Nakamura v. Isechal, 10 ROP 134 (2003)

TAKATARO NAKAMURA,
Appellant,

v.

ROBSON ISECHAL,
Appellee.

CIVIL APPEAL NO. 01-49
Civil Action No. 98-164

Supreme Court, Appellate Division
Republic of Palau

Argued: July 21, 2003
Decided: September 11, 2003

Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: Mark P. Doran

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.[1]

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MILLER, Justice:

This appeal arises from an action filed with the Trial Division by Takataro Nakamura ⊥135 to quiet title to a parcel of land known as Emel-Urung, identified as Tochi Daicho Lot No. 729 and located in Ngaraard State. The trial court denied Nakamura's action to quiet title, concluding that Appellee Robson Isechal is the rightful owner of Emel-Urung. We affirm.

BACKGROUND

At some point during the 1970s, Nakamura heard that people who had claims for land in Ngaraard needed to file those claims. Upon hearing this, he went to the Land Management Office in Koror where, with the assistance of employees in the office, he searched the Tochi Daicho records and obtained a list of properties registered under his name and under the name of his father, Ngirakebou. One of the properties registered in the Tochi Daicho under his father's name was Emel-Urung. Nakamura testified that the people at the Land Management Office then directed him to take the document listing the properties he was claiming to Micronesian Legal

[1]The Honorable ALEX R. MUNSON, Chief Judge, United States District Court for the Northern Mariana Islands, sitting by designation.

Services Corporation ("MLSC"), which he did. While at MLSC, a registration statement was prepared for Nakamura, and he was told to take the registration statement and the list of properties to the District Court. The registration statement was signed by Nakamura and notarized by the Clerk of Courts on September 9, 1975. However, it was never filed with the Land Commission.

On July 22, 1980, the Ngaraard Land Registration Team conducted a formal hearing concerning the ownership of Emel-Urung. Two claimants entered appearances at the hearing, Isechal Elewel and Meriang Blesam. Elewel testified that the person registered as the owner of Emel-Urung in the Tochi Daicho, Ngirakebou, was the younger brother of his father and that ownership of the parcel was not distributed at Ngirakebou's eldecheduch nor did Ngirakebou distribute the property by will. Elewel claimed that he was entitled to the land because Ngirakebou did not have any remaining close relatives alive at the time of the determination of ownership hearing. Elewel observed that Ngirakebou had an adopted son, Takataro, but asserted that this relationship was irrelevant: Ngirakebou had acquired the land through Tublai Clan, but Takataro had become Ngirakebou's adopted child through the "House of Ichetii." Elewel informed the team that he had agreed with the only other claimant to the land, Meriang Blesam, to divide the parcel into two separate parcels and grant ownership of one of the parcels to Blesam's son Stevano Meriang. Blesam substantiated this agreement. In its opinion issued after the hearing, the Ngaraard Land Registration Team stated that no other person, lineage, or clan appeared to contest the claims of the parties and recommended that a determination of ownership be issued to Elewel and Stevano.

Nakamura did not receive personal notice of the hearing and did not attend. He testified that he was informed by his daughter, who worked at the Office of the Land Commission, that a determination hearing with regard to Emel-Urung had been held. He immediately went to Koror, where he located Elewel, and together they went to the Land Commission. Nakamura testified that upon their arrival at the office, Ichiro Dingilius, the Senior Land Commissioner, scolded him for failing to attend the determination of ownership hearing. Itelbang Luii, another Land Commissioner, told Nakamura that there would be notice of another hearing held with regard to ownership of the land. At trial, Commissioner Dingilius confirmed Nakamura's testimony, recalling that Commissioner Luii suggested to him that the ownership proceedings be held again. ⊥136 However, no subsequent hearing was ever held.

An Adjudication of Ownership stating the conclusion of the land registration team that the property was owned by Elewel and Meriang was signed by Commissioners Dingilius and Luii on February 4, 1981. The Land Commission subsequently issued determinations of ownership for Emel-Urung to Elewel and Meriang on June 1, 1981. These determinations were also signed by Dingilius and Luii.[2]

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[2]On October 20, 1981, Palau Public Lands Authority filed a Notice of Appeal with the Trial Division of the Trust Territory High Court contesting both determinations of ownership. The case was subsequently transferred to the Supreme Court of the Republic of Palau, Trial Division. *See* Palau Const. art. XV, § 8. PPLA's appeals remained inactive until April 8, 1984, when Nakamura filed a Motion to Intervene. In April 1994, Robson moved to intervene or to be substituted as appellee in place of his father Elewel, who had died. Robson claimed that he was given the land at Elewel's eldecheduch. The Trial Division

Nakamura filed a complaint with the Trial Division on May 18, 1998, seeking to quiet title to Emel-Urung. Nakamura contended that the determinations of ownership issued in favor of Elewel and Meriang were invalid because the Land Commission failed to provide him notice of its 1980 determination of ownership hearing. The Trial Division tried the case and subsequently issued its Findings of Fact and Conclusions of Law. The trial court found that Nakamura failed to present sufficient evidence to prove that the Land Commission did not comply with the applicable statutory procedures. The court stated that because Nakamura failed to file a claim with the Land Commission and was not shown to be an interested party, he was not entitled to personal notice of the hearing. The court also concluded that Nakamura's claim was barred by laches. Nakamura appeals.

STANDARD OF REVIEW

A certificate of title "shall be conclusive upon all persons who have had notice of the proceedings and all those claiming under them." 67 TTC § 117. In other words, an unappealed determination of ownership issued by the Land Commission precludes a later claim to the subject property. *Secharmidal v. Techemding Clan* , 6 ROP Intrm. 245, 246 (1997). However, a person may collaterally attack a determination of ownership rendered by the Land Commission on the grounds that statutory or constitutional procedural requirements were not complied with, but that person has the burden of proving non-compliance by clear and convincing evidence. *Ucherremasech v. Wong*, 5 ROP Intrm. 142, 147 (1995).

