Ngirmeriil v. Estate of Rechucher, 13 ROP 42 (2006)

MEROL NGIRMERIIL, SETSUO NGIRMERIIL, ANTONIA NGIRMERIIL, ANTINA MAUI, ANATANIO KIKUO, SYLVIA TANGELBAD, KIKLANG SBAL, GABRIEL SKILANG, HUANES SKILANG, BRENGIEI MASAMI, ETEI RENGCHOL, MISIUSCH MARTIN NGCHAR, DECHOL NGCHAR, and VERONICA UMEDIB,
Appellants,

v.

ESTATE OF EUSEBIO RECHUCHER,
NGETCHEDONG RENGIIL, and BENJAMIN SKILANG,
Appellees.

CIVIL APPEAL NO. 05-007
Civil Action No. 98-222

Supreme Court, Appellate Division
Republic of Palau

Argued: October 25, 2005
Decided: January 30, 2006
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Counsel for Appellants: Johnson Toribiong

Counsel for Appellee Estate of Eusebio Rechucher: Carlos H. Salii

Counsel for Appellees Rengill and Skilang: Douglas F. Cushnie

BEFORE: LARRY W. MILLER, Associate Justice; LOURDES F. MATERNE, Associate Justice; JANET HEALY WEEKS, Part-Time Associate Justice.

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

PER CURIAM:

Appellants, members of Ngerketiit Lineage, challenge the trial court's upholding of an award of Lineage land to a third party on the basis of the Lineage attorney's statements to a predecessor court that all senior strong members had consented to the issuance of various deeds to be used as collateral for obtaining loans to finance litigation involving the lineage. Appellants urge that the judicial admission doctrine cannot override the customary requirement that all senior strong members must consent to the alienation of lineage land. Because this Court believes that lineages are not exempt from the general rule that clients are bound by the statements of their attorney, we affirm.

⊥44 **BACKGROUND**

This appeal is the latest incarnation of the long-running litigation concerning the land *Ngerielb*. This Court has previously set forth the factual background of the dispute over *Ngerielb*, including the present lawsuit, in *Rechucher v. Ngirmeriil*, 9 ROP 206, 208 (2002). In a previous quiet title action, Ngerketiit Lineage, Ngerukebid Clan, and various other parties claimed ownership of *Ngerielb*. Ultimately, the Appellate Division found in favor of Ngerketiit Lineage as to several lots. *Ngerketiit Lineage v. Ngerukebid Clan* , 7 ROP Intrm. 38, 45 (1998). The court, in turn, awarded some of these lots [1] within *Ngerielb* to Eusebio Rechucher, on the basis of quitclaim deeds that the Lineage had previously executed in his favor in order to finance the litigation.[2] The Lineage did not dispute the validity of the quitclaim deeds or the award of property to Rechucher. To the contrary, "[t]he Lineage represented at oral argument that all senior strong members assented to the conveyance [of lots to Rechucher]." *Id.* at 38 n.9. Subsequently, Appellants, who assert that they are strong members of Ngerketiit Lineage, filed this action seeking to recover the lands given to Rechucher and the rental proceeds therefrom. The resulting trial was bifurcated; the first phase relating to membership in Ngerketiit Lineage and the second relating to the propriety of the land transfers made by Francisco Armaluuk. At the conclusion of the trial's first phase, the court entered an order setting forth its conclusions regarding membership in Ngerketiit Lineage. As part of its determination, the court concluded that Appellants are members of the Lineage. During the second phase of the trial, Appellants argued that although Armaluuk, as administrator of *Ngerielb*, may have received permission from some of the strong members of the Lineage to alienate the land, they were not aware of the extent of such transactions. The trial court agreed, declaring the transfers void and ordering all lands previously awarded to Rechucher to be returned to Ngerketiit Lineage. In so holding, the court explained that a previously executed Memorandum of Understanding/Power of Attorney document appointing Armaluuk as Administrator of *Ngerielb* did not grant Armaluuk the power to alienate the property, either through outright deed or deed of trust, and that the agreement could not be said to convey such a power implicitly. The court held, further, that an administrator of lineage property does not have the right to alienate such property without the consent of the senior strong members, which Armaluuk had not, in fact, obtained.

