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878 F.2d 1439

Unpublished Disposition

NOTICE: Ninth Circuit Rule 36-3 provides that dispositions other than opinions or orders designated for publication are not precedential and should not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel.

Agapita TRAJANO, etc., et al., Plaintiffs–Appellants,
v.
Ferdinand E. MARCOS, et al., Defendants–Appellees.
Maximo HILAO, et al., Plaintiffs–Appellants,
v.
Ferdinand E. MARCOS, et al., Defendants–Appellees.
Florentina SISON, et al., Plaintiffs–Appellants,
v.
Ferdinand E. MARCOS, et al., Defendants–Appellees.
Fluellen M. ORTIGAS, et al., Plaintiffs–Appellants,
v.
Ferdinand E. MARCOS, et al., Defendants–Appellees.
Vicente CLEMENTE, et al., Plaintiffs–Appellants,
v.
Ferdinand E. MARCOS, et al., Defendants–Appellees.

Nos. 86–2448, 86–15039.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted June 10, 1987.

Submission Deferred June 12, 1987.

Resubmitted July 10, 1989.

Decided July 10, 1989.

Before GOODWIN, Chief Judge, BEEZER and DAVID R. THOMPSON, Circuit Judges.

1 MEMORANDUM*

2 Several groups of plaintiffs filed this consolidated appeal challenging the orders of district
courts in Hawaii and California dismissing their suits against former Philippine president
Ferdinand E. Marcos, and others, as nonjusticiable under the act of state doctrine. The
appellants allege that Marcos and his agents committed various torts against them and their
family members by carrying out acts of torture. We deferred submission pending the
decision of this court in *Republic of the Philippines v. Marcos*, 862 F.2d 1355 (9th Cir.1988)
(en banc), cert. denied, 109 S.Ct. 1933 (1989). We now reverse and remand.

3 * A. The Complaints

4 1. Sison

5 In *Sison v. Marcos*, Florentina Sison, Ramon Sison, and Jose Maria Sison sued in the
district of Hawaii on behalf of Francisco Sison, the son of Florentina and the brother of
Ramon and Jose Maria. They alleged various torts, including wrongful death and the
intentional infliction of emotional distress, stemming from the torture and murder of
Francisco Sison in 1971, allegedly at the direction of Marcos and codefendant Fabian C. Ver,
former Military Chief of Staff of the Republic of the Philippines. In addition, Jose Maria
Sison sued for assault and battery, false imprisonment, and other torts arising out of his
detention and torture between 1977 and 1986. Jaime S. Piopongco also joined in *Sison*,
suing for assault; interference with and destruction of a business, and violations of the law
of nations arising out of the closure of his radio station upon the declaration of martial law
in 1972, and his subsequent arrest and torture.

5 Ramon Sison and Piopongco are United States citizens. The other plaintiffs are citizens of
the Philippines.

2. Trajano

6 In Trajano, Agapita Trajano, a citizen of the Philippines, sued Marcos, Ver, and Marcos' daughter Imee Marcos, alleging that the defendants were responsible for the kidnapping, torture and murder of her son Archimedes Trajano in 1977. Trajano alleged false imprisonment, wrongful death, kidnapping, and violation of international law on behalf of Archimedes' estate, and the intentional infliction of emotional distress for her own suffering on being shown the tortured body of her son.

3. Hilao

7 Hilao is a class action in the district of Hawaii by the alleged victims or personal representatives of victims of torture perpetrated by Marcos. The complaint alleged that the plaintiffs were university students and labor organizers who were detained and routinely subjected to electric shock, beatings, Russian roulette, gang rapes, and in some cases murder. They sued for violation of the law of nations, seeking compensatory and punitive damages of \$75 million.

4. Ortigas

8 Ortigas is an action by thirteen Philippine citizens against Marcos in the northern district of California, alleging that they were imprisoned, and in some cases tortured, in violation of the law of nations.

5. Clemente

9 Clemente is an action by eight Philippine citizens, one of whom had dual American citizenship, alleging the same cause of action as Ortigas.

B. Proceedings in the District Court

10 Sison, Hilao, and Trajano came before Judge Fong in the district of Hawaii. In each case, Marcos moved for dismissal on a variety of grounds pursuant to Fed.R.Civ.P. 12(b)(6). The district court reviewed the possible jurisdictional bases for hearing the case, noting in particular that it assumed that the Ninth Circuit would follow the holding of the Second Circuit that the federal courts have jurisdiction over a case alleging torture under the alien tort statute, 28 U.S.C. Sec. 1350. See *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir.1980).

11 The court was not required to reach the question of jurisdiction, however, as it held the cases nonjusticiable under the act of state doctrine. The court stated that the inquiry these cases would require into the official acts of a foreign head of state was beyond the capacity or function of the federal courts. Judge Spencer Williams of the Northern District of California repeated Judge Fong's analysis in his dismissal of Ortigas and Clemente under the act of state doctrine.

12 All plaintiffs timely appealed. Fed.R.Civ.P. 4(a)(1). We have jurisdiction. 28 U.S.C. Sec. 1291. We review these questions of law de novo.

II

13 The act of state doctrine is the foreign relations equivalent of the political question doctrine. See *Marcos*, 862 F.2d at 1360. It is a prudential doctrine that prevents the judiciary from embroiling itself in affairs over which it has little or no power. *Id.* In *Marcos*, we considered the doctrine's applicability to RICO claims against Marcos that alleged, inter alia, theft, fraud and embezzlement of property, both inside and outside the Philippines. Without needing extensive analysis of whether the alleged acts constituted acts of state, we found the doctrine to be of "little or no applicability" to the situation of a deposed ruler from whom his former domain seeks an accounting. *Id.* at 1360-61. "Once deposed, [a] dictator will find it difficult to deploy the [act of state doctrine] successfully." *Id.* at 1360.

14 We see no material distinctions between these cases and *Marcos*. *Marcos* is a private citizen residing in the United States. Neither the present government of the Republic of the Philippines nor the United States government objects to judicial resolution of these claims, or sees any resulting potential embarrassment to any government. The issues raised, although extraordinarily complex, are within the capacity of the courts to resolve.

15 We therefore reverse the orders of dismissal, and remand for further proceedings. We

leave the other issues, notably the difficult question of jurisdiction under 28 U.S.C. Sec. 1350, to the original consideration of the district courts.

16 **REVERSED and REMANDED.**

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