

*Rechetuau v. Iwet Clan*, 10 ROP 58 (2003)

**MERII RECHETUAU,  
Appellant,**

**v.**

**IWET CLAN,  
Appellee.**

CIVIL APPEAL NO. 02-23  
LC/H 00-368

Supreme Court, Appellate Division  
Republic of Palau

Argued: December 9, 2002  
Decided: February 19, 2003

Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: No appearance

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENGEBAU SENIOR, Associate Judge, presiding.

MILLER, Justice:

This appeal arises from a determination of ownership that was issued following a purported mediated settlement. On a previous appeal, we granted Merii Rechetuau's motion for an order remanding the case to the Land Court. On remand, the Land Court concluded that the settlement agreement signed by Rechetuau was not deficient and rejected her request for an evidentiary hearing on her claim that the settlement had been induced by a misrepresentation of the mediator. For the reasons set forth below, we affirm the decision of the Land Court in part, reverse in part, and remand for further proceedings.

### **BACKGROUND**

Rechetuau filed a claim with the Land Court to land described as Lot No. 32-3042, known as Ngesaul, and located in Ngetbong Hamlet, Ngardmau State. Her claim, along with others, was submitted to mandatory monumentation and mediation as required by 35 PNC § 1307. Rechetuau subsequently signed a Settlement Agreement and Stipulation for Entry of Judgment ("Settlement Agreement"). On the basis of this agreement, the Land Court issued a Determination of Ownership.

¶59 Rechetuau appealed from the Determination of Ownership to the Supreme Court, Appellate Division, raising two issues. First, she claimed that the Settlement Agreement was invalid because she had not acknowledged it under oath as required by Rule 17 of the Rules and Regulations of the Land Court (hereinafter “ROP R. & Reg. Ld. Ct.”). Second, she claimed that it was invalid because she signed it on the basis of the mediator’s false assurance that she would have an opportunity to have a hearing on her claim. Rechetuau subsequently moved this Court to remand the matter to the Land Court to allow the Land Court to conduct an evidentiary hearing on her claim of misrepresentation. We granted Rechetuau’s motion, stating that the mediator’s alleged assurance “raises factual issues that cannot be resolved on the current record.” We also stated that whether the Settlement Agreement had to be acknowledged “involves the interpretation of a potentially ambiguous Land Court regulation that could have a wider impact on its ongoing mediation program.” Thus, we determined that the better course was to defer ruling on it until the Land Court had an opportunity to address it.

On remand, the Land Court held that pursuant to ROP R. & Reg. Ld. Ct. 13 settlement agreements reached pursuant to monumentation and mediation sessions need not be acknowledged. The Land Court also refused to hold an evidentiary hearing concerning the mediator’s alleged misrepresentations. The court held that by signing the agreement, Rechetuau certified that she was not relying on any statements that did not appear in the document and that she understood that she was giving up her right to have her claim determined by a hearing before the court. Rechetuau appeals.

### STANDARD OF REVIEW

Whether the Rules and Regulations of the Land Court require that settlement agreements be acknowledged under oath is a question of law, as is the question of whether Rechetuau is entitled to an evidentiary hearing on her misrepresentation claim. The Appellate Division reviews questions of law *de novo*. *Lakobong v. Anastacio*, 6 ROP Intrm. 178, 180 (1997).

### DISCUSSION

#### A. Acknowledgment

Rechetuau argues that ROP R. & Reg. Ld. Ct. 17 requires that, in order for her Settlement Agreement to be valid, it must be acknowledged under oath.<sup>1</sup> Rechetuau urges ¶60 the

---

<sup>1</sup>Rule 17 provides:

Where parties to any claim agree to a settlement or compromise, the particulars shall be recorded and acknowledged under oath by the parties, and shall have the same force and effect as a decision by the Land Court.

Where the only claimants to land which has already been surveyed have resolved their claims between themselves, the Land Court shall promptly issue a determination of ownership in accordance with the agreement. Such agreement must be in writing and must be signed and subscribed to by all claimants. However, in no event may the Land

*Rechetuau v. Iwet Clan*, 10 ROP 58 (2003)

Appellate Division to adopt a two-part application of Rule 17. She contends that the first paragraph of Rule 17, which requires acknowledgments, should apply in those situations when a mediator is involved in initiating and reaching a settlement agreement between claimants. Rechetuau claims that requiring an acknowledgment in such situations protects parties from potential misunderstandings when mediators are used to reach agreements and protects parties from mediators who may have the incentive to push for agreements that the parties may otherwise be disinclined to reach. Rechetuau contends that when land disputes are resolved informally between the parties and on their own initiative the second paragraph of Rule 17 should apply. In these situations, there is no need for an acknowledgment because of the informal nature of the agreement. Rechetuau asserts that her construction of Rule 17 is supported by 35 PNC § 1304(c),<sup>2</sup> which essentially tracks the language of the second paragraph of Rule 17. Rechetuau maintains that this provision was enacted to encourage people to resolve their land disputes informally and without third party interference.

The Land Court determined that, because the Settlement Agreement was reached through a mandatory monumentation and mediation session and completed on the Land Court's settlement form, Rule 13 governed. The Court observed that Rule 13 does not require settlement agreements be acknowledged. Thus, it concluded that Rechetuau's Settlement Agreement was valid even though it was not acknowledged. We agree.

