

Trolii v. Gibbons, 11 ROP 23 (2003)
NGIRUMERANG TROLII,
Appellant,

v.

FRANCISCO GIBBONS,
Appellee.

CIVIL APPEAL NO. 01-002
Civil Action No. 99-340

Supreme Court, Appellate Division
Republic of Palau

Argued: July 21, 2003
Decided: October 20, 2003

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Counsel for Appellant: Mark Doran

Counsel for Appellee: Carlos Salii

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

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

MICHELSEN, Justice:

This case began as a suit by Francisco Gibbons challenging the validity of a deed concerning Cadastral Lot Nos. 021 A 33 and 021 A 34 in Ngerkebesang. By that deed, Daniel Ngirchokebai, acting purportedly on behalf of Eluil Clan, transferred ownership of the lots to Western Caroline Trading Company (“WCTC”). Mr. Gibbons’s complaint alleged that he was a strong senior member of the Clan and that he had not consented to the transfer. Ngirumerang Trolii and Irachel Adelbai moved to intervene in the case. They agreed that not all strong senior members of the Clan (themselves, to be specific) had consented to the transfer, but disputed Mr. Gibbons’s claim to be a strong senior member.

The Trial Division entered judgment in favor of the Plaintiff and Intervenors and declared the deed void, on the basis that both Plaintiff Gibbons and Intervenors Trolii and Adelbai are senior strong members of Eluil Clan. The original Defendant, Ngirchokebai, has died, WCTC is not pursuing the matter, and Adelbai has not appealed. Thus, the only parties to this appeal are Plaintiff Gibbons and Intervenor Trolii. Mr. Trolii only appeals from that part of the judgment holding that Mr. Gibbons is a strong senior member of the Clan. He argues that the Trial Division erred in not applying the principles of issue preclusion to prevent Mr. Gibbons from

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claiming senior strong status within the Clan, and that the Trial Division found facts that are inconsistent with the evidence of custom submitted at trial. Because we believe that issue preclusion principles did not apply to the matters appealed by Mr. Trolii, and that the Trial Division's findings of facts are fully supported by this record, we affirm.

DISCUSSION

Ripeness

Because this case initially concerned whether a specific deed was void, a matter on which both Mr. Gibbons and Mr. Trolii were in agreement and were aligned as Plaintiffs, a preliminary question is whether Mr. Trolii can continue this litigation on appeal, even though the issue triggering the lawsuit has been resolved in his favor. The current disagreement between Mr. Gibbons and Mr. Trolii concerns their relative strength within the Clan, a matter that has nothing to do with the validity of the deed. Palau courts have previously declined to reach issues that either have happened and are beyond the point of remedy, *Termeteet v. Ngiwal State*, 5 ROP Intrm. 236 (1996) (noting that challenged public law had expired by its own terms), **125** *Salii v. House of Delegates*, 1 ROP Intrm. 708 (1989) (finding that propriety of removal of legislator was moot upon end of term when no emoluments of office remain unpaid), or concern a future injury that may happen, but the possible factual circumstances are so indefinite that the questions raised are hypothetical or abstract, *Toribiong v. Gibbons*, 3 ROP Intrm. 419 (Tr. Div. 1993) (holding that question of legal consequences if Koror State ever applied for, and was denied, permit under Lagoon Monument Act found not ripe for review).

If this case had begun with Mr. Gibbons and Mr. Trolii simply requesting the Court to opine on their relative strength within the Clan and there was no request for legal or equitable relief, the dispute would not be ripe for judicial intervention regardless of how genuine their difference of opinion. Yet ripeness is a “flexible and often context-specific doctrine.” *Harvey E. Yates Co. v. Powell*, 98 F.3d 1222, 1237 (10th Cir. 1996). Because both Mr. Gibbons and Mr. Trolii chose to fully litigate the strength issue, and its resolution is now intertwined with the fact-finding and the final judgment of the Trial Division, principles of *res judicata* will hereafter apply. Hence, since there are collateral legal consequences for both of the remaining parties, we conclude that the issue is properly before us.

