

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

**NGARBECHESES KLOBAK, UCHELKEYUKL CLAN,
RECHEIUNGEL BENJAMIN YOBECH, UONG DAVID ORAK,
EBAS SANTY ASANUMA, and IBEDULRAIDONG KRISPIN
TERMETEET,**

Appellants/Cross-Appellees,

v.

**MINORU UEKI, DEMEI OTOBED, PAUL UEKI, ELIA
YOBECH, ISAIAS OITERONG, and BASKASIO OITERONG,**

Appellees/Cross-Appellants,

v.

**JAMES YALAP, TARKONG ELLIS, KAMILU NGIRMERIL,
DEBEDEBEK MONGAMI and REMELIIK NGCHAR,**

Appellees.

Cite as: 2018 Palau 17

Civil Appeal No. 17-001

Appeal from Civil Action No. 14-043 & 14-165 (consolidated)

Decided: September 19, 2018

Counsel for Appellant

Pro se

Counsel for Appellee

Lalii Chin Sakuma

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
ALEXANDRO C. CASTRO, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice,
presiding.

OPINION

PER CURIAM:

[¶ 1] This case arises out of a dispute surrounding a funeral and burial,
but the heart of the dispute is broader and extends back decades. Nine years

ago at the conclusion of extensive litigation, this Court noted that, in 2007, the Trial Division marked the underlying conflict between the parties as a “more-than-20-year-old dispute.” *Orak v. Ueki*, 17 ROP 42, 42 (2009) (internal citation omitted).

[¶ 2] The Appellants/Cross-Appellees (Plaintiffs below; hereinafter “Appellants”) filed a lawsuit seeking declaratory and injunctive relief, and the Appellees/Cross-Appellants (Defendants below; hereinafter “Appellees”) brought a counterclaim, also requesting declaratory relief. Intervening parties contended that the burial was not authorized and sought to have the deceased’s remains removed from the burial location. The Appellees also filed a separate lawsuit suing the Appellants for trespass. The cases were then consolidated. The Trial Division granted a temporary restraining order and, following trial, determined that the intervening parties did not control the land and denied most declaratory relief sought by the parties because there remained no live controversy and “harm or dilution of some right [was] not present in the Counterclaim.” Findings of Fact and Decision 4 (“Decision”). It further denied the Appellants’ request for damages. For the reasons set forth below, we **AFFIRM** in part and **VACATE** and **REMAND** in part.

FACTS

[¶ 3] The underlying cases in dispute began in 2014 when the Appellants filed suit to prevent the Appellees from interfering with a funeral at the Ngerbachesis Bai in Ngermid for a member of the Uchelkeyukl Clan who the Appellants claim was Rechiungel of the clan. The Appellants sought a temporary restraining order preventing the Appellees from interfering in the funeral and burial of the deceased, compensatory and punitive damages, and declaratory relief.

[¶ 4] The Appellees brought a counterclaim seeking various declaratory relief, including a judgment that they are the strong members of Yungel Lineage of Uchelkeyukl Clan with authority to appoint the title bearers of Uchelkeyukl Clan.¹ They also contended that the deceased was not Rechiungel of Uchelkeyukl Clan as the Appellants claimed and sought

¹ This claim is identical to an issue before this Court in *Orak*, 17 ROP 42.

related declaratory relief.² Additional intervenors claimed to own the land where the burial took place and sought to have the deceased's remains exhumed. In a second lawsuit (before it was consolidated with the first trial court case), the Appellees sued the Appellants for trespass.³

[¶ 5] The Trial Division issued a temporary restraining order against the Appellees, enjoining them from interfering with the funeral at Ngerbachesis Bai and the burial that followed on Cadastral Lot No. 008 B 39, referred to by the parties as Ngerkesulang. After trial, the Trial Division determined that Ngerkesulang is owned by Ngerkesulang Lineage and found that the individual intervenors were at best ulechell members of Ngerkesulang Clan and that there were living ochell members of that clan, including one who testified that he did not object to the deceased's burial at Ngerkesulang. As a result, the Trial Division concluded that the intervenors did not have exclusive authority over the use of Ngerkesulang. The Trial Division refused to consider the declaratory relief sought by the parties, in part, "because of the lack of a live controversy as between the parties." Decision 8.

