Ren Int'l Co. v. Garcia, 11 ROP 145 (2004)

REN INTERNATIONAL CO., LTD., and KIYOKAZU KOIZUMI,
Appellants,

v.

MARITA SUSAN GARCIA,
IRENE NOVELAS, LAARNE ONADA, MYRTLE S. ALAMBATIN, and CRISTINA AUSTRIA,
Appellees.

CIVIL APPEAL NOS.
03-006, 03-007, & 03-017
Civil Action Nos. 01-34, 01-78, & 01-265

Supreme Court, Appellate Division
Republic of Palau

Argued: March 1, 2004
Decided: May 20, 2004
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⊥147
Counsel for Appellants: Douglas F. Cushnie

Counsel for Appellees: David F. Shadel

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MICHELSEN, Justice:

These consolidated appeals require a consideration of the interplay between the administrative remedies provided in the Protection of Resident Workers Act ("the Act") found at 30 PNC §§ 101-188 and the regulations issued thereunder, and the legal and equitable remedies that may be sought in this Court. Ren International Co. Ltd. and Kiyokazu Koizumi (collectively, "the Employer") appeal the judgment of the Trial Division, and their principal contention is that no relief should have been granted to the Appellees (collectively, "the Employees") because available administrative remedies were not exhausted.[1] Because we

[1]Although the trial court originally entered judgments on January 2, 2003, the Employees timely filed their Motions to Amend Judgment on January 13, 2003. Those motions were granted in part and denied in part on February 19, 2003, and the amended judgments were filed on March 18, 2003. The Employer filed its initial notices of appeal in Civil Appeal Nos. 03-06 and 03-07 on January 31, 2003. It then filed amended notices of appeal in Civil Appeal Nos. 03-06 and 03-07, and a notice of appeal in Civil Appeal

believe that the administrative remedies of the Act are supplemental and complementary to this Court's jurisdiction, the Employees were entitled to seek relief in this Court at any time after their causes of action accrued. Having also considered the Employer's additional contentions, we affirm the Trial Division in all respects.

FACTS

Koizumi is the principal shareholder and president of Ren International Co. Ltd., which does business in Palau as the Palau Marina Hotel. He had, for many years, ⊥148 operated three nightclubs in Japan. Using a previous business contact in the Philippines as a recruiter, Koizumi interviewed and hired a group of entertainers for nightclub operations at the hotel. Appellee Onada was hired as the singer of the group. Appellees Garcia and Novelas were hired as dancers. They each signed a one-year employment contract in the Philippines, effective upon their respective arrival dates in Palau. Koizumi and the Employees also later signed a Republic of Palau Division of Labor employment contract ("Standard Contract"), co-signed by the government. Those contracts provided that they were to work 48 hours a week and be paid $500 per month on a biweekly basis. The Trial Division found that the employment terms imposed by the Employer were significantly different.

> Practice [for the Employees] was conducted for 2 hours in the mornings, between 9-11 a.m., after which they went to their room and were forbidden to leave the premises. They remained in their barracks until it was time to begin preparing for the shows. There were two shows a night, 7:30 p.m. and 10:30 p.m. Each Plaintiff was told she could not leave the premises during the times they were not working, with the exception of Sundays, when they were permitted to attend religious services so long as they returned by 4:00 p.m. Plaintiffs worked seven days a week.

Koizumi threatened to penalize the Employees for leaving the hotel without his permission by subjecting the Employees to extra payroll deductions[2] or forcing them to buy their own return tickets to Manila.[3] Other deductions were imposed to enforce another unwritten requirement: that they were to also entertain customers by sitting with them between shows, engaging them in conversation, and talking them into buying more drinks. The Employees were

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No. 03-17, on April 3, 2003, after the amended judgments were entered. Under ROP R. App. Pro. 4(a), "[t]he time for filing an appeal is terminated by the timely filing . . . of a motion to alter or amend the judgment . . . . The full time for appeal commences to run and is to be computed from the service of an order granting or denying a motion to alter or amend the judgment." Thus, the Employer's initial notices of appeal were premature and need not and should not have been filed until after the motions to amend were ruled upon by the trial court.