On appeal, the Appellate Division upheld the trial court's factual findings as to membership in Ngerketiit Lineage. Regarding the court's conclusions arising out of the second phase of the trial, the Appellate Division reversed and remanded, holding that there remained a question "whether the Appellees' awareness of the prior litigation, including Rechucher's role in financing it and Armaluuk's role in hiring an attorney to represent the interests of Ngerketiit Lineage, could support a conclusion that the Appellees ⊥45 either ratified or acquiesced in the transfer of land to Rechucher." *Rechucher v. Ngirmeriil* , 9 ROP at 212. The trial court had

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[1] Specifically, the court awarded the following lots to Rechucher: 016 B 05, 016 B 06, 016 B 07, and 016 B 08.

[2] According to the trial court, "[t]hese deeds were, in effect, foreclosures of earlier 'deeds of trust' granted by Defendant Armaluuk to Defendant Rechucher." *Ngirmeriil v. Armaluuk*, Civil Action No. 98-222 (Order dated Mar. 21, 2000, at 2). These deeds had originally been granted by Armaluuk to Rechucher as security for loans that the latter had given to finance the *Ngerielb* litigation on behalf of the Lineage.

previously raised this issue, but had not fully addressed it. [3] The Appellate Division therefore remanded the case and directed the trial court to address the issue. On remand, without further hearing, the trial court entered judgment in favor of Rechucher on the grounds that Douglas Cushnie, who had been retained as counsel for the Lineage, had not contested Rechucher's ownership in the previous lawsuit:

> In summary, the Plaintiffs knew that Mr. Armaluuk had been delegated the responsibility to oversee the litigation and that as part of that responsibility, he was to retain counsel for Ngerketiit Lineage. Furthermore, Plaintiffs were aware that Mr. Armaluuk had retained Mr. Cushnie as counsel, and do not challenge this decision as outside the scope of his authority. During the quiet title action, Mr. Cushnie, as counsel for Ngerketiit Lineage, conceded that Mr. Rechucher was the owner of certain lots, and at no point did he make any claim of ownership of those parcels on behalf of the Lineage. In fact, Mr. Cushnie expressly represented that all strong senior members of the Lineage consented to the transfer of title to Mr. Rechucher. *See Ngerketiit Lineage v. Ngerukebid Clan* , 7 ROP Intrm. 38, 44 n.9 (1998). The remaining question is whether members of the Lineage may begin a new round of litigation for the purpose of challenging the earlier judgment and to claim the very lots their attorney already conceded Mr. Rechucher owned. The answer is no.

Ngirmeriil v. Armaluuk , Civil Action No. 98-222 (Order dated Oct. 29, 2004, at 7). In light of the failure of the Lineage to contest (through its legal representative) the award of the land to Rechucher in the earlier quiet title action, the court held that any objections to his title had been waived. Following this order, the members of the Lineage filed an interlocutory appeal, which was dismissed on procedural grounds. *Ngirmeriil v. Armaluuk* , 11 ROP 122 (2004). The trial court subsequently entered final judgment disposing of all pending issues in the case. Members of the Lineage now appeal, urging that an unauthorized and incorrect judicial admission ⊥46 cannot trump traditional law, which prohibits the alienation of lineage land without the consent of all senior strong members of the lineage.[4]

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[3] In a hearing on the matter, the trial court had noted:

> I guess the area that concerns me is when the members of the lineage appoint someone to represent them in litigation. And when that duly appointed person hires an attorney, they know that the litigation is going on. I'm concerned about the idea that that duly appointed representative and their attorney can make judicial admissions [and] that later on those who actually did appoint that person as an agent can say "well, that part I don't agree with."

Id. at 213 n.13.

[4] In addition, Armaluuk's co-defendants Ngetechedong Rengiil and Benjamin Skilang have brought their own appeal from the trial court's judgment. They argue that they are entitled, on the basis of their status within and service to the Lineage, to any compensation that the Lineage may receive through the current litigation. Specifically, they urge first that Rengiil is the sole ourrot of Ngerketiit Lineage, and, second, that Rengiil and Skilang are entitled to any compensation the Lineage obtains through this litigation as a result of their service to the Lineage. We will not entertain this appeal. Judge Michelsen

ANALYSIS

This Court employs the *de novo* standard in evaluating the lower court's conclusions of law. *Temaungil v. Ulechong* , 9 ROP 31, 33 (2001). Factual findings are reviewed using the clearly erroneous standard. *Id.* at 33. Under this standard, the findings of the lower court will only be set aside if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Dilubech Clan v. Ngeremlengui St. Pub. Lands Auth.* , 9 ROP 162, 164 (2002).