Rule 13 expressly governs mandatory mediation and monumentation sessions, not Rule 17. Rule 13 provides that if parties to mandatory monumentation and mediation sessions wish to reach a settlement agreement, "the mediator shall complete the Settlement Form prepared by the Senior Judge and return it to the Land Court prior to the scheduled hearing." The "Settlement Form" referred to in Rule 13 is required by 35 PNC § 1307(e). This statute provides that "[w]ithin 15 days after his appointment, the Senior Judge shall prepare a Settlement Form that may be used by claimants who wish to settle their disputes." The language of Rule 13 and § 1307(e) is plain: settlement agreements reached through mandatory monumentation and mediation sessions must be on a settlement form prepared by the Senior Judge of the Land Court and completed by the mediator. Neither provision requires that the settlement form be acknowledged. To accept Rechetuau's argument, therefore, would require us to declare that the settlement form prepared by the Senior Judge in compliance with the statute and rule was nevertheless invalid. We see no basis for doing so. As the Land Court observed, "[a] principal function of an acknowledgment is to entitle an instrument to be recorded; the acknowledgment furnishes formal proof of the authenticity of the execution of the acknowledged instrument when it is presented **L61** for recording." 1 Am. Jur. 2d *Acknowledgment* § 73 (1994). However, settlement forms are not recorded; they are filed with the Land Court which then issues a

---

Court accept such an agreement unless the deadline for filing claims has elapsed, and proper notice has been given as provided for in the Act.

<sup>2</sup>35 PNC § 1304(c) provides:

Where the only claimants to land which has already been surveyed have resolved between themselves their claims, and proper notice has been given as provided in section 1308, the Land Court shall promptly issue a determination of ownership to those claimants in accordance with the agreement(s) between them. The Land Court shall give priority to matters in which the claimants have resolved their claims between themselves.

*Rechetuau v. Iwet Clan*, 10 ROP 58 (2003)

determination of ownership in accordance with the agreement. There is no question of authenticity in this case and, notwithstanding the instant dispute, we believe that such issues are unlikely to arise in the context of mediated settlements. We therefore affirm the Land Court's conclusion that settlement agreements reached on its settlement form need not be acknowledged.

B. The Mediator's Alleged Assurance

Rechetuau's second claim of error arises from her allegation that the mediator assured her that she would have the opportunity to present her objections to the Settlement Agreement at a hearing. The Land Court concluded that by signing the Settlement Agreement, Rechetuau certified that she was not relying on any statements that did not appear in the document and she understood that she was giving up the right to have her claim determined by a hearing before the Land Court. The court concluded that Rechetuau was estopped from contending that the Settlement Agreement was invalid on the basis of the mediator's alleged assurances and denied her request for an evidentiary hearing on this issue.

On appeal, Rechetuau claims that by refusing to hold an evidentiary hearing, the Land Court erroneously deviated from the Appellate Division's mandate on remand. We disagree. Our order did not require the Land Court to hold an unnecessary evidentiary hearing. If the Land Court determined that Rechetuau could not contest the validity of the Settlement Agreement based on an alleged misrepresentation as a matter of law, which it did, there would be no reason to require it to hold an evidentiary hearing. The actual issue presented to us on this appeal is whether the Land Court's conclusion that a hearing was unnecessary is correct.

Two provisions of the Settlement Agreement are salient in this regard. First, the agreement provides that "[e]ach undersigned claimant further acknowledges that there have been no statements, promises or agreements made or relied upon as an inducement for entering into this agreement which do not appear in this document." Second, the agreement expressly provides that "[b]y entering into this agreement, each undersigned claimant understand[s] that he/she is giving up the right to have his/her claim to this real property determined by hearing before the Land Court."

The terms of the Settlement Agreement subscribed to by Rechetuau contradict her allegation that she executed it in reliance upon the assurance that her claim would still be heard by the Land Court. However, that does not end our analysis. Under the Restatement (Second) of Contracts, applicable here pursuant to 1 PNC § 303, a misrepresentation that contradicts the express terms of an underlying agreement may serve as the basis for avoiding the agreement. Restatement (Second) of Contracts §§ 163 and 164 (1979).<sup>3</sup> While the language of the **162** contract is obviously pertinent to this determination, other facts—e.g., Rechetuau's ability to read and understand English—may have a bearing on whether Rechetuau knew or "had a reasonable

---

<sup>3</sup>Restatement (Second) of Contracts § 163 (1979) provides:

If a misrepresentation as to the character or terms of a proposed contract induces conduct that appears to be a manifestation of assent by one who neither knows or has reason to know of the character or essential terms of the proposed contract, [that person's]

*Rechetuau v. Iwet Clan*, 10 ROP 58 (2003)

opportunity to know the character or essential terms of the agreement” or was “justified in relying” on the alleged misrepresentation.<sup>4</sup> Accordingly, a factual hearing is necessary to allow Rechetuau the opportunity to attempt to establish whether the misrepresentation occurred and, if it did, whether it was sufficient to render the agreement void or voidable.

### **CONCLUSION**

For the foregoing reasons, the decision of the Land Court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

---

conduct is not effective as a manifestation of assent.

Section 164(2) provides:

If a party’s manifestation of assent is induced by either a fraudulent or material misrepresentation by one who is not a party to the transaction upon which the recipient is justified in relying, the contract is voidable by the recipient, unless the other party to the transaction in good faith and without reason to know of the misrepresentation either gives value or relies materially on the transaction.

<sup>4</sup>The settlement agreement signed by Rechetuau is written in English, not Palauan.