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Case Digest

Journal Staff

CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

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1. Admiralty

A STATE HAS STANDING TO SUE TO RECOVER THE COST OF REPLACING NATURAL RESOURCES DESTROYED BY POLLUTION

Defendant vessel, Panamanian tanker, ran aground off the southern coast of Puerto Rico. To dislodge the ship, the captain ordered the dumping of approximately 1.5 million gallons of crude oil into the sea. The resulting oil slick drifted into a bay and severely polluted several miles of beach and mangrove areas. The Commonwealth of Puerto Rico and its Environmental Quality Board proceeded both *in rem* against the ship and *in personam* against the owners and their underwriters to recover for environmental damages and cleanup costs. Defendants' conduct during discovery was so obstructive that the court struck their pleadings and defenses and dismissed the petition for limitation of liability. The trial was therefore limited to the issue of the Commonwealth's standing to sue and the determination of damages. The court noted that the Commonwealth holds title in trust to public property and is charged with the protection of its citizens' interest in that property. The court also noted that the Commonwealth has title to all beaches, to the maritime terrestrial zone abutting the navigable waters, and to the mangrove areas which are a part thereof. On the basis of the Commonwealth's status as a trustee

of the public property and its proprietary interest in the bay and related resources, the court held that the Commonwealth had standing to sue to recover for harm to natural resources. In addition, the court held that the Commonwealth, in its capacity as *parens patriae,* has a special interest in the general welfare of its citizens which gives rise to a right to seek redress for damages done to the collective community. After determining the defendants' liability, the court held that plaintiffs were entitled to recover the cost of replacing marine organisms killed by the oil, the cost of replanting and cultivating 23 acres of mangrove, and the cost of cleaning up the spill. The total damage award exceeded 6 million dollars. *Significance* — By virtue of its status as trustee of the public trust, and in its capacity as *parens patriae,* a state may sue to recover the cost of replacing natural resources destroyed by pollution resulting from the negligence of a private party. *Commonwealth of Puerto Rico v. SS Zoe Colocotroni,* 456 F. Supp. 1327 (D.P.R. 1978).

2. Aliens' Rights

EXECUTIVE ORDER BARRING LAWFULLY ADMITTED RESIDENT ALIENS FROM FEDERAL CIVIL SERVICE IS VALID

Plaintiffs brought an action against the Chairman of the United States Civil Service Commission challenging the validity of President Ford's Executive Order (11935) barring lawfully admitted resident aliens from the federal competitive civil service. In *Hampton v. Mow Sun Wong,* 426 U.S. 88 (1976), the Supreme Court held that a Civil Service Commission regulation barring resident aliens from competitive civil service deprived them of due process. The Court did not decide what the effect would be of a congressional or Presidential ban. The court of appeals in the instant case affirmed the validity of the Executive Order, holding that the order was within the President's constitutional and statutory authority and did not violate due process. Congress delegated authority to the President in 5 U.S.C. § 3301(1) to prescribe regulations necessary for admission to the civil service. The President, in turn, delegated this authority to the Civil Service Commission. *Mow Sun Wong* held that the Commission violated due process in considering the following government interests in making the ban: 1) bargaining power in negotiations with foreign powers, 2) creating incentives for aliens to seek citizenship, and 3) the need for undivided loyalty. The President, however, could consider these interests in issuing the order. Significance — This case indicates that because the plaintiff aliens were admitted as the result of

decisions made by Congress and the President, due process requires that the decision of whether to deny them the right to federal civil service employment while they remain resident aliens must be made "at a comparable level of government." *Vergara v. Hampton*, 581 F.2d 1281 (7th Cir. 1978).

