IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FRED ANDRES,
Appellant,
v.
AIMELIIK STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2020 Palau 18
Civil Appeal No. 20-011
Appeal from Civil Action No. 19-060

Argued: August 18, 2020
Decided: August 31, 2020

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... Brengyei R. Katosang

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice, presiding.

OPINION

DOLIN, Associate Justice:

[¶ 1] All things, even litigation, must come to an end eventually. Usually that happens when a court of last resort issues a judgment with respect to a contested issue or when a lower court's judgment is not appealed and thus

allowed to become final. And while litigants may be disappointed with the judicial resolution of their disputes, such disappointment is not sufficient cause to continue a fight that the referee has called long ago. So too in this case, where Appellant, Fred Andres, is attempting to relitigate his status in Trei Clan—an issue on which both the Trial Division and our Court have spoken on at least two separate occasions. Because his claims are foreclosed by these prior determinations we, like the court below, reject them. Accordingly, we **AFFIRM** the Trial Division's judgment.

BACKGROUND

[¶ 2] Prior to the beginning of this round of litigation, Trei Clan[1] owned Cadastral Lot Nos. 095 M 01, 095 M 02, and 095 M 03. On August 31, 2018, Hatsuichi Ngirchomlei, who claims to be *Secharraimul* (the highest ranking male title of the Clan) and Geggie Asanuma Udui, who claims be *Dilsecharraimul* (the highest female title of the Clan), executed a warranty deed to these lots in favor of Appellee Aimeliik State Public Lands Authority (ASPLA). When ASPLA sought a new Certificate of Title from the Land Court, Andres filed an objection, asserting that Ngirchomlei and Udui had "no right and authority to alienate these lands" on behalf of the Clan. In his submission to the Land Court, Andres argued that he, rather than Ngirchomlei and Udui, is the proper representative of Trei Clan, because it is he who holds the *Secharraimul* title, and that in any event, given his genealogical lineage, he is a senior strong member of the Clan whose consent is required for any alienation of the Clan's land. Additionally, Andres asserted that the Land Court's 2007 determination which awarded the land in question to Trei Clan in the first place explicitly recognized him as the Clan's representative, while barring Ngirchomlei and Udui from representing the Clan. Thus, he asserted that this determination is *res judicata* on the issue of who has the authority to speak for the Clan.

[¶ 3] In response to Andres' objection, ASPLA filed a quiet title action in the Trial Division. In its complaint, ASPLA asserted that "Andres has no rights, basis or grounds for objecting to the transfer of the Land by Trei Clan to" ASPLA, because Andres is neither the titlebearer nor a senior strong member

[1] In earlier cases, this is spelled Terei Clan.

of the Clan. Andres filed a motion to dismiss ASPLA's complaint, pleading the same theories that formed the basis of his objection in the Land Court. The Trial Division, treating the motion to dismiss as a motion for summary judgment, denied it. The Trial Division rejected Andres' *res judicata* argument, holding that:

> [T]he Land Court's only relevant determination was that the land at issue belonged to Trei Clan. It did not determine who within the clan has the authority to manage or convey the land, nor did it litigate the issue of who within the clan was a senior strong member or a title bearer.

[¶ 4] ASPLA also filed its own motion for summary judgment, asserting that the prior litigation in which Andres and his predecessors were involved foreclosed his claims regarding both the *Secharraimul* title and his status in the Clan. Andres opposed ASPLA's motion and submitted two affidavits (from himself and his sister) in support of his position.[2] The affidavits recount Andres' family tree and assert that he is an *ochell* (which is the highest ranking family status in a clan), whereas Ngirchomlei and Udui are not even members of the Clan, because they are descended from individuals who were *cheltakl el ngalek*,[3] a status which cannot be inherited.

