

Sualog v. Kebekol, 1 ROP Intrm. 16 (Tr. Div. 1982)

**PEPITO T. SUALOG, NESTOR
BARTOLOME, HUBERTO
BARTOLOME, ALEJANDRO MATA,
BONAFACIO TUMACA, MIGUEL
MATINONG, MAURICIO SOMBILON,
SAMPAGUITA GAUPO, Republic of
Palau T.T.P.I.,
Plaintiffs,**

v.

**HASHIDA KEBEKOL, individually and
d/b/a PALAU AGRO-MARINE CORP.,
Defendant.**

CIVIL ACTION NO. 111-81

Supreme Court, Trial Division
Republic of Palau

Judgment

Decided: March 3, 1982

BEFORE: MAMORU NAKAMURA, Chief Justice.

This matter came on regularly before this Court for trial on February 5, 1982. The plaintiffs were represented by Miriam Harmatz, Esq., MLSC, and the defendants was represented by John S. Tarkong, Esq.

Having heard the testimony and considered the evidence and the arguments of counsel, and this cause having been submitted for decision, the Court makes the following findings of fact and conclusions of law.

Sometime in May of 1980, the defendant, Hashida Kebekol, and a Filipino man by the name of Lucio Himbing, met and discussed the possibility of a business arrangement involving fishing in Palau. After that discussion, Lucio Himbing returned to the Philippines and began recruiting the plaintiffs individually for work in Palau. The defendant, pursuant to the discussion he had with Lucio Himbing and subsequent correspondence with him, began processing the necessary papers with the Employment Service of the Republic of Palau, so that the plaintiffs could come to Palau and work.

Around July of 1980, the plaintiffs were individually given employment contracts to sign. All the contracts stated that Palau Federation of Fishing Association (PFFA) would be their employer, and that the defendant was the President of that company. (Plaintiffs' Exhibit No. 1). The signed **L17** contracts were subsequently returned to Palau, and later filed with Employment

Service.

On September 24, 1980, the defendant signed the “Application to Employ Non-Resident Worker(s) and Employer’s Non-Resident Worker Agreement”. (Plaintiffs’ Exhibit No. 5). In his application, the defendant listed Palau Marine Development Company as the name of the employer, rather than PFFA. The defendant testified that he was informed by his lawyer that PFFA would not be able to enter into such an employment agreement. Therefore, he listed Palau Marine Development Company rather than PFFA on the application in September, 1980. However, the defendant is President of both companies, and on the basis of this document and others filed by the defendant, entry permits for all the plaintiffs were obtained by the defendant and sent to the Philippines.

On November 10, 1980, the plaintiffs arrived in Palau. The plaintiffs were accompanied by Lucio Himbing and another man by the name of Carlos Infante. After the arrival of the plaintiffs, Lucio Himbing, Carlos Infante, and the defendant entered into a separate agreement entitled, “Management Agreement”, which defined the responsibilities of the three companies the men represented. (Defendant’s Exhibit No. A). Although the dates across from the signatures of the individual parties appear to be August 13 and 19, 1980, the defendant testified that the agreement was not actually executed by him until the latter part of November, 1980, after the plaintiffs’ arrival in Palau. None of the plaintiffs were a party to the “Management Agreement”.

The plaintiffs reported for work the day after their arrival, November 11, 1980. With the exception of Sampaguita Gaupo, all of the plaintiffs first worked at Inabo’s fishpond and then were sent by the defendant to work at another fishpond in Airai. The latter project lasted about two weeks. Apparently, the defendant did not have any work for them after this project, as the plaintiffs were unemployed until the first part of January, 1981, when their unemployment was discovered by Olympio Sicat, the manager of Pacifica Development Corporation (PDC). He had visited the plaintiffs at the house where they were staying and had learned from the plaintiffs that they were out of work. Olympio Sicat informed them that PDC needed some workers and that he would talk to their employer, the defendant, about allowing them to work for PDC. After Olympio Sicat received such permission from the defendant, four of the plaintiffs, Nestor Bartolome, Huberto Bartolome, Miguel Matinong, and Alejandro Mata, began work on January 2, 1981. The three others, Bonifacio Tumaca, Mauricio Sombilon, and Pepito T. Sualog began work the second week in **L18** January. They received \$1.25 per hour as wages. The defendant received twenty per cent of the plaintiffs’ wages as “overhead” for their employment with PDC.

