

It is, therefore, Ordered, Adjudged and Decreed that the Taiwanese fishing vessel Len Che Seng No. 3 be, and it hereby is, condemned, together with her tackle, apparel, furniture and equipment, and all of the same is forfeited to the High Commissioner for the use of the Trust Territory of the Pacific Islands.

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TRUST TERRITORY OF THE PACIFIC ISLANDS, Libelant

v.

HONG SEN IEN, Libelee

Civil Action No. 573

Trial Division of the High Court

Palau District

August 17, 1972

Libel for condemnation and forfeiture of vessel. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, granted the libel where owner of vessel failed to appear and prove he had no knowledge or wilful negligence regarding the violation made the grounds of the libel.

**Actions—Failure to Appear**

Where owner of vessel involved in proceeding for condemnation and forfeiture failed to appear and meet his statutory burden of proving that violation made grounds of proceeding was without his knowledge or wilful negligence, court would order vessel condemned and forfeited. (19 T.T.C. § 156)

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*Counsel for Libelant:*

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J. LEO MCSHANE, ESQUIRE

BURNETT, *Chief Justice*

The Trust Territory Government filed its libel herein on May 5, 1972, seeking condemnation and forfeiture of the Taiwanese fishing vessel, the Hong Sen Ien. The captain of the vessel was convicted on his plea of guilty, to a charge

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of unlawful removal of marine resources, in *Trust Territory v. Hsu Ming Have*, Palau Criminal Case No. 431. The vessel was seized on or about May 3, 1972, off Ngkesol reef, Kayangel Municipality, Palau, and since that date has been in the custody of the District Administrator, Palau District, pursuant to 19 T.T.C. 154.

Notice of seizure and of forfeiture proceedings was given to the reputed owner of the vessel, and his response to the libel was filed on June 19.

The matter was set for trial in Palau on July 31. It appearing to the Court that notice of such trial setting had not been given to the owner in sufficient time to give him an opportunity to appear, it was stipulated by counsel that libelant could proceed with its case for forfeiture, and that the matter would be further continued to August 14 in Saipan to insure the owner of an opportunity to appear. Libelant then proceeded with the introduction of evidence in support of the libel.

Prior to the date set for further hearing, that is, August 14, the owner gave notice that he did not intend to appear.

Section 156, Title 19, provides for relief from forfeiture if the owner can establish that the violation occurred without his knowledge or any wilful negligence on his part. The Court has previously held that this statute imposes an affirmative burden of proof on the person seeking to avoid statutory penalty of forfeiture. *Trust Territory v. Kyoshin Maru No. 23*, 4 T.T.R. 452. In view of the owners decision not to appear and his failure to present evidence otherwise meeting his burden of proof, I must necessarily find for the libelant.

It is, therefore, Ordered, Adjudged and Decreed that the Taiwanese fishing vessel Hong Sen Ien be, and it hereby is, condemned together with her tackle, apparel, furniture, and equipment, and all of the same is forfeited to the High

Commissioner for the use of the Trust Territory of the  
Pacific Islands.

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**JOSE Q. LIZAMA, Plaintiff**

v.

**BANK OF AMERICA, Defendant**

Civil Action No. 1008

Trial Division of the High Court

Mariana Islands District

August 29, 1972

Action for recovery of full payment paid on new auto loan. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where purchaser of new auto with 30-month bank loan failed, through lack of experience and understanding, to notify bank he was switching loan insurance from bank's company to another after first year of loan, as allowed by financing agreement, and failed to give policy with endorsement in bank's favor to bank and to purchase insurance for last six months of loan, and bank was apparently indifferent to purchaser's lack of sophistication and renewed insurance for the rest of the loan, and bank could prove that it purchased the last six months' insurance, but not that it purchased insurance for the second year, and purchaser was refused title upon demand for it after making all payments on time, on the ground he owed bank for the insurance bank purchased, both parties were at fault and purchaser would be ordered to pay last six months' insurance purchased by bank, bank to then turn over title to the vehicle to purchaser.

**1. Contracts—Breach**

Where purchaser of new auto through bank loan switched insurance protecting bank to another firm, as allowed by the financing agreement, but did not comply with agreement in that he failed to give the policy to the bank until the last payment, did not have an endorsement in bank's favor, and did not purchase insurance for the last six months of the loan, he was in substantial default; but there was no harm where he made all the payments, and his failures could be treated as technical and due to lack of experience and understanding of his obligations.

**2. Evidence—Burden of Proof**

Where bank failed to prove purchase of insurance protecting bank in regard to second year of auto loan, it could not recover cost of premium from purchaser, who had, as allowed by financing agreement, purchased the second year's insurance with another firm without giving bank required notice.