

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

KOROR STATE LEGISLATURE

Appellant,

v.

**KOROR STATE PUBLIC LANDS AUTHORITY and
PALAU SEA VENTURES, INC.,**

Appellees.

Cite as: 2020 Palau 15
Civil Appeal No. 20-009
(Civil Action No. 14-112)

Argued: June 4, 2020
Decided: July 08, 2020

Counsel for Appellant	James W. Kennedy
Counsel for Appellee KSPLA	Michael Crane
Counsel for Appellee Palau Sea Ventures ...	Kassi Berg and Rachel A. Dimitruk

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
KATHERINE A. MARAMAN, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

OPINION

BENNARDO, Associate Justice:

[¶1] This is a case of statutory interpretation. The issue is whether the Koror State Public Benefit Act affects a commercial lease between Koror State Public Lands Authority and Palau Sea Ventures for a certain property on Malakal. We find that it does not. Accordingly,

we **AFFIRM** the Trial Division’s grant of summary judgment in favor of Koror State Public Lands Authority and its dismissal of Koror State Legislature’s claims against Koror State Public Lands Authority and Palau Sea Ventures.

FACTS

[¶2] The Koror State Public Benefit Act passed the Koror State Legislature as Bill No. 10-6 on April 15, 2014. It was vetoed by Governor Adachi on April 25, 2014. On May 2, 2014, the Legislature overrode the governor’s veto and enacted the Public Benefit Act into law. *See* Koror State Public Law No. K10-269-2014.

[¶3] The content of the Public Benefit Act will be discussed in greater depth below, but some summarization of the statute is necessary to provide context for the facts that follow. By its terms, the statute places limitations on the remaining “two parcels of public land on Malakal Island that are available for leasing.” *Id.* § 1. The two parcels, known as the P/K property and the Fisheries property, are both held by Koror State Public Lands Authority (KSPLA). *Id.* Among other things, the statute greatly restricts KSPLA’s ability the lease the properties. *See id.* § 3.A. Other than a short-term lease exception, “no leases, contracts or other encumbrances may be agreed upon or executed for any” private residential, industrial, or commercial uses of the properties. *Id.*

[¶4] Two weeks before the statute was enacted, however, KSPLA leased the P/K property to Palau Sea Ventures. That lease, executed on April 18 while the bill was under consideration by Governor Adachi, created a long-term tenancy in the property for commercial purposes. There is no dispute that the lease pre-dates the enactment of the statute.

[¶5] After securing the lease, Palau Sea Ventures applied to the Koror Planning Commission for a permit to fence and pave a parking lot on the property. The Planning Commission issued the permit on June 30, 2014. Dissatisfied with what it saw as the refusal of the executive branch to enforce or comply with the Public Benefit Act, Koror State Legislature filed suit against the Koror Planning Commission, KSPLA, and Palau Sea Ventures in July 2014. The Legislature’s complaint alleged that the permit issued by the Koror Planning Commission violated the Public Benefit Act and the lease between KSPLA and Palau Sea Ventures was void from its inception.

[¶6] The Trial Division dismissed the action for lack of standing on the part of Koror State Legislature. On appeal by the Legislature, we reversed the Trial Division’s dismissal and remanded the case for further proceedings. *Koror State Legislature v. KSPLA*, 2017 Palau 28.

[¶7] Following our remand, KSPLA filed a Motion for Summary Judgement, which Palau Sea Ventures joined. In August 2019, the Trial Division granted the motion and dismissed Koror State Legislature’s claims against KSPLA and Palau Sea Ventures. *See* Order

Granting Defendant’s Motion for Summary Judgment, Civ. Action 14-112 (Aug. 28, 2019). In reaching its decision, the Trial Division relied on two seemingly contradictory lines of reasoning. First, the Trial Division found that, “[b]ecause the Act contains no language providing for its retroactive application, it must be applied prospectively, and must not impair the rights of leases or contracts entered into before its enactment.” *Id.* at 7. In doing so, the Trial Division found that the lease between KSPLA and Palau Sea Ventures was not impaired by the Public Benefit Act. Second, the Trial Division conducted a constitutional analysis in which it concluded that the Public Benefit Act was “an unconstitutional impairment of a contract in violation of the Contract Clause,” Article IV, § 6 of the ROP Constitution. *Id.* at 12. The Trial Division’s decision did not dispose of Palau Sea Ventures’s pending counterclaim against Koror State Legislature and a third-party claim against the Koror State Government, nor of Koror State Government’s counterclaim against Palau Sea Ventures.

[¶8] In September 2019, Koror State Legislature filed an appeal from the Trial Division’s ruling. Prior to the appeal, no party had requested, and the Trial Division had not issued, a certification of its order as a final judgment under ROP Rule of Civil Procedure 54(b). Palau Sea Ventures moved to dismiss the appeal on the basis that it was interlocutory and none of the exceptions to the final judgment rule applied. This Court agreed and dismissed the appeal, holding that “[f]or litigants in [the Legislature]’s position, the appropriate mechanism for attempting to appeal an otherwise interlocutory order is ROP Rule of Civil Procedure 54(b),” and noting that, if the Trial Division decided such certification was appropriate, this Court would take up the appeal again. *See Koror State Legislature v. KSPLA II*, 2019 Palau 38 ¶¶ 5, 6 n.3.