Sometime in the middle of February, 1981, the Employment Service heard of the plaintiffs’ employment with PDC and ordered them to stop working, which they did immediately. Again, the defendant did not have any work for them to do, so he sent them to Peleliu, where they stayed at the house of the defendant’s parents. The plaintiffs began reef fishing, turning the fish they caught over to the defendant’s brother. However, after two months or so, the people of Peleliu, unhappy with the fishing, chased them out. Again, the plaintiffs were without work.

The plaintiff, Sampaguita Gaupo, had somewhat of a different work schedule. She

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reported for work on November 11, 1980, as the cook of the other plaintiffs. She continued to cook for the other plaintiffs until they left for Peleliu. At that time, she stayed behind in Koror. She worked, with the defendant's permission, for the Fumio Rengiil Family for one and half months as a domestic helper. She received \$120.00 a month during her employment with the Rengiil family.

During the time period from November 11, 1980, to the date the plaintiffs' resignation in April, 1981, the plaintiffs did not receive their wages from the defendant. Time and time again the plaintiffs asked the defendant for their salaries. Each time the defendant replied, "Wait, just wait". Three of the plaintiffs, Huberto Bartolome, Bonifacio Tumaca, and Mauricio Sombilon, each received a check from the defendant in the amount of \$50.00.

On April 7, 1981, the plaintiffs finally reported their situation to the Employment Service. The plaintiffs' letter to the Palau Employment Service Officer, Mr. Feliciano Udui, stated in part that they had not received their wages and that the situation had become intolerable. (Plaintiffs' Exhibit No. 2). As a result of the complaint, Mr. Udui sent a letter dated April 13, 1981, to the defendant informing him of the complaints filed against him by his non-resident workers. (Plaintiffs' Exhibit No. 7). No response was received by the Employment Service, so a second letter was sent to the defendant on April 29, 1981. (Plaintiffs' Exhibit No. 3). For humanitarian reasons, the plaintiffs have been allowed by the Government of the Republic of Palau to work pending the outcome of this lawsuit.

The plaintiffs are requesting that the defendant pay their back wages and airfare to the Philippines, pursuant to **119** their employment contracts with the defendant and Employer's Agreement. The defendant contends that he is not liable for wages or airfare, and that any claim that the plaintiffs may have for such is against Lucio Himbing.

The Court notes at the onset that the defendant filed a counterclaim against the plaintiffs alleging damages in the amount of \$100,000.00. He also listed estoppel as one of his affirmative defenses. The Court finds that the defendant failed to produce a scintilla of evidence in support of his counterclaim. Therefore, it is summarily dismissed. Furthermore, the defendant did not properly plead or prove an estoppel defense. Consequently, it is also dismissed.

The only issue remaining for the Court to decide is whether the defendant is liable for the plaintiffs' back wages and airfare home to the Philippines according to the contracts entered into by the defendant with the plaintiffs and the Employer's Agreement with the Employment Service. For the following reasons, the Court concludes that the defendant is liable for the plaintiffs' back wages from November 11, 1980, to April 24, 1981, excluding the time periods they worked with the permission of the defendant for PDC and Rengiil and the \$150.00 given to three of the plaintiffs. In addition, the Court concludes that the defendant is liable for the plaintiffs' airfare back to the Philippines.

Title 49 of the Trust Territory Code is known and cited as the, "Protection of Resident Workers Act". This statute requires, among other provisions, that when any employer desires to import alien workers for employment, he must file an application with the Employment Service.

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In addition, the employer must enter into an employment agreement with the government. Plaintiffs' Exhibit No. 5 is the employment agreement entered into by the defendant and the Employment Service in Palau. Section C states in part as follows:

“In consideration of being allowed to employ non-resident workers I agree and certify to the following:

[. . .]