3. Constitutional Law

SCOPE OF LACEY ACT LIMITED TO FOREIGN LAWS DESIGNED TO PROTECT WILDLIFE

A reptile dealer and two amateur herpetologists were indicted for smuggling snakes and other reptiles into the United States in violation of the Lacey Act, 18 U.S.C. § 43. The Lacey Act imposes criminal sanctions on anyone who transports, sells, receives, or purchases any wildlife taken, transported, or sold in violation of any federal or state law or any law of a foreign country. Defendants were charged with smuggling reptiles in violation of the laws of Fiji and Papua New Guinea. Defendants contended that the Lacey Act is unconstitutional, because it assimilates foreign laws that may conflict with constitutional guarantees. The court, relying on *United States v. Harris*, 347 U.S. 612 (1954), rejected this defense by stating that a foreign law being deemed unconstitutional does not by itself provide a sufficient basis for invalidating the statute. The court further held that the Lacey Act assimilates only those foreign laws concerning the protection of wildlife. The court's holding was based on the following: (1) its finding that the congressional intent in assimilating foreign law into the Lacey Act was to reduce the demand for foreign wildlife, and promote reciprocity by assisting foreign countries in enforcing conservation laws; and (2) the requirement that criminal statutes be strictly construed. Since neither of the foreign laws violated by defendants were conservation laws, the Lacey Act's assimilative provisions were inapplicable. *Significance* — This decision suggests that violations of foreign laws designed to protect wildlife will be actionable under the Lacey Act, even if those foreign laws may be unconstitutional under domestic standards. *United States v. Molt*, 452 F. Supp. 1200 (E.D. Pa. 1978).

4. European Economic Community

RESTRICTIVE RESALE PROVISIONS, DISCRIMINATING PRICING POLICIES, AND REFUSALS TO DEAL BY CORPORATION WITH A DOMINANT POSITION IN A SUBSTANTIAL PART OF EEC VIOLATES ARTICLE 86 OF THE EEC TREATY

The United Brands Company (UBC), a multinational corporation marketing "Chiquita" brand bananas in the Common Market (EEC), petitioned the Court of Justice of the European Communities to set aside a decision by the Commission of the European Communities which found UBC in violation of article 86 of the EEC Treaty. According to the Commission, UBC's European subsidiary, United Brands Continental B.V. (UBC B.V.) acquired a dominant position in a substantial part of the European market for bananas, and abused that position by prohibiting distributor/ripener (D/R) customers from reselling green bananas, by charging varying prices to its D/Rs for bananas of equivalent quality, by refusing to supply "Chiquita" bananas to one of its well-established Danis D/Rs, and by setting prices unfairly in excess of the true value of the bananas being sold to certain D/Rs. The Commission imposed a fine on UBC, ordered it to terminate the resale restrictions on its D/Rs, and to establish a uniform Common Market pricing schedule that would be neither discriminatory nor excessive. Except for that portion which found UBC's prices excessive, the Commission's decision was upheld by the Court of Justice. By prohibiting the resale of green bananas, charging different prices for the same quality banana, and refusing to sell "Chiquita" bananas to a Danish D/R because the latter had traded in a competitor's brand, the Court reasoned that UBC had partitioned national markets, distorted competition, and impaired the normal movement of trade between member states, all in violation of article 86. With regard to the Commission's charge of an unfair price difference, the Court said that a price difference of approximately seven percent between UBC's "Chiquita" bananas and other competing brands was not unfairly excessive. Consequently, the Court reduced the fine imposed on UBC. *Significance* — This decision supports the Commission's trend towards expanded regulation of anti-competitive practices through the use of article 86 and the "refusal-to-supply" and "market segregation" doctrines, which are not specifically enumerated in article 86 of the EEC Treaty. *United Brand Corp. v. Commission of the European Communities,* Case No. 27, 176 (C.J. Eur. Comm. Feb. 14, 1978), [1978] 3 COMM. MKT. REP. (CCH) ¶ 8429.

5. International Travel

STATUTE SUSPENDING SOCIAL SECURITY INCOME BENEFITS FOR RECIPIENT TEMPORARILY OUT OF THE UNITED STATES DOES NOT IMPERMISSABLY INFRINGE THE CONSTITUTIONAL RIGHT OF INTERNATIONAL TRAVEL

A recipient of Social Security Income Benefits (SSI) lived out-

side the United States for a two month period. The SSI benefits were stopped under 42 U.S.C. § 1611(F) which provides that no person who is outside the United States for 30 consecutive days shall receive benefits. When such person returns for 30 consecutive days benefits may be reinstated. After exhausting administrative remedies, the recipient sought judicial review of the agency action. The district court held that the statute unconstitutionally infringed the right of international travel since the government did not show a fair and substantial relationship between the statute and its purpose. The Supreme Court reversed, holding that when a statute only incidentally effects the right of international travel, the test is whether a rational basis for the statute exists. The basis need not be a compelling state interest. The Court upheld the statute as a rational means of limiting SSI payments to United States residents. *Significance* — This decision refines the distinction between the rights of international and interstate travel and clearly limits the constitutional scrutiny of the former. *Califano v. Aznavorian,* ___ U.S. ___, 99 S.Ct. 471 (1978).

