Airai State Gov't v. Ngkekiil Clan, 11 ROP 261 (Tr. Div. 2004)

AIRAI STATE GOVERNMENT,
Plaintiff,

v.

NGKEKIIL CLAN,
Defendant.

CIVIL ACTION NO. 03-207

Supreme Court, Trial Division
Republic of Palau

Decided: August 3, 2004
⊥262
ARTHUR NGIRAKLSONG, Chief Justice:

BACKGROUND

At issue in this case is land located in Oikull Hamlet in Airai State, listed as Lots N-153 and N-091, which both sides agree is owned by Defendant in fee simple. The disputed property is part of a larger tract of land upon which Plaintiff hopes a golf course will be built. To that end, the Airai State Public Lands Authority (hereinafter "ASPLA") has entered into a lease agreement with Resort Trust, Inc. (hereinafter "RTI"), a Japanese corporation established under the laws of Japan with its principal place of business at Nagoya, Japan.

Pursuant to the terms of the agreement between ASPLA and RTI, the lands authority will lease 120 hectares of land referred to as Olsiukl, including the property as issue in this case, to RTI for 25 years for the purpose of "any lawful business, including but not limited to construction and operation of a golf course, hotel(s) and condominium(s), and assorted facilities." RTI Palau, a wholly-owned subsidiary of RTI, has been granted a Foreign Investment Approval Certificate for the operation of the golf course and accompanying facilities.

After Defendant was judicially determined to own the disputed property, the Clan rejected ASPLA's offer to lease the land. Plaintiff brought this action seeking to use its power of eminent domain to condemn the disputed property. Defendant has moved for summary judgment.

DISCUSSION

Article X, Section 2 of the Airai State Constitution provides in relevant part: "The State Government shall have the power to take private property for public use upon payment of just compensation. . . . This power shall not be used for the benefit of a foreign entity . . . ."[1]

[1]The Palau Constitution also prohibits the use of the power of eminent domain "for the benefit of a foreign entity." Palau Const, art. XIII, § 7. The recently passed Airai State Public Law No. A-3-15-01,

Defendant argues that Article X, Section 2 prohibits the proposed condemnation here because Airai State wants to use its eminent domain power for the benefit of RTI, a foreign entity. Plaintiff claims that the true beneficiaries would be the citizens of Airai, who would benefit from the money the Airai State Government stands to make in the transaction.

Even if Plaintiff's argument is correct, the Airai Constitution on its face prohibits the use of the eminent domain power because the ⊥263 condemnation would be for the benefit of a foreign entity. The Constitution does not require the foreign entity to be the "sole" beneficiary, and it does not include an exception for situations in which the citizens of Airai might also benefit. Very simply, it prohibits the use of the power "for the benefit of a foreign entity," which is exactly what the proposed condemnation would be.

From its inception, the Court has held that, where the language of a Constitution or statute is clear, that is the end of the inquiry. *Tellames v. Congressional Reapportionment Comm'n*, 8 ROP Intrm. 142, 143 (2000) ("When constitutional language is clear and unambiguous, we must apply its plain meaning."); *The Senate v. Nakamura*, 7 ROP 212, 217 (1999) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'") (quoting *Conn. Nat'l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992); *Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117, 119-20 (1995). ("Where the language of a statute is plain and admits of no more than one meaning, the language of the statute controls without resort to other materials."); *Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992) "([W]here the language in a statute is unambiguous, courts are to find legislative intent in the ordinary meaning of the language alone."); *Remeliik v. The Senate*, 1 ROP Intrm. 1 (Tr. Div. 1981) ("[I]t is a cardinal rule of constitutional construction, that if a constitutional provision is positive and free from all ambiguity, it must be accepted by the courts as it is written.").

Even assuming there are ambiguities in the words "benefit" or "foreign entity" or in how the condemnation provision of the Airai Constitution is read, the guiding principle of constitutional construction is that the intent of the framers must be given effect. *Remeliik*, 1 ROP Intrm. at 5; *Palau Chamber of Commerce v. Ucherbelau*, 5 ROP Intrm. 300, 302 (Tr. Div. 1995). Although the plain language of Article X, Section 2 of the Airai Constitution is sufficient for this Court to decide the constitutionality of this condemnation proceeding,[2] a look at the history of the identical language in the national constitution, as discussed in *Gibbons v. Salii*, 1 ROP Intrm.

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however, prohibits the use of the eminent domain power only when it is used "for the *sole* benefit of a foreign entity" (emphasis added). To the extent that A-3-15-01 purports to give the State a broader power of eminent domain than it has under either the State or national Constitution, the law is invalid. *See* Airai Const. art. II, § 2 ("Any law or act of the Government of the State of Airai which conflicts with this Constitution shall be invalid to the extent of such conflict."); Palau Const. art II, § 1 ("This Constitution is the supreme law of the land."). Consequently, it is only necessary to determine whether Airai State's attempted condemnation violates the state Constitution.

[2]*See Ngeremlengui State Council of Chiefs v. Ngeremlengui State Gov't*, 8 ROP Intrm. 178, 181 (2000) ("[T]he courts are required to give effect to the intent of the framers as expressed in the plain meaning of the language used in the constitution."); *The Senate,* 7 ROP Intrm. at 214 ("In determining the framers' intent, we look first to the language chosen.").