[¶9] Following our dismissal, the Trial Division certified its ruling on the Motion for Summary Judgment as a final judgment under Rule 54(b).¹ Koror State Legislature timely appealed. As promised, we take up the appeal again.

STANDARD OF REVIEW

[¶10] Issues of statutory interpretation are reviewed *de novo*. *E.g., Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 85 (App. Div. 2004). We may affirm a lower court on “any basis apparent in the record.” *Secharmidal v. Ngiraikelau*, 2019 Palau 35 ¶ 11 (internal quotation omitted).

DISCUSSION

[¶11] The Trial Division’s decision has two parts. First, it held that the Public Benefit Act did not apply retroactively to invalidate the lease between KSPLA and Palau Sea Ventures

¹ The lower court initially denied the request but granted the Legislature’s motion to reconsider. Appellees do not challenge the lower court’s decision to certify.

for the P/K property. Second, it held that the Public Benefit Act violates the Contract Clause of Palau’s Constitution. Given that we agree that the Public Benefit Act does not invalidate or otherwise impair the lease, we need not reach the constitutional issue. As we have said in the past, this Court should avoid a ruling on a constitutional issue where there is an alternative basis to affirm the lower court. *See Koror State Pub. Lands Auth. v. Ngermellong Clan*, 21 ROP 1, 4 (App. Div. 2012); *see also Kual v. Ngarchelong State Pub. Lands Auth.*, 20 ROP 232, 234 (App. Div. 2013).

[¶12] While the parties devote considerable argument to whether the statute is “retroactive” in its application, in our view that concept doesn’t quite properly frame the analysis. The determinative issue is not whether the statute itself is retroactive, but whether the statute’s restrictions apply to property that is currently leased, such as the P/K property. This is a question of statutory interpretation.

[¶13] We discussed the general process of interpreting a statute in *Diaz v. ROP*, 21 ROP 62, 63 (App. Div. 2014), which provides:

“The first step in statutory interpretation is to look at the plain language of a statute. . . . [I]f statutory language is clear and unambiguous, the courts should not look beyond the plain language of the statute and should enforce the statute as written.” *Lin v. ROP*, 13 ROP 55, 58 (2006) (internal citations and quotations omitted). Statutory terms are to be “interpreted according to the common and approved usage of the English language.” 1 PNC § 202. “In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.” *Noah v. ROP*, 11 ROP 227, 233 (2004).

[¶14] Additionally, we have recognized “the long-established premise that there is a strong presumption of constitutionality of legislative acts.” *Tulmau v. R.P. Calma & Co.*, 3 ROP Intrm. 205, 208 (App. Div. 1992). When faced with interpreting an ambiguous statute in which one plausible interpretation would cast serious doubt on the constitutionality of the statute and another plausible interpretation would not, the doctrine of constitutional avoidance counsels us to select the interpretation that does not place the statute in jeopardy of invalidation. *See Republic of Palau v. M/V Aesarea*, 1 ROP Intrm. 429, 434 (App. Div. 1988) (holding that it is a “fundamental principle of statutory construction[] that interpretations which might bring into doubt the constitutionality of a statute are to be avoided”); *see also Blailles v. ROP*, 2020 Palau 9 ¶ 7 (“[T]he Legislature is presumed to intend to pass a valid act, and a law should be construed to sustain its constitutionality whenever possible.” (internal quotation omitted)); *Clark v. Martinez*, 543 U.S. 371, 381, (2005) (noting that the canon of constitutional avoidance “is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable

presumption that [the legislature] did not intend the alternative which raises serious constitutional doubts”).

[¶15] In this case, the Public Benefit Act’s scope is not clear. Portions of the statute’s language clearly contemplate that the statute’s restrictions will be applied only to unleased property. For example, Section 1 of the statute refers to the P/K property as “available for leasing.” Koror State Public Law No. K10-269-2014, § 1. Indeed, the plain text of the statute states that the P/K property was specifically chosen because it was “not currently leased.” *Id.* The Legislature found that the P/K property had “significant public value” because it was the only unleased property on the northern or western coastline of Malakal, and therefore the statute directed that the P/K property “should not be leased for private or commercial purposes.”² *Id.* Thus, the statutory language indicates that the P/K property was selected for inclusion in the Public Benefit Act specifically because it was unleased. Under the reasoning communicated in the statutory language, the P/K property, if leased, would not have been selected. Once leased, the P/K property would no longer occupy the uniquely valuable position identified as the reason for its selection by the statutory text. Therefore, applying the statute to leased property would frustrate the statute’s stated purpose, which was to prevent KSPLA from entering into leases for two unleased properties.

