Anastacio v. Haruo, 8 ROP Intrm. 128 (2000)

SABINO ANASTACIO,
Appellant,

v.

DONALD HARUO,
Appellee.

CIVIL APPEAL NO. 99-04
Civil Action No. 98-359

Supreme Court, Appellate Division
Republic of Palau

Counsel for Appellant: William Ridpath
Counsel for Appellee: Johnson Toribiong

Argued: November 2, 1999
Decided: March 7, 2000

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

BEATTIE, Justice:

In this appeal, we are called upon to determine whether a Palauan citizen's leasehold interest in land is forfeited under 39 PNC § 302, where the Palauan citizen is a co-lessee with a non-citizen in a lease with a term in excess of 50 years. The Trial Division determined that it is not forfeited, and we affirm.

I.

Siang Recherikl was the owner of 8,418 square meters of land known as Tiai. On November 15, 1995, Recherikl, as lessor, entered into a lease (the Lease) with Donald Haruo, as lessee, and Fumioki Naitoh, as lessee. Haruo is a Palauan citizen, and Naitoh is a non-citizen. The Lease had an initial term of 50 years, with an option to renew for an additional 25 years. The lessees paid the first four years of annual rent, amounting to $33,672, upon signing the Lease, and recorded the Lease with the Clerk of Courts.

In 1997, well after the recording of the Lease, appellant purchased Tiai from Recherikl. Appellant then filed this action against Haruo, seeking a declaration that Haruo's leasehold interest is invalid under 39 PNC § 302, and that he has no right, title or interest in Tiai. The Trial Division ruled that 39 PNC § 302 did not invalidate Haruo's interest in the property because the statute was only intended to invalidate leasehold interests of noncitizens. This appeal followed.

II.

The statute at issue, 39 PNC § 302, provides that:

> No lease agreement of real property to noncitizens shall be entered into subsequent to the effective date of this section with respect to any land within the territory of the Republic which shall be for a term to exceed 50 years, inclusive of any options for renewal. Any agreement entered into in violation of this section shall be void and of no legal effect in its entirety. (emphasis supplied)

We begin by making three observations. First, the plain language of §302 only prohibits long term leases to noncitizens. Second, there are no noncitizens ⊥129 who are parties to this case. The case before us deals with a Palauan citizen's leasehold interest in land. Third, in interpreting § 302, we are required to pay heed to the settled rule that statutes should be strictly construed to avoid forfeiture where possible, and that "forfeitures are never to be inferred from doubtful language." *ROP v. M/V Aesarea*, 1 ROP Intrm. 429, 433 (1988). We believe that rule to be particularly appropriate where, as here, the forfeiture of a Palauan citizen's right to acquire an interest in land in Palau is involved.

The appellant argues that the Trial Division's decision is flawed because it, in effect, treated this case as involving two leases, one to a citizen lessee and one to a noncitizen, and then upheld the lease to the citizen. Appellant claims that the plain language of the statute is unambiguous and that the lease is void "in its entirety." Appellant's argument ignores the fact that the plain language of the statute only prohibits leases to "noncitizens," and that the Lease here is a lease, not to "noncitizens," but to co-lessees, only one of whom is a noncitizen.

Thus, the plain language of the statute does not reveal what the OEK intended in the event of a long term lease to co-lessees where one is a citizen and the other is not. The intent of the OEK is clearly set forth, however, in the Conference Committee Report on the statute. The Committee reported that the intent of § 302 "is the same as that which underlies the Constitutional provision which provides that only Palauan citizens are permitted to own land in Palau." Con. Com. Rep. No. 13, (March 28, 1991). That constitutional provision is Article XIII, Section 8 of the Palau Constitution, which provides that:

> Only citizens of Palau and corporations wholly owned by citizens of Palau may acquire title to land or waters in Palau.

Article XIII cannot be read to prevent a Palauan citizen from acquiring title to land in Palau. If the intent of § 302 is the same as the intent of Article XIII, it is just as clear that § 302 does not prevent a Palauan citizen from acquiring a long term leasehold interest in land. The fact that the Lease has a noncitizen co-lessee does not change our view of the legislature's intent. If a conveyance of title to land were made to a Palauan citizen and a noncitizen as tenants in common, nothing in Article XIII, Section 8, would prevent the Palauan citizen from becoming vested with title. Because the OEK's intent was that § 302 would have the same effect on long term leasehold interests as Article XIII had on freehold interests, we do not believe the OEK

intended that § 302 invalidate leasehold interests of Palauan citizens simply because a noncitizen was named as a co-lessee. To the contrary, the intent was that "only leases to noncitizens should be limited." Con. Com. Rep. No. 13. While the Trial Division noted the probable invalidity of Naitoh's leasehold interest, this action was filed seeking a declaration that the interest of *Haruo* is void. The Trial Division ruled that it was not void, and we agree.

