IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGERUBURK CLAN,
Appellant,
v.
JULIET SKEBONG,
Appellee

and

JANET EBIL TEBELAK ORRUKEM,
Appellant,
v.
JULIET SKEBONG,
Appellee.

Cite as: 2019 Palau 39
Civil Appeal No. 19-012
Appeal from Civil Action No. 17-176

Decided: December 26, 2019

Counsel for Appellant Ngeruburk Clan .....Johnson Toribiong

Counsel for Appellant Janet Ebil Tebelak Orrukem …… J. Uduch Sengebau Senior

Counsel for Appellee .....C. Quay Polloi

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
DANIEL R. FOLEY, Associate Justice
DENNIS K. YAMASE, Associate Justice

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

OPINION[1]

PER CURIAM:

[¶ 1] Ngeruburk Clan and Janet Ebil Tebelak Orrukem, Appellants in this case, made claims against the estate of Blau Skebong for parcels of land owned by decedent in fee simple. The Trial Division granted summary judgment in favor of Juliet Skebong, Appellee and administrator of the estate, denying Appellants' claims. While Appellants claim different pieces of land and appeal different Trial Division orders, the basis for their claims is so similar that we treat them as a single appeal. For the reasons that follow, we agree with the Trial Division that the time for seeking to invalidate the award of land to decedent has long since past, and we affirm the grant of summary judgement in Appellee's favor.

BACKGROUND

[¶ 2] On December 3, 2014, Blau Skebong died intestate. His daughter Juliet Skebong filed a petition to settle his estate and transfer ownership of lands registered in his name in fee simple to herself and her brother, Julius Skebong. Within the time for filing claims against the estate, Appellant Ngeruburk Clan[2] filed a claim to land known as Ilengel, Tochi Daicho Lot No. 93, which includes Cadastral Lot Nos. 10 K 01, 10 K 04, and 10 K 05. Appellant Janet Ebil Tebelak Orrukem filed a claim on behalf of Telungalek er a Idub[3] for Cadastral Lots 021 K 09, 021 K 29, 021 K 30, and 031 K 01. In addition, decedent's wife filed a claim against the estate which is not at issue in this case and remains pending before the Trial Division.

[¶ 3] Appellee filed a motion for summary judgment, arguing that the claims of Ngeruburk Clan and Orrukem should be denied because they were, in essence, collateral attacks against the Land Court judgments that awarded

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[1] Although both Appellants request oral argument, we determine that argument is not necessary to resolving this appeal and decide the matter on the briefs pursuant to ROP R. App. P. 34(a).

[2] We make no findings regarding the whether the individuals who filed the instant claim are proper representatives of the Clan, as it is irrelevant to our holding that the Clan's claims are time-barred.

[3] Again, we make no findings regarding the appropriateness of this representation.

the disputed lands to decedent in fee simple, and whether evaluated under the six-year catchall statute of limitations or the 20-year statute of limitations for claims to land, Appellants' claims were time-barred. The Clan's claim was an attack on a 1981 determination of ownership, and Orrukem's claim attacked determinations of ownership made in 1994. The exhibits to Appellee's motion included the relevant determinations of ownership and Certificates of Title. Ngeruburk Clan's opposition argued that decedent procured Ilengel by fraud and without notice to the senior strong members of the Clan. Appellant Orrukem did not oppose the motion for summary judgment, but in her claim had argued that decedent procured ownership to the parcels without notice to Telungalek er a Idub's close kin.

[¶ 4] The Trial Division granted Appellee's motion for summary judgment, finding that Appellants' claims were barred by the statute of limitations. Ngeruburk Clan then appealed, and Orrukem filed a motion to reconsider. When that motion to reconsider was denied, Orrukem appealed.

STANDARD OF REVIEW

[¶ 5] As we explained in *Akiwo v. ROP*, 6 ROP Intrm. 105, 106 (1997), "[o]ur review of summary judgment is de novo and plenary." A motion for summary judgment should be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." ROP R. Civ. P. 56(c). In analyzing a motion for summary judgment, "the court must view all evidence in the light most favorable to the non-moving party as well as draw all inferences in that party's favor." *Olkeriil v. ROP*, 17 ROP 202, 204 (2010).

