

Micronesian Indus. Corp. v. M/T Bowoon No. 7, 1 ROP Intrm. 57 (Tr. Div. 1982)

**MICRONESIAN INDUSTRIAL
CORPORATION,
Plaintiff,**

v.

**M/T BOWOON NO. 7, her engines,
tackle, apparel, etc., TRANSPACIFIC
INTERNATIONAL CO., INC., KIM
CHUL UNG, and JOHN DOES
I THROUGH V,
Defendants.**

CIVIL ACTION 102-80

Supreme Court, Trial Division
Republic of Palau

Order

Issued: September 27, 1982

BEFORE: HERBERT D. SOLE, Justice.

On August 26, 1982, the motion of plaintiff for an order determining jurisdiction over Transpacific Shipping International Co., Inc. came on for hearing. Douglas F. Cushnie appeared as counsel for plaintiff. Defendant Bowoon Sangsa Company, Ltd. and Transpacific Shipping International Co., Inc., submitted Points and Authorities to the court and the submissions of all parties were duly considered. It appears to the court that it has jurisdiction over defendant Transpacific Shipping International Co., Inc. (hereinafter referred to as TSIC) on the following grounds.

I.

The Requisite "Minimum Contacts" Between **158** TSIC and the Republic of Palau Have Been Established.

This action was originally filed in the High Court of the Trust Territory of the Pacific Islands. Due to the certification of the Republic of Palau court system pursuant to Dept. Int. Sec. Order No. 3039, Sec. 5(a), this case was transferred to the Supreme Court of the Republic of Palau on December 23, 1981.

At the time this action was instituted[,] foreign service of process over nonresidents was provided for in 6 TTC § 41. It establishes jurisdiction when a nonresident engages in one of the enumerated acts listed in the provision and a cause of action arises therefrom. In relevant part, 6 TTC § 41 states as follows:

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Any person, corporation or legal entity, whether or not a citizen or resident of the Trust Territory, who in person or through an agent does any of the acts enumerated in this subchapter, thereby submits himself or its personal representative to the jurisdiction of the courts of the Trust Territory as to any cause of action arising from:

(1) The transaction of any business within the Trust Territory;

[. . .]

(3) The operation of a vessel or craft within the territorial waters or airspace of the Trust Territory; . . .

The Republic of Palau passed a similar long arm statute with identical provisions to subsections (1) and (3) quoted above on February 24, 1982. *See*, RPPL No. 1-27.

The contact of TSIC with the Republic of Palau is specified in the second amended complaint on file in this case. The complaint states that TSIC is engaged in the business of carriage of merchandise by water for hire, and at all times herein mentioned owned, operated and controlled the defendant vessel M/T Bowoon No. 7. Plaintiff therefore claims that in April, 1980, TSIC directed the M/T Bowoon No. 7 into Malakal Harbor, Koror, Palau to load a quantity of coconut oil belonging to the plaintiff Micronesian Industrial Corporation (hereinafter referred to as MIC) to be delivered to the Port of San Francisco. The M/T Bowoon No. 7 took on a substantial amount of oil and sailed on April 22, 1980. Shortly thereafter, the ship ran aground on Stephen Reef within the L59 territorial waters of the Republic of Palau. After striking the reef, the ship discharged several tons of the oil overboard and returned to Koror and discharged the remainder of the cargo. MIC alleges damages due to the above casualty in the amount of one million five hundred thousand dollars (\$1,500,000.00).

With respect to jurisdiction over foreign corporations, the initial question is the significance of the foreign corporation's contacts with the forum state. Defendants Bowoon Sangsa Company, Ltd. and TSIC have alleged that there were not sufficient minimum contacts between TSIC and the Republic of Palau to justify jurisdiction over TSIC by this court. It is clear that the performance of a single act in the forum state by a nonresident is sufficient contact with that state to meet the requirements of due process if the act gave rise to the cause of action by the resident. *McGee v. International Life Insurance Company*, 355 U.S. 220, 78 S. Ct. 199 (1957). Therefore, the court finds no merit to the defendants' argument that sufficient contacts were not established between TSIC and the Republic of Palau to comply with due process. At a minimum, the requirements of 6 TTC § 41 (1) and (3), and subsections (1) and (3), Section 2 of RPPL No. 1-27 have been met. As a result, this court finds it has jurisdiction over defendant TSIC for purposes of this action.

