

**In the Matter of the Proceedings by the
TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff
v.
TRAID CORPORATION, TOSHIMORI FUKUSHIMA, and
JOSE DL. G. DIAZ, Defendants
Civil Action No. 279
Trial Division of the High Court
Mariana Islands District**

March 3, 1969

Action to enjoin foreign corporation from conducting business in Territory. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that United States Constitutional provisions relating to interstate commerce were not applicable in Trust Territory and that foreign corporation would be enjoined from violation of a Public Law which controlled such corporations.

1. Legislative Power-Municipal Ordinances

A municipal ordinance cannot in effect repeal an act of the Congress of Micronesia or do away with the necessity of compliance with its provisions.

2. Corporations-Regulation-Doing Business

A corporation has no physical body, it acts wholly through individuals so whether it is engaged in a business activity within the Trust Territory depends on the authorized activities of the corporation's representatives.

3. Corporations-Regulation-Doing Business

Where corporation's representative solicited orders, demonstrated the product, signed the contracts, forwarded the contracts and also accepted down payments on the product, clearly the corporation through such person was engaged in business activity within the Trust Territory. (Public Law 4-22)

TRUST TERRITORY v. TRAUD CORPORATION

4. Trust Territory-Applicable Law

Although it has been held that some fundamental laws of the United States Constitution apply to territories, it is well settled that not all constitutional provisions are applicable to territories which are not a part of the United States.

5. Commerce and Trade-Interstate Commerce

The United States Constitutional provisions as to interstate commerce do not prohibit the regulations imposed by Public Law 4-22. (Public Law 4-22)

6. Judgments-Res Judicata

A proceeding in the District Court to determine whether an accused had violated the provisions of a local ordinance had no bearing on whether such person had violated or helped a corporation violate the provisions of a Public Law. (Public Law 4-22)

7. Injunctions-Irreparable Injury, Loss or Damage

While a showing that irreparable injury, loss or damage would result to the citizens of the Trust Territory if defendants were not enjoined from violation of law in question might have had to have been made in order to get a restraining order pendente lite, such a showing need not be made at trial where section of Code provided that a violation of its provisions may be enjoined. (T.T.C., Sec. 1135)

CLIFTON, *Temporary Judge*

FINDINGS OF FACT

1. That Traid Corporation is a foreign corporation, that is, it was not incorporated under the laws of the Trust Territory of the Pacific Islands, but was incorporated under the laws of the State of California.

2. That the defendant Toshimori Fukushima is not a citizen of the Trust Territory.

3. That the defendant Jose DL. G. Diaz is a citizen of the Trust Territory.

4. That the defendant Traid Corporation has not applied for or secured a business permit under the provisions of Public Law No. 4-22 of the Fourth Regular Session, 1968, of the Congress of Micronesia, to engage in a business activity within the Trust Territory.

5. That the defendant Toshimori Fukushima has not applied for or secured a business permit under the provisions of Public Law No. 4-22 of the Fourth Regular Session, 1968, of the Congress of Micronesia, to engage in a business activity within the Trust Territory.

6. That the defendant Traid Corporation since October 1968 has extensively engaged in business activities in the Trust Territory in the sale of cameras and camera accessories and unless restrained by an order of this court will continue to engage in such business activities without securing a permit under said Public Law 4-22.

7. That the defendant Toshimori Fukushima on behalf of himself and also acting for the defendant Traid Corporation in its business activities described in paragraph 5 above, since October 1968 has extensively engaged in business activities in the Trust Territory in the sale of cameras and camera accessories by and for the Traid Corporation and unless restrained by an order of this court will continue to so do.

8. That the defendant Jose DL. G. Diaz since October 1968 has aided the defendant Traid Corporation and the defendant Toshimori Fukushima in their said engaging in business activities in the Trust Territory in the sale of cameras and camera accessories, and unless restrained by an order of this court will continue to so do.

9. That it is not true that an amended complaint was filed against the defendant Toshimori Fukushima for the offenses alleged in this action, but it is true that in an amended complaint filed in said court in Criminal Case No. 32-69 it was alleged in an amended complaint that Toshimori Fukushima was engaged in the business of soliciting and taking orders for cameras without obtaining a license for said activity in violation of Subsection (18) of Section 5 of Municipal Ordinance No. 24 of the

Municipality of Saipan, Mariana Islands District, and that the court heard the said matter and rendered a decision as follows: "After hearing of deliberation of both sides, seeing that the complaint is defective or the government having established no case, upon the Defense motion the case is dismissed with prejudice."