[2]Koizumi already had in place deductions for the benefit of his Philippines recruiter, who was to receive $100 a month of each employee's salary. He also exacted other deductions for the original travel such as an "escort fee," a "terminal fee," and a "travel tax." Also, a $50 deduction was taken every month for food.

[3]*But see* Division of Labor Regulation § 11.2 (currently renumbered § 6.4); "[t]he employer is fully responsible and shall pay all expenses for a prompt return of non-resident workers . . . to their original point of hire upon termination of such non-resident workers."

required to solicit a minimum of five ladies' drinks per night, of which they would receive a one dollar commission from each drink. If they failed to sell a minimum of five drinks per night, they were penalized by way of salary deductions or by the Employer withholding the commissions they had earned. The five-drink quota was later unilaterally increased to ten drinks per night. Novelas and Garcia testified that they were not informed about the requirements that they entertain the customers and solicit a minimum number of drinks each night or be penalized until after they had signed their contracts and arrived in Palau to work.

Onada filed her complaint in court on February 2, 2001, as Civil Action No. 01-34. Koizumi's response was to fire her effective ⊥149 that same day.[4] She was given three days' notice of her booking on a flight to Manila for February 17, 2001. Koizumi also fired her co-workers on March 26, 2001, and attempted to have them evicted from their living quarters and to have them leave Palau on March 31.[5] Onada, through counsel, obtained an emergency order to prevent Koizumi from making her co-workers immediately leave Palau. A second lawsuit was filed March 29, 2001, against the Employer by Garcia, Novelas, and four others as Civil Action No. 01-78.

After Koizumi fired this group of entertainers, he brought in replacements from Manila who arrived in July 2001. Those replacements were soon faced with most of the same terms of employment. They also were subjected to various salary deductions, some justified, others added at the whim of Koizumi, to enforce his unilateral contract additions. After these deductions, Appellants Alambatin and Austria actually owed Koizumi money for their first month's work.

On October 10, 2001, the second group of entertainers, through their counsel, wrote a letter to the Employer, seeking payment of unpaid wages and restitution for past improper salary deductions. The next day, Koizumi informed them that their employment contracts would be terminated on October 15, 2001, and that they would be returning to the Philippines on October 24, 2001. Their complaint was filed October 22, 2001, as Civil Action No. 01-265, and they obtained a temporary restraining order to prevent Koizumi from evicting them from the barracks, from stopping payment to them of their food allowance and salaries, from terminating their employment, and from taking action to force them to leave Palau.

All three complaints raised both contract and tort claims, including breach of contract, fraud and conspiracy, public nuisance, invasion of privacy, intentional infliction of emotional distress, and false imprisonment. They sought various forms of relief, including compensatory and punitive damages, attorney's fees, a declaratory judgment, and injunctive relief. The three complaints were consolidated for trial. Onada, Garcia, Novelas, and Alambatin were the only remaining named plaintiffs, the others having dismissed their claims. At the beginning of the

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[4]*But see* Division of Labor Regulation § 12.2 (currently renumbered § 19.3); "the employer shall give written notice to the worker and a copy [of such notice] to the Division of Labor at least ten days prior to the effective date of the termination."

[5]*But see* Division of Labor Regulation § 12.5 (currently renumbered as § 19.3.2); "[s]helter and food shall be provided during the ten days waiting period [after notice of termination] if wages are withheld or if shelter and food had been provided by the employment contract."

trial, the court stated that it was treating Cristina Austria, a member of the second group of dancers hired by the Employer, as an additional plaintiff. Appellees Alambatin and Austria moved to formally add Austria's name as a plaintiff, which motion the trial court granted.

