

Estate of Domingo v. Marcos, Not Reported in F.Supp. (1983)

1983 WL 482332

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United States District Court,  
W.D. Washington.

ESTATE OF Silme G. DOMINGO, et al., Plaintiffs,  
v.  
Ferdinand MARCOS, et al., Defendants.

No. C82-1055V.

July 14, 1983.

engaged in an ongoing conspiracy to silence and disrupt the anti-Marcos opposition. The goal of this conspiracy against the anti-Marcos opposition was and is to infiltrate, monitor, counteract, interfere with, disrupt, and neutralize the anti-Marcos opposition in this country and thus to deprive the opposition of equal protection of the laws and other civil rights.”

## ORDER

VOORHEES, J.

\*1 Having heard oral argument and having fully considered the memoranda and affidavits submitted in connection with the following motions: (1) the motion of plaintiffs to vacate and set aside the Court’s order of December 23, 1982, dismissing plaintiffs’ claims against defendants Ferdinand and Imelda Marcos; (2) the motion of defendant Republic of the Philippines to dismiss; (3) the motion of defendant Ernesto Querubin to dismiss; (4) the motion of plaintiffs to disqualify the United States Attorney; and (5) the motion of the United States government defendants to dismiss, the Court now finds and rules as follows:

1. Plaintiffs are members of a group opposed to the policies and actions of the regime of Ferdinand Marcos, President of the Republic of the Philippines, and to the alleged policy of the United States of military, economic, political and other support of that regime.

2. Plaintiffs allege:

“All the defendants have and are

The American defendants named in the complaint are alleged to have been aware of the alleged activities of Philippine agents against the anti-Marcos opposition in the United States but to have taken no action to halt or to curtail those activities. Allegedly, the United States government defendants have acted to further the objectives of the conspiracy against the anti-Marcos opposition. In addition, certain unnamed United States government defendants are alleged to have participated in the plot to murder Domingo and/or Viernes.

3. The Court has previously dismissed President Marcos and his wife, Imelda Marcos, as defendants pursuant to a Suggestion of Immunity made by the Department of State of the United States. Plaintiffs move to vacate and set aside that order on the procedural ground that they were not afforded an opportunity to respond to the United States and on the substantive ground that the Suggestion of Immunity procedure was eliminated by enactment of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. Sections 1330 *et seq.*

4. Although the Court finds that the motion to dismiss defendants Marcos was properly noted on the Court’s calendar for December 23, 1982, the Court will address *de novo* the substantive question of the immunity of those defendants.

5. Plaintiffs’ principal argument in opposition to the Suggestion of Immunity is that, in enacting the FSIA, Congress intended to eliminate the Suggestion of Immunity procedure. The legislative history of the Act indicates that Congress had this intention only with respect to foreign states. House Rep. No. 94-1487, 94th Cong., 2nd Sess., U.S.Code Cong. and Admin. News, at

Estate of Domingo v. Marcos, Not Reported in F.Supp. (1983)

1983 WL 482332

6610 (“House Report”). There is no evidence in the legislative history of the FSIA nor in the FSIA itself that Congress intended to modify the procedure with respect to the immunity of a foreign head of state.

\*2 6. Under the FSIA a foreign state is, with certain exceptions, immune from the jurisdiction of the courts of the United States. 28 U.S.C. Section 1604. The term “foreign state” is defined in Section 1603 as “a political subdivision of a foreign state or an agency or instrumentality of a foreign state.”

7. Plaintiffs have cited no reference to the immunity of a foreign head of state in the FSIA or in its legislative history. They nevertheless argue that because the head of a foreign state was historically considered the embodiment of the state itself, a head of state should now be accorded no greater immunity than a state. There is no evidence, however, that Congress intended to eliminate the Suggestion of Immunity procedure as a means of securing the dismissal of an action against a foreign head of state.

8. The Court finds additional support for this result in the fact that enactment of the FSIA was not to affect the immunity of diplomatic or consular officials. House Report at 6610. Those officials enjoy absolute immunity. It would be illogical to accord a lesser degree of immunity to a foreign head of state than to a diplomat appointed by that head of state. The Court concludes that it must accede to the Suggestion of Immunity made by the Department of State with respect to defendants Ferdinand Marcos and Imelda Marcos.