[¶ 6] "[A] trial court's decision to reconsider a previous decision is ordinarily reviewed on appeal for abuse of discretion." *In re Idelui*, 17 ROP 300, 303 (2010).

ANALYSIS

I. It is appropriate for us to consider this interlocutory appeal underthe unique circumstances of this case.

[¶ 7] While no party has raised the issue of whether or not these appeals are properly before us, we do so *sua sponte*. *See PCSPP v. Udui*, 22 ROP 11, 14 (2014) (affirming a trial court's grant of dismissal, *sua sponte*, on prudential grounds). Palau follows the final judgment rule. *E.g.*, *Pac. Call Invs., Inc. v. Palau Marine Indus. Corp.*, 16 ROP 89, 90 (2008). There is no final judgment in this case, *In re: The Estate of Blau Johannes Skebong, a/k/a Blau Skebong*, because there is an additional claimant, decedent's wife, whose claim against the estate has not yet been adjudicated.[4]

[¶ 8] While there is a provision which would have allowed the Trial Division to issue a final judgment in this case, Rule 54(b), it was not utilized. *See* ROP R. Civ. P. 54(b) ("[w]hen . . . multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."). Nevertheless, it appears that the Trial Division intended to certify its judgment, because at the conclusion of its May 7, 2019 *Order on Petitioner's Motion for Summary Judgment; to Include Lot 10 K 03 and to Exclude Lot 10 K 05 from the List of Assets*, it stated: "For the reasons set for[th] above, Petitioner's motion for summary judgment is granted. A separate judgment will be issued in accordance herewith." We presume the failure to issue a separate judgment was an inadvertent error on the part of the Trial Division. Our conclusion regarding the Trial Division's intention is bolstered not only by its denial of Orrukum's motion to reconsider the grant of summary judgment against her,[5] but also by its most recent order in the

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[4] Although this is an interlocutory appeal, and the exceptions allowing consideration of such appeals are inapplicable here, we note that our rule against interlocutory appeals is prudential, not jurisdictional. *ROP v. Black Micro Corp.*, 7 ROP Intrm. 46, 47 n.2 (1998).

[5] One of the reasons that Rule 54(b) requires the trial judge to certify judgments as final for appeal is because otherwise the trial court can reconsider them. ROP R. Civ. Pro. 54(b) (noting that a judgement ordinarily"is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."). The

case, of which we shall take judicial notice. It was a scheduling order issued September 23, 2019, which found that "the more efficient way to address the claim of Martha I. Skebong and its posture following mediation is to wait for Janet Orrukem's appeal to be resolved. Accordingly, no further dates will be set pending the Appellate Division's opinion."

[¶ 9] In the interest of judicial economy, we see no need to dismiss this appeal and remand the case to the Trial Division to enter a final judgment under Rule 54(b) only to have Appellants refile the appeal, potentially causing months of delay, in this rare case where the Trial Division's intention is clear. That is particularly true where all parties have submitted their briefs and proceeded with this appeal without raising an objection. Having satisfied ourselves that prudential considerations warrant proceeding, we shall move on to the merits of this appeal.[6]

II. Appellant Ngeruburk Clan is barred from collaterally attacking Land Court judgments after the statute of limitations has run, even if it does so by making claims against the property owner's estate.

[¶ 10] Appellant Ngeruburk Clan' claims against the estate are a collateral attack on judgments of the Land Court. We have not expressly considered what, if any, statute of limitations should apply to a collateral attack in this context. *Cf. Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276, 281 (2010) (hinting that the statute of limitations may apply to a collateral attack on a Land Court judgment, but finding it unnecessary to decide the issue). Today we hold that a statute of limitations must apply to collateral attacks on Land Court judgments, regardless of the type of proceeding in which they are made.

[¶ 11] Many of the same reasons that militate in favor of requiring the heavier "clear and convincing evidence" burden of proof for collateral attacks

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Trial Division's explicit denial of a request to reconsider its decision cuts against our dismissal of this appeal on prudential grounds.