Standards of Review

The Appellate Division has never expressed a standard for its review of a lower court's application of either *res judicata* or collateral estoppel. Because the question of whether to apply principles of preclusion to subsequent litigation is fraught with legal issues, we hold that application of *res judicata* and collateral estoppel is a question of law that should be reviewed *de novo*.

We review the Trial Division's fact finding for clear error. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998).

Issue Preclusion

Mr. Trolii objects to that part of the trial court's judgment that declared Mr. Gibbons a strong, senior member of Eluil Clan. Mr. Trolii requests this Court apply the principles of issue preclusion as set forth in the Restatement (Second) of Judgments (1982),¹ which explains: "[W]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Id.* § 27.

Mr. Trolii argues that Mr. Gibbons is bound by the judgment in *Rengiil v. Derbai*, Civil Action No. 1621 (Tr. Div. Dist. Ct. 1971), *aff'd*, Civil Action No. 536 (Tr. Div. High Ct. 1973), because he was "in privity" with his maternal uncle Rdialul Torual.² The case was a dispute between two people, both of whom claimed to be Rengiil of Eluil Clan. ¶126 Specifically, the plaintiff, Rdialul, sought an order to compel the defendant, Secharmidal, to pay over to him timber sale proceeds he had accepted and retained as Rengiil. The subsequent judgment declared that Secharmidal was Rengiil of Eluil Clan. It therefore resolved the question as to who was the male title holder of Eluil Clan in 1971, in order to determine who was entitled to the timber sale proceeds.

The *Rengiil* court's factual findings included (1) that the original strong members of Eluil Clan were "no longer in existence"; (2) that other persons who immigrated to Ngerkebesang became members of Eluil Clan—"they used to be called drift members of this clan, and now [Secharmidal] is in the position of a strong member of Eluil Clan"; and (3) Secharmidal was declared to hold the title Rengiil of Eluil Clan, based upon the court's finding of his proper appointment and long-recognized tenure.

In the instant litigation, Mr. Trolii sought to preclude Mr. Gibbons from relitigating his relationship to Eluil Clan based upon the *Rengiil* court's statement that Rdialul "has no connection to Eluil Clan of Ngerkebesang by way of either ochell, ulechell, drift member nor through adoption." The court next stated, however:

Except that he is a member of Olngembang Lineage within Ikelau Clan in Koror section. As the story goes, the woman of Olngembang Lineage named Tuchoi was a daughter of a strong member man of Eluil Clan named Dibuk. Now with this relationship, the Plaintiffs has a very deem [sic] connection with the Clan of Eluil.

Because the court said that Rdialul had "no connection" and a "deem connection" to Eluil Clan, it cannot be said that the judgment resolved what the connection was.³

¹The principles expressed in the Restatement (Second) of Judgments are utilized when considering the related doctrines of issue preclusion and claim preclusion. *Renguul v. Airai State Pub. Lands Auth.*, 8 ROP Intrm. 282, 284 (2001); *Sato v. Ngerchelongs State Assembly*, 7 ROP Intrm. 79, 80-81 (1998); *Osarch v. Bai*, 5 ROP Intrm. 327, 328 (Tr. Div. 1995); *Ngersikesol Lineage v. Ngiwal State Legislature*, 5 ROP Intrm. 284, 287 (Tr. Div. 1994).

²Rdialul Torual apparently filed suit in that case under the name of Rengiil, the title he asserted he held. For the purposes of this opinion however, we will refer to him by his given name, Rdialul Torual.

³The district court judge signed two opinions, one in Palauan and one in English. Mr. Trolii relies on the

The issue became further clouded on appeal before Associate Justice Turner, sitting in the Trial Division of the High Court. Oral argument was presented on appeal, but no additional evidence was taken. The appellate judgment relates that Secharmidal introduced statements made by Rdialul's sister Ucheliei Gibbons to the effect that her brother was not Rengiil. Justice Turner also stated that "[t]here was some discrepancy in the testimony as to who were the senior female members of Eluil Clan. In any event, Appellant's sister, Ucheliei Gibbons, recently deceased was a strong member of the Clan." It is through Ucheliei that Mr. Gibbons claims membership in Eluil Clan.