9. The Republic of the Philippines has also moved to dismiss. Its claim of immunity is expressly governed by the FSIA. Plaintiffs contend that the Republic cannot assert a defense of sovereign immunity because of the exception contained in 28 U.S.C. Section 1605(a)(5), scope of his office or employment; ...”  
f plaintiffs’ complaint plaintiffs allege that certain of the defendants

committed an assault and battery upon Domingo and Viernes which caused their deaths. At no place in plaintiffs’ complaint is there an allegation that the deaths of Domingo and Viernes were caused by the tortious act of the Republic of the Philippines or by an official or employee of the Republic of the Philippines w

hile acting within the scope of his office or employment. Absent such an allegation the Republic of the Philippines

is immune from the jurisdiction of the courts of the United States and the motion of the Republic of the Philippines to dismiss must be granted. This Court is without jurisdiction under the FSIA to grant injunctive relief as against the Republic of the Philippines. General Ernesto Querubin also moves to dismiss. He argues that he is immune from suit by virtue of his “consular immunity.” Querubin claims immunity under two separate consular treaties. The first is the Vienna Convention on Consular Relations of April 24, 1963, "https://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1969090950&pubNum=6792&originatingDoc=lc0c3acdd540111d9a99c85a9e6023ffa&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnte

re dCitation)" 21 U.S.T. 78, T.I.A.S. No. 6820. This convention, however, provides immunity only with respect to acts performed by a consul in the exercise of his consular functions. Article 43(i). Defendant Querubin does not contend that the acts alleged by plaintiffs are “consular functions.” 1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)" 24 U.S.T. 1233, T.I.A.S. No. 7642.

That agreement provides in Article 13: es and members of their families forming part of their households shall enjoy immunity from the jurisdiction of the judicial and administrative authorities of the receiving state.”

.S. No. 1741. Article I(2) of that convention provides: [c]onsular officers of each High Contracting Party shall, after entering upon their duties, enjoy reciprocally in the territories of the other High Contracting Party rights, privileges, exemptions and immunities

no less favorable in any respect than the rights, privileges, exemptions and immunities which are enjoyed by consular officers of the same grade of any third country and in conformity with modern international usage.”

Estate of Domingo v. Marcos, Not Reported in F.Supp. (1983)

1983 WL 482332

Philippines and the United States in 1948. T.I.A.S. No. 1741. Article I(2) of that convention provides:

Convention .”

“[c]onsular officers of each High Contracting Party shall, after entering upon their duties, enjoy reciprocally in the territories of the other High Contracting Party rights, privileges, exemptions and immunities no less favorable in any respect than the rights, privileges, exemptions and immunities which are enjoyed by consular officers of the same grade of any third country and in conformity with modern international usage.”

14. Defendant Querubin does not contend that, upon entry into force of the Polish Treaty, Philippine consular officials were automatically accorded the immunity enjoyed by Polish consular officials. That is, defendant does not argue that the most-favored-nation clause is self-executing. Rather, he argues that he became entitled to the consular immunity of the Polish Consular Convention when the United States accepted the tender by the Philippines of immunity in a note, dated December 6, 1982, in which the United States stated:

“In accordance with the provisions of Article I(2) of the 1947 United States–Philippines Consular Convention, the request of the Republic of the Philippines is granted on the basis of the representations and guarantee of reciprocity set forth in the Embassy’s note. Accordingly, consular officers of the Philippines will henceforth enjoy reciprocally in the United States privileges, exemptions and immunities no less favorable in any respect than those that are enjoyed by Polish consular officers in the United States pursuant to the 1972 United States–Poland Consular

15. Plaintiffs’ action was filed on September 14, 1982, which was two months prior to the exchange of diplomatic notes granting Philippine consular officials the immunity enjoyed by Polish officials. Plaintiffs argue that this immunity cannot be conferred retroactively. They contend that their cause of action against Querubin accrued no later than June 1, 1981, the date upon which Domingo and Viernes were slain.

\*4 16. Plaintiffs have cited *Arcaya v. Paez*, 145 F.Supp. 464, 468 (S.D.N.Y.1956), 244 F.2d 958 (2d Cir.1957) for the proposition that a consular officer cannot be retroactively immunized. *Arcaya* was a libel action against a Venezuelan consul, who was not immune from suit at the time he was served. Subsequently, the defendant was promoted to the rank of ambassador and became entitled to absolute immunity from suit. Plaintiff argued that the Venezuelan government could not retroactively immunize defendant for the acts he committed while he was a consular officer. The court ruled that since defendant was served with process before he was immune, the action against him should not be dismissed. The court held, however, that the action should be suspended because defendant’s promotion to ambassador entitled him to absolute immunity.

17. The absolute immunity of defendant Querubin under the Polish Convention requires the termination of these proceedings as against him. The action must be dismissed, rather than simply suspended, as against him since even a suspension of the action would be inconsistent with the provision in the Polish Convention that a consular official “shall enjoy immunity from the jurisdiction of the judicial and administrative authorities” of the United States.