[¶ 6] The parties have filed cross-appeals in this matter.⁴ They contend the Trial Division erred "when it determined that clan matters should be decided by the clan and not the court." Appellees' Br. 1. The Appellants further claim that the Trial Division "erred in not deciding the issue of damages." Appellants' Br. 4. They argue that both compensatory and punitive damages were proven at trial and are not a customary matter "and therefore should be decided by this court."⁵ *Id.* at 10.

² This claim is also identical to an issue before this Court in *Orak*, 17 ROP 42.

³ The parties did not appeal any determination with regard to the intervenors' claim or the trespass claim. Thus, those issues are not addressed on appeal.

⁴ Appellees James Yalap, Tarkong Ellis, Kamilu Ngirmeriil, Debedebek Mongami, and Remeliik Ngchar did not join in the cross-appeal.

⁵ The Appellees seek oral argument pursuant to Rule of Appellate Procedure 34(a), and the Appellants waive oral argument. The Court determines pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

STANDARD OF REVIEW

[¶ 7] This Court has previously and succinctly explained the appellate review standards as follows:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. Matters of law we decide de novo. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted).

[¶ 8] In this appeal, the issues raised by the parties regarding the Trial Division's refusal to consider claims for declaratory relief and its denial of punitive damages involve the Trial Division's exercise of discretion. *See id.* at ¶ 6 (“a decision by a Trial Division whether to intervene in a customary matter and issue a declaratory judgment . . . is a matter committed to the sound discretion of the Trial Division and cannot be reversed absent an abuse of that discretion” (quoting *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001))) and *W. Caroline Trading Co. v. Kloulechad*, 15 ROP 127, 128 (2008) (stating that an award of punitive damages is a matter of the Trial Division's discretion). Thus, the question on appeal is whether the Trial Division abused its discretion. “Under the abuse of discretion standard, a Trial Division's decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive.” *W. Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011) (citing *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008)).

[¶ 9] The Trial Division's findings of fact concerning compensatory damages are reviewed for clear error. *Otei v. Smanderang*, 2018 Palau 4 ¶ 10 (citing *Palau Marine Indus. Corp. v. Seid*, 11 ROP 79, 81 (2004)). “Under the clear error standard, findings will be reversed only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record.” *Id.* (citing *Imeong v. Yobech*, 17 ROP 210, 215 (2010)).

ANALYSIS

I. Declaratory Relief Related to Clan Matters

[¶ 10] The Appellees argue that the Trial Division “failed to apply the [Republic of Palau Rule of Civil Procedure] 57 discretionary standard at all” in determining whether it should weigh in on the customary clan matters presented by the parties. Appellees’ Br. 2. They state that the Trial Division “found that the parties’ claims for declaratory judgment were non-justiciable.” *Id.* The Appellants make a similar argument: the Trial Division “chose to use the cover of clan matters as outside the jurisdiction of the court” rather than apply Rule 57 to determine whether to consider declaratory relief. Appellants’ Br. 8.

[¶ 11] The parties primarily rely on *Kiuluul* to support their positions. In that case, there was a dispute regarding who held the Melachelbeluu and Obaklubil Reikl titles in the Elilai Clan. 2017 Palau 14 ¶ 2. The lawsuit also contained a claim that the defendant who purportedly held the Melachelbeluu title had alienated certain clan lands. *Id.* The Trial Division determined that the parties did not prove their claims for damages and concluded that the claims for declaration of the proper titleholders of the clan “failed to ‘present a justiciable controversy that is ripe for adjudication.’” *Id.* at ¶ 3 (quoting *Elilai Clan v. Kiuluul*, Civil Action No. 13-018, at 4 (Mar. 30, 2015)). The parties appealed.

[¶ 12] This Court ruled that “[t]he Trial Division did not apply the correct standard in deciding whether to entertain the parties’ claims for declaratory judgment.” *Id.* at ¶ 16. It reasoned that the Trial Division “failed to apply the Rule 57 standard at all,” *id.* at ¶ 7, and “applied a more rigorous standard to the parties’ declaratory judgment claims” because they involved customary law, *id.* at ¶ 15.

