

Isechal v. ROP, 15 ROP 78 (2008)
MIRIAM ISECHAL,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 07-003
Criminal Case No. 06-232

Supreme Court, Appellate Division
Republic of Palau

Argued: March 31, 2008
Decided: April 4, 2008

Counsel for Appellant: Ben Carter

Counsel for Appellee: David C. Fifer

BEFORE: KATHLEEN M. SALII, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice; ROSEMARY SKEBONG, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

SALII, Justice:

Section 1501 of Title 40 of the Palau National Code provides: “Any person engaging in business in the Republic shall, as a condition precedent to engaging in or continuing to engage in business, obtain from the Director a license to engage in business and pay an annual fee” The Trial Division held that Appellant violated this statute when she continued to engage in business after the Ministry of Finance revoked her business license. We agree and affirm the judgment below.

BACKGROUND

Appellant Miriam Isechal owns the Rent-It Center in Koror. At some point (not made clear by the record) she obtained a business license pursuant to 40 PNC § 1501. In a letter dated August 16, 2006, Ricardo Bausoch, the **L79** Chief of the Division of Revenue and Taxation of the Ministry of Finance, threatened to “suspend all your business licences (sic) pursuant to 40 PNC § 1703 and 40 PNC § 1505 effective August 31, 2006.” due to Appellant’s failure to file a tax return or pay taxes for the second quarter of 2006. In a subsequent letter dated September 5, 2006, Bausoch noted that the delinquent taxes had not yet been paid and suspended the business

Isechal v. ROP, 15 ROP 78 (2008)

license of Appellant. The letter also stated: "[C]ontinued operation of your business without a valid license shall result in our office converting the suspension into a full revocation. Additionally, you shall be cited for operating a business without a valid business license pursuant to 40 PNC § 1501, which is punishable upon conviction, pursuant to 40 PNC § 1704"¹

On October 4, 2006, an employee of the Division of Revenue and Taxation ascertained that the Rent-It Center continued to engage in business in light of this suspension. On October 10, 2006, the Attorney General charged Appellant under 40 PNC §§ 1501 and 1704. During the brief trial before Justice Miller, Appellant argued that business owners operating on a suspended license are subject to civil penalties and interest under 40 PNC § 1606(b),² but not criminal liability under § 1704. Only business owners operating without ever having procured a business license in the first instance are subject to the punishment for violating § 1501. Because Appellant did obtain a business license that was later suspended, she argued she should be subject only to the civil penalties in § 1606. The trial court disagreed. The court read § 1501 "that not only must you get a license to begin with, but you must have a license to continue to engage in business, and to the extent that I'm being asked to read license to mean a valid license and not a suspended license . . . that I think is reasonable to be read into the statute." Tr. at 26. The court also held that § 1606 is a means of collecting taxes, not a penalty for operating a business for a suspended license and therefore not applicable to Appellant. The trial court sentenced Appellant to one year imprisonment, all suspended, and a \$500.00 fine.

DISCUSSION

The only issue on appeal is one of statutory interpretation, which is a question of law that we review *de novo*. See *Wenty v. ROP*, 8 ROP Intrm.188,189 (2000). Appellant renews her argument below that § 1501 requires her only to initially obtain a business license before doing business in Palau, and does not require her to *maintain* a *valid* business license. Although these two italicized words do not appear in the statute, the only reasonable reading of the statute necessitates their implied presence.

180

The word "or" in the statute dictates that "continuing to engage in business" is a statutorily distinct concept from simply "engaging" in business. The plain language of § 1501 reads, as applicable to this case, as follows: "Any person engaging in business in the Republic shall, as a condition precedent to . . . continuing to engage in business, obtain from the Director a license to engage in business" Appellant was engaging in business in the Republic. She failed to pay her taxes and the Director suspended her license pursuant to 40 PNC § 1505 and § 1703. In order to continue to engage in business, she must obtain a license from the Director.

¹ Section 1704 provides: "Any person who willfully violates any of the provisions of this division for which there is no other designated penalty, or any rule or regulations issued hereunder, shall, upon conviction, be imprisoned for a period of not more than one year, fined not more than \$1,000.00, or both."

² Section 1606 provides: "The Director shall have available for the enforcement of any delinquent tax assessment the following remedies: a) Suit . . . for delinquent taxes . . . b) Injunction . . . to restrain any person who is delinquent in the payment of any tax liability from continuing to carry on his business until such delinquent liability is paid."

Isechal v. ROP, 15 ROP 78 (2008)

She did not do so even though she continued to engage in business and is therefore in violation of § 1501. Appellant's argument that the plain language of the statute requires that a business person obtain a license only in the first instance is a facile reading of the statute and one this court cannot adopt.