[¶ 5] Relying on our decision in *Obak v. Ngirturong*, 2017 Palau 11, and the Trial Division's unappealed judgment in *Asanuma v. Blesam*, Civil Action No. 19-215 (Tr. Div. March 9, 2000), the Trial Division granted ASPLA's motion. The Trial Division held that the two just-cited decisions have conclusively determined that Appellant is neither *Secharraimul* nor a senior strong member of the Clan, and that, *pace* Andres' assertions, Ngirchomlei and Udui are in fact bearers of the highest male and female titles, respectively. Accordingly, the Trial Division entered judgment for ASPLA and quieted title to Cadastral Lot Nos. 095 M 01, 095 M 02, and 095 M 03 in ASPLA. This timely appeal followed.

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[2] The affidavits are identical in every respect, save for the personal details of each affiant.

[3] A person who is *cheltakl el ngalek* was "introduced into the clan as step-child[] of a person who, themselves, married into the clan." *Orak v. Ueki*, 17 ROP 42, 44 n.4 (2009).

STANDARD OF REVIEW

[¶ 6] The "application of res judicata and collateral estoppel is a question of law that should be reviewed *de novo*." *Trolii v. Gibbons*, 11 ROP 23, 25 (2003).

> We review the trial court's entry of summary judgment *de novo*, employing the same standards that govern the trial court and giving no deference to the trial court's findings of fact. A motion for summary judgment should only be granted when the pleadings, affidavits, and other papers show that no genuine issue of material fact remains, and the moving party is entitled to judgment as a matter of law.

ROP v. Reklai, 11 ROP 18, 20-21 (2003) (citations omitted).

ANALYSIS

[¶ 7] On appeal, Andres is continuing to press his claim that he is the chief of Trei Clan, or at least a senior strong member. In support of his contention, he repeats the same arguments he raised before the Land Court and the Trial Division. We address each of these contentions in turn.

A.

[¶ 8] Appellant first argues that a prior Land Court case which awarded the lots in question to Trei Clan is *res judicata*—not just on the issue of the land's ownership (which no one disputes), but also on the question of whether Ngirchomlei and Udui are the Clan's titlebearers with authority to dispose of the Clan's land. Appellant bases this argument on the language of the Land Court's preliminary order, which noted that, because neither Ngirchomlei nor Udui filed a claim to the land, either as individuals or as the Clan's titlebearers, "the only way the Court would allow them to participate in the instant hearing is if they were to present testimony as witnesses for Trei Clan's claims." *In re Lots 17M02-001, etc.*, Summary of Proceedings, Findings of Fact, Conclusions of Law, and Determination, LC/M 17-00028 at 2-3 (Land Ct. Aug. 1, 2017).

[¶ 9] We begin by noting the distinction between *res judicata*, or claim preclusion, and collateral estoppel, or issue preclusion. These are distinct doctrines. *Res judicata* "prevents the subsequent litigation by either party of any ground of recovery that was available in the prior action, whether or not it was actually litigated or determined." *Ngerketiit Lineage v. Ngirarsaol*, 9 ROP 27, 29 (2001). Collateral estoppel, on the other hand, precludes the relitigation in a subsequent action of an *issue* that has already been determined in a prior action, where certain additional criteria are met. *See Salii v. Terekiu Clan*, 19 ROP 166, 170-71 (2012). These terms are not interchangeable, although neither doctrine is applicable here.[4]

[¶ 10] A determination of who the Trei Clan titleholders are is not a claim that could have been litigated in the Land Court, and therefore *res judicata* does not apply. The Land Court lacks jurisdiction to decide claims, such as a request for declaratory judgement determining who holds clan titles, that are separate from the ownership of the property before it. *See* 4 PNC § 208 ("The Land Court shall have concurrent original jurisdiction with the Supreme Court over all civil cases involving the adjudication of title to land or any interest therein (other than the right to immediate possession)."). *See also* 35 PNC § 1304(a); *Anastacio v. Yoshida*, 10 ROP 88, 91 (2003) (noting that 35 PNC § 1304(a) defines the limited jurisdiction of the Land Court, which is to determine ownership of property). Indeed, the Land Court in the instant case specifically admonished the parties that it "has no role in determining Clans/Lineages' traditional title holders or membership of clans and lineages"; the court's role was simply to "determine ownership" of the land. LC/M 17-00028 at 3. While determining that a clan owns a lot without also determining who has the authority within that clan to administer the property may not—indeed frequently does not—completely resolve the

