Airai State v. Roman Tmetuchl Family Trust, 13 ROP 16 (2005)

AIRAI STATE,
Appellant,

v.

ROMAN TMETUCHL FAMILY TRUST,
Appellee.

CIVIL APPEAL NO. 04-027
LC/N 02-156

Supreme Court, Appellate Division
Republic of Palau

Argued: September 19, 2005
Decided: November 1, 2005

Counsel for Appellant: John Rechucher

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable RONALD RDECHOR, Associate Land Court ⊥17 Judge, presiding.

MILLER, Justice:

The properties involved in this land dispute, known as *Bitkuu* and *Bkulangis*, are located on Ngerduais Island in Airai State. The present appeal marks the second time the matter has been before the Appellate Division of this Court. The Land Court originally found that Airai State's presence divested it of jurisdiction, pursuant to ROP Const. Art. X, § 5,[1] but we remanded the case back so the court could first address Roman Tmetuchl Family Trust's ("RTFT") objection that Airai was not a true party because it had never filed a claim. *Roman Tmetuchl Family Trust v. Ordomel Hamlet*, 11 ROP 158 (2004).

On remand, the Land Court sustained RTFT's objection and dismissed Airai State from the case.[2] The court then proceeded to determine ownership between the two claimants who had

[1] ROP Const. Art. X, § 5 states in part: "The trial division of the Supreme Court shall have original and exclusive jurisdiction over . . . those matters in which . . . a state government is a party."

[2] In dismissing Airai State's claim, the Land Court rejected its three arguments as to why it was not required to file a claim under 35 PNC § 1308(a). Airai first relied on a general claim made by the District Government in 1973 of Palau on behalf of itself and its subdivisions for all public lands in Palau, which Airai State argued eliminated any need for it to file a claim. Although the general claim was not

timely filed claims – RTFT and Ordomel Hamlet. Although the Chiefs of Airai, also known as Ngara-Irrai, conveyed all of Ngerduais Island by way of a Deed of Transfer to Roman Tmetuchl in 1987, Ordomel Hamlet argued the deed was ineffective to transfer ownership because neither Airai nor Airai Municipality had previously conveyed the land to Ngara-Irrai. The Land Court disagreed, finding that *Airai State Government v. Iluches* , 6 ROP Intrm. 57 (1997), "settled any serious challenge to the validity of agreements entered into by Ngara-Irrai during the period before the first Airai Constitution was found to be invalid in *Teriong v. State of Airai* , 1 ROP Intrm. 664 (1989)." Determination at 9. Accordingly, the court awarded ownership of *Bitkuu* and *Bkulangis* to RTFT.

Airai State was the only party to file an appeal. Despite being dismissed from the case for failing to file a claim, Airai dedicates its entire brief to attacking the merits to the determination, arguing: (1) there was no "legal factual basis" to support the Land Court's award, (2) the Land Court erroneously applied the ruling in *Airai State Government v. Illuches* , and (3) the land should be awarded to it under the "doctrine of escheat." It offers no argument as to why the Land Court erred in rejecting its arguments that it was somehow exempt from filing a claim. *See* n.2 *supra*.

Airai's appellate brief puts the cart before the horse. A party whose claim has ⊥18 been rejected on procedural grounds, and whose substantive arguments were not considered for that reason, cannot argue that the trial court erred on the merits, but must show instead that the basis of the court's rejection was erroneous. For example, a plaintiff whose claim was dismissed on statute of limitations grounds cannot argue the merits of its case, but must first show that its claim was in fact timely brought. *A fortiori* , a non-party like Airai State, whose claim was determined not even to be properly before the court, cannot raise issues before this Court that it was not permitted to present below. *Cf. Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp*., 510 U.S. 27, 114 S. Ct. 425 (1993) (one who has been denied the right to intervene cannot challenge vacation of judgment by trial court without seeking review of denial of intervention motion).[3]

Indeed, in this case, the merits of the issues raised in Airai State's brief are entirely irrelevant. As the prior proceedings make clear, if Airai had demonstrated that it was entitled to proceed below, the result would have been the dismissal of this matter for lack of jurisdiction. *See RTFT*, 11 ROP at 161 ("If [the Land Court] determines that Airai had a right to present its claim, then the case must be dismissed."). Thus, the only issue possibly pertinent to this appeal was whether Airai was properly before the court, which was, of course, the reason we remanded

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admitted into evidence, the Land Court nonetheless considered it, but eventually found that *Bitkuu* and *Bkulangis* were not covered because they were not "public lands." It next argued that RTFT's claim was untimely because it was not filed before January 1, 1989. The Land Court, however, stated that, even assuming the properties were "public lands," RTFT was still permitted to bring a private claim according to *Kerradel v. NSPLA* , 9 ROP 185 (2002). Finally, Airai argued that it did not have to file a claim because, as a state government, it was a trustee of public lands. Land Court, however, again relied on its finding that *Bitkuu* and *Bkulangis* were not "public lands."

[3] It appears that some of these arguments were presented by Ordomel Hamlet, which was represented by the same counsel. For reasons unknown, however, no appeal was filed on Ordomel's behalf.

the case in the first place. Having failed to address this issue, [4] its appeal must be rejected. *See Sungino v. Palau Evangelical Church* , 3 ROP Intrm. 72, 76 (1992) ("fail[ure] to assign error to the basis of the trial court's decision . . . constitutes waiver and is fatal to his appeal").

CONCLUSION

For the foregoing reasons, the determination of the Land Court awarding the properties known as *Bitkuu* and *Bkulangis* to RTFT is AFFIRMED.

[4] In response to a question at oral argument, Airai's counsel mentioned the ruling in *Masang v. Ngirmang*, 9 ROP 125 (2002). But that case – which is also cited in its brief – pertains only to claims for the return of public lands pursuant to 35 PNC § 1304(b), *see* 9 ROP at 128 n.3, and is thus irrelevant in any event.