

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Doctor Nui Loa Price, a/k/a Maui Loa v. United States General Services Administration

Doctor Nui Loa Price, a/k/a Maui Loa v. United States General Services Administration, 894 F.2d 323 (9th Cir. 1990) · No. No. 86-15002 · Decided January 16, 1990

SUMMARY

The Ninth Circuit held that the district court lacked subject matter jurisdiction over a bidder's claim for specific performance to compel the GSA to accept his bid for surplus land. The Little Tucker Act (28 U.S.C. §1346(a)(2)) does not authorize equitable relief against the United States, and no waiver of sovereign immunity permitted such a suit. The court vacated summary judgment and remanded for dismissal or possible transfer to the Claims Court, noting that 28 U.S.C. §1491(a)(3) grants the Claims Court exclusive jurisdiction over pre-award contract claims but does not expand district court jurisdiction. Key topics: sovereign immunity, Little Tucker Act, equitable relief, pre-award contract claims, Claims Court jurisdiction.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Kozinski, Alex; Sneed, Joseph Tyree III; Thompson, John B.
JURISDICTION	Federal
DECIDED	January 16, 1990
DOCKET	No. 86-15002
DISPOSITION	vacated_and_remanded
PROCEDURAL POSTURE	Appeal from grant of summary judgment for defendant
STANDARD OF REVIEW	de novo review for subject matter jurisdiction
PRECEDENTIAL VALUE	Published
PARTIES	Doctor Nui Loa Price, a/k/a Maui Loa v. United States General Services Administration

TOPICS

- appellate procedure
- civil procedure
- contracts

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court had subject matter jurisdiction over Price's claim for specific performance against the United States in a pre-award contract dispute.

HOLDINGS

1. The district court lacked subject matter jurisdiction because the Little Tucker Act does not authorize equitable relief and the United States has not consented to suits for specific performance of government contracts.

KEY QUOTATIONS

“An action seeking specific performance, rather than damages, against [the federal government] is an action against the sovereign and is not maintainable unless consented to.” (§ 7)

“the Tucker Act ‘impliedly forbids’ declaratory and injunctive relief and precludes a[n APA] Sec. 702 waiver of sovereign immunity in suits on government contracts.” (§ 5 (citing *North Side Lumber*))

FACTUAL BACKGROUND

In early 1983, the GSA issued an Invitation for Bids to sell 89.275 acres of surplus land in Waianae, Oahu, Hawaii. The property was appraised at \$2.4 million, but the highest bid (by plaintiff Price) was \$89,000. Because all bids were far below the appraised value, the GSA rejected all bids and canceled the sale. Price sued for specific performance, alleging bad faith and violations of internal agency policies.

PROCEDURAL HISTORY

Price filed suit in district court on September 16, 1983, seeking specific performance of an auction contract. The district court granted summary judgment for the government on August 15, 1986, holding that the GSA's action was supported by a rational basis. Price appealed.

DISPOSITION

vacated_and_remanded

REMAND INSTRUCTIONS

On remand, the district court is directed to dismiss the action for lack of jurisdiction, unless the court determines that transfer to the Claims Court would be appropriate under 28 U.S.C. § 1631.

CASES CITED

- *North Side Lumber Co. v. Block*, 753 F.2d 1482 (9th Cir.), cert. denied, 474 U.S. 931 (1985)
- *Lee v. Blumenthal*, 588 F.2d 1281 (9th Cir. 1979)
- *Sharp v. Weinberger*, 798 F.2d 1521 (D.C. Cir. 1986)

- *Chemung County v. Dole*, 781 F.2d 963 (2d Cir. 1986)
- *Ulstein Maritime, Ltd. v. United States*, 833 F.2d 1052 (1st Cir. 1987)
- *Coco Bros., Inc. v. Pierce*, 741 F.2d 675 (3d Cir. 1984)
- *Rex Systems, Inc. v. Holiday*, 814 F.2d 994 (4th Cir. 1987)
- *Rowe v. United States*, 633 F.2d 799 (9th Cir. 1980), cert. denied, 451 U.S. 970 (1981)
- *Laguna Hermosa Corp. v. Martin*, 643 F.2d 1376 (9th Cir. 1981)
- *Parola v. Weinberger*, 848 F.2d 956 (9th Cir. 1988)
- *American General Leasing, Inc. v. United States*, 587 F.2d 54 (Ct. Cl. 1978)
- *Contract Custom Drapery Service v. United States*, 6 Cl. Ct. 811 (1984)
- *Emrich v. Touche Ross & Co.*, 846 F.2d 1190 (9th Cir. 1988)

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