

Hermine Fujuro MISCH, et al.
vs.
ZEE ENTERPRISES, INC., et al.

Civil Action No. 85-0023
District Court NMI

Decided October 29, 1986

1. Federal Law - Jones Act

The "Recovery for Injury to or Death of Seaman" statute applies in the Commonwealth of the Northern Mariana Islands. 42 U.S.C. §688.

2. Jurisdiction - District Court

Statute giving the District Court of the Northern Marianas jurisdiction of a District Court of the United States of the Northern Marianas does not provide an independent basis for jurisdiction. 48 U.S.C. §1694(a).

3. Federal Law - Jones Act

The venue requirement of section of federal Jones Act must be satisfied even if other grounds for jurisdiction exist. 46 U.S.C. §688(a).

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN MARIANA ISLANDS

5 HERMINE FUJURO MISCH, on behalf)
6 of KANSIANO MISCH, as well as)
7 on behalf of his dependents)
8 and family.)

CIVIL ACTION NO. 86-0023

9 Plaintiff.)

10 vs.)

11 ZEE ENTERPRISES, INC., YUMA)
12 CLIPPERS, INC., CASAMAR GUAM,)
13 INC., LAURA ANN PARTNERSHIP,)
14 LAWRENCE ZUANICH, DOES I)
15 through V, individuals and)
16 partners, ROE CORPORATIONS I)
17 through V.)

18 Defendants.)

DECISION AND ORDER

FILED
Clerk
District Court

OCT 29 1986

For The Northern Mariana Islands
By _____

This matter came before the Court on July 18, 1986, for oral argument of defendants' motion to dismiss plaintiff's complaint.

Defendants argue for dismissal on several grounds. Chief among them is that the complaint fails to state a claim upon which relief can be granted. Defendants claim that this Court lacks jurisdiction because 46 U.S.C. §638, the "Recovery for Injury to or Death of Seaman" section of the Jones Act, does not apply in the Commonwealth of the Northern Mariana Islands.

Defendants support their argument by first citing Section 303 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United

States of America. Section 503(b) states that the "coastwise laws of the United States" will not apply to the CNMI except in the manner and to the extent made applicable to the Commonwealth by the U.S. Congress after termination of the Trusteeship Agreement. Defendants then turn to the "Section-by-Section Analysis of the Covenant" which was prepared by the Marianas Political Status Commission and released February 15, 1975. The Analysis notes that the coastwise laws are also known as the Jones Act. From this, defendants reason that since the coastwise laws are a portion of the Jones Act, and since they do not apply in the CNMI, then no portion of the Jones Act, including §688, has effect in the CNMI.

Defendants claim further support for this interpretation in Covenant §502(b). This section says that U.S. laws regarding coastal shipments and conditions, including wages and hours, do apply in the CNMI, but only to the U.S. government and its contractors.

[1] The issue of the applicability in the CNMI of 42 U.S.C. §688 is presented to the Court for the first time. Only secondary sources are available for guidance. For example, "Welcoming America's Newest Commonwealth," the Second Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States (August, 1985), says only that the applicability of Title 46 of the United States Code "merits further study." Id. at p. 523. The Documentary Supplement to the Second Interim Report contains a lengthy

1 exposition but makes no mention of §688. Rather, it deals
2 exclusively with documentation of vessels, use of foreign hulls
3 for fishing, and citizenship requirements for owning and
4 operating vessels in the CNMI; that is, the "coastwise laws."

5 However, the staff of the Northern Mariana Islands
6 Commission on Federal Laws released, at the same time as the
7 Second Interim Report mentioned above, a "Legal Analysis of
8 Selected Titles of the U.S. Code." The Legal Analysis, while
9 discussing §688, states:

10 This Jones Act provision is not to be
11 confused with other so-called Jones Act
12 requirements relating to shipping laws as
they apply to the territories.

13 Id. at p. 72.

14 In the section titled "Present Applicability" the
15 Analysis concludes that 42 U.S.C. §688 applies to the CNMI
16 through Covenant §502(a)(2), because §688 has force and effect in
17 Guam. Id. at p. 73.

18 Based on the foregoing, the Court finds that 42 U.S.C.
19 §688 does apply in the Commonwealth of the Northern Mariana
20 Islands. Defendants' motion to dismiss on this ground is denied.

21 [2] Plaintiff concedes that 48 U.S.C. §1694(a), which
22 endows this Court with the "jurisdiction of a District Court of
23 the United States," does not provide an independent basis for
24 jurisdiction.

25 Plaintiff also concedes that the complaint presently
26 lacks sufficient allegations of diversity to bring this cause

1 under 28 U.S.C. §1332.

2 [3] The remaining issue is defendants' claim that 46 U.S.C.
3 §688(a) provides jurisdiction only in the court in the district
4 in which either defendant employer resides or in which the
5 employer's principal office is located. The parties agree, and
6 the Court concurs, that the "jurisdiction" requirement of §688(a)
7 has been construed uniformly to mean "venue." The venue
8 requirement must be satisfied, even if other grounds for
9 jurisdiction exist. Leith v. Oil Transport Co., 321 F.2d 591,
10 592 (1963). Defendants argue that plaintiff has not alleged
11 clearly which defendant is regarded as decedent's employee.
12 Also, the claim fails to allege that any defendants reside or
13 maintain their principal office within the CNMI. Dismissal would
14 be warranted, then, because there has been no showing that venue
15 is proper within the meaning of 42 U.S.C. §688(a).

16 The Court agrees that the complaint lacks specificity
17 in this regard and grants plaintiff's somewhat belated request
18 for leave to amend. An amended complaint shall be filed no later
19 than twenty days from the date of this order.

20 The Court also advises both parties that strict
21 adherence to this Court's rules is expected.

22 IT IS SO ORDERED.

23
24 Oct. 29, 1986
25

26 Date



JUDGE ALFRED LAURETA