[6] We caution future litigants that our decision is limited to the specific facts of this case, as ordinarily interlocutory appeals that could have been certified under Rule 54(b) but were not shall be dismissed. *See, e.g., Koror State Legis. v. KSPLA*, 2019 Palau 38.

against Land Court judgments also suggest that we should apply a statute of limitations to them wherever they appear:

> Another reason, especially compelling with respect to an allegation of non-compliance with statutory notice provisions, is that often the collateral attack is made years after the determination of ownership and the public officials involved are unavailable or have no recollection of the details of the proceedings concerning a specific parcel of land. Finally, there is a strong public policy that favors finality in determinations of ownership of real property. *Ngirasibong v. Abelbai*, 4 ROP Intrm. 95, 100 (1993) (statutes regarding conclusive nature of certificates of title "are consistent with the important public policy favoring the final adjudication of land titles to promote certainty and to preclude endless litigation.").

Ucherremasech v. Wong, 5 ROP Intrm. 142, 146 (1995). The fact that Appellants are making their collateral attack in order to pursue claims against an estate, rather than in separate proceedings, should not exempt them from the appropriate statute of limitations. Indeed, in addition to the fading memories of public officials, in an estate case one of the critical witnesses, the decedent, is guaranteed to be unavailable. The application of the statute of limitations to these claims against decedent's estate "accomplishes the important social function that statutes of limitation are intended to perform." *Isimang v. Arbedul*, 11 ROP 66, 73 (2004) (quotation marks omitted).

[¶ 12] The Trial Division in this case did not determine whether the 20-year statute of limitations for "actions for the recovery of land or any interest therein" or the six-year catchall statute of limitations should apply to Appellants' claims, finding that it was unnecessary to do so as more than 20 years had passed. *See* 14 PNC § 402; 14 PNC § 405. We therefore need not reach the issue of which statute of limitations applies.

III. Appellant Ngeruburk Clan's opposition does not raise a genuine issue of materialfact regarding the tolling of the statute of limitations.

[¶ 13] The Clan is correct that statutes of limitations can sometimes be tolled by fraudulent concealment by the potential defendant:

> If any person who is liable to any action shall fraudulently conceal the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within this chapter after the person who is entitled to bring the same shall discover ***or shall have had reasonable opportunity to discover*** that he has such cause of action, and not afterwards.

14 PNC § 409 (emphasis added). But the Clan's assertions are insufficient to raise a genuine issue of material fact regarding fraudulent concealment.

[¶ 14] On appeal, the Clan contends that "in 1977 the notice was never served upon the Clan," and the Clan did not discover that the property had been transferred until 2017, "by pure luck." Appellant's Brief at 6, 12. As to whether the Clan had a "reasonable opportunity to discover" the transfer prior to 2017, its brief states only that "there was never any issue" with the land. The Clan does not explain how it lacked a reasonable opportunity to discover the alleged fraud, memorialized in the public record of the Land Court, for over 40 years.[7]

[¶ 15] The Clan's Opposition to the Motion for Summary Judgment included no citations to affidavits, deposition testimony, or documentary evidence in support of its assertions. The Opposition simply stated that the decedent's Certificate of Title "was procured by, fraud, without notice to the responsible members of Ngeruburk Clan as required by law and without the knowledge or consent of the strong senior members of Ngeruburk Clan."

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[7] While we need not decide, in this case, what is required for a showing of fraudulent concealment of a cause of action, presumably it requires something more than the initial fraud itself. *See Isimang*, 11 ROP at 75 (holding that where there was nothing presented to the court other than the initial fraud in obtaining the deeds, "Appellants failed at summary judgment and again on appeal to argue a legal standard or recite facts sufficient to raise even the specter of fraudulent concealment."). Appellant's citation to *Estate of Remed v. Ucheliou Clan*, 17 ROP 255 (2010), is unavailing, because while that case dealt with fraud by a Clan titleholder resulting in the Clan failing to get notice of a Land Court proceeding, it did not address fraudulent concealment tolling the statute of limitations, and the collateral attack in that case was brought within six years of the Land Court judgment.

This likely does not even meet the *pleading* standard for a fraud claim, which requires more specificity than an ordinary pleading. *See Minor v. Rechucher*, 22 ROP 102, 107 (2015) ("Our Rules of Civil Procedure expressly require that '[i]n all averments of fraud or mistake, the circumstances constituting the fraud or mistake shall be stated with particularity[,]' [ROP R. Civ. P.] 9(b)[,] . . . [including] the who, what, when, where, and how of the allegedmisconduct."). It certainly does not meet the requirement for opposing a motion for summary judgment.