In awarding the lots to Rechucher, the trial court held that Cushnie's statement that all senior strong members of the Lineage consented to the transfer of title to Rechucher constituted a judicial admission. "Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding on the party making them." *Keller v. United States*, 58 F.3d 1194, 1198-99 n.8 (7th Cir. 1995). Once made, such admissions "may not be controverted at trial or on appeal. Indeed, they are 'not evidence at all but rather have the effect of withdrawing a fact from contention.'" *Id.* (quoting Michael H. Graham, Federal Practice and Procedure: *Evidence* § 6726 (Interim Edition)). In light of Cushnie's failure to present any claim to the lots awarded to Rechucher on behalf of the Lineage, the court found that any objections to Rechucher's title were waived.

As a matter of basic agency law, this case is entirely straightforward. As the trial court explained, in the attorney-client setting, "[t]he clients are principals, the attorney is an agent, and under the law of agency the principal is bound by his agent's chosen deeds." *United States v. 7108 West Grand Ave., Chicago, Ill.*, 15 F.3d 632, 634 (7th Cir. 1994) (citations omitted). Such a rule is vital because "allowing a party to evade 'the consequences of []his freely selected agent' 'would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent.'" *SEC v. McNulty* , 137 F.3d 732, 739 (2d Cir. 1998) (quoting *Link v.* ⊥47 *Wabash R. Co.* , 370 U.S. 626, 633-34 (1962)). Thus, "[i]n the absence of egregious circumstances, parties are generally bound by the admissions of their attorney, including oral admissions." *Ngiratewid v. Omisong* , 8 ROP Intrm. 337, 338 (Tr. Div. 1999) (quoting *Town of North Bonneville v. Callaway*, 10 F.3d 1505, 1509 (9th Cir. 1993)).

The fact that Appellants were not parties to the earlier quiet title action in their individual capacities does not alter this analysis. Appellants' interest in *Ngerielb* derives solely from their membership in the Lineage, and the Lineage was a party to that action. The Lineage's then-

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ruled that this first argument, that Rengiil is the sole ourrot of the Lineage, was subsumed by his initial findings of fact regarding Lineage membership. We agree, and thus conclude that Appellants are bound by the Appellate Division's affirmance of that order. As for the suggestion that they are entitled to any compensation returned to the Lineage, we need only add that no money has been ordered returned to the Lineage, and, now that this case is over, it appears that none will be. Rengiil and Skilang also contend that one last lot within *Ngerielb* – Lot 016 B 05A – remains undistributed. In light of the lengthy litigation that has already occurred over this land, they ask this Court to award the land to the Lineage. Judge Michelsen, however, appeared to believe that title to this lot was decided in the previous quiet title proceedings. If he was right, then there is nothing more to be said. If not, these are not the proper proceedings to address this issue.

counsel Mr. Cushnie not only failed to object to the award of land to Rechucher, but actually argued in favor of such a result. *Cf. Azuma v. Odilang Clan*, 10 ROP 16, 19 (2002) (citing Restatement (Second) of Judgments § 41 (1982) ("The general rule is that '[a] person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party.'")). The trial court found that Appellants themselves were aware that Armaluuk had been delegated the responsibility of overseeing the litigation involving *Ngerielb*, and that he had, as part of that responsibility, retained counsel on behalf of the Lineage.[5] The court found, further, that Appellants were aware that Armaluuk had used *Ngerielb* as collateral to obtain loans from Rechucher to finance the litigation and that there existed a risk that Rechucher would obtain the properties if the loans were not repaid. In light of this knowledge and acquiescence, Appellants cannot now repudiate the acts of their counsel in the earlier quiet title action, or otherwise complain about the outcome of that proceeding.

Nevertheless, Appellants maintain that this case presents unique circumstances. They contend, first, that the traditional law requiring the consent of all senior strong members to the alienation of lineage land is absolute and cannot be averted by a judicial admission or waiver. In the alternative, Appellants contend that they should be relieved of the judicial admission because it was false and based on a factual error. Finally, Appellants argue that Armaluuk had no authority to alienate or otherwise encumber lineage land and that Cushnie's "admission" that the Lineage had approved the alienation of the land was fraudulent. None of these arguments are persuasive.