Novelas and Garcia were the only plaintiffs to attend the trial. The Trial Division entered judgment in favor of the Employees on the breach of contract claims. It also concluded that requiring them to work seven days a week without overtime pay, as well as the unauthorized deductions from their pay, were breaches of their employment contracts. The Trial Division also determined that the Employer breached the employment ⊥150 contracts by terminating the contracts shortly after the lawsuits were filed or legal action was threatened in a patent attempt to get rid of the employees and their claims, and such actions could not be considered terminations for cause. The Employees were awarded varying amounts of damages, representing amounts for unpaid salaries after early terminations, unpaid overtime work, unpaid ladies' drinks commissions, and other unauthorized salary deductions. An amount for Onada's return airplane ticket to Manila was also awarded. All of the Employees' other requests for relief were denied.

STANDARD OF REVIEW

Trial court findings of fact are reviewed under a clearly erroneous standard. ROP R. Civ. P. 52(a); *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Under this standard, if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Appellate Division is left with a definite and firm conviction that an error was made. *Roman Tmetuchl Family Trust*, 8 ROP Intrm. at 318. A trial court's legal conclusions are reviewed *de novo* on appeal. *Id*.

DISCUSSION

Compliance with Labor Rules and Regulations

The Employer's first argument is that the Trial Division lacked subject matter jurisdiction over the Employees' claims because they failed to exhaust their administrative remedies before filing their complaints. It is contended that where relief is available from an administrative agency, a plaintiff is required to pursue any claim through that agency before seeking relief from the courts. *See Reiter v. Cooper*, 113 S. Ct. 1213, 1220 (1993). This Court has not previously had occasion to address what circumstances might require an aggrieved party to pursue and complete an available administrative process as a precondition for seeking relief in this Court. Because of the specific language of this Act, we need not do so here because even if such a doctrine was adopted, it would not apply to these facts.

The applicable statutory procedures are found at 30 PNC §§ 101-88. As part of that Act, § 143(b) obligates the Chief of the Division of Labor to require private sector employers of noncitizens to accept

> such agreements or conditions for the payment of wages or benefits to nonresident workers as the Chief shall determine to be necessary and consistent with the policy and purposes of this chapter. Any such agreements or conditions agreed to by an employer shall be legally enforceable in the courts of the Republic, upon action taken by an aggrieved employee or on his behalf by the Chief.

Although § 144 of the Act authorizes the Chief to "promulgate rules and regulations necessary or appropriate to effectuate the provisions of this chapter," we do not believe that any resulting regulations can be read as a restriction of the express statutory right to proceed to court granted to employees in § 143. Not every grievance, however, is worth a trip to court, and the parties might prefer to resolve minor disputes by using a more informal mechanism. Consistent with that approach, the regulations establish a ⊥151 grievance procedure for employees to complain to the Division of Labor concerning an employer's failure to comply with the employment agreement. *See* Part XII, §§ 12.7(a) and (b), Division of Labor Rules and Regulations (subsequently repealed and replaced by Part XIX, §§ 19.4 and 19.4.1). Relief pursuant to these regulations, however, is necessarily limited. For instance, the Division of Labor cannot issue injunctions, and the amount of time the Division will take to complete an investigation is uncertain. In this case, the Employer, having created the crisis by failing to provide the necessary notice and justification for employee terminations required by the regulations, can hardly fault the Employees for bypassing an administrative process that would have taken longer than the few days left before they were booked for departure. It was only the court that could provide injunctive relief to preserve the status quo.

The Employer nonetheless contends that the Standard Contract of the Division of Labor requires that the Employees comply with the dispute resolution procedures set forth by the Division of Labor. The Employer points out that the Standard Contract specifically makes reference to, and incorporates, the administrative procedures found in the Act and vests the Division of Labor with jurisdiction over disputes arising thereunder.

Paragraph XII of the Standard Contract signed by the parties provides in relevant part as follows:

> In case of any disputes between the EMPLOYER and the EMPLOYEE, the Division of Labor of the Republic of Palau has jurisdiction in all matters according to the laws of the Republic of Palau as a sovereign state, and is responsible for conciliation, arbitration and settlement of labor disputes of all nationalities working in the Republic of Palau.

