

Azuma v. Odilang Clan, 10 ROP 16 (2002)
JOSE SINGENARI AZUMA, YASKO RAMARUI, and AZUMA
DEFENDANTS
Appellants,

v.

ODILANG CLAN and UNITED MICRONESIA
DEVELOPMENT ASSOCIATION, INC.
Appellees.

CIVIL APPEAL NO. 02-04
Civil Action No. 00-170

Supreme Court, Appellate Division
Republic of Palau

Argued: September 22, 2002
Decided: November 20, 2002

Counsel for Appellants: Clara Kalscheur

Counsel for Odilang Clan: Johnson Toribiong

Counsel for UMDA: Kevin N. Kirk

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice.

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

MICHELSEN, Justice:

This appeal is the most recent round of litigation arising out of a lease of property to United Micronesian Development Association, Inc. (UMDA). The core issue is whether judicial determinations in prior cases about the relative strength of Odilang Clan members are binding upon Jose Azuma, Ichiro Rechebei, Anna Deltang, Naruo Ngerngemius, Moses Azuma, and Yasko Ramarui (hereinafter, “Appellants”¹). The Trial Division granted summary judgment for Odilang Clan and UMDA (collectively, “Appellees”) holding that Appellants and others were precluded from challenging the lease as a result of collateral estoppel principles. We affirm, because persons who are represented by a party to an action are bound by the resulting judgment as though **L17** they themselves were parties.

¹Initially, Ingeiaol Clan also filed a notice of appeal in this matter. That appeal was dismissed for failure to prosecute.

BACKGROUND

Because the applicability of collateral estoppel (i.e., issue preclusion) is at issue in this appeal, a discussion of relevant prior lawsuits is warranted. In *Gibbons v. Rengechel*, 5 ROP Intrm. 181 (1996) (designated by the trial court and the parties here as *Odilang II*), this Court affirmed the Trial Division's judgment that decided, among other issues, who were the senior strong members of Odilang Clan. Emiliano Ingereklii and Rimat Ngiramechelbang were parties in that case, and claimed to be strong members of Odilang Clan. The Trial Division found that they were *mechut el yars* of Odilang Clan, but that they had not presented any evidence regarding membership strength. In *Ngiramechelbang v. Katosang*, 8 ROP Intrm. 333 (Tr. Div. 1999) (designated below and hereinafter as *Rimat*), Rimat Ngiramechelbang sought a declaratory judgment that a prior lease between Odilang Clan and UMDA concerning a property called Desomel² was invalid. She asserted that she was a strong member of Odilang Clan because she was a descendant of a woman named Dirrengewis. After trial, the Trial Division found that Rimat—under both issue preclusion principles and the facts—failed to show she was authorized to participate in the disposition of Odilang Clan property. The court specifically determined that according to the expert testimony presented, the descendants of Dirrengewis were *mechut el yars*³ of Odilang Clan, but not strong members. *Id.* at 334-36.

In order to improve the development and marketability potential of Desomel, Odilang Clan, specifically its titleholders Odilang Becheserrak Rengechel, Rechebei Singichi Katosang, and, in light of the death of Imeong Etibek, Joe Rengechel, rescinded all previous lease agreements with UMDA and entered into a new lease for Desomel. As part of the consideration for this lease, Odilang Clan agreed to institute this lawsuit to confirm the authority of the Clan's signatories to execute the lease and to resolve any remaining potential claims as to its legal status. Appellants and others submitted claims in response.

Appellees timely filed a motion for summary judgment. On the day of the scheduled hearing, Appellants sought a continuance. Appellees consented to a two-week continuance, and in return Appellants agreed to waive, *inter alia*, “any and all objections . . . related to . . . the scheduling of the hearing on their claims.”

At the subsequent hearing, several Appellants testified and presented evidence of Palauan custom to the effect that: (1) the labels *ochell* and *ullechel* did not apply to Odilang Clan because the original members had died out; (2) Appellants were *mechut el yars* of Odilang Clan; (3) they were blood descendants of Dirrengewis; and (4) they were therefore stronger than other members of Odilang Clan, who had no blood ties to **118** Dirrengewis. Upon cross examination, Appellants essentially conceded that Ingereklii and Rimat had represented their interests in *Odilang II* and *Rimat* because they had been presenting claims on behalf of the descendants of Dirrengewis. Specifically, Ichiro Rechebei testified that Ingereklii and Rimat were the oldest

²This property can be more fully described as Cadastral Lot No. 013 A 02; land containing an area of 15.12 hectares as shown on the Bureau of Lands and Survey Cadastral Plat No. 013 A 00, dated August 6, 1973.