(2) That nonresident workers are required immediately in the job classification stated in Item 10, and they will be placed on the payroll at the wages stated in Item 17 on the date they report for work in the company for which they were hired . . .

(6) That I accept full responsibility and will pay all expenses for the prompt return of nonresident workers to their original point of hire . . .”

In addition to the above-quoted sections, the individual contracts entered into by the defendant and the **L20** plaintiffs, which are all identical in their terms, state in Section 3 thereof that, “The employer shall pay the EMPLOYEE the sum of US\$1.25 per hour . . .” Section 6 thereof states: “In accepting this agreement, the EMPLOYER agrees to provide the EMPLOYEE a minimum of 40 hours per week for the duration of contract, and the EMPLOYEE agrees to work such hours and such shifts as may be required by the EMPLOYER.” Finally, Section 8 states: “The EMPLOYER shall provide, at no expense to the EMPLOYEE, round-trip economy class transportation from the point of hire regardless of the reason for termination.”

The defendant testified that he understood the contents of the Employer's Agreement and his responsibilities thereunder. He further testified that he filed the individual contracts between the plaintiffs and PFFA with the Employment Service, pursuant to his application to employ non-resident workers. The Court concludes that the defendant understood the terms of the contracts and is bound by his agreements with the government of Palau.

Finally, the Court is disturbed by the defendant's neglect of the plaintiffs while they were in his employ. The plaintiffs were allowed to enter Palau on the basis of their contracts with the defendant's company. The plaintiffs left large families behind in the Philippines, with the intentions of supporting them through employment in Palau. Instead, they were left to fend for themselves for long lengths of time.

The defendant is not the only one at fault. The government failed in its responsibilities also. Had the government been properly monitoring the plaintiffs' employment in accordance with the provisions of Title 49, it could have prevented the situation from deteriorating to the extent that it did.

IT IS ORDERED, ADJUDGED, AND DECREED that the plaintiff, Sampaguita Gaupo, recover from the defendant, Hashida Kebekol, the sum of \$1,000.00 (\$1.25 per hour for 40 hours

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a week from November 11, 1980, through April 23, 1981, less \$180.00 for the money she earned working for the Rengiil family), together with interest thereon at the rate of 9% per annum from March 3, 1982, until paid;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Pepito T. Sualog, recover from the defendant, Hashida Kebekol, the sum of \$1,060.00 (\$1.25 per hour for 40 hours a week from November 11, 1980, through April 23, 1981, less \$120.00 for the days he worked at PDC from January 15, 1981, through January 30, 1981), together with interest thereon at the rate of 9% per annum from March 3, 1982 until paid;

121 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiffs, Bonafacio Tumaca and Mauricio Somilon individually, recover from the defendant, Hashida Kebekol, the sum of \$910.00 (\$1.25 per hour for 40 hours a week from November 11, 1980, through April 23, 1981, less \$220.00 for the days they worked at PDC from January 15, 1981, through February 15, 1981, less \$50.00), together with interest thereon at the rate of 9% per annum from March 3, 1982, until paid;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiffs, Nestor Bartolome, Miguel Matinong, and Alejandro Mata, individually recover from the defendant, Hashida Kebekol, the sum of \$870.00 (\$1.25 per hour for 40 hours a week from November 11, 1980, through April 23, 1981, less \$310.00 for the days they worked at PDC from January 2, 1981, through February 15, 1981), together with interest thereon at the rate of 9% per annum from March 3, 1982 until paid;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Huberto Bartolome, recover from the defendant, Hashida Kebekol, the sum of \$820.00 (\$1.25 per hour for 40 hours a week from November 11, 1980, through April 23, 1981, less \$310.00 for the days he worked at PDC from January 2, 1981, through February 15, 1981, less \$50.00), together with interest thereon at the rate of 9% per annum from March 3, 1982 until paid;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Hashida Kebekol, purchase economy class airfare tickets to the Philippines for each of the plaintiffs named above, thereby returning each plaintiff to the point of his/her hire;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Hashida Kebekol, recover nothing on his counterclaim, which counterclaim is dismissed on the merits with prejudice.

Plaintiffs are awarded court costs.