333 (1986), confirms that the framers intended to prohibit the use of the power of eminent domain in situations such as this one.[3] On the question of what constitutes a "foreign entity," the Constitutional Convention's Committee on General Provisions defined "foreign entity" to include "any entity whether a person, a ⊥264 government, a corporation, or other association or group, which is neither a citizen of Belau nor totally owned by citizens of Belau." SCR No. 30 (March 4, 1979). Since RTI is a Japanese company and RTI Palau is a wholly-owned subsidiary of RTI, both clearly are foreign entities.

As for the question of what constitutes a "benefit," the history of the constitutional provision shows that Article XIII, Section 7 prohibits the use of the power of eminent domain for the benefit of a foreign entity even if the Palauan people might also benefit. The 1979 Rosenblatt cable seeking changes in the proposed constitution to avoid conflicts with the Compact of Free Association warned that the proposed text, "*public use* does not include use by a foreign entity" might "be inconsistent with the U.S. responsibility for and authority in the defense of Palau under the Compact" (emphasis added), putting the Compact at risk. Instead of abandoning the sentence, however, the framers decided to amend it in a way that makes it clear that it applies to situations such as the one here, settling on the current language that the "[eminent domain] power shall not be used for the benefit of a foreign entity." The limit on the power of eminent domain remained even after the Drafting Commission proposed deleting the sentence from Article XIII, Section 7 because keeping the provision "would seriously undermine the ability of the constitutional government of Palau to fulfill its obligations under a compact of free association and thus close the door to a political relationship of free association." *Report to the Palau Legislature from the Palau Constitutional Drafting Commission*, at 6 (Aug. 21, 1979).

Thus, the framers risked losing the Compact and the benefits it would bring to the people of Palau in order to protect a citizen's right not to have his property taken by the government. Therefore, the history of the provision at issue shows that the framers wanted to preclude the use of the power of eminent domain for the benefit of a foreign entity, even if the people would also benefit.

The Appellate Division reached the same conclusion in *Gibbons*, which considered the constitutionality of a provision of the Compact of Free Association and Military Use and Operating Rights Agreement that obligated Palau to make available land and water areas designated by the United States for use by the United States military. *Gibbons*, 1 ROP Intrm. at 333. After finding that the United States qualified as a "foreign entity," the Court rejected the Republic of Palau's claim that the benefit to the United States was not relevant because the Compact would also benefit the people of Palau.

This reasoning would render meaningless the constitutional position against

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[3]Although this case arises out of the Airai Constitution, it is appropriate to look at the history of the national Constitution in order to interpret the relevant language. *See, e.g.*, *Gotina v. ROP* , 8 ROP Intrm. 65 (1999) (looking to United States case law because Palau's consitutional prohibition against excessive fines is derived from a comparable clause in the U.S. Constitution); *State v. Ramirez* , 597 N.W.2d 795 (Iowa 1999) (noting the propriety of looking to the United States Constitution in order to interpret a provision of the Iowa State Constitution because the Iowa Constitution took the language of the provision at issue directly from the United States Constitution).

> exercise of eminent domain for the benefit of a foreign entity. Eminent domain is the power exercised by the Executive Branch and the "benefit" language is obviously intended as a curb upon the powers of that branch. Surely the government would only invoke the power of eminent domain after concluding that exercise of the power would be beneficial to the people of Palau. The government's position is, in essence, that the eminent domain clause prevents the government from exercising such powers to provide land for a foreign entity, except when the ⊥265 government has decided that it would be good to do so. That is not what Article XIII, Section 7 says.
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> The clause unambiguously prohibits the use of the power of eminent domain for a foreign entity. At the very least, this means that if the land in question is to be used by a foreign nation the government of the Republic of Palau has an extremely heavy burden of showing extraordinary circumstances which establish that the particular use is for the sole benefit of Palauan persons or entities.

Gibbons, 1 ROP Intrm. at 354-55.

Plaintiff in this case observes that the United States would have had the right to select the sites to be condemned in *Gibbons*, while the site here has already been determined. Airai also notes that *Gibbons* involved a foreign nation, while the beneficiary here would be a foreign corporation; that if RTI decides not to pursue the golf course project, the state will search for another developer; and that the land will be returned to its rightful owners when the lease expires in 25 years. But the State fails to explain why any of these minor distinctions should change the analysis or the outcome. The fact remains that, as in *Gibbons*, a foreign entity will benefit from the condemnation, leaving Airai State with "an extremely heavy burden of showing extraordinary circumstances which establish that the particular use is for the sole benefit of Palauan persons or entities." If the millions of dollars and national defense benefits that would have gone to the people of Palau from the Compact did not qualify as "extraordinary circumstances," then the generation of revenue for Plaintiff–the stated purpose of the proposed condemnation–cannot qualify, either.

Defendant has also filed motion seeking attorney's fees. Although Plaintiff's argument is not a winning one, it is not groundless, frivolous, or brought in bad faith as required for sanctions under ROP R. Civ. P. 11 or 14 PNC § 702. Accordingly, Defendant's motion for an award of attorney's fees is denied.

CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment is granted. Article X, Section 2 of the Airai State Constitution on its face clearly prohibits the use of eminent domain for the benefit of a foreign entity. The *Gibbons* Court reading of the identical provision in the National Constitution is consistent with the plain meaning of the Airai State Constitution. Hence, this condemnation proceeding is hereby declared unconstitutional.