[4] There is a third doctrine, judicial estoppel, which is also sometimes confused with claim and issue preclusion. Judicial estoppel generally provides that a party cannot make an assertion in one case that is accepted by the court and then make a conflicting assertion in a later case. *See Etipson v. Obichang*, 2020 Palau 8 ¶ 27. The doctrine is "more flexible. . . [and] concerned more generally with protecting the integrity of the courts from the appearance and reality of manipulative litigation conduct." *Id.* ¶ 35 (Dolin, J., concurring) (quoting *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 795 (7th Cir. 2013)).

disputes between the claimants in Land Court, determining ownership is all the Land Court is authorized to do.[5]

[¶ 11] The Land Court did its job, choosing the best claimant before it, which was Trei Clan. *See Eklbai Clan v. KSPLA*, 22 ROP 139, 146 (2015) ("[I]n a superior title case, the Land Court has no choice but to choose [the strongest claim] between the claimants who come forward."). This Court also takes judicial notice of the fact that, because of the informality of the Land Court's procedures, it is very common for one individual to represent another person or clan. *See, e.g.*, *Rengulbai v. Children of Elibosang Eungel*, 2019 Palau 40 (discussing Appellant's representation of his uncle in Land Court, which awarded the properties to his uncle in fee simple). Thus, it is not surprising that Andres (who is undisputedly a member of Trei Clan) filed a claim on the Clan's behalf. And it is also not surprising that the Land Court refused to entertain out-of-time claims, irrespective of who filed them. *See* 35 PNC § 1309(a) ("Any claim not timely filed shall be forfeited."). This is what the Land Court explained to all parties that appeared before it. Andres simply misinterprets this simple explanation of the Land Court's procedures as an on-the-merits determination of the Clan's leadership or structure. However, Appellant's misinterpretation does not convert this explanation into a finding that he had a superior rank in the Clan or that he was in fact the titleholder.[6]

[¶ 12] Appellant's attempt to characterize the quiet title action in the Trial Division as a collateral attack on the Land Court judgment is equally meritless. The Land Court determined that the property belonged to Trei Clan, a conclusion that no party to the present proceeding challenges. However, as an owner of the land in fee simple, Trei Clan was entitled to alienate the property in favor of a third party. The Clan, speaking through Ngirchomlei and Udui, did so by conveying the land to ASPLA. ASPLA's suit to quiet title thus relies on the Land Court judgment rather than

[5] While it is possible that the Land Court would be required to make a factual finding regarding an individual's status in a clan in order to determine ownership of a property, which could then form the basis of a finding of collateral estoppel in a later case, that is not what happened here.

[6] Furthermore, the resolution of the title issue was not necessary to the Land Court's judgment, and therefore issue preclusion is also of no help to Andres. *See Etipson v. Obichang*, 2020 Palau 8 ¶ 24.

challenging it; the fact that in 2007, ASPLA also happened to be an unsuccessful claimant in the Land Court does not change the analysis.[7]

B.

[¶ 13] Andres next claims that the Trial Division erred in quieting title to the land in ASPLA because, according to him, neither Ngirchomlei nor Udui are actually titlebearers, and in fact are not even members of the Clan because they are descended from members who were *cheltakl el ngalek*, a status which cannot be inherited. The Trial Division rejected this argument because it concluded that it was squarely foreclosed by our contrary decision in *Obak v. Ngirturong*, 2017 Palau 11. We agree.

