or other relief. The rule must be applied in the present case.

Ordered, adjudged and decreed:—

1. That plaintiff shall have and hereby is granted judgment against defendant for wrongful breach of plaintiff's employment contract.

2. That further hearing shall be held to determine the nature of the relief to be awarded plaintiff, whether it shall be an order of reinstatement or an order awarding damages for breach of contract and if damages are to be awarded the amount of such relief.

3. That the Court will look with favor upon any stipulation as to relief agreed by the parties and their counsel without further hearing.

4. Plaintiff is awarded costs in accordance with law upon filing claim.

MANUEL T. CRUZ, VERONICA S. CASTRO, ADOLFO TAISAKAN, CONSUELO T. NAKATSUKASA, on behalf of themselves and all others similarly situated, Plaintiffs

v.

EDWARD E. JOHNSTON, individually and in his capacity as High Commissioner of the Trust Territory of the Pacific Islands, Defendant

Civil Action No. 46-73

Trial Division of the High Court

Mariana Islands District

October 19, 1973

Class action for declaratory judgment and injunctive relief. The Trial Division of the High Court, Burnett, Chief Justice, held that where homesteaders had complied with requirements necessary to the conveyance of the land to them, High Commissioner could not refuse conveyance on the grounds of inadequate surveys and unreliable description of the lands.

1. **Homesteads—Homestead Deed from Government**

   Statutory provision that "High Commissioner shall issue the deed of conveyance within two years of the time the homesteader becomes eligible", shown by legislative history to have been enacted to enable homesteader to go to court to demand issuance of the deed, for which there had previously been no time limit, was clearly mandatory, not directory. (67 TTC § 208)

2. **Statutes—Time Requirements**

   While time for performance set out in a statute may well be generally directory and not mandatory, it cannot be so held when such a result would be contrary to the purpose of the statute and the clear legislative intent.

3. **Homesteads—Homesteading Regulations**

   Homestead law provision that High Commissioner may "waive any requirement, limitation or regulation relating to homesteads" does not allow waiver of specific statutory provisions, such as time within which he must convey property after a homesteader becomes eligible for it, but rather, refers to administrative regulations of district administrators and land advisory boards. (11 TTC § 211)

4. **Mandamus—High Commissioner**

   High Commissioner is subject to mandamus with respect to a mandatory statute relating to a ministerial duty.

5. **Courts—Enforcement of Orders**

   The court has a duty to issue appropriate orders regardless of its physical power to enforce them, and whether or not the court is without power to enforce its orders directed to the High Commissioner, it should not abdicate its responsibility to find and declare the law.

6. **Civil Procedure—Class Actions—Joinder**

   In class action by homestead entrymen claiming full compliance with requirements necessary to conveyance of the land to them and seeking such conveyance, joinder of all class members, or deferring resolution of the case until each was given individual notice, was not necessary and was impractical, for the fact and law questions were common to the class, the exact size of the class was not made known to the court, though it was approximately 200 persons, and they would not have to accept the deeds should they choose not to.

7. **Homesteads—Homestead Deed from Government**

   Where homesteaders had complied with requirements necessary to the conveyance of the land to them, High Commissioner could not refuse conveyance on the grounds of inadequate surveys and unreliable description of the lands. (67 TTC § 208)

Counsel for Plaintiffs: SAMUEL WITHERS, ESQ., DON JUNEAU, ESQ., and DANIEL AQUINO, *Co-counsel,* Micronesian Legal Service Corporation
Counsel for Defendant: LYLE RICHMOND, ESQ., EMMETT RICE, ESQ., and MAMORU NAKAMURA, ESQ.

BURNETT, *Chief Justice*

Plaintiffs brought this action for declaratory and injunctive relief on their own behalf, and on behalf of a class consisting of other similarly situated persons. All are homestead entrymen who claim full compliance with requirements of the Trust Territory Homestead Law, 67 TTC, Chapter 9. Their motion for summary judgment was granted in open court, with Order and Judgment entered thereafter, declaring plaintiffs' immediate right to the issuance of deeds of conveyance, and ordering defendant to execute such deeds.

