JESUS GUERRERO AUG, as Administrator
of the Estate of JOSE AUG SAN NICOLAS,
aka JOSE SAN NICOLAS AUG, deceased, Plaintiff
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS,
Its Alien Property Custodian,
The Alien Property Custodian of the District of Saipan,
and The Land and Claims Administrator, Defendants

Civil Action No. 119

Trial Division of the High Court

Mariana Islands District

September 16, 1965

See, also, 3 *T.T.R. 603*

Suit against Trust Territory and certain of its officers for wrongful holding of lands on Saipan, for return of land and for damages. Defendant moved to quash summons on g.round government had not consented to be sued. Plaintiff maintained trustee government not "sovereign", and that assumption of administration of Territory embodies consent. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that suit is actually one against United States and cannot be entertained without appropriate Congressional authority.

1. Trusteeship-Generally
   Although Trust Territory is definite geographical area, it is merely name under which United States carries out its obligations as administering authority under Trusteeship Agreement.
2. Trusteeship-Generally
   Trust Territory is not real legal entity since it speaks, operates and acts as part of executive department of United States through Secretary of Interior.
3. Trusteeship-Trusteeship Agreement
   Trusteeship Agreement does not create such trusts as courts of equity can enforce.

4. Trusteeship-Administering Authority-Powers

Although United Nations Charter and Trusteeship Agreement set out terms of trust, United States as administering authority must itself determine how terms of trust shall be carried out.

5. United States-Suits Against

Contention that individual defendants are sued in individual rather than official capacity is without merit when judgment would expend itself on public treasury or domain or interfere with public administration or effect of judgment would be to restrain government from acting or compel it to act.

6. United States-Suits Against

It rests with Congress to determine not only what United States may be sued for but in what courts suit may be brought.

7. United States-Suits Against

Jurisdiction of suits against United States whether by counterclaim or by direct action does not exist without specific Congressional authority.

8. United States-Suits Against

High Court of Trust Territory has no Congressional authority to entertain suits of any kind against United States.

9. United States-Suits Against

Where suit is captioned as suit against Trust Territory and certain of its officers but is actually suit against United States, it cannot be entertained in Trust Territory courts.

10. United States-Suits Against

Unless and until Congressional authority exists for actions against United States to be brought in Trust Territory court, court has no jurisdiction to entertain them.

Assessor: JUDGE IGNACIO V. BENAVENTE
Interpreter: FELIPE A. SALAS
Counsel for Plaintiff: JOHN BOHN, JR., of ARRIOLA, BOHN and GAYLE
Counsel for Defendants: ROBERT K. SHOECRAFT, *Attorney General*

KINNARE, *Associate Justice*

Plaintiff's complaint, in four counts, concerns two pieces of land; one more than eleven hectares and the other approximately one hundred fourteen hectares, both located on Saipan, allegedly seized unlawfully by the

Government of Japan about 1931, and allegedly wrongfully now held by the Trust Territory of the Pacific Islands and its agents. In addition to the return of the land, plaintiff seeks damages for rents, issues, profits, etc. Robert K. Shoecraft,appearing specially, moved the court "to quash, set aside, and hold for naught the summons herein as to the Trust Territory of the Pacific Islands, its Alien Property Custodian, the Alien Property Custodian, if any, of the Mariana Islands District, and the Land and Claims Administrator, and likewise the service or purported service thereof in this cause, for the reason that this appears to be an attempted action against the Government of the Trust Territory of the Pacific Islands, its officers and agents, and the said Government of the Trust Territory of the Pacific Islands has not given its consent for itself or its officers or agents to be made defendants in this action".

At the hearing on the motion, plaintiff argued that it should be denied because the Government of the Trust Territory (hereinafter referred to as "the Government") is not "sovereign" and therefore is not immune from suit in actions such as this; that even if the Government is sovereign, it is not free to refuse to be sued without its consent as any doctrine of sovereign immunity is inapplicable to a trustee government; that even if the Government is sovereign and immune from suit without its consent, such immunity applies only to actions sounding in tort and not to actions such as this sounding in contract; that even if the Government is sovereign and immune to suit without its consent, such consent has been given by the assumption of the administration of the territory under the limited authority of the Trusteeship Agreement; and that this action is not a suit against the Government but rather against the individuals therein

denominated in their official capacities, so that no consent need be obtained prior to suit. Plaintiff submitted a memorandum amplifying and explaining his contentions as to the above.

OPINION

[1, 2] The Trust Territory of the Pacific Islands is certainly a definite geographical area; other than that we think it merely a name under which the United States carries out its obligations as Administering Authority under the Trusteeship Agreement with the United Nations for the former Japanese mandated islands. The Trust Territory, therefore, is not a real legal entity. It speaks, operates, and acts as a part of the excutive department of the United States, the President having by executive order vested all executive, legislative, and judicial authority for the area involved in the Secretary of the Interior.

[3,4] In his memorandum, plaintiff argues forcefully concerning the liability of any trustee for breach of a trust committed to his care. We believe, however, that the Trusteeship Agreement of the United States with the United NatIons concerning the Trust Territory did not create such a trust as courts of equity can enforce. The charter of the United Nations and the Trusteeship Agreement set out the terms of the trust, and the United States, as the Administering Authority, must of itself determine how the terms of the trust shall be carried out.

[5] We believe that plaintiff's contention that the individuals named as defendants are sued in their individual rather than their official capacities is without merit. The language in *Dugan v. Rank,* 83 S.Ct. 999, is applicable here.

"The general rule is that a suit is against the sovereign 'if the judgment sought would expend itself on the public treasury or domain or interfere with the public administration', *Land v. Dollar,* 67 S.Ct. 1009, or if the effect of the judgment would be 'to restrain

the government from acting or to compel it to act', *Larson v. Domestic and Foreign Company,* 69 S.Ct. 1468."

The relief sought by the plaintiff falls clearly within the above.

[6,7] It is basic, of course, that it rests with Congress to determine not only what the United States may be sued for but in what courts the suit may be brought; jurisdictions of suits against the United States, whether by counterclaim or by direct action, does not exist without specific congressional authority (see Corpus Juris Secundum, Vol. 91, United States, Sec. 190).

"The objection to a suit against the United States is fundamental, whether it be in the form of an original action or a set-off, or a counter-claim. Jurisdiction in either case does not exist unless there is specific congressional authority for it." *Nassau Smelting and Refining Works v. U.S.,* 45 S.Ct. 25.

"And it rests with Congress to determine not only whether the United States may be sued but in what courts the suit may be brought." *State of Minnesota v. U.S.,* 59 S.Ct. 292.

[8,9] The High Court of the Trust Territory exists, by virtue of Section 115, Trust Territory Code, promulgated by Albert D. Thomas, High Commissioner of the Trust Territory of the Pacific Islands, by Executive Order No. 32 on December 22, 1952. This court has no congressional authority to entertain suits of any kind against the United States. Therefore, as we consider this suit, although it is captioned as a suit against the Trust Territory of the Pacific Islands and certain of its officers, to be actually a suit against the United States, it cannot be entertained by this court.

[10] In his memorandum, the plaintiff argues strongly that powerful reasons compel this court to entertain this suit, contending that plaintiff has no other recourse. We sympathize with his position. Unless and until, however, congressional authority exists for such actions to be

brought in this court, we have no jurisdiction to entertain them.

JUDGMENT

The summons herein as to all named defendants is quashed, set aside, and held for naught, and this action is dismissed.