[¶ 13] Unlike the Trial Division’s conclusion in *Kiuluul*, the Trial Division here does not proclaim customary title disputes non-justiciable.⁶

⁶ The Court recognizes the source of the parties’ misunderstanding. The judgment issued by the Trial Division says, “Clan matters should be decided by the clan and not the court. The Clan should decide who the title bearers are and not the court.” Judgment 2. In its written opinion, however, the Trial Division did not categorically refuse to decide issues related to clan

Rather, in its written opinion, it found that there was no live controversy remaining in the lawsuit on which to base declaratory relief. Decision 4.

[¶ 14] “[P]arties seeking declaratory judgments based on customary law should enjoy the same access to the courts as those seeking declaratory judgments based on other sources of law.” *Kiuluul*, 2017 Palau 14 ¶ 13 (citing *Beouch v. Sasao*, 20 ROP 41 (2013)). “Declaratory relief is appropriate where it will serve a useful purpose in clarifying the legal relations of the parties or terminate the uncertainty and controversy giving rise to the proceeding.” *Senate v. Nakamura*, 8 ROP Intrm. 190, 193 (2000) (citation omitted).

[¶ 15] Rule 57 reads, in part, as follows: “In a case of actual controversy within its jurisdiction, the court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” ROP R. Civ. P. 57; *see also* 14 PNC § 1001 (the Declaratory Judgment Act). “The decision whether to entertain an action for declaratory relief is committed to the Trial Division’s sound discretion.” *Whipps v. Idesmang*, 2017 Palau 24 ¶ 7.

[¶ 16] In this case, the Appellees sought a declaration that “Minoru Ueki and members of his immediate family are strong members of [Uchelkeyukl] Clan with the authority under Palauan custom to appoint Chief Rechiungel and Ebilrechiungel.” Counterclaim Count 1 Prayer for Relief ¶ 1. The Trial Division explained that there was “no basis for the Court to make declarations as to membership of Uchelkeyukl Clan,” in part, because it was already established, in *Orak v. Ueki*, 17 ROP 42 (2009),⁷ that “neither Minoru Ueki and his relatives nor Maria Asanuma and her relatives are strong members of Uchelkeyukl Clan.”⁸ Decision 8. It also explained that it had

membership because it thought that they should be determined by the clan. It is unclear to us why the Judgment does not match the sentiment of the written opinion.

⁷ The Trial Division references Civil Action No. 04-077, which is the underlying trial division case in *Orak*, 17 ROP 42. For purposes of this entry, the Court refers to the published appellate decision rather than Civil Action No. 04-077.

⁸ The Trial Division also explained that this Court held in *Orak* that “Minoru Ueki at best is a strong terruoal member of the Clan and Maria Asanuma is not a strong member.” Decision 8; *see also Orak*, 17 ROP at 49 (“Ueki appears at best to be a strong terruoal member of the

repeatedly told the parties throughout the course of the case “that it was not inclined to make declarations involving membership and strength of the parties within Uchelkeyukl Clan without any live controversy.” Decision 3. For these reasons, the Trial Division declined to consider declaratory relief for Appellees on the strength of their membership in Uchelkeyukl Clan.

[¶ 17] To the extent that *Orak* determined the strength of membership in Uchelkeyukl Clan for various parties to this lawsuit, the Trial Division did not abuse its discretion in deciding not to consider declaratory relief regarding strength of membership in Uchelkeyukl Clan. Collateral estoppel prevents the Trial Division from relitigating an issue “when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment.” *Ngarameketii/Rubekul Kldeu v. Koror State Pub. Lands Auth.*, 2016 Palau 27 ¶ 10 (quoting Restatement (Second) of Judgments § 27 (1982)). Such a “determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *Id.* (quoting Restatement (Second) of Judgments § 27). On issues of clan membership and strength, the parties and their representatives have had their day in court (and then some). Accordingly, we affirm the Trial Division’s decision not to consider the declaratory relief sought with respect to membership and strength of membership issues decided in *Orak*. Those matters have been fully litigated and finally determined by this Court.⁹

[¶ 18] The Appellants, however, also sought a declaration that the Appellees are not members of Ngerbachesis Klobak of Ngermid Hamlet, have no authority over Ngerbachesis Bai, and did not have authority to interfere with the funeral planned at that location. Decision 2. The Appellees similarly asked the Trial Division to issue a declaratory judgment providing that Ngermelei Klobak and Ngerbachesis Klobak “have equal say over the

Clan”) and *Orak*, 17 ROP at 50 (“[W]e AFFIRM the Trial Division’s determination that Asanuma and Ngiralmu are not strong members in the Uchelkeyukl Clan”). In *Orak*, this Court also held that “Orak is clearly ochell and Ueki is clearly not ochell.” *Orak*, 17 ROP at 52.

