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FOR PUBLICATION

IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOSE P. MAFNAS, Personally and as President of the Seventh Commonwealth Senate, Petitioner, vs. SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Respondent. and ELOY INOS, in his capacity as Director of the Department of Finance, JOSEPH INOS, JESUS R. SABLAN, EDWARD U. MARATITA, FRANCISCO M. BORJA, and HENRY DLG. SAN NICOLAS, in their capacity as Members-Elect of the Seventh Commonwealth Senate, FELIPE Q. ATALIG and ABRAHAM TAISACAN, Real Parties In Interest.	ORIGINAL ACTION NO. 90-001 SUPERIOR COURT NO. 90-31 ORDER DENYING PETITION FOR WRIT OF MANDAMUS and MOTION FOR STAY

Before: Villagomez and Borja, Justices, and Hillblom, Special Judge.

PER CURIAM:

On January 10, 1990, Senator Jose P. Mafnas (hereafter "Mafnas") filed with the superior court a Complaint for

Declaratory Relief and for a Preliminary and Permanent Injunction. Mafnas, in part, sought to be declared President of the Senate. Simultaneously, he applied for a temporary restraining order, asking that the real parties in interest be enjoined from acting as officers of the Senate. On the same day the superior court issued an Order to Show Cause directed to the real parties in interest. (See caption above for a list of real parties in interest.) On January 18, 1990, the superior court issued a stipulated order restraining Eloy Inos from disbursing government funds to the Senate pending disposition of the case.

A hearing was held, after which the judge issued, on January 22, 1990, his Memorandum Decision followed by his Declaratory Judgment. The Judgment declared, inter alia, that Joseph Inos was the President of the Senate.

On January 23, 1990, Mafnas filed a Motion for Stay of Judgment and for Injunction Pending Petition, or in the Alternative for a Temporary Stay. However, no petition or appeal was pending at the time and the trial court denied the motion on January 24, 1990.

Mafnas then filed his Petition for Writ of Mandamus with this Court on January 30, 1990. He contends that the Respondent, trial court, usurped its judicial power; that he (Mafnas) has no plain, speedy and adequate remedy other than a writ of mandamus; and requests this Court to direct the trial judge to immediately vacate his Declaratory Judgement

and Memorandum Decision. He also prays for this Court to grant Mafnas the declaratory relief sought below, including a ruling that he is the duly constituted President of the Senate of the Seventh Legislature. At the same time he filed a motion for stay in this Court.

Rule 21(b) of the Rules of Appellate Procedure of this Court provides:

> If this Court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order.

We have carefully examined the Petition for Writ of Mandamus, the memorandum in support thereof, and the excerpt of the record. We have re-examined the conditions, guidelines and criteria set forth in our previous decisions on the question of when it is justified for this Court to invoke such extraordinary remedy.[1/]

In applying such guidelines to the facts and circumstances of this case, we have come to the conclusion that mandamus is not the proper remedy. There is insufficient showing of extraordinary circumstances.

1/ In Tenorio v. Superior Court, Original Action No. 89-002 (CNMI slip opinion, November 4, 1989) we set forth the guidelines and precedents for all litigants and the superior court to follow in cases involving extraordinary writs. Neither the trial court nor the Petitioner referred to such guidelines.

The criteria for showing extraordinary circumstance as set forth in Tenorio v. Superior Court, supra, are as follows:

1. The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired.

2. The petitioner will be damaged or prejudiced in a way not correctable on appeal.

3. The lower court's order is clearly erroneous as a matter of law.

4. The lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules.

5. The lower court's order raises new and important problems, or issues of law of first impression.

In applying these guidelines to a particular case there will not always be a bright-line distinction; the guidelines themselves often raise questions of degree; the considerations are cumulative; and proper disposition will require a balancing of conflicting indicators. Tenorio v. Superior Court, supra.

In Tenorio, a review had to be made within a few days because of an upcoming election. There was no time for a direct appeal. Had the review been done after the election, there would have been damage or prejudice not correctable on appeal. It would have been too late. We also found that the order of the lower court was clearly erroneous as a matter of law and that it raised issues of first impression in this

jurisdiction. After balancing the conflicting indicators we granted the Petition for Writ of Mandamus.

In the case at hand, after reviewing the guidelines and balancing the conflicting indicators, the balance tips towards denying the Petition. The Petition does not convince us that the lower court's Memorandum Decision and Declaratory Judgment have to be reviewed immediately and has not clearly shown what the damage will be that cannot otherwise be correctable on direct appeal.

The Petitioner fails to show that the lower court's decision is an oft-repeated error, or manifests a persistent disregard of applicable rules. The Petitioner contends that the judge failed to follow the rules of procedure and applied the law incorectly solely in this particular case.

We find that this case raises issues of first impression in the Northern Mariana Islands. However, this factor alone does not convince us that a writ of mandamus is the proper vehicle. As we noted in Tenorio,

> (t)here are dangers to an unprincipled use of peremptory writs, as for example, the possibility that its use would be an impermissible alternative to the normal appellate process. Its abuse could operate to undermine the mutual respect generally existing between trial and appellate courts. Further, appellate courts should insure against the temptation to grant such writs merely because they might be sympathetic to the petitioner's underlying actions.

Supra at page 5.

We place greater weight on the first two guidelines. In

view of this, there is no need to consider criteria number three.

Based on the above analysis, we conclude that this case should be brought before us by way of a direct appeal, not by way of a petition for writ of mandamus.

IT IS HEREBY ORDERED that the Petition for Writ of Mandamus is DENIED and this case is DISMISSED. Having decided to deny the Petition for Writ of Mandamus we see no basis for a stay and the motion for stay is also DENIED.[2/]

Entered this 31st day of January, 1990.

Ramon G. Villagomez
RAMON G. VILLAGOMEZ, Acting Chief Justice

Jesus C. Borja
JESUS C. BORJA, Associate Justice

Larry L. Hillblom
LARRY L. HILLBLOM, Special Judge

[2/] This order does not preclude the Petitioner from filing a notice of appeal and moving for a stay pursuant to applicable rules.