

MELIONG MADRAINGLAI, et al., Plaintiffs
v.
YOSIWO EMESIOCHEL and THE SCHOOL OF THE PACIFIC,
Defendants

Civil Action No. 1-74

Trial Division of the High Court

Palau District

February 1, 1974

Contempt proceeding. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that service of ex parte temporary restraining order on counsel was service on defendants.

1. Civil Procedure—Process—Service

Service of temporary restraining order, obtained ex parte, upon defendants' attorney, was service upon defendants.

2. Civil Procedure—Process—Service

Largely because the method of service of ex parte temporary restraining order through police left room for dispute as to what service had been obtained, individual defendants would not be punished for ignoring the order, even though they were unquestionably in contempt of court; but corporate defendant was not entitled to such leniency and would be fined.

Assessor: FRANCISCO MOREI, *Acting Presiding
Judge, District Court*
Interpreter: AMADOR D. NGIRKELAU
Reporter: SAM K. SASLAW
Counsel for Plaintiffs: JOHN NGIRAKED
Counsel for Defendants: BAULES SECHELONG

TURNER, *Associate Justice*

Plaintiffs filed an action against the individual defendant and the defendant school seeking to enjoin the use of the land known as Ibobang in Ngetpang Municipality, Babelthaup Island, Palau, as a site for a boarding school. Upon application of the plaintiffs the Court issued an ex parte temporary restraining order at the time the complaint was filed and thereafter set hearing for determination whether the temporary order, issued without notice, should be continued as an injunction pendente lite or be vacated.

The summons and complaint were served by the Palau District police upon the defendant, Emesiochel, at the school site in Ngetpang January 22, 1974. The evidence is not clear whether the temporary restraining order also was served with the summons which was handed to the defendant in a sealed envelope. He denied he received the temporary restraining order. The temporary order was served by the police upon defense counsel. The counsel and the school representative asked the Court for a hearing on fixing an injunction bond. The Court issued an order at that time, January 23, 1974, for hearing to be held January 25, 1974.

Service of the notice was obtained and the parties and their counsel appeared before the Court. At the hearing counsel for plaintiff told the Court the representatives of the defendants were ignoring the temporary restraining order and were working at the school site. Counsel for de-

fendant denied any willful violation of the restraining order.

Thereafter, upon plaintiff's motion to declare defendants in contempt of the Court's temporary restraining order, the motion being supported by photographs taken January 26, 1974, the Court issued an Order to Show Cause January 28, 1974, and set return date of January 30, 1974. In the meantime, defense counsel had left Koror for Saipan to attend the Congress of Micronesia session and defendants obtained substitute counsel.

At the hearing on the order to show cause plaintiff clearly established that representatives of the defendants had continued working at the school site after the January 22, 1974 issuance of the temporary order until at least sometime Monday January 28, 1974. Whether or not the temporary order was served on anyone was not definitely established. Both the individual defendant and the representative of the school denied they had been served.

At the January 25, 1974 hearing on the question of issuance of a temporary injunction with an injunction bond the defendants were admonished by both the Court and by defense counsel that the restraining order required that work be stopped and that if the order was not complied with they—the individual defendant and the representative of the school—would be punished. Defense counsel asked the school representative, Droteo Espangel, if he knew the effect of the order. He said he did know but that he had not received an order.

The following colloquy took place:—

“Q. Do you know that when you are given an injunction from the Court you will have to stop any work you are doing?”

“A. Yes, we do.”

“Q. Have you received that order or not?”

“A. No.”

* * *

“Q. I want to remind you that if you or the people at the site received this order, they better stop their work and you better send word to your people that when they do receive this order they have to stop the work.”

“JUSTICE TURNER: Just a minute, let us not give him bad legal advice. All your workers, three hundred people, do not have to receive the order. You represent, you testified, the school and the order is against the school, so it is against you and then all of your people. It only has to be served on you and if your people keep on working, then you are at fault and I will put you in jail or fine you for contempt of court but not your three hundred people.”

[1] The statements were misleading as to whether or not the defendants, or their workers, had “received” the order. Actually, service upon their counsel was service upon them. The defendants actually knew, or they should have known, that the Court had ordered that use and occupancy of the land be halted temporarily until a determination could be made whether to continue restraint until the dispute was settled on its merits.

The facts are such the Court is convinced the individual defendants knew they had been ordered to halt operations. They chose, however, to permit their 300 volunteers, if in fact there were that many workers, to continue their activities.

Droteo Espangel described himself variously as “acting director,” as “deputy director” and as “representative” of the defendant “nonpublic” school intended to operate at a post elementary level. He was represented by competent counsel. He accompanied counsel to the Court chambers to discuss proceedings in the case. On the witness stand, having first promised to tell the truth, he asserted he was “confused” and did not “understand” his obligation with regard to the Court order. The assertions were incredible.

[2] Largely because the method of service through the police left room for dispute as to what service had been ob-

tained the Court will forego imposition of punishment on the individuals even though there is no question the individuals were in fact guilty of contempt of the court order. The same might be considered also applicable to the corporate entity, the defendant school. But the justification for leniency is not the same. The corporate school acts through its representatives who are its officers, directors and counsel. The representatives failed to order the termination of occupancy and work at the school site in accordance with the temporary order of the Court. Because of this failure the corporation was in contempt of court.

A corporation may not be incarcerated but it can be fined. The Court believes such punishment warranted to impress upon those who manage, direct, advise and represent the school that they may not act through the corporation in defiance of a formal court order with impunity. Accordingly, it is,

Ordered, adjudged and decreed:—

1. That Yosiwo Emesiochel and Droteo Espangel are found guilty of contempt of this Court's order because of failure to comply with it. That punishment for such contempt shall be suspended throughout the continuance of Palau Civil Action No. 1-74 on condition there is full compliance during the pendency of the case with the restraining order or any other order of the Court.

2. That the corporate defendant, The School of the Pacific, Inc., is found guilty of contempt of this Court's order because of its failure to comply with it and it shall pay to the Clerk of Court a fine of \$150.00.