⁹ At the time of this Court’s 2009 decision *Orak*, we urged “the members of the Uchelkeyukl Clan—especially Orak and Ueki—[to] work towards building a future consensus out of the present acrimony.” *Orak*, 17 ROP at 52. Reluctantly, we now find ourselves repeating the sentiment some nine years later.

use and control of” Ngerbachesis Bai. Counterclaim Count 4. The Trial Division granted a temporary restraining order preventing the Appellees from interfering in the funeral and granting the Appellants’ use of Ngerbachesis Bai for the funeral. Once the funeral had taken place, the Trial Division reasoned, it was “not necessary anymore to make any declarations of who the members of Ngerbachesis are.” Decision 6. The Trial Division also stated that “it was not firmly established at trial that the Ngerbachesis Bai belongs to the Ngerbachesis Klobak.” *Id.* Rather, based on testimony at trial that Ngerbachesis Bai was built with money from federal grants from the Head Start Program and Koror State Government funds, the Trial Division postulated, but did not decide, that “the building seems to be a public building and as such can be used by people from Ngermid,” including the deceased who was from Ngermid. *Id.* at 6–7. For those reasons, the Trial Division did not consider the declaratory relief sought.

[¶ 19] That the funeral had already occurred does not eliminate the question of who can use or determine the use of Ngerbachesis Bai. The question may not even be one of custom, given the evidence presented regarding public funds expended on the building’s construction. The Trial Division’s primary reason for not addressing the parties’ requests for declaratory judgment with respect to Ngerbachesis Bai was because it found that no “live controversy” remained once the 2014 funeral and burial had taken place. Given this Court’s ruling in *Koror State Legislature v. Koror State Pub. Lands Auth.*, 2017 Palau 28, the Trial Division’s reliance on the concept of “live controversy” is misplaced.¹⁰

[¶ 20] This Court earlier brushed up against determining the meaning of “controversy” in Rule 57 and the Declaratory Judgment Act in our decision in *Senate v. Nakamura*, 8 ROP Intrm. 190 (2000) (“*Nakamura*”). *See id.* at 192–94. We acknowledged that the Declaratory Judgment Act “is based on the Declaratory Judgment Act of the United States” and “turn[ed] to the law of the United States for guidance in construing [it].” *Id.* at 192. In that instance, we noted that “[i]t is unclear whether [the Declaratory Judgment Act] incorporates the ‘case and controversy’ jurisdictional requirement of [A]rticle

¹⁰ This Court acknowledges that the Trial Division reached its decision in the underlying matter on March 8, 2017, before the decision in *Koror State Legislature* was issued.

III of the U.S. Constitution or the jurisdictional grant of [A]rticle X of the Palau Constitution.” *Id.* at 193 n.3. We further determined that we did not need to decide the issue then “because in our view the case meets the potentially more restrictive ‘case and controversy’ standard.” *Id.*

[¶ 21] In light of our recent ruling in *Koror State Legislature*, now is the time to address the question in *Nakamura*: Do Rule 57 and the Declaratory Judgment Act “incorporate[] the ‘case and controversy’ jurisdictional requirement of [A]rticle III of the U.S. Constitution or the jurisdictional grant of [A]rticle X of the Palau Constitution[?]” *Id.*

[¶ 22] Just as we determined in *Koror State Legislature* that “[o]ur current standing jurisprudence does not honor the distinction between the broad language of our Constitution and the more limiting language of the U.S. Constitution,” *id.* at ¶ 15, it is similarly inappropriate to impose limitations presented by the U.S. Constitution on Rule 57 and the Declaratory Judgment Act. U.S. courts have treated the “actual controversy” requirement in the U.S. Declaratory Judgment Act as a “jurisdictional prerequisite.” *Océ-Office Sys., Inc. v. Eastman Kodak Co.*, 805 F. Supp. 642, 643 (N.D. Ill. 1992); *see also Niagara Mohawk Power Corp. v. Tonawanda Band of Seneca Indians*, 94 F.3d 747, 752 (2d Cir. 1996) (“The Declaratory Judgment Act permits declaratory relief only in cases presenting ‘actual controvers[ies],’ 28 U.S.C. § 2201(a), a requirement that incorporates into the statute the case or controversy limitation on federal jurisdiction found in Article III of the Constitution.” (citing *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239–40 (1937))). As explained in *Koror State Legislature*, no such jurisdictional prerequisite is in our Constitution. Because “[o]ur Constitution does not so limit our jurisdiction,” *Koror State Legislature*, 2017 Palau 28 ¶ 15, we hold that the case or controversy requirement of Article III of the U.S. Constitution is not incorporated into Rule 57 or the Declaratory Judgment Act.

