

*In re Estate of Otang*, 12 ROP 200 (Tr. Div. 2005)

**In the Matter of the  
ESTATE OF SKEBONG OTANG,  
Deceased.**

**JOHN B. SKEBONG,  
Petitioner.**

CIVIL ACTION NO. 03-201A

Supreme Court, Trial Division  
Republic of Palau

Decided: May 24, 2005

KATHLEEN M. SALII, Associate Justice:

**BACKGROUND AND UNDISPUTED FACTS**

On December 31, 2003, John B. **L201** Skebong (hereinafter “Petitioner”) filed this complaint to settle the estate of his father, Skebong Otang (hereinafter “Otang”), who died intestate on February 18, 1998. The lots which are the subject of this case are located in Imeong Hamlet of Ngeremlengui State and are hereinafter referred to as “Ngerutoed.” The Tochi Daicho listing for Ngeremlengui lists Ngerutoed as being owned by Ngeruburk Clan (hereinafter “Clan”) with Otang as trustee. Based on such listing, the Land Commission issued Determinations of Ownership of Ngerutoed to the Clan with Otang as trustee in 1981.

On November 12, 1997, Petitioner, on behalf of Otang, and Meruk Rengulbai and Dirribukel Smau, two members of the Clan, signed a document entitled “*Telbiil Ra Semecheklel Ma Olutel A Chutem*” (hereinafter “Agreement”), providing that the Clan agrees to return Ngerutoed to Otang. Based on this Agreement, the Land Court issued Certificates of Title in Otang’s name for Cadastral Lot Nos. 00 K 01, 00 K 02, 00 K 03, 00 K 04, 00 K 05, and 00 K 06, which are the former Tochi Daicho Lot Nos. 437, 438 and 439.

Otang died less than a month after the new CTs were issued, and Petitioner now asks this Court to transfer ownership of these lands to himself and his siblings as Otang’s heirs. The Clan, through its representatives Ngeskesuk Ngirakebou, Haruo Esang, and Teruo Rengulbai, filed its notice of claim to these three lots, and it tendered a supplemental complaint seeking to quiet title to Ngerutoed in the Clan. The Clan further brought a counterclaim alleging that Petitioner fraudulently obtained the signatures of Rengulbai and Smau on the Agreement.

The Clan filed a motion for summary judgment. Petitioner filed his response in opposition to the motion and, in the alternative, filed a cross-motion for summary judgment, to which the Clan replied. On the day before trial was to commence, the Court denied both motions because of conflicting affidavits filed by the parties. On the same date, the parties filed a joint

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motion to continue the trial herein. Having further considered the motions and arguments raised therein, and for the reasons set forth below, the Court finds that this matter is ripe for entry of summary judgment in favor of the Clan. Accordingly, the Clan's motion for entry of summary judgment is **GRANTED** and Petitioner's motion for the same is **DENIED**.

### STANDARD FOR GRANTING SUMMARY JUDGMENT

Republic of Palau Rule of Civil Procedure 56 provides that summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, admissions, or affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. ROP R. Civ. P. 56(c). Summary judgment is appropriate against a party who fails to make an evidentiary showing sufficient to raise a factual question as to an element essential to that party's case and on which that party will bear the burden of proof at trial. *Wolff v. Sugiyama*, 5 ROP Intrm. 105, 109 (1995). A party may defeat a motion for summary judgment by offering evidence that shows there is a genuine issue of material fact to be resolved at trial. *Id.* at 110. A factual question is "material," as that term is used in Rule 56(c), if the fact finder must resolve it in order to determine whether an essential element has been established. *Id.* In reviewing a motion for summary judgment, all doubts must be resolved against the movant, and the motion must be denied **1202** if the non-movant identifies some evidence in the record demonstrating a genuine factual dispute on a material issue. *Dilubech Clan v. Ngeremlengui State Gov't.*, 8 ROP Intrm. 106, 108 (2000). Identical standards apply where there are cross-motions for summary judgment. *Rechelulk v. Tmilchol*, 2 ROP Intrm. 277, 282 (1991).

### DISCUSSION

In seeking summary judgment, the Clan first argues that there was never a transfer of Ngerutoed to Otang, and consequently, the Certificates of Title issued in his name are void. The Clan also maintains that the purported transfer of Ngerutoed to Otang by the Clan lacked consideration, that the Agreement violates Palauan custom because not all signatures of the senior strong Clan members were obtained, and that Smau's signature on the Agreement was obtained through fraud by Petitioner. Petitioner, in opposing the motion and in support of his cross-motion for partial summary judgment, contends that the Clan's challenge to the validity of the Agreement is barred by the six-year statute of limitations as set forth in 14 PNC § 405.

The Court first addresses Petitioner's argument that the Clan's claims are barred by the six-year statute of limitations. The relevant statutory provision states that "[t]he following actions shall be commenced only within 20 years after the cause of action accrues: . . . (2) actions for the recovery of land or any interest therein." 14 PNC § 402. The other potentially applicable statute is 14 PNC § 405, the catch-all provision that provides that "[a]ll actions other than those covered in the preceding sections of this chapter shall be commenced within six years after the cause of action accrues."