The appellant argues, however, that Haruo's interest must stand or fall with Naitoh's because § 302 provides that "[a]ny agreement entered into in violation of this section shall be void and of no legal effect in its entirety." The inquiry here centers on the meaning of "in its entirety," for on the face of the statute the language appears to be ⊥130 surplusage. To glean its meaning, one must look to the genesis of § 302, which was a decision of the Trial Division of this court in *Odilang Clan v. Obakrakelau* , Civ. No. 541- 89 (October 15, 1990). *Odilang* involved a 99-year lease to a corporation which was not wholly owned by Palauan citizens. The court was called upon to determine whether the lease violated Article XIII, Section 8 of the Palau Constitution, which expressly prohibits such corporations from acquiring title to land in Palau. The *Odilang* judge ruled that, although one does not "acquire title to land" under a lease, the lease still violated the constitution because a 99-year lease was the equivalent of an outright sale. The lessee of the *Odilang* lease appealed the decision to the appellate division. While the appeal was pending, the OEK enacted § 302.

One of the grounds for the *Odilang* appeal was that the lease should not be void in its entirety, but rather it should be reformed so that its term was for a shorter period than 99 years. The Conference Committee report for § 302 states, on the question of whether a lease in excess of 50 years could be reformed, that the Committee "agreed that section 2 of the bill regarding reformation of leases [in excess of] 50 years should be deleted" and "is aware of the case pending in court on this issue and feels it is best not to preempt the court's decision through legislative enactment."[1] There is no doubt, then, that the "in its entirety" language is meant to prevent the reformation of a lease with a term in excess of 50 years to a noncitizen--if the noncitizen's leasehold interest exceeds 50 years under the lease, a court may not uphold the leasehold interest by reducing the lease term to 50 years.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is AFFIRMED.

[1] The case was settled during the pendency of the appeal, so the Appellate Division never decided the issue.

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MUNSON, Part-Time Associate Justice:

Because I feel strongly that the decision of the majority is incorrect and will lead to much mischief in the future, I respectfully dissent.

Facts

The relevant facts are not in dispute. On November 15, 1995, owner Siang Recherikl leased 8,418 square meters of land known as "Tiai" to Donald Haruo, a citizen of Palau, and Fumioki Naitoh, a noncitizen, as co-lessees. The lease had a term of 50 years, with an option to extend the lease for an additional 25 years. In 1997, Mr. Recherikl sold Tiai to plaintiff Sabino Anastacio. In the Trial Division, plaintiff sought to have the lease declared void as to appellee Haruo.[2] In an attempt to avoid a forfeiture, the Trial Division reasoned that the lease did not violate § 302 as to appellee Haruo, in that there are no statutory restrictions on the length of a lease between Palauan citizens, but found it entirely void as to Naitoh, the noncitizen.

Analysis

I begin with one of the most well-settled doctrines in Palauan jurisprudence: a ⊥131 statute unambiguous on its face must be interpreted according to its terms. *Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992) ("[W]here the language is plain and admits of no more than one meaning, the duty of interpretation does not arise."), *quoting Caminetti v. United States*, 242 U.S. 470, 485-86, 37 S.Ct. 192, 194 (1917). The *Yano* Court quoted again from *Caminetti*: "[W]ords are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attached to them." *Id.* The first focus is always on the plain language of the statute and we go no further if the words are clear. *See, e.g., North Dakota v. United States*, 460 U.S. 300, 312, 103 S.Ct. 1095 (1983); *Funbus Systems, Inc. v. CPUC*, 801 F.2d 1120, 1125-26 (9th Cir. 1986).

In addition, we have previously stated unequivocally that the Olbiil Era Kelulau is presumed to know the meaning of the words it uses and that we are bound to construe and apply a statute in the form in which it was enacted. *In the Matter of the Application of Won and Song*, 1 ROP Intrm. 311, 312-313 (1986). In that same decision we recognized that we cannot "judicially legislate" by enlarging the terms of a legislative enactment. *Id.* at 313. We have also stated that "[s]ilence regarding the specific definition of a term used in [a] statute compels us to start with the assumption that the legislative purpose is expressed by the ordinary meaning of the word used." *Republic of Palau v. Jesse Ngiraboi*, 2 ROP Intrm. 257, 264 (1991). And again: "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. * * * Where the language in a statute is unambiguous, courts are to find legislative intent in the ordinary meaning of the language alone." *Republic of Palau v. Etpison*, 5 ROP Intrm. 313, 317 (Tr. Div. 1995), *relying in part upon Blum v. Stenson*, 465 U.S. 886, 104 S.Ct. 1541 (1984).

With our actions thus constrained by our previous rulings and our proper role, I turn now

[2] Mr. Naitoh was not made a party to this lawsuit.

to the language of the statute itself. Title 39, Palau National Code ("PNC") § 302, provides in its entirety:

> No lease agreement of real property to noncitizens shall be entered into subsequent to the effective date of this section with respect to any land within the territory of the Republic which shall be for a term to exceed 50 years, inclusive of any options for renewal. *Any agreement entered into in violation of this section shall be void and of no legal effect in its entirety.* [Emphasis added.]