We first note that the expansive jurisdictional assertion in that paragraph finds no textual support in the statute or in the regulations promulgated thereunder. As has already been noted, § 143 of the Act expressly provides that an employee's rights pursuant to the agreement between the Division and an employer are legally enforceable in court by the employee. At most, this contract language can only be construed as a recognition that the applicable statutes and the related regulations place upon the Division of Labor the responsibility to attempt to resolve labor disputes involving noncitizen employees in the private sector.

More generally, we are hard pressed to find any basis in either the statute or the regulations to justify the Division of Labor's requirement that a Standard Contract be signed by the employer, the employee, and the Division of Labor as an additional employment contract to be read in tandem with the original contract. Section 165 of the Act provides that the Chief of the Division of Labor shall enter into an agreement with the *employer* by which the *employer* makes specific commitments to the government to meet minimum employment conditions and other requirements. Neither the statute nor the regulations make any reference to the execution of a "standard contract" to be co-signed by the government, the employer, and the employee. We are therefore reluctant to restrict the Employees' express statutory rights based upon the provisions of such a "standard contract."

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The Employer asserts that even if the Court determines that administrative exhaustion is not required, the Court should apply the doctrine of primary jurisdiction in this case. The doctrine of primary jurisdiction, "basically a federal concept," *Wiginton v. Pac. Credit Corp*., 634 P.2d 111, 117 n.11 (Haw. Ct. App. 1981), requires the court to give the parties an opportunity seek an administrative ruling on an issue within the special competence of an agency before bringing suit on that issue. *See Reiter v. Cooper*, 113 S. Ct. 1213, 1220 (1993). The purpose of the doctrine is to insure that regulatory agencies, with their technical or specialized expertise, are not bypassed in cases that are outside the usual ken of judges, or in disputes that require the exercise of administrative discretion, so that uniformity and consistency in the administration of the regulatory scheme is preserved. *United States v. W. Pac. R.R. Co*., 77 S. Ct. 161, 165 (1956).

The Employer argues that under the Act, the Division of Labor was given primary responsibility for governmental supervision and control over the employment of noncitizen workers, as well as the authority to make a threshold investigation and decision regarding the resolution of employment disputes. The Employer further contends that under the regulatory scheme created by the Act, the factual issues presented by this case fall within the Division of Labor's area of expertise. We disagree. The Employer failed to identify any particular issue or question raised in this case that is within the special competence of the Division of Labor. Rather, Employees' common law tort and contract claims were matters of law that are appropriately resolved by the Court. *See Nader v. Allegheny Airlines, Inc*., 96 S. Ct. 1978, 1987 (1976); *Fulton Cogeneration v. Niagara Mohawk Power*, 84 F.3d 91, 97 (2d Cir. 1996) (concluding that breach of contract claims not within agency's specialized competence). Further, no decision by the Court under the circumstances presented in this case would affect the uniformity of the regulatory scheme under the Act because no agency policy, rule, or procedure was called into question by the Employees. *See W. Pac. R.R. Co*., 77 S. Ct. at 165-66; *Nat'l Comm. Ass'n, Inc. v. Am. Tel. & Tel*., 46 F.3d 220, 223 (2d Cir. 1995). Thus, there is no need for the Court to consider the adoption of the doctrine of primary jurisdiction under the facts of this case.

The Employer also claims that the Employees should be barred from prosecuting any action for back wages because they failed to comply with the provisions of the Division of Labor Rules and Regulations. Section 12.7(a) of the Division of Labor Rules and Regulations provided that when an employer fails to pay an employee's salary promptly and on schedule, the employee must first try to resolve this issue with the employer, then file a written complaint with the Chief.

Under § 12.7(b), the written complaint must be filed within 15 working days.[6] The argument is premised on the Employer's exhaustion argument and assumes that regulations can restrict an Employee's rights established by § 143 of the Act. We have rejected both positions for the reasons previously noted.