6. Jurisdiction and Procedure

DISMISSAL ON GROUNDS OF FORUM NON CONVENIENS IS NOT AN ABUSE OF DISCRETION WHERE DEFENDANT WOULD BE UNDULY INCONVENIENCED AND DENIED OPPORTUNITY TO VINDICATE ITS LEGAL CLAIM BY IMPLEADING THIRD PARTY ALLEGEDLY LIABLE FOR ACCIDENT

A pier owner brought suit against a Liberian shipping company for property damage sustained when defendant's ship struck plaintiff's pier in Trinidad. Defendant had entered the harbor without a local pilot, in violation of Trinidad law. The plaintiff, a New York corporation with its principal place of business in New York City, sued in the Southern District of New York, where defendant's agent was also located. The district court dismissed the action on the ground of *forum non conveniens,* applying the balancing test set forth in *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501 (1947). It determined that the prejudice to the defendant outweighed plaintiff's interests in suing in the United States. Factors in defendant's favor were the location of witnesses, location of evidence, the inability of the defendant to implead the pilots' association if suit were brought in New York, lack of a sufficient nexus between the controversy and the Southern District of New York, and the expertise of Trinidad's courts in applying Trinidad law. These factors were found to outweigh significantly plaintiff's arguments that repair witnesses were located in the United States, that Trinidad law would provide a significantly smaller recovery, and that the defen-

dant would be equally inconvenienced by a trial in Trinidad. The district court concluded that a United States citizen does not have an absolute right to bring an action in a United States court. The decision was conditioned, however, on defendant's agreement to submit to jurisdiction in Trinidad. The Second Circuit Court of Appeals affirmed in a split decision, finding that the lower court had carefully weighed the relevant factors and had not abused its discretion in granting the motion to dismiss. *Significance* — The lower court decision was upheld in spite of the Second Circuit's normal reluctance to force a United States citizen to sue in a foreign court by applying the doctine of *forum non conveniens. Alcoa Steamship Co. v. M/V Nordic Regent,* No. 78-7054 (2d Cir., Aug. 31, 1978), *aff'g by a divided court* 453 F. Supp. 10 (1978).

DOUBLE JEOPARDY CLAUSE DOES NOT PRECLUDE THE UNITED STATES FROM BRINGING CRIMINAL CHARGES AFTER PROSECUTION BY A FOREIGN SOVEREIGN

Acting on advice from United States Drug Enforcement Agency officials, Guatemalan authorities prosecuted and imprisoned two United States citizens traveling through Guatemala for violations of narcotics laws. After purchasing their freedom pursuant to commutability provisions of their sentences, the two citizens were deported to the United States and indicted for violations of federal narcotics laws. The district court denied the defendants' motion to dismiss the indictment on grounds that the Guatemalan proceedings barred federal prosecution under the double jeopardy clause of the fifth amendment. The court of appeals affirmed, holding that the double jeopardy clause does not preclude federal prosecution of a criminal defendant subsequent to judicial action initiated by a foreign sovereign. Citing *Abbate v. United States,* 359 U.S. 187 (1957) and *United States v. Wheeler,* ____ U.S. ____, 98 S.Ct. 1079 (1978), the court recognized a sovereign's need to maintain its authority and preserve the preogative to enforce its own laws. Consequently, prosecution by a foreign sovereign does not preclude the United States from bringing criminal charges. The court also noted that the Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, T.I.A.S. No. 6298, signed by both Guatemala and the United States, did not interfere with a sovereign's ability to prosecute for an offense previously litigated by another signatory nation. *Significance* — This decision, along with that in *United States v. Martin,* 574 F.2d 1359 (5th Cir. 1978), applies the double jeopardy clause in an international context. *United States v. Richardson,* 580 F.2d 946 (9th Cir. 1978).