[¶ 23] Rather, relief pursuant to Rule 57 and the Declaratory Judgment Act should be looked at through the lens of jurisdiction as defined in *Koror State Legislature*, despite the use of the term “actual controversy” in Rule 57 and the Declaratory Judgment Act. In addition, where parties seek declaratory relief based on customary law, they “should enjoy the same access to courts

as those seeking declaratory judgments based on other sources of law.” *Kiuluul*, 2017 Palau 14 ¶ 13.

[¶ 24] Accordingly, we remand the parties’ claims for declaratory relief with respect to the use and control of Ngerbachesis Bai to the Trial Division with instructions to apply the jurisdictional standard defined in *Koror State Legislature*. The Trial Division need only consider whether to grant declaratory relief where the relief sought is not collaterally estopped by the decision in *Orak v. Ueki*, 17 ROP 42 (2009).

II. Damages

[¶ 25] The Appellants also contend that the Trial Division “erred in not deciding the issue of damages.” Appellants’ Br. 4. They maintain that both compensatory and punitive damages were proven at trial and are not a customary matter “and therefore should be decided by this court.” *Id.* at 10.

[¶ 26] The Trial Division did in fact reach a decision regarding both compensatory and punitive damages. In its Decision, the Trial Division concluded that the Appellants’ “claim for damages fails.” Decision 7. The Trial Division explained that the Appellants’ claim for compensatory damages “cannot be sustained because absolutely no evidence was presented to show how much the purported relatives who stayed away were supposed to contribute.” *Id.* The Appellants contend that they “proved the amount of loss through the testimony of the senior women responsible for the funeral to be about \$23,000.” Appellants’ Br. 10. The Trial Division explained that there was no evidence that “the purported relatives who stayed away were obligated to contribute a certain sum of money.” Decision 7. Thus, it determined that the evidence the Appellants presented regarding lost contributions was insufficient to establish a damages claim. We cannot say that “no reasonable trier of fact could have reached the same conclusion based on the evidence in the record.” *Otei*, 2018 Palau 4 ¶ 10. Thus, there is no reversible error here. Accordingly, we affirm the Trial Division’s determination not to award compensatory damages because it disposed of the damages claims on the merits based on lack of evidence.

[¶ 27] The Trial Division also discussed the Appellants’ request for punitive damages: “Plaintiffs do argue they should be award[ed] punitive

damages as well but at the same time concede that a Temporary Restraining Order was issued by the Court which effectively prevented any interference from the Defendants.” Decision 7. Punitive damages are “awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.” *Masang v. Masang*, 18 ROP 104, 112 (Tr. Div. 2011) (citing Restatement (Second) of Torts § 908(1)). The Trial Division notes that the Appellants conceded that the Temporary Restraining Order served its function—to prevent interference by the Appellees in the deceased’s funeral preparations, funeral, and burial. Decision 7. There is no indication in the record that the Appellees engaged in conduct sanctionable by punitive damages. Because the Trial Division reviewed the merits of the punitive damages claim, and its decision regarding punitive damages was not arbitrary, capricious, or manifestly unreasonable and did not stem from an improper motive, it is affirmed.

CONCLUSION

[¶ 28] We **AFFIRM** the Trial Division’s judgment with respect to declaratory relief regarding clan membership and strength of membership and its judgment on damages, but **VACATE** and **REMAND** for limited proceedings consistent with this opinion on the issue of use and control of Ngerbachesis Bai. To that end, the Court directs the Trial Division to refrain from entertaining arguments by the parties concerning issues of clan membership and strength of membership, to the extent that they have already been determined in *Orak*.

SO ORDERED, this 19th day of September, 2018.