Both parties cite to *Isimang v. Arbedul*, 11 ROP 66 (2004) to support their arguments. *Isimang* established that courts must first assess and characterize the cause of action in order to determine the appropriate statute of limitations. Speaking specifically to cases that challenge the

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validity of deeds, the *Isimang* Court evaluated both the majority and minority positions in United States jurisdictions as well as a prior Trust Territory High Court decision concerning the appropriate statute of limitations, and the Court ultimately held that “[w]here the allegations of a particular claim amount to an assertion that the plaintiff never parted with the title to her land and is entitled to immediate possession of it, . . . [the] claim is one for the recovery of land and is governed by the 20-year statute of limitations.” *Isimang*, 11 ROP at 72. In contrast, where the owner did part with title to his land, even if through allegedly wrongful means, the owner is not yet entitled to possession of the land until the wrongful transaction is undone. The *Isimang* Court held that the latter claim is not for recovery of land and is thus governed by the six-year statute of limitations.

The Clan’s claim to the land is based on its belief that the Agreement was void -- because it did not actually transfer land, because it lacked consideration, because the senior strong members did not consent, and because it was a product of fraud. The *Isimang* Court specifically addressed the argument that the senior strong members were not involved in the conveyance, holding that

where Appellants claim that the Clan did not consent to the transfer because the deeds were not signed or assented to by all of the senior strong members, Appellants are entitled to argue that the 1203 deeds were [sic] of no legal effect. . . . For th[is] cause[] of action, rescission of the deeds is not required and the action is one to recover land. Thus, . . . violation of custom cause[] of action [is] subject to the twenty-year statute of limitations.

*Id.* at 73. Accordingly, the Clan may proceed on at least that claim, and given this Court’s resolution of that claim, it is unnecessary to decide at this time whether the Clan’s other arguments fall under the 20-year limitations period.

The Clan claims that it never consented to the transfer of Ngerutoed because the Agreement was not signed by all the senior strong members and, thus, the Agreement is void *ab initio*. Specifically, the Clan maintains -- and Petitioner does not dispute -- that there were other senior strong members of the Clan who were not privy to the Agreement, never signed it, and, in at least one instance, were unaware of its existence until this action was filed. Based on the Affidavit of Teruo Rengulbai, which Petitioner did not contradict, the other strong senior members of the Clan in 1997 who did not sign the Agreement included Teruo Rengulbai, Haruo Esang, Ngeskesuk Ngirakebou (now deceased), Kukong Fritz, Kerngokl Ngiralmu, Olsudong Rengulbai, Desebel Rengulbai, and Mayumi Keibo.

Petitioner does not challenge the established Palauan custom that in order for any lineage or clan land to be transferred out of the lineage or clan, the consent of the senior strong members is required. Instead, he argues that Rengulbai and Smau’s signatures on the Agreement waived the interest of the Clan in that land. In support of this contention, Petitioner cites to *Ngatpang State v. Amboi*, 7 ROP Intrm. 12 (1998), wherein a letter signed by the Ngatpang Governor and traditional council of chiefs was enforced as a valid waiver of the State’s interest in a contested property. But the facts and holding of *Amboi*, which involved public land, are simply

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inapplicable to this case, where only two of the senior strong members of a Clan purported to transfer Clan land.

Petitioner also seems to suggest that the Agreement was not in itself a transfer of ownership but instead merely restored Otang's right to the property, and as such the consent of all the senior strong members was not required. He contends that

[w]hat the parties did agree to was the fact that the land at issue had been always owned by Otang, and that Ngeruburk Clan, through its representatives, decided to correct the wrong by acknowledging Otang's interest on the land and [the Clan] disclaimed or withdrew its purported interest.

Petitioner's Response to Motion for Summary Judgment at 5-6.

The argument seems disingenuous given the undisputed facts in the record -- the Tochi Daicho listed the Clan as the landowner, CTs were issued in the Clan's name, with Otang serving only as the trustee, and after the Agreement was signed, the Land Court issued new CTs recognizing that Otang then owned the land. Accordingly, the Agreement served to transfer title, and based on uncontroverted **1204** Palauan custom, the transfer of Clan land is invalid without consent of the senior strong members of the Clan. *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38 (1998); *Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101, 105 (1992).

## CONCLUSION

In reviewing the cross motions before the Court and addressing first the Clan's motion, the Court holds that the Clan's action to quiet title to Ngerutoed, through which it claims that it never parted with title to Ngerutoed, is one for the recovery of land and is therefore subject to the twenty-year statute of limitation. In addition, even resolving all doubts against the Petitioner, the undisputed fact is that not all the senior strong members of the Clan signed the Agreement. For this reason alone, the Agreement is void as a matter of law, and the Clan is entitled to summary judgment with respect to that claim. These same reasons dictate that Petitioner's cross-motion for summary judgement must be denied. Accordingly, Petitioner's motion is **DENIED** and the Clan's motion is **GRANTED**. A separate judgement will be entered accordingly.