As Appellants correctly note, it is "widely known" that Palauan custom requires the consent of all senior strong members of a lineage to alienate lineage land. *Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101, 105 (1992) (citing *Gibbons v. Bismark*, 1 TTR 372 (1958)). *See also Ngiraloi v. Faustino*, 6 ROP Intrm. 259, 260 (1997). To date, "[n]either the Trust Territory High Court nor this Court has recognized any exception to the rule requiring senior strong member approval to alienate clan land." *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. at 44. Nor do we do so today. Instead, we recognize simply that basic agency concepts that apply to litigants generally also apply to clans and lineages and their members. This is not a novel concept. In *Badureang Clan v. Ngirchorachel*, 6 ROP Intrm. 225 (1997), for example, the Badureang Clan argued that the defendant had obtained title to land rightfully owned by the Clan through fraud, by falsely claiming that all senior strong members of the Clan had notice of his claim to the land, and ⊥48 that the Land Commission had relied on this misrepresentation in awarding him title to the land in question. This Court held that, regardless of its merits, the claim must fail on appeal because the Clan's failure to raise it before the trial court rendered it waived. *Id.* at 226.

Indeed, in the very quiet title action that led to this case, we concluded that Ngerketiit Lineage's claims to other portions of *Ngerielb* were circumscribed by the fact that Francisco Armaluuk had failed to appeal an adverse 1987 determination against various parties, [6] and we

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[5] For their part, Appellants concede that Cushnie was acting on behalf of the Lineage when he made the admissions at issue.

[6] *See* 7 ROP Intrm. at 42: "[W]e agree with the Trial Division that with the exception of the lots awarded to the Lineage in the 1990 appeal, the 1987 Land Commission determinations are conclusive and

found that its arguments alleging a lack of due notice had been waived by the failure of Armaluuk, himself a trial counselor, and the attorneys who assisted him, to assert them at that time.[7] Thus, we create no exception to the senior strong member rule, but recognize merely that, notwithstanding that rule, clans and lineages may lose their lands, or their ability to claim them, by failing to take adequate legal steps to protect their rights.

In essence, Appellants' argument boils down to a claim that a system of representative litigation is inconsistent with fundamental aspects of customary Palauan law. In Appellants' words, "[t]he doctrine of judicial admissions evolved in the United States from cases involving facts and circumstances foreign to our traditional concepts of land ownership." Appellant's Opening Brief at 21. Unfortunately, Appellants do not explain this broad conclusion, nor develop this line of reasoning in any way. Instead, they posit a hypothetical situation intending to demonstrate the inconsistency of the doctrine with Palauan custom: "Suppose a lineage is party to a lawsuit, and the lineage representative appears in court and makes a false, self-serving admission that the alienation of lineage land has been approved by the lineage senior strong members, should that judicial admission be allowed to prevent the lineage senior strong members from challenging that transfer?" *Id.* at 22. Answering their own question, Appellants continue: "Of course it should not. If the judicial-admission exception to this rule of traditional law is adopted, the door will be open for abuses by unscrupulous clan heads or lineage representatives." *Id*. This hypothetical, however, has more bearing on Appellants' argument that Armaluuk and/or Cushnie acted fraudulently, than on their argument regarding the applicability of agency concepts to traditional Palauan lineages or clans. Moreover, we do not accept Appellants' contention that this ruling opens the door to abuse by unscrupulous lineage or clan leaders. In such a situation, the remedy, if any, lies against the lineage representative, via a suit for breach of fiduciary duty, not against a third party who transacted with the lineage in good faith.[8]

⊥49 Furthermore, Appellants do not consider the potential ramifications of a system in which

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cannot be relitigated."

[7] *See* 7 ROP Intrm. at 41: "[Armaluuk] represented the Lineage before the Land Commission and also before the Trial Division, where the Lineage was additionally assisted by Attorney Udui. The subsequent 1990 appeal was handled by Attorney Cushnie. Any objections regarding the form of notice, and service, were waived by counsel, either by not raising them at the Trial Division level, or by not raising the issue in the 1990 appeal."

[8] We might also note that the facts surrounding this case are, perhaps, uniquely convoluted, and that such a situation is unlikely to reoccur in the future. We cannot imagine how an unscrupulous lineage leader could manipulate a situation so as to take advantage of this opinion to avoid the general requirement of senior strong member approval for alienation of land. Indeed, in the present case, the Lineage members were present in court when the admissions were made. If those persons disagreed with the statements of the Lineage representative, they had every opportunity to speak up. Had they done so, this situation would have been avoided altogether. Moreover, even in the event of fraud by a lineage leader, the courts are not powerless to intervene to prevent injustice. In *Shmull v. Ngirirs Clan* , 11 ROP 198 (2004), for example, a clan leader filed a land claim on behalf of his clan. At the subsequent land hearing, however, the leader changed the nature of his claim to an individual claim without the clan's knowledge or consent. Although the Land Court initially awarded the land to the clan leader in his individual capacity, it later reversed itself after learning of the clan leader's duplicity via a motion to reconsider. *Shmull*, 11 ROP at 200-01.

parties can disavow the statements and actions of their attorneys made during the course of litigation. Such an approach would be inconsistent with our system of representative litigation and interfere with the prompt and efficient adjudication of lawsuits. Allowing traditional clans or lineages to escape the basic agency rules inherent in the attorney-client relationship would, for example, render a court unable to enforce basic procedural rules in cases involving such entities. When questioned about such ramifications during oral argument, Appellants' attorney admitted that they were "troubling," but proposed no solution.

