit less expeditious,

⁷A Court's constitutional or Organic Act jurisdiction is not so easily compromised by local legislation.

remedies of law exist.⁸

[15] We turn first to the issue of whether the Guam Legislature intended Public Law 24-61, to be retroactive in effect.⁹ As a rule, a statute is presumed to have only prospective effect unless it is made expressly retroactive or is retroactive by “necessary implication.” *Nelson v. Ada*, 878 F.2d 277, 280 (9th Cir.1989). Guam also has a statutory provision which requires an express declaration of retroactivity. 1 GCA § 702 reads “No part of this Code is retroactive, unless expressly so declared.” In the absence of a retroactivity clause the legislative intent is looked to for guidance as to whether retrospective impact is otherwise specifically directed or is “necessary to

accomplish the purposes for which the statute was enacted.” *McBarron v. Kimball*, 26 Cal.Rptr. 379, 380 (Cal. Ct. App. 1962); *State of Hawaii v. Von Geldern*, 638 P.2d 319, 322 (Haw. 1981)(stating lack of a retroactivity provision not determinative of effect).

[16] In the present matter, we must conclude that it is necessarily implied that the Legislature intended to preclude the Court from determining the issues before us. While no express retroactivity provision exists within Public Law 24-61, the pre-enactment, enactment and post-enactment history collectively infer that the primary purpose of Public Law 24-61 was to prevent this Court from determining the merits of the pending Request for Declaratory Judgment

[17] The following facts are significant. There is before this Court only one pending Request for Declaratory Judgment, CRQ97-001 and it is the focus of the present Motion for Dismissal. Resolution 97-155 and Public Law 21-64 were passed quickly and in anticipation of the 19 September 1997 hearing on the merits of the Request. Furthermore, as Resolution 97-155 indicates, the Legislature had a concern that our determination of the issues would have an “unfortunate and unintended impact” on

⁸If this Court’s review of the Request for Declaratory Judgment were the only vehicle for addressing these issues, the Court might be bound to retain jurisdiction at this time. Such is not the case.

⁹Counsel for the 24th Guam Legislature, in filing a supplement to his Motion to Dismiss on 18 September 1997 commented on Public Law 24-61 and acknowledged that the amendment has only forward application. He indicated in that filing that it took effect at midnight on 17 September 1997. Counsel later argued that section 3 was intended to be retroactive.

the operations of the present legislature. While this language is somewhat cryptic, oral arguments revealed the particular concern being addressed. Counsel for the Legislature hypothesized that a court ruling which strikes 2 GCA § 2104 in favor of Organic Act provisions, would have the unintended consequence of subjecting the current legislature to the requirements imposed by the Organic Act of Guam. Applying Public Law 24-61 to the present matter certainly avoids any “unfortunate and unintended impact.” See *supra* note 2 and accompanying text.

[18] Also quite compelling is the manner in which 7 GCA § 4104 was amended. There was a haste in passing Substitute Bill 220 which evidences the fact that the purpose of the legislation was to stop our consideration of this pending matter. Substitute Bill 220 was reported out of committee by the Committee on Finance and Taxation on 12 September 1997, as an amendment to 7 GCA § 4104 which never received a public hearing. It was reported out on the same day that Resolution 97-155 was passed by the 24th Guam Legislature, and later, on that same day, legal counsel for the Legislature filed a motion to dismiss the Request for Declaratory Judgment. Finally, on 15 September 1997, the Legislature heard

Substitute Bill 220 and passed it through second and third readings in a matter of hours.

[19] Thus, before passage of Public Law 24-61, it was a matter within the discretion of this Court as to whether the Request for Declaratory Judgment would be dismissed. As with any Motion to Dismiss, the Court could weigh the arguments of the parties as to the propriety of dismissal. But on 15 September 1997, Public Law 24-61 halted the decision-making process of this Court by eliminating any judicial discretion. It forced the singular and intended result, dismissal of CRQ97-001.

[20] The neglect of the Legislature in failing to provide for express retroactivity in the body of Substitute Bill 220, will not preclude a retroactive operation where the purpose of the statute is abundantly clear. Such oversight is easily explainable in the present instance, given the rush to avoid judgment demonstrated by the Legislature in hearing, debating and voting upon Substitute Bill 220.

[21] Furthermore, it is evident that when Public Law 24-61 was passed, the Legislature knew that Resolution 97-155 had already been adopted and had intended that such resolution compel

dismissal. When the amendment to the law was debated during second reading, a senator questioned the germaneness of the amendment to 7 GCA § 4104 as a supplement to the 1998 Budget Bill and remarked that the effect of section 3 of Substitute Bill 220 would be to make Resolution 97-155 law. This Court finds that Resolution 97-155 reflects the current intent of the Legislature that the Supreme Court not rule on the merits of CRQ 97-001 and that such intent was ratified by the passage of Public Law 24-61.

[22] Thus, the legislative history, including the sequence and timing of all events, the players, the apparent motives, and the segue from Resolution 97-155 to Public Law 24-61 § 3, persuades this

JANET HEALY WEEKS
Associate Justice

Court that despite the omission of a retroactivity clause, Public Law 24-6's amending of 7 GCA § 4104 was specifically intended to apply to the Supreme Court's jurisdiction in CRQ97-001.

[23] Because this Court has acknowledged the importance of these issues to the people of Guam, and despite the spectre of once again marshaling its resources of time and judicial priorities to address these issues only to be informed of a Legislative change of mind, this Court grants the dismissal without prejudice. We shall respect the limits of our authority as a court, and as a branch of Guam's government.

SO ORDERED:

PETER C. SIGUENZA
Chief Justice