

Baulbei Clan v. Melekeok State Pub. Lands Auth., 11 ROP 117 (2004)

**BAULBEI CLAN,
Appellant,**

v.

**MELEKEOK STATE PUBLIC
LANDS AUTHORITY,
Appellee.**

CIVIL APPEAL NO. 03-030
Civil Action No. 98-174

Supreme Court, Appellate Division
Republic of Palau

Decided: April 5, 2004¹

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Matthew Johnson

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

¶118

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

This appeal concerns the Trial Division’s judgment that Baulbei Clan’s (“the Clan”) ownership of the land known as Bairebelau remains subject to the Land Use Agreement entered into between the Clan and the Trust Territory Government in 1970. The Clan argues that the Land Use Agreement is void because it was superseded and subsumed by a subsequent settlement with the Trust Territory Government and the Trial Division’s judgment in this case that the Clan is the owner of the land. Further, the Clan contends that it should take ownership of the land free of its obligations under the Land Use Agreement pursuant to Article XIII, Section 10 of the Palau Constitution, which requires that public lands that were wrongfully taken by previous occupying powers be returned to the original owners.² For the reasons set forth

¹The Court has determined that oral argument would not materially assist in the resolution of this appeal. See ROP R. App. Pro. 34(a).

²“The national government shall . . . provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.” Palau Const. art. XIII, § 10.

below, we affirm.

BACKGROUND

The Clan was the traditional owner of a parcel of land known as Bairebelau that is located in Ngermelech Hamlet, Melekeok State and identified as Tochi Daicho Lot No. 390 and Cadastral Lot No. 005 C 08 (“the land”). The parties agree that the Clan is entitled to the return of the land under Article XIII, Section 10 of the Palau Constitution, as implemented by 35 PNC § 1304(b), because it was taken by the Japanese Government by force and without compensation or adequate consideration. However, the parties disagree as to whether the Clan’s ownership of the land remains subject to the Land Use Agreement the Clan entered into with the Trust Territory Government on February 3, 1970.

The Land Use Agreement (“agreement”) allows for the continued use of the land “for school and other public purposes as long as the needs exist” in consideration for the government supplying materials and constructing a school building on the site. Upon cessation of such use, the land was to revert to the land owners if title was “determined and vested” in a claimant other than the government. In 1975, the Clan and the Trust Territory Government litigated the issue of ownership in Civil Action No. 73-75. The case was settled in 1976 when the parties agreed to a stipulation, which provided that ownership would remain with the Trust Territory Government, but the land would revert to the Clan in the event that it was no longer used for “educational and schooling purposes.” Pursuant to the parties’ settlement agreement, a judgment was entered and a Certificate of Title was issued to the Trust Territory Government with a possibility of reverting to the Clan.

The issue of ownership was raised anew in 1988, when the Clan timely filed a claim with the Land Claims Hearing Office (“LCHO”) for the return of public land. It is unclear what, if any, proceedings were held in the LCHO or the Land Court, but the Clan filed its Complaint for the Return of Public Land in the Trial Division of this Court in May of 1998, and the parties filed cross-motions for summary judgment. The trial court concluded that the Clan was entitled to the ownership of the land, subject to the Land Use Agreement. It reasoned that because the defenses of *res judicata*, collateral estoppel, and waiver do not apply to claims for public lands pursuant to 35 PNC § 1304(b), neither the stipulation nor the judgment entered in Civil Action No. 73-75 barred the Clan’s claim of ownership. However, the trial court stated that Article XIII, Section 10 of the Palau Constitution and 35 PNC § 1304(b) do not negate all prior dealings regarding the use of public lands that are returned to their original owners. It concluded that while the Clan may be entitled to current ownership of the land, that ownership remains subject to the Clan’s obligations under the Land Use Agreement.

The Clan then filed a supplemental brief presenting two additional theories for the invalidation of the Land Use Agreement: (1) that the execution of the Land Use Agreement constituted an unlawful taking that should be undone by the operation of Article XIII, Section 10; and (2) that the Land Use Agreement was not supported by consideration. The trial court entered another Decision and Order reaffirming its prior decision. It held that there was no basis for characterizing the Land Use Agreement as a taking because the agreement was entered into

Baulbei Clan v. Melekeok State Pub. Lands Auth., 11 ROP 117 (2004)

voluntarily by the Clan, it involved land that was already owned by the Trust Territory, and it preserved the Clan's right to claim ownership to the land. The trial court acknowledged that it was possible that the agreement lacked consideration, because the Trust Territory Government was already under a general obligation to pay for the construction of schools. However, the court concluded that the Clan had made a voluntary choice to allow its land to be used for the community's benefit, and the court could see no basis for undoing that choice. In its Judgment, the trial court held that although the Clan is the owner of Lot No. 005 C 08 in Melekeok State, the Clan's ownership remains subject to the 1970 Land Use Agreement. The Clan has appealed that judgment.

STANDARD OF REVIEW

Trial court findings of fact are reviewed under a clearly erroneous standard. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Under this standard, if the trial court's findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Id.* The trial court's conclusions of law are reviewed *de novo*. *Id.*

ANALYSIS

On appeal, the Clan first argues that the 1976 stipulation and judgment superseded the Land Use Agreement, and the stipulation and judgment was superseded in turn by the Trial Division's judgment in this case that the Clan is the owner of the land. The Clan points out that the Land Use Agreement acknowledged that the Clan had an unsettled claim against the government for the land in dispute. The Clan then contends that the subsequent judgment in Civil Action No. 73-75 superseded or subsumed the Land Use Agreement because it resolved the conflicting claims of ownership in favor of the government, but provided the Clan with the possibility of reverter. The Clan concludes that the Trial Division's finding that the Clan owns the land in question extinguished the possibility of reverter, giving the Clan full ownership and use rights to the land.