[¶ 14] The *Obak* case was "a dispute between two factions of the Aimeliik State Public Lands Authority [] board regarding who has a right to sit on the board, and therefore which faction holds a majority of seats on the board." *Id.* ¶ 1. Because one of the Board's seats was allocated to the bearer of the *Secharraimul* title, the Court had to resolve the question of who held that title. Both Andres and Ngirchomlei claimed to be the titlebearer on the basis of their appointments by competing groups of women in the Clan. *Obak* affirmed the Trial Division's finding that Ngirchomlei is the holder of the *Secharraimul* title. *Id.* at ¶ 22. The only question, then, is whether this prior determination binds Andres in the present case. We hold that it does.

[¶ 15] We have recently explained that:

> The application of issue preclusion requires that four elements be present: 1) an issue of fact or law is actually litigated; 2) it is determined by a valid and final judgment; 3) the determination is essential to the judgment; and 4) at least the party against whom preclusion is being used was a party to, or in privity with a party to, the prior case. . . . Doubts regarding the applicability of issue preclusion should be resolved in favor of Appellant.

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[7] In fact, in an unsuccessful effort that was dismissed prior to the present transfer of the property to it, ASPLA *did* previously attempt to attack the Land Court's judgement in the Trial Division. *See ASPLA v. Teltull, Trei Clan, et al.*, Order Granting Defendants' Motion to Dismiss, Civil Action No. 17-226 (Tr. Div. Oct. 5, 2017).

Etipson v. Obichang, 2020 Palau 8 ¶ 17 (citations and quotation marks omitted).[8]

[¶ 16] There is little question that the issue of who bears the *Secharraimul* title was actually litigated in *Obak* and that Andres was a party to that case.[9] Indeed, the Court spent several pages discussing the arguments that had been raised by both Andres and Ngirchomlei with respect to their competing claims to the title.[10] *Obak* was also a final judgment that explicitly determined the identity of the titleholder. Although nominally the question in *Obak* was not who the chief of Trei Clan was, but who held a seat on the ASPLA Board, the determination of the chief's identity was "essential to the judgment" because one of the Board's seats was reserved for Trei Clan's titleholder.

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[8] The *Obichang* Court went on to explain that:

> If issues are determined but the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded. This is because, where a court makes findings that are dicta or constitute alternative grounds for a decision, such determinations may not have been as carefully or rigorously considered as [they] would have been if it had been necessary to the result.

Id. at ¶ 24 (citations and quotation marks omitted).

[9] Although Appellant's brief claims that Fred Andres was not a party to the case, Opening Br. at 16, that is manifestly incorrect. Andres' name appears in the caption of the case and the discussion of his claim to the *Secharraimul* title takes up about one-third of the entire opinion. In fact, Andres' attorney in this appeal represented him in *Obak* as well. While we will presume that this misrepresentation was unintentional, counsel is strongly admonished to be more careful in the future. Furthermore, "[a] judgment in an action whose purpose is to determine or change a person's status is conclusive with respect to that status upon all other persons." *Odilang Clan v. Ngiramechelbang*, 9 ROP 267, 270 (Tr. Div. 2001) (quoting Restatement (Second) of Judgments § 31(2)). "[C]lan status logically falls within the ambit of this rule." Id. at 270, n.3. Thus, even if Andres had not been a party to the *Obak* case (though he certainly was), he would still be bound by its judgment with respect to the identity of Trei Clan's chief.

[10] Although both the Trial and Appellate Divisions commented on the failure of both sides to present certain evidence or to make their arguments under the proper legal standards as set forth in *Beouch*, *see Obak*, 2017 Palau 11 at ¶ 21 ("The Trial Division noted that Cross-Appellants . . . had not presented any evidence to bring even a *prima facie* challenge to the validity of Ngirchomlei's 2014 appointment."), an *opportunity* to litigate is all that is required for the application of collateral estoppel.