18. Plaintiffs also assert that Article I(2) of the U.S.-Philippine Convention does not contemplate absolute immunity because immunity of that character is not “in conformity with modern international usage.” The Court is not, however, persuaded that the U.S.-Poland Consular Convention is in any way contrary to modern international usage.

19. The Court finds no merit in the other arguments made by plaintiffs against the absolute immunity of defendant Querubin.

Estate of Domingo v. Marcos, Not Reported in F.Supp. (1983)

1983 WL 482332

20. Plaintiffs have moved to disqualify the United States Attorney on the ground that he has a conflict of interest because his investigation of the murders of Domingo and Viernes may uncover evidence which inculpates one or more of the United States government defendants in the present action. At the hearing held on plaintiffs' motion, the Court granted the United States' request for a waiver of Local Rule 2(d), which requires out-of-the-district counsel to associate local counsel. At that time, however, the Court indicated that it would be a convenience to all parties and to the Court to have a representative of the United States Attorney's office to be available to attend to such ministerial functions as the acceptance of service of pleadings. In order to avoid even the appearance of a conflict of interest, however, the Court requests counsel for the United States defendants to associate as local counsel an attorney from the Seattle office of some federal agency other than the office of the United States Attorney.

21. Since neither the Federal Rules of Civil Procedure nor federal practice recognizes John Doe pleadings, the named John Doe defendants one through seventy-five must be dismissed. Should unknown defendants hereafter be identified, plaintiffs may seek leave to add those parties as parties defendant.

\*5 22. The federal agencies named as defendants, namely, The Federal Bureau of Investigation, the Department of Justice, the Department of State, Naval Intelligence, and Naval Investigative Service are not legal entities. They can neither sue nor be sued. The complaint of the plaintiffs must, therefore, be dismissed as to those defendants.

23. The named United States government defendants have moved for dismissal of plaintiffs' complaint as against them. The Court is persuaded by the memoranda of authorities filed by those defendants and by the decisions cited therein, that the following rulings must be made with respect to the claims asserted by plaintiffs as against the United States government defendants:

(1) With respect to plaintiffs' claims for damages against the United States government defendants in their individual capacities, the Court finds that those defendants do not in their individual capacities have such minimum contacts with the State of Washington as to make them subject to the jurisdiction of this Court under the Long Arm Statute of the State of Washington. The damage claims of

plaintiffs against the United States government defendants in their individual capacities must therefore be dismissed.

(2) With respect to the other claims by plaintiffs against the United States government defendants, those claims must be dismissed because the allegations against those defendants in plaintiffs' complaint are lacking in the requisite specificity to enable the defendants to answer to the complaint. Before any one of the named United States government defendants may be required to defend himself against the charges in plaintiffs' complaint, plaintiffs must as to that defendant allege with particularity the personal involvement of that defendant in the alleged unlawful conduct of which plaintiffs complain.

(3) With respect to the claims of the Estates of Silme G. Domingo and Gene A. Viernes for money damages by reason of the wrongful deaths of the decedents, the actions against the named United States government defendants in their official capacities must be dismissed. The United States cannot be sued for money damages except and to the extent that it has waived its sovereign immunity. The United States has waived its sovereign immunity from suits for money damages only by the Federal Tort Claims Act. In order to commence an action under the Federal Tort Claims Act a claimant must comply strictly with the terms of that act. One of the provisions of that Act is that prior to the commencement of an action for damages against the United States, the claimant must submit an administrative claim and have that claim ruled upon administratively. This, the claimants have not done. Their claims for money damages against the named United States government defendants in their official capacities must therefore be dismissed.

Accordingly, the motion of President Ferdinand E. Marcos and Imelda Marcos to dismiss is GRANTED. The motion of Ernesto Querubin to dismiss is GRANTED. The motion of the Republic of the Philippines to dismiss is GRANTED. The motion of the United States government defendants to dismiss is GRANTED in part. The complaint of plaintiffs as to defendants Federal Bureau of Investigation, Department of Justice, Department of State, Naval Intelligence, Naval Investigative Service, and John Does one through seventy-five, is DISMISSED.

**DODGE, WILLIAM 8/15/2022**  
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**Estate of Domingo v. Marcos, Not Reported in F.Supp. (1983)**

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1983 WL 482332

\*6 Plaintiffs shall have leave to file an amended complaint. That amended complaint must, however, comply with the mandate of [Fed. Rules Civ. Proc. 8](#) that the complaint be a short and plain statement of each of plaintiffs' claims. The Court will strike an amended complaint that is not in compliance with [Rule 8](#).

copies of this order to all counsel of record.

**All Citations**

Not Reported in F.Supp., 1983 WL 482332

The Clerk of this Court is instructed to send uncertified

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