

**HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS**

PATRICK LANGRINE, in his capacity as the Secretary of Finance, Plaintiff, v. ALBERT AMOS and JENIS TEN, Defendants.	CN 2022-00609 HCT/LAND/MAJ ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION
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Counsel:

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This case involves a dispute as to who between Defendant Albert Amos (“Amos”) and Defendant Jenis Ten (“Ten”) is the proper person to hold and exercise Alap rights, title, and interests over Wonmak South, Kwajalein Atoll, Marshall Islands (“Wonmak South”), and to receive the Alap’s share of quarterly Kwajalein Land Use Agreement payments for Wonmak South (“LUA Payments”).

On November 11, 2022, this matter came before the Court on Amos’s Motion for Preliminary Injunction . . . (“Motion”). In his Motion, Amos asks that the Court order the Secretary of Finance to deposit the LUA Payments now being paid to Ten into escrow in an interest-bearing account pending the outcome of this case. Having considered the parties’ moving papers and having heard the parties’ arguments, the Court **DENIES** the Motion.

I. LEGAL STANDARD

“[The] purpose of a preliminary injunction . . . is to preserve the status quo and the rights of the parties until a final judgment issues in the cause.” *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). “A preliminary injunction . . . is not a preliminary adjudication on the merits but rather a device for preserving the status quo and preventing the irreparable loss of rights before judgment.” *Sierra On-Line, Inc. v. Phx. Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).” *Ramos v. Wolf*, 975 F.3d 872, 887 (C.A.9 (Cal.), 2020).

A party seeking preliminary injunction must fulfill one of two standards, described as "traditional" and "alternative." *Nuka v. Morelik*, 3 MILR 39, 41 (2007) (citing *Cassim v. Bowen*, 824 F.2d 791, 795. (9th Cir. 1987)). Under the traditional standard, the Court may issue preliminary injunctive relief if it finds that "(1) the moving party will suffer irreparable injury if the relief is denied; (2) the moving party will probably prevail on the merits; (3) the balance of hardships favors the moving party; and (4) the public interest favors granting relief." *Nuka*, 3 MILR at 41. Under the alternative standard, "the moving party may meet its burden by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions exist and the balance of hardships tips sharply in its favor." *Id.* "The latter formulation represents two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." *Id.* (citing *Oakland Tribune Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985)). However, these two tests are not separate and unrelated; they represent "merely extremes of a single continuum." *Benda v. Grand Lodge of Int'l Ass'n of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978). Under this alternate standard, courts weigh the factors “on a sliding

scale, such that where there are only ‘serious questions going to the merits’—that is, less than a ‘likelihood of success’ on the merits — [injunctive relief] may still issue so long as ‘the balance of hardships tips sharply in the plaintiff’s favor’ and the other two factors are satisfied.” *Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (citations omitted). “Under any formulation of the test, plaintiff must demonstrate that there exists a significant threat of irreparable injury.” *Oakland Tribune*, 762 F.2d at 1376.

As the Marshall Islands Supreme Court has held in *Niedenthal v. Chief Electoral Officer*, SCT Civil 2015-01, Slip Op 4 (June 3, 2015): “In order to demonstrate irreparable harm, it must be shown there is an injury that is ‘certain, great, actual, and not theoretical,’ and not ‘merely serious or substantial.’ *Heideman v South Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). It must also be shown that the harm is ‘imminent.’ *Id.* The key word in considering irreparable harm is irreparable, which means that mere harm — even if substantial — in terms of money, time, and energy that would be expended is not enough. *Sampson v. Murray*, 415 U.S. 61, 90 (1974). In short, ‘irreparable harm, as the name suggests, is harm that cannot be undone.’ *Salt Lake Tribune Publ 'g Co. LLC v. AT&T Corp.*, 320 F.3d 1081, 1105 (10th Cir. 2003).”

II. ANALYSIS

Under either the traditional or alternate standard, the moving party, Amos, must show that he will suffer immediate and irreparable harm if the Court does not issue the requested preliminary injunction. This Amos has not done.

In his Motion, Amos claims that absent a preliminary injunction, there will be immediate and irreparable harmed in two ways. First, the Government’s payment of the Alap’s share of Wonmak South LUA Payments to Ten threatens, diminishes, and is detrimental to his rights as

manmaron for Alap Roseline. Second, he will suffer irreparable harm from the loss of the payments. These arguments fail for the following reasons.

First, as noted above, the purpose of a preliminary injunction is to maintain the *status quo*. Since Irojilaplap Kotak Loeak's February 22, 2021 determination that Ten is the Alap of Wonmak South, that is the *status quo*. With Loeak's February 2021 determination, Amos suffered the loss of customary rights as *manmaron* for Alap Roseline. The issuance of a preliminary injunction cannot undue Loeak's determination and Amos's loss of *manmaron* rights. Amos must await a decision on the merits.

Second, Amos claims that absent a preliminary injunction he will suffer irreparable harm through the loss of LUA Payments. However, he has failed to show that his loss will be imminent or irreparable. According to Amos, the Alap share of Wonmak South LUA Payments has been diverted to Ten since the Irojilaplap Loeak's February 2021 determination. As to past payment Amos's purported loss cannot be said to be imminent, as it has already occurred. As to future payments, Amos has not shown that he is facing irreparable harm. He has not shown that Ten could not repay Amos if he succeeds on the merits. Ten is also receiving the Senior Dri Jermal share of Wonmak South LUA Payments, so would have a source of funds from which to repay Amos. *See Nuka v. Morelik, et al.*, 3 MILR 39, 42 (2007).

Amos has failed to show he will suffer imminent and irreparable harm if the Court does not issue a preliminary injunction. Therefore, the Court need not consider the other factors necessary for issuing a preliminary injunction, such as likelihood of success on the merits, the balance of hardships, and public policy.

III. CONCLUSION

For the above reasons, the Court denies Plaintiff Amos's Motion for Preliminary Injunction.

So ordered and entered.

Carl B. Ingram
Chief Justice, High Court
Date: December 5, 2022