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The Injunction Arising Out of a Limitation Proceeding in the District Court of
Guam Does Not Make Service of the First Amended Complaint Invalid or
Prohibit Jurisdiction Over TSIC.

In October, 1980, defendant Bowoon Sangsa Company, Ltd. filed a limitation of liability action in the United States District Court in Guam. As part of that action a restraining order was issued and served on MIC. The restraining order states in part that it is:

ORDERED that further prosecution of any and all suits, actions and proceedings which may have already been commenced against the M/T BOWOON NO. 7 or BOWOON SANGSA CO., LTD. in any court wheresoever occasioned by, or in any way consequent upon the stranding aforesaid or otherwise arising out of the voyage on which the M/T BOWOON NO. 7 was then engaged, and the institution or prosecution of any suits, actions or legal L60 proceedings of any nature or description whatsoever in any court wheresoever, except in this proceeding for exoneration from or limitation of liability, against Plaintiff BOWOON SANGSA CO., LTD., OR THE M/T BOWOON NO. 7 in respect of any claim or claims arising out of, occasioned by, or in any way consequent upon the stranding aforesaid or otherwise arising out of the voyage on which the M/T BOWOON NO. 7 was then engaged, or otherwise subject to limitation in this proceeding, be and the same hereby are stayed and restrained . . .

MIC served TSIC with the first amended complaint in late November, 1980, during the life of the restraining order. The defendants contend that this court lacks jurisdiction of the person of TSIC because the first amended complaint was served at a time when a United States judge had forbidden any such procedure.

In a limitation of liability proceeding, "if there is more than one claim and if proceedings are regularly taken and monition duly issued, the jurisdiction of the court to hear and determine every claim becomes exclusive and it is the duty of every other court, federal or state, to stop all further proceedings in separate suits upon claims to which the Limitation of Liability Act applies," (Emphasis added). 8 Benedict, *Admiralty*, § 81 (6th ed. 1981). In *Touchey v. New York Life Insurance Co.*, 314 U.S. 118, 62 S. Ct. 139 (1941), the court held that in furtherance of a limitation action, a federal court could effectively enjoin a state court proceeding. And it is equally established that a federal court in admiralty may effectively enjoin a state court proceeding. And it is equally established that a federal court in admiralty may effectively enjoin another federal court proceeding in furtherance of a limitation action.

However, it is this court's opinion that the instant case is more analogous to the situation in *Petition of Bloomfield Steamship Company*, 422 F.2d 728 (2d Cir. 1970), than to the authorities cited above. In that case, Bloomfield had initiated a limitation proceeding in Louisiana. Throughout the litigation, Bloomfield contended that the opposing party had acted improperly, indeed in defiance of a United States restraining order, in bringing suit in an English court. The restraining order in *Petition of Bloomfield Steamship Company* was issued in the usual form under 46 U.S.C. § 185, as is the case with the order issued by the United States

Micronesian Indus. Corp. v. M/T Bowoon No. 7, 1 ROP Intrm. 57 (Tr. Div. 1982) District Court in Guam. Bloomfield's position was rejected for the reason **L61** that the injunction had no "extraterritorial effect" and that an order or decree in a limitation proceeding is given "mere domestic and not international recognition". *Petition of Bloomfield Steamship Company, supra* at 732. (See *Jung Hyun Sook v. Great Pac. Shipping Co.*, 632 F.2d 100 (1980) for a similar ruling).

As the High Court of the Trust Territory of the Pacific Islands and the Supreme Court of the Republic of Palau are not creatures of a state or of the judicial system of the United States, they are not bound by injunctions issued in United States District Courts in limitation of liability proceedings anymore than the English court would be in the above mentioned case. Similarly, the court finds that the injunction issued in the United States District Court in Guam does not prevent this court from establishing personal jurisdiction over the defendant TSIC pursuant to 6 TTC § 41 and RPPL No. 1-27. Therefore,

IT IS ORDERED that the motion be and it is hereby granted on the ground that this court has jurisdiction over defendant TSIC.