10. That Jose DL. G. Diaz applied for and on January 28, 1969, obtained from the Municipality of Saipan a business license. Said license was issued under the provisions of Municipal Ordinance No. 21-10-1968 and licensed him to engage in the business of sales representative in the Municipality of Saipan, but said license did not grant him the right to violate or aid in the violation of Public Law 4-22, 1968, of the Congress of Micronesia.

11. That a violation of Public Law 4-22 by the defendants or any of them is likely to cause great and irreparable injury to the citizens of the Trust Territory, especially in relation to the noncompliance by the defendants Traid Corporation and Toshimori Fukushima, with requirements of said law for provisions for Micronesian citizens' ownership and management participation in the businesses conducted in the Trust Territory, provisions for employment preference to be accorded to citizens of Micronesia, and provisions for minimum wage to be paid employees, provisions for the service in the Trust Territory of process of the courts of the Trust Territory, and provisions that business activities licensed under Public Law No. 4-22 will not restrict the opportunities for advancement of citizens of the Trust Territory.

OPINION

This is an action to permanently enjoin the defendants Traid Corporation and Toshimori Fukushima, under Section 1135 of the Trust Territory Code, from "selling cameras or engaging in any other business activity in the

Trust Territory" and praying "that the defendant Jose DL. G. Diaz and any other employee, salesman or representative be permanently enjoined from selling any products of the Traid Corporation in the Trust Territory." The complaint alleges that the Traid Corporation is a foreign corporation engaged in business activities in the Trust Territory and that Toshimori Fukushima is a non-citizen of the Trust Territory and that he and the defendant Diaz are employee representatives or salesmen of the Traid Corporation and that neither said corporation nor Fukushima have obtained any permit under Public Law 4-22, 1968, to engage in a business activity in the Trust Territory.

Public Law 4-22, 1968, of the Congress of Micronesia of the Fourth Regular Session, amends Chapter 17 of the Trust Territory Code, and provides that no noncitizen, individual or company in which a noncitizen owns any interest may engage in any business activity within the Trust Territory without first applying for and obtaining a permit to do so from the High Commissioner. An application must be filed containing among other things provision for ownership and management participation to be allowed citizens of the Trust Territory, employment preference to be accorded citizens of Micronesia and minimum wage to be paid employees. A corporation organized under the laws of a state, territory or possession of the United States, or of a foreign country must, in addition, file among other things copies of its charter or articles of incorporation and a designation of a person residing within the Trust Territory upon whom process may be served. A filing fee of \$50.00 must be filed with applications for a permit. Upon compliance with the requirements as to the applications, the High Commissioner "if satisfied that the business activity proposed by the noncitizen, individual or company will not restrict the opportunities for eco-

conomic advancement of citizens of the Trust Territory, may issue to the noncitizen, individual or company a permit to do business within the Trust Territory in accordance with the application so submitted."

As found above neither the Traid Corporation, a California operation, nor Toshimori Fukushima have applied for or obtained the permits required by said Public Law No. 4-22.

The defenses set up in the answer were that the defendant Diaz was issued a business license of the Municipality of Saipan of the Trust Territory of the Pacific Islands on January 28, 1969, "that as a matter of law state and municipal authorities are not permitted to make laws or ordinances for the taking of orders for future delivery, which orders are to be transmitted to any firm or company, subject to delivery and shipment in interstate commerce and may not be lawfully interfered with", and that under an amended complaint against Toshimori Fukushima filed with the District Court of Saipan, Criminal Case No. 32-69, after a hearing was had for the offense alleged in this action the court dismissed the action with prejudice. It is contended that any other action constitutes double jeopardy and that the subject matter is "within the purview of res judicata".

The testimony and stipulations show that Fukushima had in person solicited orders for cameras designated as "Fotron" which contained a strobe light which illuminated the photographer's subjects without flashlight bulbs. The purchasers signed a "Retail Installment Contract" in which the Traid Corporation subject to acceptance at its home office in Glendale, California, agreed to sell and deliver the camera, a case, albums and purchase coupons to be used in purchasing film. The price of the camera was \$469, plus an additional \$60.00 for spreading the monthly payments over 30 months. The purchaser signed the "Retail

Installment Contract" and was given a duplicate signed by Toshimori Fukushima as the representative of the Traid Corporation. Toshimori Fukushima accepted a \$10.00 down payment and forwarded the contract to the home office, and the camera and accessories were delivered to the purchaser by U.S. mail. The purchasers mailed the monthly installment payments to the Traid Corporation home office. Toshimori Fukushima testified that he had sold an estimated 50 or 60 cameras in the Trust Territory in this way.