³In *Rimat*, expert testimony defined *mechut el yars* as “original settlers in one clan who left to go to another clan and take over the titles and authority in the new clan.” *Rimat*, 8 ROP Intrm. at 335.

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and strongest members of the lineage of Dirrengewis, and that they therefore represented the interests of that lineage, i.e., that of Appellants. Rechebei added that Ingereklii and Rimat were the ones who were responsible for prosecuting the lawsuits on behalf of the lineage, and that they did not need to ask his permission to represent his interest because he “didn’t have any responsibility for that.” Likewise, Anna Deltang testified that because Rimat was older, “she doesn’t have to ask my permission to represent my interest” as to lawsuits concerning the strength of the lineage. She specifically stated that Rimat represented the interest of all descendants of Dirrengewis (including Appellants) in *Rimat*. Jose Azuma testified that under the rules and understandings of his family (as opposed to Palauan custom generally), Rimat and Ingereklii were representing the other members of the lineage of Dirrengewis in *Odilang II* and *Rimat*.

Appellees Odilang Clan and UMDA argued that on these facts issue preclusion prevented Appellants from relitigating their status in Odilang Clan as descendants of Dirrengewis. The trial court agreed. The court cited the Restatement (Second) of Judgments § 31(2) (1982) for the proposition that 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.” The court found that § 31(2) was applicable, because the “key issue” in both the prior cases and the instant case was the determination of the status of various individuals within Odilang Clan. The court concluded that Appellants’ “relation and connection to Odilang Clan has been established in the earlier cases, and, as a matter of law, they are bound thereby.” The court entered summary judgment accordingly.

STANDARD OF REVIEW ON APPEAL

Our review of appeals of summary judgments is plenary. *Akiwo v. ROP*, 6 ROP Intrm. 105, 106 (1997). All evidence and inferences are viewed in the light most favorable to the nonmoving party, and we examine *de novo* the Trial Division’s decision that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law. *Dalton v. Borja*, 8 ROP Intrm. 302, 303 (2001); *Ngerketiit Lineage v. Tmetuchl*, 8 ROP Intrm. 122, 123 (2000).

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ANALYSIS

A number of issues raised by Appellants do not require extended discussion. Appellants contend that the Trial Division's opinion overstated the degree to which they denied knowing about the lease at issue or participating in *Rimat* and *Odilang II*. We see no reversible error here, because these issues were not material to the conclusion reached by the Trial Division.

Appellants also contend that the court abused its discretion in refusing to grant an additional extension prior to the hearing, but Appellants did not ask for an extension and, given their express waiver on this very point, we find no error.

They also assert that the trial court erred in (1) applying issue preclusion to them, and (2) finding that they were not strong members of Odilang Clan. Because the court ¶19 based its finding that Appellants were not strong members on issue preclusion principles, Appellants essentially raise one issue: the applicability of issue preclusion to these facts.

Appellants disagree with the trial court's application of § 31 of the Restatement (Second) of Judgments, arguing that they should not be bound by the prior status determinations under this section because their individual rights were bound up in the those determinations, and because they were not afforded an opportunity to participate. Even if that were so, we believe the trial court still should be affirmed. See *Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219, 222 (1992) (holding that appellate court may affirm trial court even though its reasoning differs).

Appellees argued below and on appeal that Ingereklii and Rimat represented Appellants in *Odilang II* and *Rimat* because they were presenting claims on behalf of all of the descendants of Dirrengewis. We agree. The general rule is that “[a] person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party.” Restatement (Second) of Judgments § 41 (1982).⁴ Among other things, a person is represented by a party who is: “(a) [t]he trustee of an estate or interest of which the person is a beneficiary; or (b) [i]nvested by the person with authority to represent him in an action.” *Id.* Further, “[f]iduciary authority and responsibility for management of interests of others may repose in relationships other than a trust.” *Id.* cmt (a). For example, parents may represent their minor children, and managing officers of unincorporated associations may represent those associations concerning the interests for which they are responsible. *Id.* These principles are consistent with the usual and long-accepted practice in Palau that title bearers and senior strong members defend the interests of a clan or lineage. In such cases, the younger members of the clan or lineage will benefit from any favorable results, but they are also bound by less successful efforts. We apply that rule here because Appellants acknowledge that Ingereklii and Rimat presented claims on behalf of the descendants of Dirrengewis.

⁴For the exceptions to that general rule, see § 42 of that Restatement.

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CONCLUSION

Appellants were bound by the judgments in *Odilang II* and *Rimat* with respect to their strength in Odilang Clan and, consequently, cannot relitigate the issue that their predecessors in interest have already argued for the descendants of Dirrengewis. We affirm the judgment of the trial court.