DISCUSSION

Nakamura's central contention is that the Ngaraard Land Registration Team failed to make an adequate preliminary inquiry. He claims that such an inquiry would have shown him to be an interested party and, as such, entitled to personal notice of the determination-of-ownership hearing. Nakamura does not dispute the fact that he neglected to file a claim for Emel-Urung with the Land Commission, but he maintains that ⊥137 the evidence established that he filed a claim with the High Court. Nakamura contends that the officer who conducted the preliminary inquiry should have searched the High Court files for claims. Nakamura also insists that the land registration team should have served notice of the impending determination-of-ownership hearing on any known children of Ngirakebou, the person listed as the owner of land in the Tochi Daicho. Nakamura observes that Melaitau Tebei, a member of the Ngaraard Land Registration Team, testified that he was aware that Nakamura was Ngirakebou's adopted son. Nakamura also notes that Elewel testified at the 1980 determination-of-ownership hearing that Nakamura was Ngirakebou's adopted son.

Before commencing a hearing on a claim, the land registration team was required to

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remanded the appeals to the LCHO to make a determination of the heir or heirs of Elewel. The LCHO determined that Robson was Elewel's heir and entitled to his estate, including his ownership of the property. As a result, PPLA and Robson stipulated to Robson's substitution in place of his father, appellee Elewel, in PPLA's appeal. On April 19, 1995, the parties stipulated to a dismissal of PPLA's appeal without prejudice.

provide notice of the impending hearing by posting notice on the land thirty days in advance of the hearing and by serving notice of the hearing upon "all parties shown by the preliminary inquiry to be interested." 67 TTC § 110. The issue raised by Nakamura is whether this preliminary inquiry should have shown him to be an "interested party" entitled to personal notice.

The preliminary inquiry is described by 67 TTC § 107(1)(a), which provides that the land registration team must "institute a preliminary inquiry regarding the title to all lands claimed by individuals, families, lineages, clans, or otherwise, within the area for which it is responsible and, if satisfied that such claims are well founded, shall record the same for hearing." There are no cases discussing the precise requirements of a preliminary inquiry, so we turn directly to the words of the statute.

The preliminary inquiry is "regarding title to all lands claimed." Thus, someone must first file a claim of ownership for a particular parcel of land before a preliminary inquiry begins. Once a claim has been filed, the land registration team must then make a preliminary inquiry "regarding title" to the property claimed. The extent of the preliminary inquiry into title is best understood with reference to its purpose, which is to determine whether the claim actually filed is "well founded." If, after preliminary inquiry, the registration team was satisfied that the claim was well founded, it was required to record the claim for a determination-of-ownership hearing. On its face, the statute does not require that the land registration team conduct a free-ranging investigation with the intent of discovering all the possible claimants for a piece of property.[3]

Nakamura was entitled to personal notice of the determination of ownership hearing only if such a preliminary inquiry would have shown him to be an "interested party." 67 TTC § 110(1)(c). Significantly, the word "party" is a legal term of art. The term "party" does not signify any person or entity who might conceivably have an interest in the outcome of an action. Black's Law Dictionary 775 (6th ed. 1991) ("[O]thers who may be affected by the suit, indirectly or consequently, are persons interested but not parties."). Rather, a party is a person or entity who has expressed an interest in the outcome of an action, i.e., someone who has filed a claim. *Id.*; *cf. Secharmidal v. Techemding* ⊥*138 Clan*, 6 ROP Intrm. 245, 249 (1997) (holding that person who did not file a claim was not entitled to notice of issuance of determination of ownership as an "interested party" under 67 TTC § 114).

Interpreting the two statutes together, an "interested party" entitled to service of personal notice is a person, family, lineage, or clan who has actually filed a claim and whose claim the land registration team concluded merited an evidentiary hearing. Nakamura's failure to file a claim with the Land Commission is fatal to his contention that he was entitled to personal notice of the determination of ownership hearing. *See Ucherremasech*, 5 ROP Intrm. at 145 (observing that while there was evidence from which LCHO might have surmised that appellant might have a claim to property, LCHO was not required to provide personal notice to unknown claimant).

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[3]Commissioner Dingilius opined both that the land registration team had the authority and obligation to actively search for claimants and, on the other hand, that claimants were responsible for filing claims. Dingilius's testimony is equivocal. More important, the question of the extent of the preliminary inquiry required by the statute is purely a matter of statutory interpretation: a legal question, not a factual one.

Nakamura also maintains that the Land Commission promised to reopen the matter and hold another hearing, but that the hearing was never held. Nakamura contends that this promise happened shortly after the land registration hearing. However, despite the alleged promise of another hearing, Commissioners Dingilius and Luii signed both the Adjudication and the Determination of Ownership in favor of Elewel and Meriang without ever holding any such hearing. This could indicate that the promise was never made, or that it was made after the Determination of Ownership was already signed, or that the commissioners simply forgot about it. More important, even if the Land Commission did in fact promise Nakamura a subsequent hearing before the Determination of Ownership was signed, Nakamura did not provide the trial court or this Court with any support for the proposition that the Land Commission had the authority to reopen an adjudication to allow the airing of claims that had not been timely filed with the land registration team.

Nakamura failed to carry his burden of proving by clear and convincing evidence that the Land Commission did not comply with the applicable statutory procedural requirements. *See Ucherremasech*, 5 ROP Intrm. at 147. Thus, the trial court's denial of his collateral attack must be affirmed.