We disagree with this reasoning. The 1120 Clan misconstrues the language in the Land Use Agreement to mean that, if title to the land was ever determined and vested in persons other than the government, the requirement that the land be used for educational purposes would immediately cease to exist. Under this reading, upon the Trial Division's judgment that the Clan owned the land, the Clan would have been entitled to both the immediate ownership and use of the land. However, courts look to the actual language used in a contract to discern the parties' intent. *Winterthur Swiss Ins. Co. v. Socio Micronesia, Inc.*, 8 ROP Intrm. 169, 172 (2000). The actual language of the Land Use Agreement indicates that the use of the land for educational purposes was to continue as long as such use was needed, regardless of who was ultimately determined to be the owner of the land. Further, rather than superseding or subsuming the Land Use Agreement, the stipulation and judgment confirmed the Clan's intent that the land continue to be used for educational purposes as long as necessary. It provided that title to the land would vest in the Clan "[i]n the event the property is no longer used or ceases to be used for educational

Baulbei Clan v. Melekeok State Pub. Lands Auth., 11 ROP 117 (2004)

and schooling purposes.” This language acknowledged the mutual agreement entered into between the Clan and the Trust Territory Government in 1970 that the land would continue to be used as a school as long as the need existed, regardless of who was eventually determined to be the owner of the land, and that only upon cessation of such use would the land revert to the land owners.

The Clan also argues that it should take ownership of the land free of its obligations under the Land Use Agreement because Article XIII, Section 10 requires that full use, possession, and ownership of public lands be returned to their original owners. The Clan cites to authority indicating that, at the time that it entered into the Land Use Agreement in 1970, the Trust Territory Government was reluctant to return lands that were wrongfully taken by the Japanese Government to their original owners. *See Sechesuch v. Trust Territory*, 2 TTR 458, 461-62 (Tr. Div. 1963); *Martin v. Trust Territory*, 1 TTR 481, 483-84 (Tr. Div. 1958); *Wasisang v. Trust Territory*, 1 TTR 14, 16 (Tr. Div. 1952). The Clan construes the stipulation and judgment in Civil Action No. 73-75 as a compromise by the Trust Territory Government because it felt morally obligated to provide for the return of the land at some future date, even though the Clan’s claim was not legally cognizable at that time. However, the Clan asserts that Article XIII, Section 10 of the Palau Constitution has fundamentally changed the legal context in which its claim should be considered. It argues that because the land was taken by the Japanese Government by force and without just compensation or adequate consideration, the land should be returned to the Clan as its rightful owner, free from any and all conditions that were imposed upon the land before Article XIII, Section 10 took effect. The Clan claims that the Article XIII, Section 10 requirement that the land is to be returned to its owners requires that the accompanying rights to possession and use of the land must be returned as well, meaning that it is entitled to the ownership of the land free from its obligations under the Land Use Agreement.

This argument is also without merit. The plain language of Article XIII, Section 10 demonstrates that it does not apply to the Land Use Agreement. A party claiming land under Article XIII, Section 10 must show that alien ownership of the land was acquired through some type of duress or fraud or was transferred for inadequate compensation. *Masang v. Ngirmang*, 9 ROP 125, 127 (2002); *Olngembang Lineage v. ROP*, 8 ROP Intrm. 197, 201 (2000). In this case, the Clan **L121** entered into the Land Use Agreement voluntarily, without any force, coercion, or fraud by the Trust Territory Government. The language of the agreement indicates that both parties believed that they stood to benefit from the continued use of the land for educational purposes, which means the agreement was supported by adequate consideration. Because the plain language of Article XIII, Section 10 does not pertain to agreements voluntarily entered into by the traditional owners regarding the use of their land, that section does not apply to the Land Use Agreement in this case.

In a related argument, the Clan appears to contend that it was forced or coerced into signing the agreement because, under the law as it stood in 1970, the Clan had no hope of regaining ownership or use of its land. However, if the Trust Territory Government was entitled to indefinite use of the land under the law in existence at the time, there was no reason for either party to enter into the Land Use Agreement at all unless they thought they had something to gain. Thus, in return for a new school building and recognition of its unsettled claim to the land, the

Baulbei Clan v. Melekeok State Pub. Lands Auth., 11 ROP 117 (2004)

Clan was willing to agree that the land would be used for educational purposes for as long as necessary. The Clan reaffirmed its intent that the land continue to be used for educational purposes when it entered into a similar agreement six years later in the stipulation and judgment. Where, as here, the Clan was represented by counsel in litigating its ownership rights to the land in 1976, and it voluntarily resolved that litigation by stipulated judgment, that stipulated judgment cannot be said to be a result of force, fraud, or duress, nor can it be characterized as supported by inadequate consideration, regardless of any earlier abuses by Japanese colonialists. Therefore, Article XIII, Section 10 does not apply to the Land Use Agreement because the terms of the agreement and the circumstances surrounding its execution indicate that the Clan entered into the agreement freely, knowingly, and voluntarily.

We see no reason to abrogate an agreement that the Clan voluntarily entered into over thirty years ago because of a subsequent change in the law. The ultimate inquiry in the process of contractual interpretation is the intent of the parties. *Gibbons v. ROP*, 1 ROP Intrm. 634, 644 (1989). The Clan's intent that the land continue to be used for educational purposes, no matter who the owner was eventually determined to be, is clearly ascertainable from the language of the Land Use Agreement. We agree with the Trial Division that the Clan has produced no legal or factual basis for a repudiation of the Land Use Agreement or a re-examination of the intent of the parties decades after that agreement was reached.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the Trial Division.