[¶ 17] Furthermore, Udui's status as *Dilsecharraimul* was also litigated in *Obak*, determined by a valid final judgment in that case, and necessary to that judgment. That is so because Ngirchomlei's claim to the *Secharraimul* title rested on the fact that he was appointed to that role by Udui. In other words, in order for Ngirchomlei to have prevailed (as he did) the Court necessarily needed to conclude that he was validly appointed by, *inter alia*, the holder of the Clan's highest female title.[11] Indeed, in *Obak* Andres appeared to concede that Udui was *Dilsecharraimul* and only questioned whether she was an *ochell* member of the Clan. *See Obak*, 2017 Palau at ¶ 25.

[¶ 18] Faced with the rather difficult challenge of overcoming the holding in *Obak*, Andres argues that the decision in that case was erroneous. He alleges that "[t]he *Obak* Court overlooked and disregarded" Palauan customary law in its decision because it accepted proof of Ngirchomlei's acceptance by the wrong Council of Chiefs. Opening Br. at 15-16. Andres previously made the same argument in *Obak* itself, but the Court declined to address it because it was not first presented to the trial court and was therefore waived.[12] *See Obak*, ¶¶ 26-27. The present litigation cannot serve as a vehicle to raise arguments that were waived more than three years ago.[13] *See Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 43 (1998) ("In order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and raise all of their objections, in one proceeding.").To the extent that Andres' argument was intended as an invitation for us to overrule *Obak*, it is declined.

C.

[¶ 19] As a fallback argument in his challenge to Ngirchomlei's and Udui's authority to alienate the Clan's land, Andres argues that—even if

[11] Andres' own claim to be the Clan's chief failed precisely because he couldn't show that he was appointed by the then-current *Dilsecharraimul*, *see Obak*, 2017 Palau at ¶ 21, *i.e.*, the mirror image of why Ngirchomlei's claim succeeded.

[12] This Court, similarly, explicitly declines to address the issue of which council is the correct one as a matter of customary law.

[13] If there were a good cause for the failure to present these arguments to the Trial Division in the *Obak* litigation, these could and should have been raised in a petition for rehearing. *See* ROP R. App. P. 40.

Ngirchomlei and Udui are the titleholders of Trei Clan— they did not have the authority to sell Clan lands because they are descended from *cheltakl el ngalek*. *Cf. Beouch v. Sasao*, 20 ROP 41, 52 (2013) (listing the rank order of various types of clan membership). We are somewhat at a loss as to the relevance of this argument.[14]

[¶ 20] It is well-established customary law that a clan's chief can administer the clan's lands, although he must have the consent of all the senior strong members in order to alienate them. *See, e.g.*, *Eklbai Clan v. Imeong*, 13 ROP 102, 108 n.3 (2006) (noting that the Land Court recognized a chief's right to administer lands for his clan); *Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 72 (2003) ("It is axiomatic that a chief may not alienate clan land without the consent of the clan."). Therefore, the relevant question is not whether the individuals who signed the deed to ASPLA are *ochell*, *ulechell*, or even *cheltakl el ngalek*, but whether Appellant Andres is himself a senior strong member and therefore has standing to object to land's transfer. In other words, *whatever* Ngirchomlei's and Udui's strength in Trei Clan may be, the only people who can object to the transfer of land in question are those who are themselves senior strong members of the Clan. *See Saka v. Rubasch*, 11 ROP 137, 139 (2004) (noting that whether one has "a right to object to the transfer of [Clan or] Lineage lands" turns on "whether or not [the objecting parties] are strong senior members of" the relevant clan or lineage.). Thus, if Andres is a senior strong member of Trei Clan he can, by withholding his consent to the transfer, block Ngirchomlei's and Udui's attempted conveyance of the subject lands to ASPLA. Inversely, if Andres is not a senior strong member of Trei Clan, then his objections do not impact the transfer. Because we hold that Andres has not shown that he is a senior strong member of Trei Clan, we necessarily conclude that he has no right to

