

Republic of Palau v. M/V Aesarea, 1 ROP Intrm. 429 (1988)

**REPUBLIC OF PALAU,
Plaintiff/Appellee,**

v.

**M/V AESAREA,
Defendant/Appellant.**

CIVIL APPEAL NO. 16-85
Civil Action No. 20-85

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: January 14, 1988

Counsel for Appellee: Philip D. Isaac, AAG

Counsel for Appellant: Douglas F. Cushnie

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice; and EDWARD C. KING,¹ Associate Justice.

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PER CURIAM:

The principal issue in this case is whether 7 PNC § 207(b) authorizes forfeiture of a vessel which has legally entered Palauan waters, and docked, pursuant to a valid entry permit, but then has failed to depart upon expiration of the permit. We hold that such a vessel is not “involved in the commission of unlawful acts” within the meaning of 7 PNC § 202(b) and that forfeiture of the vessel therefore is not permitted.

I. Factual Background

On October 26, 1984, Sunrise Development (Sunrise), a Palau corporation, entered into a time charter with Superluck Enterprises through Superluck’s managing director William S. S. Wong. The time charter covered the steamship M/V Aesarea, of Panamanian registry, and was for the alleged purpose of conducting an economic feasibility study for the use of that vessel in Palau by the local public and tourists. The charter was for sixty days, beginning at the time of actual delivery and mooring of the vessel at Malakal Harbor in Koror.

An entry application was filed with the immigration division of the Republic of Palau (ROP), signed by John O. Ngiraked for Sunrise. The entry permit, issued on November 1, 1984

¹ Edward C. King, part-time Associate Justice with this Court, is also Chief Justice of the Federated States of Micronesia.

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for a single entry, was to expire on December 7, 1984.

The M/V Aesarea entered Malakal Harbor on or about November 11, 1984. Shortly after the entry permit expired, Mr. Ngiraked discussed the extension of the permit with the chief of immigration, and allegedly was told there would be no problem with extending the permit long enough to complete the trial project. In fact, no **L431** extension was granted.

In early January 1985, the ROP attorney general informed Sunrise that it was in violation of 19 TTC 102, now 7 PNC §202.² The latter reads as follows:

§ 202. Permission to enter territorial waters. Except for innocent passage, . . . it shall be unlawful for any unlicensed vessel to enter or remain within the territorial waters of the Republic without first receiving permission therefor from the President in accordance with provisions of Title 13 of this Code, and regulations issued pursuant thereto.

The attorney general further informed Sunrise that such a violation was punishable by a fine of not more than \$50,000 or by imprisonment for up to two years or both. See 7 PNC § 202(a). Apparently, no mention was made at that time of any possibility of forfeiture.

On January 8, 1985, the trial division of the ROP Supreme Court issued an order to show cause and a temporary restraining order enjoining Sunrise from selling or dispensing alcoholic beverages, from operating a bar and night club, from disposing of human or other waste into Malakal Harbor, and from carrying on any commercial or other activity aboard the Aesarea not absolutely **L432** necessary for maintaining the seaworthiness of the vessel or the care or feeding of the crew.

On January 18, 1985, a temporary restraining order was entered by the trial court pursuant to stipulation of the parties requiring the Aesarea to depart Palau by 4:30 p.m., February 12, unless by 4:30 p.m., February 11, the defendant presented satisfactory proof that the vessel was no longer subject to the provisions now set out in title 13 of the Republic of Palau National Code.

This action was begun by libel filed on February 13, 1985. On that same date, a warrant of arrest was filed, and on February 14, 1985, a motion to intervene and cross-complaint were filed by Superluck. Trial was held on June 18 and 19, 1985.