The testimony also showed that the defendant Diaz had accompanied Fukushima to the Island of Tinian where sales of the cameras were made by Fukushima, and that Diaz had interpreted into Chamorro with purchasers for Fukushima and had made statements about the camera although Diaz testified he was to receive no compensation for his aid to Fukushima and Fukushima testified that Diaz was "in training" to be a representative of Traid Corporation, which testimony was in decided contrast to Diaz's testimony that he had had no conversations with Fukushima about Traid Corporation. Diaz on January 28 filed an application for a business license with the Municipality of Saipan and upon paying a license fee was issued a license to engage in the business of "sales representative". His written application had stated that his business would be "Traid Corporation" which the testimony showed was written because Diaz spoke about the Traid Corporation, but that as this was an erroneous designation for a license, "Traid Corporation" was scratched over in the application and "business representative" inserted. All of this testimony despite the reluctance of Diaz to be considered an employee or representative of Traid Corporation, supports the finding that he was aiding Fukushima in Fukushima's sales efforts and intends to be a Traid Corporation representative. The license issued to Diaz was under the provisions of a Mu-

municipal Ordinance "compiling the business license fees of the Municipality and for other purposes." It is wholly for revenue producing purposes and the license in question was issued under the provision: "(26) Miscellaneous Business Services and Activities (which are separate and distinguishable services and not included in this section and implicitly exempted by this section) \$20.00."

[1] As to the first contention of the defendants as to the effect of Diaz's business license, the court cannot see that its issuance could have any effect on the requirements for compliance with the provisions of Public Law No. 4-22 by the Traid Corporation or Fukushima or the illegality of the acts of Diaz in aiding them in business activities without securing the business permits required by said act of the Congress of Micronesia. This conclusion perhaps may be strengthened by the fact that the ordinance provides that it may be suspended "for conducting any illegal activity under authority of the license." In any event, the municipal ordinance cannot in effect repeal the act of the Congress or do away with the necessity of compliance with its provisions.

[2,3] The defendants' contentions that the Traid Corporation was not engaged in a business activity within the Trust Territory cannot be sustained. A corporation has no physical body, it acts wholly through individuals, and so whether it is engaged in a business activity within the Trust Territory depends on the authorized activities of the corporation's representatives. In this case Fukushima, its representative, solicited orders, demonstrated the camera, signed the contracts (subject to the acceptance of the home office), forwarded the contracts and also accepted the down payments. Clearly the corporation through Fukushima was engaged in business activities within the Trust Territory.

The leading case of the United States Supreme Court on the question of the method of interpreting whether a corporation is doing business in a state is the case of *International Shoe Company v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154. The facts in that case are set forth at length in the following quotation from the opinion:-

"Appellant is a Delaware corporation, having its principal place of business in St. Louis, Missouri, and is engaged in the manufacture and sale of shoes and other footwear. It maintains places of business in several states, other than Washington, at which its manufacturing is carried on and from which its merchandise is distributed interstate through several sales units or branches located outside the State of Washington.

"Appellant has no office in Washington and makes no contracts either for sale or purchase of merchandise there. It maintains no stock of merchandise in that state and makes there no deliveries of goods in intrastate commerce. During the years from 1937 to 1940, now in question, appellant employed eleven to thirteen salesmen under direct supervision and control of sales managers located in St. Louis. These salesmen resided in Washington; their principal activities were confined to that state; and they were compensated by commissions based upon the amount of their sales. The commissions for each year totaled more than \$31,000. Appellant supplies its salesmen with a line of samples, each consisting of one shoe of a pair, which they display to prospective purchasers. On occasion they rent permanent sample rooms for exhibiting samples, in business buildings, or rent rooms in hotels or business buildings temporarily for that purpose. The cost of such rentals is reimbursed by appellant.

"The authority of the salesmen is limited to exhibiting their samples and soliciting orders from prospective buyers, at prices and on terms fixed by appellant. The salesmen transmit the orders to appellants' office in St. Louis for acceptance or rejection, and when accepted the merchandise for filling the orders is shipped f.o.b. from points outside Washington to the purchasers within the state. All the merchandise shipped into Washington is invoiced at the place of shipment from which collections are made. No salesman has authority to enter into contracts or to make collections."

