

*M/V Aesarea v. ROP*, 4 ROP Intrm. 19 (1993)

**M/V AESAREA  
and  
SUPERLUCK ENTERPRISES, INC.,  
Appellants,**

**v.**

**REPUBLIC OF PALAU,  
Appellee.**

CIVIL APPEAL NO. 18-92  
Civil Action No. 20-85

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: November 15, 1993

Attorneys for Appellant: Johnson Toribiong  
Toribiong & Coughlin

Attorney for Appellee: Jennifer Schwarts  
Juliet T. Brown  
Assistant Attorney eneral

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; JANET H. WEEKS, Part-Time Associate Justice

NGIRAKLSONG, Chief Justice:

At issue in this appeal is whether the Republic of Palau (“ROP”) can retain the proceeds from its sale of a forfeited ship after this Court has vacated the order authorizing the forfeiture. Reasoning that Palauan courts lost in rem jurisdiction over the ship when it was removed from Palauan waters following its sale, the trial court concluded that this Court’s decision setting aside the forfeiture order “had no legal force or effect.” The trial court further concluded that it was without power to order ROP to make restitution. It therefore granted ROP’s motion to dismiss the ship owner’s restitution action. We reverse.

**L20** DISCUSSION

ROP’s argument is premised on the theory that jurisdiction in an in rem forfeiture proceeding depends on the res’s continued presence in the jurisdiction where the suit was instituted. We reject this outdated approach to in rem jurisdiction and adopt the modern view that in an in rem forfeiture action a court is not divested of jurisdiction by the prevailing party’s

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transfer of the res. See e.g. *Republic Nat. Bank of Miami v. United States*, 113 S.Ct. 554, 559-60 (1992).

It is paradoxical, and ultimately unacceptable, for ROP to use the legal fictions of in rem forfeiture as “a means of defeating its adversary’s claim of redress” when those fictions were developed “primarily to expand the reach of the courts and to furnish remedies for aggrieved parties.” *Id.* at 559. It also seems incongruous to establish a strict rule for in rem jurisdiction when none exists for in personam jurisdiction. *Id.* (“[A]fter a final decree a party cannot defeat the jurisdiction of the appellate tribunal by removing from the jurisdiction, as the proceedings on appeal are part of the cause.”). We agree with the United States Supreme Court that “[n]othing in the nature of in rem jurisdiction suggests a reason to treat it differently” from in personam jurisdiction. *Id.*

Common sense and fairness dictate that Palauan courts continue to have jurisdiction over the forfeiture action initiated by ROP. Having benefitted from Palauan jurisdiction by obtaining a **L21** judgment, ROP should not now be allowed to escape appellate review of the judgment by transferring the res.

For all these reasons, we hold that in a forfeiture action the prevailing party cannot divest Palauan courts of jurisdiction by transferring or selling the res. Because Palauan courts never lost in rem jurisdiction over the proceeding, we had jurisdiction to set aside the forfeiture order; further, the trial court has the power to order ROP to make restitution.<sup>1</sup>

We take this opportunity to admonish Superluck’s attorney to henceforth limit its argument and the material it attaches to its briefs to the legal issues before the Court. Superluck’s attorney conceded at oral argument that the complaint in Civil Action 204-93, which he attached to his brief in this appeal, has no relevance to the issues in this appeal and was not part of the record herein. An attorney should know better than to make such a document a part of his brief.

The trial court’s order granting ROP’s motion to dismiss is REVERSED. This case is REMANDED for further proceedings not inconsistent with this opinion.

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<sup>1</sup> Contrary to ROP’s claim at oral argument, the proceedings in a related trial court case do not moot this appeal, as in that case there has been no judgment of restitution in Superluck’s favor and as ROP has contended that the case is also subject to dismissal on the basis of the trial court’s decision herein.