[14] The argument itself is not a model of clarity because it is not clear whether it is a challenge to Ngirchomlei's and Udui's ability to transfer land despite their titles or a challenge to their ability, in light of their allegedly low rank in the Clan, to hold the titles at all. To the extent that Appellant is making the latter argument, in *Obak*, the Trial Division considered, and soundly rejected, Andres' argument that *Dilsecharraimul* Oritechereng Ngirchomlei (who was Udui's mother) could not hold her title because she was *cheltakl el ngalek*. *See* Decision, Civil Action No. 15-049 (Tr. Div. Jan. 5, 2016) at 39-40. We decline to revisit the issue here.

object to Ngirchomlei's and Udui's alienation of the subject lands, irrespective of their own status in the Clan.

[¶ 21] In support of his claim to be a senior strong member, Andres submitted two affidavits to the Trial Division. The affidavits submitted by Andres and his sister Gloria are dedicated almost entirely to assertions regarding Ngirchomlei's and Udui's genealogy and status in Trei Clan. However, a single line in both affidavits states, without elaboration, that the affiant (Fred and Gloria Andres, respectively) is "a senior strong ochell member of Trei Clan of Aimeliik State." No factual support is provided for this conclusory assertion. Perhaps this should not be surprising because the argument is foreclosed by *Obak*, *supra*, and the unappealed judgment in *Asanuma v. Blesam*, Civil Action 98-215 (Tr. Div. March 9, 2000).

[¶ 22] In March 2000, the Trial Division entered a declaratory judgment in *Asanuma v. Blesam*, Civil Action 98-215 (Tr. Div. March 9, 2000), resolving competing claims to the *Dilsecharraimul* and *Secharraimul* titles.[15] In that case, both Oritechereng Ngirchomlei (the mother of the current *Secharraimul*, Hatsuichi Ngirchomlei) and Ucherriang Blesam claimed the *Dilsecharraimul* title, while Masami Asanuma and Becheserrak Tmilchol claimed the *Secharraimul* title. The Trial Division first concluded that "at least as of 2000, there were no *ochell* members left in Trei clan." *Obak*, 2017 Palau at ¶ 24 (recapitulating the *Asanuma* decision).[16] Andres' grandmother testified in *Asanuma*, in support of one of the claimants to the *Dilsecharraimul* title, but did not claim any status in Trei Clan herself. *Id.*

[¶ 23] In the *Obak* litigation, Andres claimed that he was appointed by a large group of *ochell* members of the Clan, including his mother. *Id.* at ¶ 24. If that had been true, it would have cast doubt on the appointment of Ngirchomlei by a different group of women. One question before the Trial Division, then, was which group of women had higher status in the Clan.

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[15] The caption on the Trial Division's decision is in fact *Asanuma v. Tmilchol*. In order to avoid confusion, we will refer to the decision as *Asanuma*.

[16] The *Asanuma* court accepted expert testimony that, when a clan no longer has *ochell* members, under Palauan custom the *ulechell* members rise up to exercise that authority, and that is what had happened in Trei Clan. *See* Decision at 3. That is consistent with this Court's more recent precedent. *See Imeong v. Yobech*, 17 ROP 201, 2016 (2010).

The question was answered when the Trial Division concluded (a finding which we affirmed on appeal) that the women who purported to appoint Andres as titleholder—including his mother through whom he claims his *ochell* status—were weaker members of Trei Clan than the women who appointed Ngirchomlei.[17] *See id.* at ¶ 25. Indeed, the Trial Division found that Andres "had failed to demonstrate that Katsue Andres, Fred Andres, or any of the other women who supported the 2005 appointment of Fred Andres, were actually *ochell* members of Trei Clan." *Id.* at ¶ 24. For this finding, the Trial Division relied on the aforementioned judgment in *Asanuma*. *Id.* And since an *ochell* member of a clan must be able to "trace their lineage to the clan through a matrilineal line," *Ngerungor Clan v. Renguul*, 2019 Palau 4, ¶ 21, it necessarily follows that Appellant himself cannot be an *ochell* member if his mother (Katsue Andres) were not *ochell*.