Appellants' second argument is that even if judicial admissions are binding in the context of a traditional Palauan lineage, the rule is not absolute when the admission was the product of a mistake. In support of this argument, Appellants cite *New Amsterdam Casualty Co. v. Waller*, 323 F.2d 20 (4th Cir. 1963), in which it was held that a court may relieve a party of a judicial admission "if it appears that the admitted fact is clearly untrue and that the party was laboring under a mistake when he made the admission." *Id.* at 24. *New Amsterdam* requires the presence of "exceptional circumstances" before relieving a party of its judicial admission. We see no such circumstances. The admission in question was not a stray remark by the Lineage's counsel, but instead arose directly out of Rechucher's role in financing the litigation for the benefit of the Lineage, of which Appellants were aware. The trial court found that Appellants knew of Armaluuk's use of *Ngerielb* as collateral for loans obtained to finance the litigation. In light of this knowledge, allowing Appellants to escape their attorney's admissions would be to allow them to have their cake and eat it too – that is, it would allow them to obtain the benefits of the loans in question (which were used to secure counsel in the litigation involving *Ngerielb*) and then, after the Lineage had defaulted on the loans, avoid losing the collateral on the grounds that the deeds had been issued without the consent of all senior strong members of the Lineage.

Finally, Appellants claim that Armaluuk fraudulently instructed Cushnie to make no claim on the lots awarded to Rechucher on behalf of the Lineage during the quiet title action, and that the Lineage should not now be barred from repudiating his actions. Appellants contend that Armaluuk's own personal interest was at odds with his fiduciary duty to the Lineage because he had ⊥50 obtained loans from Rechucher in excess of the Lineage's legal fees and expenses. Thus, Appellants argue "[i]t can reasonably be inferred that the underlying basis for the instruction by Mr. Francisco Armaluuk [not to contest the award of land to Rechucher] was to satisfy the loans from Eusebio Rechucher, [and] to avoid accounting for the loans given in excess of the legal fees and expenses." Appellants' Brief at 18.

It is unclear whether this argument was presented to the trial court, and we decline to consider it here. Appellants have not cited any evidence supporting this argument, nor the applicable legal authority or standards. Nor have they explained why this argument, even if supported, should not have been made against Armaluuk (or his estate) rather than Rechucher. [9] "[A]ppellate courts generally should not address legal issues that the parties have not developed through proper briefing." *Southwestern Penn. Growth Alliance v. Browner*, 121 F.3d 106, 122 (3d Cir. 1997). *See also Carducci v. Regan*, 714 F.2d 171, 177 (D.C. Cir. 1983) ("We will not

[9] Armaluuk, who was originally named as a defendant, died during the course of this litigation. Although the parties were invited by the trial court on October 28, 2004, to file a motion for substitution pursuant to Rule 25(a), ROP R. Civ. P. 25(a), no motion was ever filed.

resolve that issue on the basis of briefing and argument by counsel that literally consisted of no more than the assertion of violation of due process rights, with no discussion of case law supporting that proposition . . ."). [10] In the present case, we find no reason to depart from our usual reluctance to refuse to hear claims not fully briefed by the parties, especially in light of the factual complexity of the case and the seriousness of the charge. *See ROP v. Airai State Pub. Lands Auth.*, 9 ROP 201, 204 (2002) (court willing to consider issues not adequately presented on appeal only when the case raises "an issue of great public importance").

CONCLUSION

For the reasons set forth above, the judgment of the trial court is affirmed.

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[10] Writing for the *Carducci* court, then Judge Scalia further elucidated the policy reasons underlying this requirement:

> The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before then. Thus, [appellate rules] require[] that the appellant's brief contain "the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." Failure to enforce this requirement will ultimately deprive us in substantial measure of that assistance of counsel which the system assumes – a deficiency that we can perhaps supply by other means, but not without altering the character of our institution.

Carducci, 714 F.2d at 177. Though Justice Scalia was of course referring to the American legal system, his reasoning applies equally well to this Court.