The Supreme Court held that the corporation was doing business within the state so as to require it to comply with state unemployment compensation laws and also so as to make it amenable to process served on it in the State of Washington. The facts in the instant case are quite similar to the case cited with the addition of the fact that Fukushima, the representative, collected the down payment in the Trust Territory.

See also on the point of the method of interpreting whether a corporation is doing business in a state or territory, the following cases: *Travelers' Health Association v. Commonwealth of Virginia*, 339 U.S. 643, 70 S.Ct. 927. *Time, Inc. v. Manning*, 366 F.2d 690. *Curtiss Publishing Company v. Cassell*, 302 F.2d 132. *Bomze v. Nardis Sportswear, Inc.*, 165 F.2d 33.

The defendants' main contention is, as above noted, that "state and municipal authorities are not permitted to make laws or ordinances for the taking of orders for future delivery, which orders are to be transmitted to any firm or company, subject to delivery and shipment in interstate commerce and may not be lawfully interfered with." This statement, and the cases which defendants' counsel has cited in support of it have to do with the question of the rights of municipalities or states to make laws that interfere with or are a burden on interstate commerce so that they may be violative of Article I, Section 8, of the United States Constitution, the "commerce clause". However, these provisions and the cases have to do with *interstate* commerce and what we are here concerned with is the sale of goods between a state and territory not a part of the United States. As was pointed out by the court at the trial, the Trust Territory Code provides for taxes on imports from the states and from foreign countries. **If** the Trust Territory was considered a state under the

commerce clause, these import tax laws clearly would be invalid the same as a tax law of a state imposing import taxes on goods coming from another state.

[4] Although it has been held that some "fundamental laws" of the United States Constitution apply to territories, it is well settled that not all constitutional provisions are applicable to territories which are not a part of the United States. Thus in *Hawaii v. Mankichi*, 190 U.S. 197, 23 S.Ct. 787, it was held that it was not necessary that a person accused of a crime in an unincorporated territory of the United States be indicted by a grand jury or that a conviction must be by a unanimous verdict of a petite jury, as required by the Sixth and Seventh Amendments to the United States Constitution. A similar ruling was made by the U.S. Supreme Court as to Porto Rico in *Balzac v. People of Porto Rico*, 258 U.S. 298, 42 S.Ct. 343. In *Downes v. Bidwell*, 182 U.S. 244, 21 S.Ct. 770, it was held that imports from Porto Rico could be taxed under the Foraker Act despite constitutional provisions requiring duties to be uniform "throughout the United States". In its decision, the court differentiated between constitutional provisions as applied to territories and as applied to states.

Furthermore, in sustaining a provision of law that the proceeds of a tax on processing coconut oil should be appropriated to the Philippine treasury to be appropriated by the Philippine legislature the Supreme Court in *Cincinnati Soap Company v. United States*, 301 U.S. 308, 5 S.Ct. 764, held that provisions of the Constitution that appropriations must be made by the U.S. Congress were not violated because Congress was dealing with a dependency and that Congress in legislating with respect to such territories "is not subject to the same restrictions which are imposed in respect of laws for the United States considered as a political body of states of the union."

A somewhat lengthy explanation of Constitutional provisions as they affect territories outside of the United States is contained in 49 Am. Jur. 330. There it is said:-

"118. -To Unincorporated Territories.-While ceded territory ceases to be foreign in character, and for all purposes becomes domestic, that is, territory over which the sovereignty of the United States extends, it is appurtenant domestic territory and not an integral part of the United States, so that Congress in the administration of it is uncontrolled by many of the provisions of the Constitution. Accordingly, the rule is that as to territory which has not been made an integral part of the United States, the Constitution does not, without legislation and of its own force, carry the guaranties of the Sixth Amendment securing a trial by jury. From this it must necessarily follow that until Congress does act by extending the right to jury trial to newly acquired territory, the prevailing system of judicial procedure is applicable and controlling. Until Congress shall see fit to incorporate territory ceded by treaty into the United States, the territory is to be governed under the power existing in Congress, contained in Art. 4, Section 3 of the Constitution to make laws for such territories, and subject to such constitutional restrictions upon the powers of that body as are applicable to the situation.

