Tulmau v. R.P. Calma & Co., 6 ROP Intrm. 54 (1997)
SALOME Y. TULMAU,
Appellant,

v.

R.P. CALMA & CO.,
Appellee.

CIVIL APPEAL NO. 29-95
Civil Action No. 405-91

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: January 29, 1997

Counsel for Appellant: William L. Ridpath

Counsel for Appellee: J. Roman Bedor, T.C.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice

MILLER, Justice:

Appellant Salome Y. Tulmau brought this action against ⊥55 appellee R.P. Calma & Co. under the private attorney general provisions of § 120 of the Foreign Investment Act, 28 PNC § 101 *et seq*. *See generally Tulmau v. R.P. Calma & Co.* , 3 ROP Intrm. 205 (1992) (upholding provisions and remanding for further proceedings). Tulmau claimed that Calma failed to comply with the requirements of § 103(a) of the Act by not obtaining a Foreign Investment Certificate for the period from September 18, 1990, to May 9, 1991. Calma argued that the Act did not require it to hold a Certificate for this period.

The Trial Division held that Calma was not required to hold a Certificate during the period in question, and Tulmau appeals this holding. We affirm for substantially the reasons set forth in the Trial Division's opinion.

DISCUSSION

The Trial Division began its analysis with the triggering language of the Act which states that "[n]o non-citizen shall carry on a business enterprise in the Republic, either directly or indirectly, without first obtaining a foreign investment approval certificate . . . ." 28 PNC § 103(a). The Trial Division noted that the phrase "carrying on a business" is defined in § 102(d) of the Act as "engaging in any kind of business enterprise, profession or trade, as an owner or

part owner, for the purpose, in whole or part, of commercial gain or profit." The Trial Division further noted that the phrase "business enterprise" is defined in § 102(c) of the Act as "any form of business organization established in the Republic of Palau for the purpose of carrying on a business." The Trial Division reasoned therefrom that the disputed issues were (I) whether Calma carried on business "in the Republic" during the period in question, and (ii) whether Calma was "established in the Republic for the purpose of carrying on a business" at that time.

We agree with the Trial Division's analysis:

> "The question of whether the business is being carried on in the Republic is separate and distinct from the second issue of whether the business enterprise is 'established in the Republic for the purpose of carrying on a business.' Statutes should be construed to give effect to every word . . . . Applying this canon of statutory interpretation to the Foreign Investment Act, establishing a business in the Republic therefore must be different than carrying on a business in the Republic."

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Decision at 7.

While we agree with Tulmau that these provisions should be interpreted consistently with the purposes and objectives of the Act, we believe that the Trial Division's analysis does so. As Calma suggests,[1] the additional requirement that a business be established may well reflect an intent to exclude from coverage foreign companies which, although arguably carrying on a business, have only a limited connection to Palau. Contrary to Tulmau's contention, *see* Appellant's Brief at 5, it is not "quite clear" to us, in reviewing the language of the Act, that it "was intended to apply to all business conducted by non-citizens in the Republic."

In this case, the Trial Division found that Calma had carried on business "in the Republic" during the period in question. Neither party contests this finding. Tulmau contests, however, the Trial Division's finding that Calma was not "established in the Republic".

The following facts were stipulated by the parties. Calma is a certified public accounting firm established in the Republic of the Philippines and has been in business for more than ten years. Without having a Certificate -- or any other license issued by the Foreign Investment Board -- Calma conducted two audits of Palauan companies between September 18, 1990, and May 9, 1991. Such audits were conducted pursuant to contracts entered into by Calma and the audited Palauan entities, and Calma received remuneration for the performance of such audits. Several Calma employees visited Palau in connection with such audits, some visits lasting as long as two weeks. Calma paid gross revenue taxes to the Republic on the income Calma received in consideration of the performance of such audits, and Calma held a business license issued by the Republic for the period in question.

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[1] Calma posits the example of foreign computer manufacturers who send employees to Palau for sales and service, and suggests plausibly that such companies are not required to obtain a Certificate.

Based on these facts, we agree with the Trial Division's finding that Calma was not "established in the Republic". We agree, in particular, that "[s]ome degree of permanency must exist before a business can be deemed 'established'" and that "[o]ther than the . . . audits performed during 1991 . . . there is insufficient evidence in the record to find that [Calma] established a business in the Republic." Decision at 8.[2] ⊥57

CONCLUSION

Calma would have been required to hold a Certificate for the period in question only if both (I) Calma had carried on business "in the Republic" during such period and (ii) Calma was "established in the Republic for the purpose of carrying on a business." The limited business conducted by Calma in the Republic indicates that Calma was not "established in the Republic for the purpose of carrying on a business." The judgment of the Trial Division is accordingly affirmed.

[2] The Trial Division found, and Tulmau concedes, that regulations promulgated by the Foreign Investment Board in 1995 do not have retroactive effect. We accordingly do not address whether these regulations might lead to a different result on the facts presented here.