Sugiyama v. ROP, 9 ROP 5 (2001)

AKIKO SUGIYAMA and
CLARENCE SUGIYAMA,
Appellants,

v.

REPUBLIC OF PALAU,
Appellee.

CIVIL APPEAL NO. 00-31
Civil Action No. 98-369

Supreme Court, Appellate Division
Republic of Palau

Argued: July 23, 2001
Decided: July 26, 2001

[1] **Regulatory Offenses:** Mens Rea

Proof of intent is not always required in establishing a violation of a modern regulatory offense.

[2] **Regulatory Offenses:** Principal-Agent

Where a regulatory statute requiring no showing of intent is involved, a master or other principal may be held subject to the penalty for the conduct of servants acting on the principal's behalf or conducting transactions of the kind for which they are employed.

[3] **Regulatory Offenses:** Principal-Agent

A master is normally penalized for the violation of regulatory statutes by the master's servants acting in the scope of their employment although they acted disobediently and the master had no reason to anticipate such conduct.

[4] **Statutes:** Conjunctive and Disjunctive Words

Generally, the word "or" is used in the disjunctive but may be read as a conjunctive when the context of the statute so demands.

[5] **Constitutional Law:** Double Jeopardy; **Criminal Law:** Double Jeopardy

The Double Jeopardy Clause does not prohibit multiple civil actions by the government.

[6] **Constitutional Law:** Double Jeopardy; **Criminal Law:** Double Jeopardy

Where each defendant is fined individually, the Double Jeopardy Clause is not violated when a principal chooses to pay his fine as well as the fine incurred by his servant.

[7] **Appeal and Error:** Clear Error; Standard of Review

The Appellate Division will affirm the Trial Division's findings of fact unless they are clearly erroneous and the Trial Division's decision to accept the testimony of one witness over that of another is not clearly erroneous.

Counsel for Akiko Sugiyama: Oldiais Ngiraikelau

Counsel for Clarence Sugiyama: Yukiwo P. Dengokl

Counsel for Appellee: Daniel M. Pacheco

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice.

SALII, Justice:⊥6

Akiko Sugiyama and Clarence Sugiyama appeal from the Trial Division's judgment holding them liable for violations of the Marine Protection Act committed when their employee purchased undersized sea life for their restaurant, and imposing a monetary fine upon each Appellant. We affirm.

Akiko Sugiyama is the sole proprietor and owner of Yum Yum Restaurant in Meyuns. Clarence Sugiyama, Akiko's son, is the manager of that restaurant. On June 4, 1997, officers of the Division of Entomology and Conversation executed a search warrant at the restaurant and confiscated one female, berried rock lobster whose length was less than six inches, one *ngimer* (napoleon wrasse) cut in two pieces whose length was less than 25 inches, and the head of another *ngimer*. Yuan Rong Hua was the restaurant's cook and was responsible for acquiring seafood for the restaurant.[1]

Following a trial on the merits where each defendant testified and was represented by counsel, the Trial Division found that defendant Yuan Rong Hua had violated 27 PNC § 1204 by purchasing the undersized lobster and the undersized wrasse that had been cut in two pieces. The trial court further found that Akiko Sugiyama, as Hua's employer, and Clarence Sugiyama, as Hua's supervisor, were legally responsible pursuant to 27 PNC § 1210(b). The Court fined each defendant separately $1,000 for each of the two violations, and thus imposed a $2,000 fine on each of the three defendants.

DISCUSSION

[1] Appellants argue that the trial court erred by finding them liable under the statute without

[1]The Trial Division also imposed a $2,000 fine upon Yuan Rong Hua, but he did not appeal.

finding that they had participated in the purchase of the marine life, or had actual knowledge that it had occurred. In other words, they argue that they cannot be penalized without proof of intent to violate 27 PNC § 1204. The only case cited by Appellants on this issue, however, is inapplicable. *United States v. Morissette*, 72 S. Ct. 240 (1952), is a case involving a *criminal conviction* without proof of scienter. The Court specifically distinguished a common-law criminal offense from modern "regulatory offenses" which require no criminal intent, and noted that proof of knowledge or intent in the latter cases is not always required. *See id.* at 243-50. In contrast, this statute is regulatory in nature and requires only proof that a person committed an act prohibited by § 1204 in order to be subject to civil penalty. 27 PNC § 1210(b).[2]

[2, 3] When, as here, a regulatory statute requiring no element of intent is involved, "a master or other principal may be held subject to a penalty for conduct of servants or other agents acting on his behalf in doing acts or in conducting transactions of the kind for which they are employed." Restatement of Agency § 217D cmt. b. "A master is normally penalized for the violation of such acts by his servants acting in the scope of employment, although they acted disobediently and he had no reason to anticipate such conduct." *Id.* Thus, whether or not Appellants had instructed Yuan Rong Hua not to purchase undersized fish, they are still held accountable because Hua was acting within the scope of his employment and the statute at issue ⊥7 requires no intent for its violation.