[¶16] Indeed, if the Legislature had contemplated that the Public Benefit Act would disrupt an existing lease, there would be no need for it to make the P/K property the focus of the Public Benefit Act. It could have selected from any one of the many leased properties along Malakal’s coastline. The Legislature did not do that—the statutory text expressly states that the P/K property was selected because it was unleased. Under this language, the statute’s restrictions should not be applied in a way that disrupts an existing lease on the P/K property.

[¶17] Ambiguity is introduced when Section 1 is read in tandem with Section 3. Section 3 states, in an unrestricted way, that the P/K property “shall be available solely for use by the Koror State Government” and that, subject to certain exceptions, “there shall be no private residential, industrial or commercial uses allowed on the P/K property.” *Id.* § 3.A. Read in isolation, this statutory text appears to make no distinction between whether the P/K property was leased or unleased at the time of the statute’s enactment. However, we do not read statutory provisions in isolation. Instead, we read statutes as a whole, in the context of the entire statute. *E.g., Blailles*, 2020 Palau 9 at ¶ 8 n.5. The same statutory subsection goes on to state that “no leases, contracts, or encumbrances may be agreed upon or executed for any such purposes.” Koror State Public Law No. K10-269-2014, § 3.A. That language

² Elsewhere in Section 1, the Public Benefit Act again refers to the P/K property and the Fisheries property as “two of the last remaining public properties with water access on Malakal Island.” Koror State Public Law No. K10-269-2014, § 1.

clearly prohibits KSPLA from entering into any new lease agreements for the listed purposes, but it does not clearly state how an already-existing lease should be treated.

[¶18] If the Legislature had desired for the Public Benefit Act to disrupt an already-existing lease, it could have stated that clearly in the statutory text of Section 3.A. After the P/K property was leased to Palau Sea Ventures, the Legislature could have amended the language of the Public Benefit Act to clearly apply to the leased property. However, it did not do that. Instead, it enacted a statute that, when read as a whole, provides no clear guidance on whether the statute’s restrictions are meant to apply to disrupt a lease that was already in force.³

[¶19] In short, we are tasked with interpreting an ambiguous statute. It is unclear from the statutory text whether the statute was meant to disrupt an existing lease on the P/K property. The principle of constitutional avoidance provides the answer. If we interpret the statute in such a way that it disrupts the P/K property lease, the constitutionality of the statute is immediately cast into serious jeopardy. At a minimum, such an interpretation would require substantial analysis of the statute’s validity under the Contract Clause. If we interpret the statute in such a way that it does not disrupt the existing lease on the P/K property, the threat of the statute unconstitutionally violating the Contract Clause immediately abates.

[¶20] Whether the Legislature intended for the statute to interfere with Palau Sea Venture’s lease of the P/K property is unclear from the statute’s text. What is clear is that the principle of constitutional avoidance counsels us to interpret the statute in a way that avoids jeopardizing the validity of the statute for constitutional reasons. Thus, we find that the Public Benefit Act does not disrupt, impair, invalidate, or otherwise affect the current lease between KSPLA and Palau Sea Ventures for the P/K property. Both the statute and the lease exist unencumbered by the other. The Public Benefit Act remains in force, but its restrictions do not apply to the P/K property while the property is subject to the current lease between KSPLA and Palau Sea Ventures. Once the current lease on the P/K property expires, the Public Benefit Act, if otherwise valid, may limit the future uses of the P/K property. That question is not presently before us. Until then, the statute does not affect the current lease between KSPLA and Palau Sea Ventures.

[¶21] Because we have interpreted the Public Benefit Act in such a way that it does not impair the current lease on the P/K property, the Constitution’s Contract Clause is not

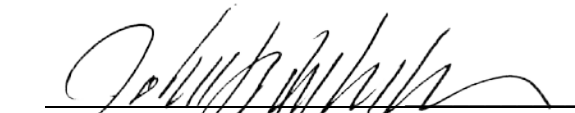
³ Alternatively, the Legislature could have added a provision to make the statute expressly retroactive to a date prior to the lease’s execution. As Appellees rightly point out, the Koror State Legislature has shown that it knows how to make a statute apply retroactively when it wants to. *See* Koror State Public Law Nos. K9-265-2013 (“Section 5. Effective Date; Retroactive Effect. This Act shall become effective upon its becoming law by operation of the Koror State Constitution and shall be retroactive to January 1, 2011.”), K9-235-2011 (Section 2), K9-218-2010 (Section 1), K8-178-2006 (Section 4).

implicated by this appeal. Accordingly, we decline to review the Trial Division's Contract Clause analysis.

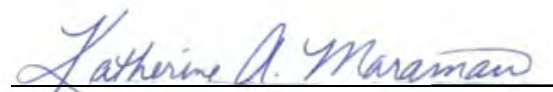
CONCLUSION

[¶22] For all of the forgoing reasons, the judgment of the Trial Division is **AFFIRMED**. This case is remanded for further proceedings not inconsistent with this opinion.

SO ORDERED, this 8th day of July, 2020.



JOHN K. RECHUCHER
Acting Chief Justice



KATHERINE A. MARAMAN
Associate Justice



KEVIN BENNARDO
Associate Justice