"Territory which is held to be appurtenant to and not a part of the United States is outside the restrictions applicable to interstate commerce, and the power of Congress, when affirmatively exercised over a territory, situated as supposed, is uncontrolled by the provisions of the Constitution in respect to national taxation."

The latter paragraph cites *Downes v. Bidwell*, supra, as authority. See also the late case of *Hoover and Allison Company v. Evatt*, 324 U.S. 652, 65 S.Ct. 870.

[5] In the light of the above authorities this court must hold that the United States Constitutional provisions as to interstate commerce do not prohibit the regulations imposed by Public Law 4-22.

Finally, as to the contentions as to res judicata, the records of the Saipan District Court show that the defendant Toshimori Fukushima was in that court's Criminal

Action No. 32-69 charged with violating Municipal Ordinance No. 24 of the Municipality of Saipan. This was passed on December 16, 1957. It was approved by Naval Administrator and was the forerunner of Defendants' Exhibit "A", that is, Municipal Ordinance No. 21-10-1968 under which the defendant Diaz became licensed on January 28, 1969. It was similar to said Ordinance No. 21-10-1968 in that it was for revenue producing purposes and was repealed by it on December 17, 1968.

Witnesses testified and the court's record shows the following decision by the trial judge:-

"After hearing of deliberation of both sides, seeing that the complaint is defective or the government having established no case, upon the Defense motion the case is dismissed with prejudice."

[6] The above holding in the District Court is not res judicata as to any of the issues in this case. The proceeding in the District Court was to determine whether Fukushima had violated the provisions of Ordinance No. 24. Said provisions are separate and distinct from the provisions of Public Law 4-22 and a determination as to whether he had violated the provisions of the Municipal licensing ordinance would have no bearing on whether he had violated or helped the Traid Corporation violate the provisions of Public Law No. 4-22.

[7] In his oral argument, defendants' counsel argued that there was no showing that irreparable injury, loss or damage would result to the citizens of the Trust Territory if the defendants were not enjoined from a violation of Public Law 4-22. As counsel for the plaintiff pointed out at the oral arguments, while such a showing might have had to have been made in order to get a restraining order pendente lite, such a showing need not be made at the trial, as Section 1135 of the Trust Territory Code provides that a violation of the provisions relating to permits

may be enjoined, However, a violation of the provisions of Public Law 4-22 would wipe out the protections afforded citizens of the Trust Territory by Its provisions for ownership and management participation to be accorded to citizens of the Trust Territory, employment preference to be accorded to such citizens, minimum wages to be paid employees, and the provisions allowing service of process within the Trust Territory so that the rights of citizens of the Trust Territory in connection with the dealings with the Traiid Corporation might be determined by courts of the Trust Territory, all of which would cause irreparable injury as the court has found above.

The plaintiff is entitled to a Judgment permanently restraining the defendants from Violations of Public Law 4-22,

JUDGMENT

It is hereby ordered, adjudged, and decreed as follows :—

1. That the defendant Traiid Corporation is permanently enjoined from selling cameras, camera accessories, or photographic supplies or equipment in the Trust Territory of the Pacific Islands unless said Traiid Corporation secures a license to conduct such business activities under the provisions of Public Law 4-22, 1968, of the Congress of Micronesia,

2. That the defendant Yoshimori Fukushima is permanently enjoined from selling cameras, camera accessories or photographic supplies in the Trust Territory of the Pacific Islands unless he secures a license to conduct such business activities as a noncitizen of the said Trust Territory under the provisions of Public Law 4-22, 1968, of the Congress of Micronesia, and he is further restrained from aiding the defendant Traiid Corporation in the sale by said corporation of cameras, camera accessories or equipment or photographic supplies in the Trust Territory unless said

corporation secures a license to conduct such business activities under the provisions of Public Law 4-22, 1968, of the Congress of Micronesia.

3. The defendant Jose DL. G. Diaz is permanently enjoined from representing or, aiding the Traid Corporation in the sale of cameras, camera accessories or photographic supplies in the Trust Territory unless said Traid Corporation secures a license to conduct such business activities under the provisions of Public Law 4-22, 1968, of the Congress of Micronesia, and he is further permanently enjoined from aiding Toshimori Fukushima in the sale of cameras, camera accessories or photographic equipment in the Trust Territory unless said Toshimori Fukushima secures a license as a noncitizen to conduct such business activities under the provisions of Public Law 4-22, 1968, of the Congress of Micronesia.