² On August 14, 1985, shortly after the events related here took place, the Republic of Palau National Code was adopted. The former Trust Territory Code provisions pertinent to this litigation were carried over into the new code practically verbatim except that the former references to Trust Territory officials are now to Republic of Palau officials. Throughout the text of this opinion, citations shall be to the Republic of Palau National Code. The Trust Territory Code counterparts are: 7 PNC § 207(a) and (b) are based upon 19 TTC 107(1) and (2); 7 PNC §§ 202 and 301 are derived from 19 TTC 102 and 106. Title 13 of the Republic of Palau National Code is drawn from title 53 of the Trust Territory Code.

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The trial court held that remaining within territorial water without the valid license required by 7 PNC § 202(b) was an unlawful act within the meaning of 7 PNC § 207(b). The vessel was therefore declared forfeited. *Republic of Palau v. M/V Aesarea*, 1 ROP Intrm. 244 (Tr. Div. 1985).

Judgment was entered on August 2, 1985. A timely notice of appeal was filed August 20, 1985. A motion for stay of proceedings to enforce judgment was filed. This resulted in an order staying execution of judgment on the condition of a \$2,000.00 supersedeas bond being posted, but no supersedeas bond was posted within the time allotted.

II. Legal Analysis

A. Principles of Interpretation

Analysis must begin with recognition that forfeiture is a **L433** harsh and oppressive remedy, generally not favored by courts. *United States v. One (1) 1975 Thunderbird 2-Door Hardtop*, 576 F.2d 834, 836 (10th Cir. 1978). (“The forfeiture remedy is harsh and . . . proof of the element of use of the property in violation of the statute should be clear before a forfeiture is ordered.”). *See also Superior Oil Co. v. Devon Co.*, 604, F.2d 1063, 1069 (8th Cir. 1979) (“The law abhors a forfeiture.”); *Belcher v. Birmingham Trust National Bank*, 348 F.Supp. 61, 140 (N.D. Ala.) stay den. 395 F.2d 685 (5th Cir. 1968). (“Forfeitures are to be avoided whenever possible.”).

Forfeiture statutes are strictly construed against forfeiture and in favor of the person whose property rights are at issue. *Kane v. McDaniel*, 407 F.Supp. 1239, 1242 (W.D. Ky. 1975). Courts will not search for a construction to bring about a forfeiture, nor will a constrained construction be indulged in to create a forfeiture. *Pirkey v. State ex rel. Martin*, 327 P.2d 463, 466 (Okla. 1958). For a statute to be construed so as to produce forfeiture, its language must clearly show an intent to do so; forfeitures are never to be inferred from doubtful language. *United States v. One 1050-51 Ford Van Type One and One-Half Ton Truck*, 118 F.Supp. 310, 313 (E.D. Va. 1954). Statutes must not be construed to forfeit an owner’s property, unless from the statute itself, in light of the object and existing conditions, it is manifest that the legislature so intended. *Warner v. United States*, 301 F.2d 327, 329 (Ct. Cl. 1962). *See also Johnson v. Kaeser*, 239 P. 324, 330 (Cal. 1925).

The normal need for caution in construing forfeiture **L434** statutes is compounded in this case by another fundamental principle of statutory construction, that interpretations which might bring into doubt the constitutionality of a statute are to be avoided.

Article IV, section 10 of the Constitution of the Republic of Palau states that “excessive fines are prohibited”. Superluck contends that the M/V Aesarea has a value of some \$4,000,000 and that forfeiture of such a vessel for remaining in the waters of Palau for some two months while efforts were taking place to obtain permission for the continued presence of the vessel here would be an “excessive fine” within the meaning of this constitutional prohibition.

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There are of course possible distinctions to be made between “fines” and “forfeitures”. For example, a fine typically is levied against an individual in a criminal proceeding for a legal violation. A forfeiture occurs in a civil action against the res, or property, itself. *See generally* 36 Am. Jur. 2d *Forfeiture and Penalties* §§ 1-5 (1968).