Defendant has filed a request that the Court make and enter specific findings of fact and conclusions of law, pursuant to Rule 16, Rules of Civil Procedure.

In the Federal practice, no specific findings and conclusions need be made in connection with a summary judgment motion. Rule 52, Federal Rules of Civil Procedure. In granting summary judgment the court makes known its determination that there are no material, triable facts in issue. In any event, the parties are entitled to know the reasons on which the court bases its judgment. *Rogers v. General Electric Company,* 341 F.Supp. 971 (1972).

None of the facts of this dispute, material or otherwise, are controverted. The court has carefully examined the entire record, including all contentions of the parties and briefs submitted in support of those contentions.

Defendant, by his answer, admits that the named plaintiffs, as well as a substantial number of others whom plaintiffs represent as a class, have fulfilled homestead requirements, received certificates of compliance more than

two years prior to filing this action, and have not received deeds of conveyance of their homestead lands. He admits further that he has acted on grounds generally applicable to the class. In response to the plaintiffs' motion, he states those grounds to be the lack of adequate field-surveys, and the unreliable description of the lands; this was not controverted by plaintiffs.

[1] While admitting that plaintiffs are entitled to deeds of conveyance, defendant contends that the time requirements of Section 208, Title 67, Trust Territory Code, are directory only, and that it is consequently within his discretion to determine when a deed should issue.

The requirement that a deed issue within two years following eligibility is clearly couched in mandatory terms:—

". . . The High Commissioner shall issue the deed of conveyance within two years of the time the homesteader becomes eligible to receive the deed of conveyance under the provisions of this Chapter. . . ."

Defendant cites 2 Sutherland Statutory Construction, 3rd ed. (1943), 216, 217, as supporting his position that the time provision is directory. A more full reading, however, produces a different result.

"§ 2803. Mandatory Statutes. Although in every case the legislative intent should control in determining whether a statute or some of its provisions are mandatory there are, nevertheless, certain forms and certain types of statutes which generally are considered mandatory. Unless the context otherwise indicates the use of the word 'shall' (except in its future tense) indicates a mandatory intent." 2 Sutherland, p. 216.

"§ 2804. Directory Statutes. . . . Likewise, where the time, or manner of performing the action directed by the statute is not essential to the purpose of the statute, provisions in regard to time or method are generally interpreted as directory only." Id. p. 217.

[2] Thus, while time of performance set out in a statute may well be generally directory, it cannot be so held when

such a result would be contrary to the purpose of the statute and the clear legislative intent.

The requirement that deeds issue within two years after eligibility was added to Section 208 by P.L. 3C–35, October 10, 1969. Prior to that amendment the statute was silent as to any time for issuance of deeds following receipt of a certificate of compliance. The purpose of the amendment, according to the report of the Senate Committee on Resources and Development, Congress of Micronesia, was ". . . to expedite the issuance of deeds of conveyance . . .". Senate Journal—1969, p. 451. Subsequent floor debate, reported in the Journal, pages 284, 285, made clear the view of the Senate that the amendment would enable the homesteader to go to court to demand issuance of the deed. This course of events demonstrates an almost classic opportunity for application of the ancient rule of legislative interpretation formulated by Lord Coke in 1584, discussed in 2 Sutherland, Section 4501, p. 314. Here, the Congress enacted a specific remedy for an identified problem, stating clearly the reason for doing so. The time provision of Section 208 is, in my view, clearly mandatory.

[3] It is further contended that defendant has discretion to defer execution of deeds by reason of Section 211, which authorizes him to ". . . waive any requirement, limitation or regulations relating to homesteads. . .". Such authorization, however, cannot reasonably be interpreted as extending to the waiver of specific statutory provisions, particularly when they impose a mandatory duty on himself. Such a conclusion would be totally inconsistent with the amendment of Section 208 in 1969. Rather, I read Section 211 as applying to requirements, limitations or regulations administratively developed by the District Administrators and District Land Advisory Boards under authority of the law.