[¶ 24] Andres' assertion that he (and his sister) are *ochell* members of the Trei Clan runs headlong into the prior determinations of this Court and the Trial Division. The prior determination that Appellant's mother, Katsue Andres, was not *ochell* is binding Andres because it satisfies all of the requirements for issue preclusion to apply. *See Etipson v. Obichang*, 2020 Palau 8 ¶ 17. First, the issue of whether Andres is an *ochell* member of the Clan was actually litigated, as it was discussed in the Trial Division's lengthy opinion. Decision at 40. Second, the issue was determined by a valid final judgment, because the Trial Division found, based on the 2000 judgment in *Asanuma*, that there were no *ochell* members of Trei Clan, and this was affirmed on appeal. *Obak*, 2017 Palau at ¶ 24. Third, the party against whom the judgment is being used, Andres, was a party to the case.

[¶ 25] As to the final requirement for issue preclusion to apply, *i.e.*, the question of whether Andres' lack of *ochell* status was necessary to the holding in *Obak*, we conclude that it was. Returning to the underlying Trial Division decision that was affirmed, the determination that Andres was not the titleholder was not based on alternative grounds, but rather "the cumulative weight of the evidence" on several points. Decision, Civil Action

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[17] The Trial Division found Andres' appointment as *Secharraimul* to be invalid because, *inter alia*, the group of women that selected him did not include "the then current *Dilsecharraimul* . . . ." *Obak*, 2017 Palau at ¶ 24.

No. 15-049 at 41. One of those was Andres' failure to establish that he was *ochell*.

[¶ 26] Because the issue was already decided against him, Andres is estopped from claiming *ochell* status. While there are other ways to become a senior strong member of a clan, such as being a lower rank but performing extraordinary services to the clan,[18] Andres does not allege that he has become a senior strong member through an alternative method.[19] Instead, he continues to insist that he is *ochell* and chief, issues that were already decided against him.

CONCLUSION

[¶ 27] This case has forced the Court to address the same issue for the *third* time. We once again hold that Andres neither holds the *Secharraimul* title nor an *ochell* rank within the Trei Clan. We note that litigation over these issues, in one form or another, has entered its third decade. We hope that our resolution herein can finally bring this dispute to a close.

[¶ 28] In summary, the Trial Division was correct to conclude that Appellant's arguments are barred by collateral estoppel and therefore his consent to the alienation of Trei Clan's land is not required. Accordingly, the judgment of the Trial Division is **AFFIRMED**.

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[18] While assisting the Clan in winning title to its properties could certainly be considered service to the Clan, such representation does not somehow confer the status of chief on a male clan member who does so; only the female titleholder and *ourrot* of the Clan can do that. *See, e.g., Ngerungor Clan v. Renguul*, 2019 Palau 4 ¶¶ 13-19 (discussing customary law requirements for the appointment of a male titleholder). Nor does such service necessarily and automatically make the person providing the service a senior strong member of a clan. *See Ngeribongel v. Gulibert*, 8 ROP Intrm. 68, 72 (1999) ("[S]ervices to the Clan [are] one factor that confer[s] strength in the Clan."). In any event, because Andres' claim to being a senior strong member of Trei Clan rests exclusively on his alleged *ochell* status rather than on any services he provided to the Clan, we need not and do not resolve the question of whether his involvement with obtaining land for the Clan (or, for that matter, participation in any other Clan activities) makes him a senior strong member of the Clan.

[19] At oral argument, Andres asserted that he indeed made this argument in his opposition to ASPLA's motion for summary judgment. We have diligently examined the record below, but found no support for this assertion. Because the argument was not made either below or in Appellant's opening brief, it is waived. *See Sugiyama v. Han*, 2020 Palau 16 ¶ 38.