On this record, we agree with the Trial Division that the 1971 judgment did not resolve the nature of the connection of Rdialul (or derivatively, Mr. Gibbons) to Eluil Clan. Thus, the doctrine of issue preclusion does not apply.⁴

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The Trial Division's Fact Finding on Custom

Mr. Trolii's second argument is that because Mr. Gibbons concedes that his family came into Eluil Clan as ulechell members, and because Mr. Gibbons did not present clear and convincing evidence that ulechell members can displace ochell members, the court's finding that Mr. Gibbons was a strong member was clearly erroneous.⁵ The record reveals no definite evidence, however, that Mr. Trolii's family was ever ochell to the exclusion of Mr. Gibbons's family. Mr. Trolii must concede that, at best, his family were "drift members" of the Clan who had no connection to the original strong members. The trial court noted that a previous Rengiil named Remoket was, like Mr. Gibbons, of Olngembang Lineage, and the Tochi Daicho listed Mr. Gibbons's ancestors as trustees of Eluil Clan lands. The court also looked to the record in Civil Action No. 1621 and found that the testimony of Mr. Trolii's predecessors-in-interest corroborated much of Mr. Gibbons's present-day story. In fact, a key part of Secharmidal's presentation was that Ucheliei, Mr. Gibbons's adopted mother, publicly confirmed that Secharmidal was Rengiil. Moreover, every one of Secharmidal's witnesses who was asked stated that Ucheliei was a member of Eluil Clan. The Trial Division stated: "That these witnesses should have testified *on behalf of Secharmidal* [i.e., Mr. Trolii's side] that the members of Olngembang were members of Eluil who had a role in choosing Secharmidal as Rengiil ra Eluil, and that they said not a word to suggest otherwise, is, in the Court's view, persuasive evidence supporting plaintiff's claim of membership today." *Eluil Clan v. Ngirochkebai*, Civ. Action No. 99-340, slip op. at 14 (Tr. Div. Dec. 19, 2000) (emphasis in original). It is a convincing point.

English opinion in his argument, so we will consider his argument based upon that version.

⁴We need not consider Mr. Trolii's argument that he should not be bound by the dismissal (for want of prosecution) of another case, *Rdiall v. Gibbons*, Civil Action No. 166-82, because the Trial Division's reliance on that case has no bearing on the issue remaining in this appeal.

⁵Mr. Trolii also disputes the importance of a mur at which Mr. Gibbons contends all titles and properties of Eluil Clan were allegedly relinquished by the last remaining original member of Eluil Clan and sold to members of Olngembang Lineage. The trial court did not rely on this evidence in its decision, however. Accordingly, it provides no ground for this Court to reverse the trial court's judgment.

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Here, the facts presented the unusual (although not unprecedented) case where there were no strong members left in a clan and “drift members” or ulechell members assumed ochell responsibilities. In such cases, custom will not provide an easy, broad-brush answer, and each case will likely turn on the unique historical facts of the particular clan. In this case the evidence was sufficient for the Trial Division to conclude that Francisco Gibbons is also a strong senior member of Eluil Clan who shares that authority with Ngirumerang Trolii.⁶

CONCLUSION

For the reasons stated herein, the judgment of the Trial Division is affirmed.

NGIRAKLSONG, Chief Justice, concurring:

The primary issue before us is the trial court’s finding that Gibbons is also a strong member of Eluil Clan. Trolii, who challenges this finding, argues that Gibbons’ claim to membership in the Clan should have been barred by the doctrine of issue preclusion.

¶28 I concur with the majority opinion on these issues on appeal. I, however, write separately because I am not comfortable taking on an issue not before us. The issue or subject of ripeness was not an issue at the trial court. It was not briefed or argued before this Court. I would leave such a constitutional principle for another day when it is properly presented before us.

⁶We note that the Trial Division did not attempt to determine all the strong senior members of Eluil Clan, and the judgment should not be construed otherwise.