J. C. TENORIO ENTERPRISES, Plaintiff

v.

EDWARD E. JOHNSTON, et al., Defendants

Civil Action No. 110-74

Trial Division of the High Court

Mariana Islands District

December 10, 1974

Action for temporary injunction. The Trial Division of the High Court, Burnett, Chief Justice, held that injunction would not be granted where third parties would be subjected to certain loss far outweighing any benefit to plaintiff.

1. Trust Territory—Contracts

Member of joint venture which was an unsuccessful bidder for duty-free airport concession granted by government had no standing to challenge decision to award the concession to the successful bidder.

2. Injunctions—Irreparable Injury, Loss or Damage

Injunction against proceeding any further with duty-free airport concession granted by government for proposed airport would not be

granted where interference with building schedule would subject the government and the public to certain loss which would far outweigh any benefit to plaintiff.

3. Injunctions—Restraining Orders

Where there was ample time to litigate the issue before the suggested harm might take place, injunction would not be granted.

Counsel for Plaintiff:	DOUGLAS F. CUSHNIE
Counsel for Defendants:	CHARLES WHEELER; ALLAN NICHOLSON
Counsel for Intervenor:	JAMES BROOKS; DONALD A. SLICHTER

BURNETT, *Chief Justice*

Plaintiff seeks a temporary injunction to prohibit defendants from proceeding with any further activity with respect to a grant of a duty-free retail concession at the Isley Field Airport complex, now scheduled for completion July 1, 1976. Duty Free Shoppers Limited (formerly known as International Shoppers Limited), the successful bidder for the concession, has intervened as party-defendant.

The complaint, and motion for injunction, attacks two separate facets of the entire transaction: First, the award of the duty-free concession, and then the amendment of Business Permit No. 83-74, originally granted February 5, 1974. In my view, these are separable and must be so treated.

[1] Bids for the duty-free concession were opened on June 4, 1974, and lease for operation of the concession entered into by the government defendants and the intervenor on July 8, 1974. Plaintiff, as a member of a Joint Venture which was an unsuccessful bidder, has no legal standing to challenge the decision of the High Commissioner to make award to International Shoppers Limited (now Duty Free Shoppers Limited). See 33 TTC 402:

"(2) Each duty-free retail concession shall be advertised for public auction or public bidding and be granted to that financially responsible person of good moral character and reputable experience who, in the sole opinion of the High Commissioner . . ." *Tenorio and Associates v. High Commissioner* (Marianas Civil Action No. 56-74).

Business Permit No. 96-74 authorizes International Shoppers Limited to operate the prime concession "at the new Isley Airport" which was granted by the High Commissioner; its term is for the "life of contract for operation of Prime Concession at Isley Airport." The term of the contract, as specified in the lease-agreement executed on July 8, 1974, is to commence "on the date District notifies Company that construction of the Apronside Building portion of the Complex is completed by District and the Public portions are open for use by the public." Scheduled completion (and consequent commencement of the term) is within two years. If not completed within that time the District is to be allowed one additional year, but is subject to pay interest at the rate of 10% of the pre-paid minimum concession fee of $5,000,000.00.

[2] Time is therefore critical in terms of the government being free to proceed with contracts for the necessary construction; contract award is now scheduled for December 18, 1974. To interfere with that schedule at this time would subject the government, and the public, to certain loss which would far outweigh any conceivable benefit to plaintiff. Under such circumstances, no injunction should issue.

Plaintiff, on hearing, conceded the necessity of permitting the government to proceed expeditiously, and I see no reason to do otherwise. It should be understood, however, that there is always an element of risk in proceeding while plaintiff's claims remain to be finally resolved.

The primary thrust of plaintiff's complaint is directed against Business Permit No. 83-74, granted to intervening defendant International Shoppers Limited (now duty Free Shoppers Limited, and hereafter so identified) on February 5, 1974. This permit, as originally granted, authorized Duty Free to operate "hotel shopping arcades." The amendment authorizes, in addition, a non-hotel retail shop which may "accept pre-orders for duty free merchandise to be delivered to purchasers at Isley Airport pursuant to its prime concession rights established by Business Permit No. 96-74." Plaintiff contends that the amendment is in substantive conflict with Public Law 5–70 (the Duty-Free law) and in procedural conflict with the Foreign Investors Business Permit Act, 33 TTC Chapter 1.

Whether plaintiff's attack on the amendment to Business Permit No. 83-74 is valid or not, it is clear that there is no threat of immediate damage or loss to plaintiff which would require, or permit, equitable relief. The amendment relates directly, in terms of duty-free sales (or acceptance or pre-orders) to Business Permit No. 96-74, which, in turn, does not authorize such sales except in connection with the agreement entered into on July 8, 1974. As noted previously, the term of that agreement commences upon completion of facilities at Isley Airport, now scheduled for some time in 1976.

[3] Thus, the questioned portion of Business Permit No. 83-74, as amended, could not become effective by its terms, until the prime, duty free concession becomes operative. There is consequently no basis for immediate injunctive relief; ample time remains to litigate the issue before the suggested harm could take place.

In view of the foregoing, the temporary restraining order previously entered herein is dissolved, and preliminary injunction is denied.