Next, Appellants claim that the statute did not authorize the imposition of the fine against more than one person because the statute imposes liability on "his employer, principal, superior, or supervisor." Appellants argue that the "or" in the statute is disjunctive, and therefore does not authorize imposition of a fine against both the employer and supervisor. The plain meaning of the statute indicates otherwise.

[4] Generally, the word "or" is used in the disjunctive, but may be read as a conjunctive when the context of the statute so demands, or it will otherwise be contrary to legislative intent. *See, e.g.*, *Hale v. Basin Motor Co.*, 795 P.2d 1006, 1010 (N.M. 1990); *First Nat. Bank v. Bernalillo County Valuation Protest Bd.*, 560 P.2d 174, 176 (N.M. Ct. App. 1977). Here, when the statute is read as a whole, it is apparent that the legislature intended for the statute to reach multiple parties involved in a single violation:

> *Any person* who is found by the Supreme Court in a civil proceeding to have committed an act prohibited by this Chapter, *his employer, principal, superior, or supervisor* if the violation was committed as part of a commercial operation or enterprise, *and any person* who aids or abets in such violation, shall be liable to the affected state and national government for a civil penalty which shall not exceed two hundred thousand dollars ($200,000) for each violation.

27 PNC § 1210(b) (emphasis added). It is evident from this language that the legislature intended the civil penalty to reach each of the several people that were connected to a violation

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[2]We need not decide today if a greater burden is required for a criminal conviction for violations of the Marine Protection Act.

of the Marine Protection Act.[3] Thus, the word "or" here creates a multiple, rather than an alternative, obligation, *cf. Atchison v. City of Englewood*, 568 P.2d 13, 18 (Colo. 1977), and the Trial Division did not err when it imposed civil penalties upon both Appellants.

[5, 6] Without citation to authority, Appellants next claim that this civil action implicates the Double Jeopardy Clause because the fine here essentially penalizes the same individual three times because the owner of the restaurant will pay the employees' fines. This claim is without merit. The Double Jeopardy Clause does not prohibit multiple civil actions by the government. *See Helvering v. Mitchell*, 58 S. Ct. 630, 633 (1938). Even if the Double Jeopardy Clause were to apply here, each defendant was fined individually. The fact that one defendant chooses to pay the others' fines does not result in violation of the Double Jeopardy Clause.

Appellants also claim that the trial court failed to consider certain factors specified by statute in determining the amount of the civil penalty. *See* 27 PNC § 1204(c).[4] ⊥8 The Trial Division directly quoted this portion of the statute in its decision, and apparently agreed that Appellants' wrongdoing was somewhat minimal, as it imposed only a $1,000 fine for each violation out of a possible $200,000 penalty for each offense.

[7] Finally, Appellant Clarence Sugiyama claims that the trial court erred by finding that a fish head and torso found in the same bag came from a single undersized *ngimer*. The Appellate Division will affirm the Trial Division's findings of fact unless they are clearly erroneous. *In re Estate of Rengiil*, 8 ROP Intrm. 118, 119 (2000). Although there was a witness for the defense who testified that he believed the fish head was from a *teriid* and that he could not tell if the whole fish was less than 25 inches long, he also stated that a *teriid* could be less than 25 inches long and that someone else with proper training could be able to tell if the fish head and tail were from the same fish and if that fish were undersized. Tr. at 123-24, 128-30. A witness for the prosecution, Officer Chin, testified that he believed the head and torso were from the same fish, and that those two pieces measured together were less than 25 inches in length. The trial court's decision to accept the testimony of one witness over that of another is not clearly erroneous. *Ngetchab Lineage v. Klewei*, 8 ROP Intrm. 116, 117 (2000) ("[W]here there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous." (internal quotations omitted)). Therefore, the Trial Division's finding that the fish head and torso came from a single, undersized fish is affirmed.

CONCLUSION

The judgment of the Trial Division imposing a $2,000 fine upon each Appellant for two violations of the Marine Protection Act is AFFIRMED.

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[3]The Standing Committee Report on the bill that ultimately became § 1210(b) indicates that the legislature intended for the civil fines to have a deterrent effect. *See* House Stand. Comm. Rep. No. 114 at 2 (Aug. 1, 1994) ("The deterrent effect of large civil fines could be enormous.").

[4]"In determining the amount of such penalty, the Supreme Court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violators, the degree of culpability, any history of prior offenses, and such other matters as justice may require." 27 PNC § 1210(c).