That having been said however, it is not manifest to us that the constitutional term “fine” excludes forfeitures. The vessel here allegedly has a value of \$4,000,000, some eighty times as large as the maximum fine which could be imposed under 7 PNC § 207(a). Forfeiture of such an expensive vessel under the circumstances of this case would raise substantial issues as to possible violation of the constitutional prohibition against excessive fines.

Thus, two separate principles of statutory construction, one L435 dictating that forfeiture statutes be strictly construed, and the other requiring that statutes be interpreted in such a way as to avoid possible conflicts with constitutional provisions, enjoin us to interpret narrowly the forfeiture authority granted by 7 PNC § 207(b).

B. The Statute

With these principles in mind we move to the statute itself, 7 PNC § 207:

(a) If any owner, master, person, company, corporation, charterer, party to a charter agreement, or any other person having command or charge of a vessel fails to comply with the provisions of this chapter, obstructs or interferes with the exercise of any powers conferred by this chapter, or engages in any unlawful act under this chapter, he shall be fined not more than \$50,000 or imprisoned not more than two years, or both.

(b) Any vessel involved in the commission of unlawful acts, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the Republic as provided in chapter 3 of this title.

Obviously, these subsections have different applications. Subsection 207(a) imposes fines on individuals while § 207(b) authorizes seizure and forfeiture of vessels. Moreover, § 207(a) has broader language, authorizing fines for one who: (1) “fails to comply” with the provisions of chapter 2 of title 7 of the Code; (2) “obstructs or interferes with the exercise of any powers” conferred by chapter 2; or (3) “engages in any unlawful act” under chapter 2.

The forfeiture section, 7 PNC § 207(b), is much more carefully circumscribed, its application being limited to vessels involved L436 in the “commission of unlawful acts”.

The government argues, and the trial court held, that failure of the M/V Aesarea to depart was an unlawful act in violation of 7 PNC § 202, quoted earlier in this opinion. An “act” may be one of commission or omission under the criminal law. H. Black, Black's Law Dictionary 24 (5th ed. 1979). Plainly, the vessel’s failure to depart or, in the alternative, to obtain permission to stay within the Republic of Palau, constituted failure to comply with 7 PNC § 202, and would

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have been punishable under 7 PNC § 207(a).

However, more is required to permit forfeiture. While 7 PNC § 207(a) authorizes fines for “failure to comply,” 7 PNC § 207(b) expressly requires that the vessel be involved in the “commission of unlawful acts.” (Emphasis added).

The legislative history is unenlightening.³ As already noted, we are obliged to read the forfeiture statute restrictively. We conclude that the affirmative word, “commission,” was intended to establish that mere omission would not be sufficient to cause forfeiture. The charge against the vessel here is that it failed to depart. This was not the commission of an act.

¶437 We hold that mere failure of a vessel to depart Palau waters upon expiration of the vessel’s entry permit is not commission of an unlawful act within the meaning of 7 PNC § 207(b) and does not subject the vessel to forfeiture under that statutory provision.⁴

III. Conclusion

The trial court’s order of condemnation and forfeiture is set aside. The case is remanded to the trial court for dismissal of the charges or for further action consistent with this opinion.

³ The phrase “involved in the commission of unlawful acts” was inserted by the Congress of Micronesia in 1974, at the same time that the fine authorized by 7 PNC § 207(a) was increased from \$10,000 to \$50,000. The bill was introduced by Senator Kaleb Udui. Senate J. of 7th Cong., 1st Reg. Sess. 48-249 (1977). Neither the committee report nor daily journal contain discussion of the reasons for inserting the word “commission.” *Id.* at 48, 54, 136, 137, 249.

⁴ Under this analysis, the remedy of forfeiture plainly applies to vessels employed to carry out the affirmative misdeeds listed in 7 PNC § 206. We express no opinion as to whether unlawful entry into the territorial waters of Palau without permission in violation of 7 PNC § 202 exposes a vessel to forfeiture under 7 PNC § 207(b).