Defendant contends also that, by reason of his position, he is not subject to the process of this court. As chief executive of the Trust Territory, charged as well with international obligations under the Trusteeship Agreement, he claims the need for "unfettered discretion". Simply stated, he claims the power to determine when, or whether he will abide by any given provision of law, whether it be mandatory or directory, ministerial or discretionary.

[4] This is a matter of first impression in the Trust Territory. Other jurisdictions are divided, some holding that mandamus will never lie against the chief executive; the other, and to me, preferable view, is that compliance with a mandatory statute, relating to a ministerial duty, can be ordered.

The distinction, noted long ago by the Supreme Court, is still sound:—

"It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done, that the propriety or impropriety of issuing a mandamus is to be determined." *Marbury v. Madison,* 1 Cranch 137, 170, 2 L.Ed. 60.

In a leading case in California it was said that that state had held consistently for more than three quarters of a century that the writ will issue to compel a governor to perform ministerial acts required by law, and that he should not be exempt from judicial process solely because he is the chief executive. *Jenkins v. Knight,* 46 C.2d 220, 293 P.2d 6.

To the same effect:

"The defendants contend that this court is without power to direct a mandatory order to the Governor because the exercise of his official duties is not subject to control or review by the courts. I agree that this is true with respect to actions of the Governor which involve the exercise by him of the discretionary and political power which is conferred upon him by the Revised Organic Act as head of the executive branch of the territorial government.

As to such matters his action is final and unreviewable. But the same is not necessarily true as to purely ministerial acts of the Governor not involving the exercise of discretion or judgment or as to acts which are prohibited to him by law. . . . For ours is a government of laws and not men." *Felix v. Government of the Virgin Islands,* 167 F.Supp. 702 (1958) at p. 706–707.

[5] It has at times been suggested, as a reason for refusing mandamus, that the court is without power to enforce its orders when directed to the chief executive. Whether this be a correct view or not, the court should not abdicate its responsibility to find, and declare, the law.

"Regardless of its physical power to enforce them, the court has a duty to issue appropriate orders." *In re . . . Subpoena . . .* U.S.D.C. Dist. Col., 42 L.W. 2125.

[6] There remains for discussion only the question of the propriety of allowing this as a class action. While defendant claims joinder of all members of the class would not be impractical, since all are known, the exact size of the class was not made known to the court, varying numbers having been given in the course of these proceedings; in any event, there are approximately 200 persons in plaintiffs' situation.

Defendant acknowledges that questions of law and fact are common to the class, and that he has acted on grounds generally applicable to the class. He claims, however, that notice should be given to all so that they might determine for themselves whether they wish deeds issued at this time.

I concluded that notice would serve no necessary purpose. Members of the class are not compelled to accept deeds if they should choose not to. The only purpose that would be served by either joinder of all such persons, or deferring resolution until they were given individual notice, would be delay. Under all the circumstances, I found that joinder would be impractical, and allowed the class action, without requiring further particularized notice.

[7] I recognize that it may well be, as defendant maintains, that conveyance of the government's interest in these homestead lands in advance of final survey would not be in the best interest of the homesteader. Yet, it is not the court's function to pass on the wisdom of the law. The view which I take of the mandate of Section 208 leaves me with no discretion in the matter. Judgment has been entered accordingly.

BENJAMIN FRANKLIN, Plaintiff

v.

ELTER JOHN, Defendant

Civil Action No. 395

Trial Division of the High Court

Ponape District

November 6, 1973

Action for damages for personal injuries. Defendant admitted liability and the only issue was damages, which the Trial Division of the High Court, Brown, Associate Justice, set at $121.50 general damages attendant upon being struck in the face.

Assault and Battery with a Dangerous Weapon—Damages

Damages for personal injuries arising when defendant struck plaintiff in the face with a bottle would be awarded in the amount of $121.50 general damages, $8.50 special damages, and costs, where medical expenses of $8.50 were proven and plaintiff would have a permanent scar above his right eye and suffered pain for a time.

Assessor:	CARL KOHLER, *Presiding Judge, District Court*
Interpreter:	HERBERT GALLEN
Reporter:	MISSY F. TMAN
Counsel for Plaintiff:	WILLIAM PRENS
Counsel for Defendant:	JOHNNY MAKAYA