I believe the issue before the court is one that is easy to resolve and admits of no conclusion but one: The lease was facially invalid because it violated the unequivocal and plain meaning of § 302. It is neither within our power nor our province to inject uncertainty or ambiguity where none exists in the very words of the statute itself.

But the majority would find otherwise, and makes several observations in favor of their decision. First, they note that § 302 only prohibits lease agreements of greater than 50 years to noncitizens and that no noncitizens are parties to this lawsuit. The first point is, again, answered by direct reference to the ⊥132 words of the statute itself: *Any* agreement entered into in violation of this section *shall be void and of no legal effect in its entirety.* [Emphasis added] The majority argues that the intent of the Legislature "was that 'only leases to noncitizens should be limited.'" If that was indeed the intent, then that is what the Legislature should have said and could easily have said by adding specific limiting language to that effect. But the Legislature did not and we are prohibited by the most fundamental tenet of statutory construction from going beyond the plain meaning of the statute. The agreement before us was void in its entirety from its inception.

The second observation, while true, is irrelevant to the analysis. [3] In the future would Palauan citizens who were parties to an illegal lease with a noncitizen be able to "solve" the problem of the illegality by the simple expedient of not naming the noncitizen as a party? The lease itself would be no less in violation of the plain prohibitions of the statute merely because the noncitizen was not made a party to the lawsuit.

The third observation made by the majority is that "forfeitures are not to be inferred from doubtful language." While this general statement is true, there is no "doubtful language" in this statute. The language is clear, the prohibition is mandatory. As directed above, we are not free to "legislatively enlarge" the language of a statute.

The majority tries to meet this argument by saying that the "plain language" of the statute does not address the situation here: an illegal lease involving a citizen and a noncitizen. I believe the statute addresses *all* situations by its plain language: *Any* agreement entered into in violation of this section *shall be void and of no legal effect in its entirety*. The majority decision does what we are prohibited from doing: it rewrites the statute to address an "ambiguity" the statute does not contain.

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[3] Although it does raise the question of whether or not Mr. Naitoh was an indispensable party in whose absence effective and complete relief could not be granted.

I have no quarrel with the majority's conclusion that a Palauan citizen is not prohibited from acquiring a long-term leasehold interest in land. But that is most emphatically not the situation here, where a noncitizen's involvement in this illegal lease rendered the lease *void ab initio*.

The phrase "in its entirety" is clearly not "mere surplusage" as the majority finds. The phrase means what it says and we are bound to give effect to those words. It is to the legislative branch to address the issue if the members of that branch are dissatisfied with the unequivocal language in the statute they enacted. To adopt the majority's construction of "in its entirety" would mean that the phrase actually means "in part." That is, that a lease invalid on its face by the plain words of the statute actually means that it is only invalid as to any noncitizen. Manifestly, there is no authority for this Court to eviscerate the plain language of the statute as passed by the Legislature. The majority reads much into three, simple straightforward words. As cited earlier, the Olbiil Era Kelulau is presumed to know the meaning of the words it uses and we are required to apply a statute in the form in which it was enacted. *In ⊥133 the Matter of the Application of Won and Song, supra*, 1 ROP Intrm. at 312-313.

While it may have been a laudable goal for the Trial Division to salvage as much of the lease as possible, the legal result of the Decision was to ignore the unequivocal mandate of 39 PNC § 302 and the practical result was to work an injustice on only one of the three equally culpable parties. During this still-nascent period of economic growth in the Republic, it is essential that citizens and noncitizens alike be held to the same standards of knowledge and that they receive even-handed treatment in the courts of Palau. I fear the majority decision does not provide such treatment and, in fact, fundamentally changes the plain meaning of the statute. If it is true (as has been stated by numerous courts over the years) that *all* persons are presumed to know the law, there can be no legal reason for insulating Recherikl and Haruo from the consequences of entering into an invalid lease, and placing the brunt of the illegal lease squarely (and only) on Naitoh's shoulders. The Trial Division's decision results in a windfall to both Recherikl (who escapes all negative consequences for having entered into an invalid lease) and to Haruo (who obtains all the benefits of the lease and more, since his noncitizen partner has been totally excised from the picture).

Section § 302 does not admit of the interpretation placed upon it by the Trial Division or the majority here; the language of the section is plain. It must be left to the Olbiil Era Kelulau to change the statute if that body wishes to alter its current language.

For the reasons stated above, I would reverse the decision of the Trial Division and hold that, pursuant to 39 PNC § 302, the November 15, 1995, lease between Recherikl as lessor and Haruo and Naitoh as co-lessees was void at its inception "and of no legal effect in its entirety."[4]

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[4] Again, because the lease was void at its inception and because all parties to the lease were equally in violation of 39 PNC § 302, I believe that the lessor should not be allowed to profit from entering into the illegal lease and that the co-lessees should be left to their remedies to recover any sums paid to lessor, said sums to be offset as justice dictates given all the circumstances.