

Espong Lineage v. Tmetuchl Family Trust, 10 ROP 55 (2003)

**ESPONG LINEAGE,
Appellant,**

v.

**TMETUCHL FAMILY TRUST,
Appellee.**

CIVIL APPEAL NO. 01-46
Civil Action No. 342-96

Supreme Court, Appellate Division
Republic of Palau

Argued: December 9, 2002

Decided: January 22, 2003

Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
KATHLEEN M. SALII, Associate Justice.

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Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN,
Associate Justice, presiding.

SALII, Justice:

Appellant Espong Lineage (the Lineage) appeals from the judgment of the Trial Division
in favor of Appellee Tmetuchl Family Trust (the Trust). We affirm.

BACKGROUND

At trial, the Trust argued that its predecessor in interest, Elibosang Eungel, received land known as Ngediull or Obokelou from his father Tmewang, Ngiraked of Tmeleu Clan. Espong is a lineage of Ngertelwang Clan. Despite Tmewang's position as Ngiraked of Tmeleu Clan, both the Lineage and the Trust agreed that at the very least the Lineage permitted him to administer the property during the Japanese administration. Moreover, both parties also agreed that the Airai Tochi Daicho listed Tmewang's name with the property. The Trust asserted that the Airai Tochi Daicho listed Tmewang as the individual owner, whereas the Lineage contended that Tmewang was listed in a representative capacity only.

In 1967, Tmewang engaged in a purported transfer of the property to Eungel by execution of a Deed of Transfer in a signing ceremony that was witnessed by ten rubaks of Airai. The

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rubaks signed a document, witnessed by an employee from the office of the Clerk of Courts, which stated that they had witnessed the ceremony and were aware of the contents of the Deed of Transfer drawn up by Tmewang. The document the rubaks signed was in English and whether it was ever read to them was a contested point at trial.

The trial court found that because the transfer took place before the enactment of the Statute of Frauds, a public signing ceremony was a reasonable way for Tmewang to transfer the land in order to avoid future disputes. The trial court further determined that because Tmewang was Ngiraked he would have known whether he was in fact listed in the Tochi Daicho as the individual owner or as a representative. The Trial Division concluded that in light of the public nature of the transfer, it was more likely than not that Tmewang owned the property he purported to convey to his son. Accordingly, the trial court found in favor of the Trust.

DISCUSSION

The Lineage makes two arguments on appeal. First, it asserts that the trial court's inference that the property was owned by Tmewang was a "clear and definite mistake" because the Trust presented no evidence of how the land became the individual property of Tmewang. Second, the Lineage disputes the trial court's finding that the signing ceremony was, in fact, "public." Because both of these issues are attacks on the Trial Division's fact finding, we review under the clear error standard. *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 158 (2000) (citing *Haruo v. Thomas*, 6 ROP Intrm. 48, 49 (1997)).

We reject the Lineage's argument that in the absence of any evidence of how the property was transferred from the Lineage to Tmewang, the trial court committed clear error by finding that Tmewang owned the disputed property. To be sure the trial court relied entirely on circumstantial evidence, but circumstantial evidence is "of no greater or lesser import than direct evidence." *ROP v. Sakuma*, 2 ROP Intrm. 23, 31 (1990) (quoting *ROP v. Kikuo*, 1 ROP Intrm. 254, 255(1985)). The trial court as fact finder was entitled to **157** draw inferences from the circumstances surrounding Tmewang's transfer of the property to Eungel. In the absence of a surviving copy of the Airai Tochi Daicho, the trial court relied on the context of the purported transfer to infer that Tmewang was listed as the individual owner rather than as a representative of the Lineage. Although a different inference could have been drawn, the trial court's conclusion was supported by relevant evidence and a reasonable trier of fact could have reached the same conclusion. *See Omenged v. United Micronesia Dev. Auth.*, 8 ROP Intrm. 232, 233 (2000) (quoting *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994)). The Lineage does marshal evidence to support its view of the facts, but it does not successfully argue that it has put forth the only permissible view of the facts. Thus, the trial court's conclusion was not clearly erroneous. *See id.* (quoting *Ngiramos v. Dilubech*, 6 ROP Intrm. 264, 266 (1997)).

As to the "public" nature of the signing ceremony, the Lineage argues that a ceremony witnessed by rubaks who had no connection to the land is not public. It contends that for the ceremony to be public, Tmewang should have included family members who may have had an interest in the land and who would have been spurred to object to his attempt to transfer lineage land. The Lineage made this argument before the trial court, and its reassertion of the argument

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on appeal urges this Court to do precisely what it is prohibited from doing, that is, to “reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.” *Id.* (quoting *Remoket v. Omrekongel*, 5 ROP Intrm. 225, 227 (1996)). The trial court could have drawn the conclusion urged by the Lineage, but its finding that the ceremony was public was not unreasonable, and thus is not clear error.

CONCLUSION

The trial court noted that this was a difficult case and a close call. We agree. The trial court was faced with deciding either that Tmewang’s method of transfer was some evidence of ownership or that in light of the lack of direct evidence of a transfer from the Lineage to Tmewang that Tmewang never had an interest to convey. It chose the former and we do not have a firm and definite belief that it committed a mistake in so doing. For the foregoing reasons we affirm the trial court’s judgment in favor of the Trust.