[¶ 16] Once the party moving for summary judgment has met their initial burden, the opposing party "may not rest upon the mere allegations or denials of the adverse party's pleading," but must provide affidavits or excerpts from discovery which establish that a factual dispute in fact exists. ROP R. Civ. P. 56(e). As we explained in *Becheserrak*, 14 ROP at 82:

> Summary judgment is appropriate against a nonmoving party who fails to make an evidentiary showing sufficient to raise a factual question as to an element essential to that party's case and on which that party will bear the burden of proof at trial. . . . The[y] . . . cannot rely on conclusory allegations in an affidavit to establish a genuine issue of fact.

In this case, the Clan did not even submit an affidavit, and attempted to rely entirely on conclusory allegations; the Trial Division was correct to grant summary judgment under these circumstances.

[¶ 17] The Clan's final argument is that the grant of summary judgment is a violation of its procedural due process rights because the Clan allegedly lacked notice of the Land Court proceeding. This claim is unavailing, because the utilization of reasonable, generally applicable statues of limitations does not violate procedural due process.[8] *E.g. Fields v. Legacy Health Sys.*, 413 F.3d 943, 956–57 (9th Cir. 2005) ("Courts will generally uphold a statute of limitations against a due process challenge as long as the

[8] Appellant cites *In re Idelui*, 17 ROP 300 (2010), which addressed whether or not the Land Court had the authority to reconsider its own judgment after realizing, two years later, that it had failed to give notice to numerous claimants due to an administrative error. The case did not involve a collateral attack on a judgment by a non-party later claiming an interest in the land.

plaintiff is accorded a reasonable time, under all the circumstances, to bring suit before the bar takes effect.").

III. The Trial Division did not abuse its discretion in declining to grant Appellant Orrukem's Motion for Reconsideration.

[¶ 18] Appellant Orrukem appeals only the denial of her Motion to Reconsider the Trial Division's grant of summary judgment. Orrukem did not file an opposition to the motion for summary judgement and saved her argument as to why summary judgment should not be granted for the motion to reconsider. She failed to comply with ROP R. Civ. P. 11(b), which requires parties opposed to the grant of a motion for summary judgment to file a brief which contains "a separate statement of each material fact as to which it is contended there exists a genuine issue to be tried and as to each [] identify the specific document or affidavit, or portion thereof, or discovery response or deposition testimony, by page and line, which it is claimed establishes the issue."[9] And, as noted above, Rule 56(e) requires more than the assertions in the pleadings to defeat a motion for summary judgment. While the grant of summary judgment must still be "appropriate," this is sufficiently demonstrated by the defeat of Ngeruburk Clan's opposition, as it raised substantially similar issues.

[¶ 19] In addition, "[m]otions for reconsideration are disfavored and the court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to the court's attention earlier in the exercise of reasonable diligence." ROP R. Civ. P. 7(b)(5). All of the arguments in Appellant Orrukem's motion to reconsider could have—indeed should have—been brought in an opposition to Appellee's motion for

[9] We acknowledge that Orrukem was without counsel at the time the motion for summary judgment, Ngeruburk Clan's opposition to it, and Appellee's reply were filed. Yet Orrukem filed multiple requests for extensions of time to file her pretrial statement during this period, which the Trial Division granted, andnever requested more time to oppose the motion for summary judgment. In addition, Orrukem retained new counsel more than one month prior to the Trial Division's decision on the motion for summary judgment, and her attorney did not attempt to oppose the motion once retained. Even *pro se* parties have a duty to inform themselves regarding the court's procedural rules, and the court is not obligated to advocate for or assist them. *See Suzuky v. Gulibert*, 20 ROP 19, 24 (2012); *Rengechel v. Uchelkeiukl Clan*, 16 ROP 155, 160 (2009).

summary judgment. *See Shmull v. Ngirirs Clan*, 11 ROP 198, 202 n.3 (2004) ("a motion to reconsider [cannot] be used to advance new arguments or supporting facts that were available at the time of the original briefing or argument.").There was therefore no abuse of discretion in the Trial Division's denial of Orrukem's motion.

CONCLUSION

[¶ 20] For all of the foregoing reasons, we **AFFIRM** the judgment of the Trial Division and **REMAND** this case for further proceedings.