Next, Appellant argues that the suspended license she possessed fulfilled the statutory requirements. In other words, § 1501 does not require that a business owner hold a *valid* license to continue to engage in business because a suspended license fulfills the purposes of the statute.³ Appellant states that the purpose of § 1501 is to “prevent rogue businesspeople from ‘flying below the radar’ and avoiding governmental regulation and taxation” by allowing the government to “keep tabs on the businesses operating in Palau.” Although this is a fairly plausible conjecture of the goal of the legislature in enacting this statute, Appellant points to no legislative history or other evidence that this is in fact what the legislature posited in passing business licensing legislation. Rather, it is much more likely that the legislature sought to require business owners to obtain a valid license in order that they might continue to engage in business in the Republic. A license is, by definition, “[a] permission, usually revocable, to commit some act *that would otherwise be unlawful*.” Black’s Law Dictionary 938 (8th ed. 2004) (emphasis added). By requiring business owners to obtain a license to do business in Palau, the legislature has declared that engaging in business in Palau without permission is unlawful. The Republic revoked Appellant’s permission to engage in business, at which point she was breaking the law by continuing to do business. The purpose of a licensing scheme requires that the license contemplated by the scheme is valid in order to comply with the licensing requirement. Appellant’s claim that an invalid license allows her to continue to engage in business thwarts the intent of the legislature as well as the unambiguous plain meaning of the statute.

Appellant claims that *Lin v. Republic of Palau*, 13 ROP 55 (2006), directs us not to “add[] words to a perfectly clear statute” or “unilaterally expand[] existing laws through judicial interpretation.” Our holding today is perfectly consistent with *Lin*. In *Lin*, the statute in question provided that “[i]t shall be unlawful for any person within the fishery zones of the Republic to . . . (e) fish for, sell, or buy . . . rock lobsters . . . smaller than six (6) inches in total length.” 27 PNC § 1204. The Court held that the “plain language of the Marine Protection Act of 1994 clearly and unambiguously prohibits the purchase of undersized lobsters in the waters of **L81** the Republic but the statutory language does not prohibit such purchases when they are conducted on land.” *See id.* at 61. Here, we hold that the plain and unambiguous language of 40 PNC § 1501 requires that a business owner cannot operate a business without a license. Appellant argues that our decision today adds the requirement, not found in the statute, that the license be a valid one. But, as mentioned above, it is the concept of a license requirement that dictates the license must be valid, not any unilateral judicial expansion of the law. As the Court did in *Lin*, we interpret words in a statute “according to the common and approved usage of the English language.” *Id.* at 58 (quoting 1 PNC § 202). The plain language of the statute controls our analysis, and “[w]here the language does not lead to absurdity, we are not at liberty to reverse this course.” *Id.* at 60. Complying with § 1501 requires holding a valid license, and the idea that an invalid

³ There is dicta from an attorney disciplinary proceeding in the Appellate Division that maintaining a valid business license is required for the practice of law. *See In re Doran*, 12 ROP 95, 99 (2005). But this is not enough to carry the day in this case.

license can fulfill the statute approaches absurdity indeed.

Appellant’s final argument is that the legislature intended a civil remedy for a violation of § 1501 under 40 PNC § 1606, not a criminal penalty under the general penalty statute 40 PNC § 1704. This, according to Appellant, is demonstrated first by 40 PNC § 1701, which provides for financial penalties for businesses who do not file a tax return or pay taxes, and § 1606, which outlines how the Director may file a civil suit against a delinquent taxpayer and seek an injunction preventing that taxpayer from “continuing to carry on his business until such delinquent liability is paid.” 40 PNC § 1606(b). The ultimate remedy for noncompliance with § 1501 would therefore be an order of contempt, not criminal prosecution.

In the proceedings below, Justice Miller read 40 PNC § 1606 as a means of collecting taxes, not as a remedy for one who is operating a business without a license, and we agree. The question is whether there is a specific penalty for operating a business without a license. If so, the general penalty in § 1704 does not apply.⁴ Section 1606 is the only section that could be considered a “designated penalty, or any rule or regulations issued hereunder” that could preclude application of § 1704. Section 1606 provides the Director with remedies “for the enforcement of any delinquent tax assessment.” Although one of those remedies, outlined in § 1606(b), is an injunction to “restrain any person who is delinquent in the payment of any tax liability from continuing to carry on his business until such delinquent liability is paid”, the Republic was not seeking payment from Appellant for delinquent taxes. If that were the case, the proper avenue for remedy would be through § 1606. The Director could sue, *see* 40 PNC § 1606(a), and, if that proved fruitless, the Director could seek an injunction under § 1606(b) after satisfying the prerequisites of that section – submitting a case to the Ministry of Justice to collect back taxes and suspending the business license of the delinquent taxpayer. But this was not a collection action it was an action to enforce the licensing requirements of § 1501 for which there is no specific penalty. The general penalty of § 1704 must therefore apply.

182 CONCLUSION

For the foregoing reasons, we affirm the conviction and sentence of Miriam Isechal.

⁴ Section 1704 provides: “Any person who willfully violates any of the provisions of this division for which there is no other designated penalty, or any rule or regulations issued hereunder, shall, upon conviction, be imprisoned for a period of not more than one year, fined not more than \$1,000.00, or both.”