Breach of Employment Contract

The Employer asserts that Appellee Onada failed to establish a breach of contract ⊥153 because "[t]here was a complete failure of proof on her part." As to Garcia and Novelas, the Employer contends that the terminations were justified due to the loss of business after Onada was terminated, and that Austria's and Alambatin's terminations were justified by their failure to entertain customers and sell enough drinks as well as the decline in business. The Employer contends that there is no evidence in the record to support the trial court's conclusion that the Employees were terminated in an effort by Koizumi to avoid being sued or that the employment contracts were otherwise breached.

We believe the trial court's conclusions were ineludible. The record, including the testimony and exhibits, and particularly Koizumi's own statements, clearly shows support for the trial court's determination. The trial court found that the Employer's agreement with the government provided for the Employees to work up to 48 hours per week and for additional work to be paid at time and a half. The Employer required the first group of employees, including Onada, Garcia, and Novelas, to work seven days a week and failed to pay them the overtime.[7] There was no award to the second group of employees for overtime. In addition, Koizumi unquestionably terminated all of the employment contracts without paying the full amount remaining on the contracts.

The Employer justifies the terminations on a number of grounds. Koizumi testified that he fired Onada because she would leave the premises when she was not working. He contended that he had a right to fire her for leaving the premises without his permission, but, as a matter of contract law, he did not have that right. He suggested at the trial that he fired the second group of employees because they could not get the customers to buy enough drinks, a task that was not part of their job description. In addition, the trial court found that he had made unauthorized deductions from the Employees' pay, a fact that cannot be contested. In summary, there was ample evidence in the record to support the trial court's conclusion that the failure to pay overtime compensation, the deduction of penalties from salaries, and the early terminations without proper cause all constitute breaches of contract, and this conclusion was not clearly erroneous.

Joinder of Christina Austria

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[6]Those provisions have been subject to amendment and are now found in § 19 of the Regulations. The amendments are not applicable to these facts because they took effect on March 1, 2002.

[7]The Employer apparently does not include the daily two-hour practice sessions as working hours, only counting the hours of 6 p.m. to midnight as the work shift, which amounts to a total of 42 hours of work for each seven days of work. The trial court apparently did not characterize practice sessions as time off. Neither would we.

Finally, the Employer contends that the joinder of Cristina Austria as a party plaintiff on the day of trial over objection was error. The trial court permitted joinder based in part on a stipulated order signed by the parties on April 22, 2002, that included Austria as a plaintiff. The pleadings were left unchanged.

Counsel for the Employer was well aware of Austria's claims as shown by her inclusion as a named plaintiff in a motion to dismiss filed in December 2001. Moreover, counsel for Alambatin filed a motion for the joinder of Austria as a plaintiff pursuant to ROP R. Civ. P. 21. That Rule states that "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action ⊥154 and on such terms as are just." Hence, the trial court has broad discretion over the decision of whether or not to permit joinder, even at a late stage in the proceedings. *See Mentor H/S, Inc. v. Med. Device Alliance, Inc*., 244 F.3d 1365, 1373 (Fed. Cir. 2001) (permitting joinder on appeal where such joinder would not prejudice defendants and cured technical jurisdictional defect); *Health Research Group v. Kennedy*, 82 F.R.D. 21, 29 (D.D.C. 1979).

The Employer asserts that joinder was unnecessary in this particular case because Austria could have maintained her own, separate lawsuit to protect her interests, and her absence in this case would not leave any of the parties to the litigation subject to a substantial risk of double or inconsistent obligations. However, joinder serves several goals, including avoiding multiplicity of suits and efficient use of judicial resources. 4 James Wm. Moore et al., *Moore's Federal Practice* ¶ 21.02[4] (3d ed. 1998) (citing cases). If Austria was required to file her own lawsuit, almost all of the same evidence would be necessary, subjecting the parties and the court to unneeded expense, duplicative effort, and further delay. In this case, where Austria's claims were identical to and arose out of exactly the same facts and circumstances as the pending claims, and where the Employer's own stipulation named her as a plaintiff and has shown no prejudice, the trial court did not abuse its discretion in joining Austria as a plaintiff.

CONCLUSION

For the above reasons, we affirm the judgment of the trial court.