

Obak v. Frank, 13 ROP 243 (Tr. Div. 2006)
NATSUO OBAK,
Plaintiff,

v.

SELISA FRANK, aka JERISSA FRANZ,
Defendant.

CIVIL ACTION NO. 05-093

Supreme Court, Trial Division
Republic of Palau

Decided: March 21, 2006

KATHLEEN M. SALII, Associate Justice:

BACKGROUND

Natsuo Obak (“Plaintiff”) filed a complaint to evict Selisa Frank (“Defendant”) from a parcel of land known as *Babelbai*, located in Ngetkib, Airai. Plaintiff claims ownership through a certificate of title issued in his name in June 1999, which was based on an earlier deed of transfer, dated 1994, from Idub Obak (“Idub”). In answering the Complaint, Defendant claims ownership of both the parcel from which Plaintiff seeks to evict her, as well as a neighboring lot, based on a 1988 deed of transfer from Idub. The parties have filed cross-motions for summary judgment. For the reasons set forth below, Defendant’s motion for summary judgment is granted, and Plaintiff’s motion is denied.

BACKGROUND

Based on the parties’ pleadings, the disputed lands consist of two separate lots located in Ngetkib Hamlet, Airai State. These lots, collectively known as *Babelbai*, include (1) Cadastral Lot No. 026 N 19 (formerly BL-335), containing an area of 582 square meters, and (2) Cadastral Lot No. 026 N 04 (formerly BL-323), containing an area of 187 square meters. Idub, the mother of Plaintiff and grandmother of Defendant, was the original owner of the Lots, pursuant to a **¶244** Determination of Ownership issued in her name on October 5, 1983.

On June 2, 1988, Idub executed a Deed of Transfer, transferring the lands to Defendant. The issuance of this deed was witnessed by two individuals and acknowledged by an assistant Clerk of Courts, but the deed was never recorded. A little over six years later, on July 31, 1994, Idub executed a deed of transfer purporting to convey the same parcels of land to Plaintiff, her son. Prior to the issuance of this second deed in his favor, Plaintiff, who resided on Guam between 1960 and 1999, visited Idub in Palau. According to his affidavit, during his visit, Idub informed Plaintiff that she had granted a use right in Defendant’s favor, allowing her to live at *Babelbai* until he returned to Palau permanently. On June 10, 1999, the Land Claims Hearing

Obak v. Frank, 13 ROP 243 (Tr. Div. 2006)

Office (“LCHO”) issued certificates of title (“certificates”) in Plaintiff’s name for both lots based on the 1994 deed of transfer. Defendant did not receive notice of Plaintiff’s request to the LCHO prior to issuance of the certificates. Plaintiff’s certificates and deed of transfer were subsequently recorded in June of 1999. Two years later, in 2001, Defendant learned for the first time of the 1994 deed to Plaintiff as well as the certificates and determinations of ownership in Plaintiff’s name when Plaintiff sought to evict her. Defendant, in response, filed and recorded with the Clerk of Courts a “Notice of Protest Regarding Certificates of Title” on October 17, 2001. Plaintiff now seeks to evict Defendant, who had lived with Idub at *Babelbai* until her death, and continues to live on the lands to date, from *Babelbai*, on the basis of the certificates of title in his name.

ANALYSIS

I. Summary Judgment Standard

Summary judgment is appropriate when:

‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’ ROP R. Civ. P. 56; *Rechelulk v. Tmilchol*, 2 ROP Intrm. 277, 281-82 (1991). In reviewing a motion for summary judgment, all doubts must be resolved against the movant, and the motion must be denied if the non-movant identifies some evidence in the record demonstrating a genuine factual dispute on a material issue. *Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 43, 51 (1993).

Dilubech Clan v. Ngeremlengui State, 8 ROP Intrm. 106, 108 (2000).

II. Recording Statute

The Palau recording statute, 39 PNC § 402, provides:

No transfer of or encumbrance upon title to real estate or any interest therein . . . shall be valid against any subsequent purchaser or mortgagee of the same real estate or interest, or **1245** any part thereof, in good faith for a valuable consideration without notice of such transfer . . . if the transfer to the subsequent purchaser or mortgagee is first duly recorded.

39 PNC § 402. This statute requires that, in order for a transferee of property to prevail in a claim of better title than an earlier transferee, he must not only be first in time to record his deed, but must also pay valuable consideration for the property in good faith and without notice of the prior transfer. *Ongalk Ra Teblak v. Santos*, 7 ROP Intrm. 1, 2 (1998) (citing *Ueki v. Alik*, 5 ROP Intrm. 74, 77 (1995)). Thus, the fact that Defendant failed to record her earlier deed does not automatically render Idub’s earlier transfer of *Babelbai* invalid. In order for the recording statute to protect his claim to the land, Plaintiff, as a subsequent transferee, must qualify as a bona fide

Obak v. Frank, 13 ROP 243 (Tr. Div. 2006)

purchaser for value of *Babelbai* without prior notice of the earlier transfer to Defendant. Yet, based on the affidavits submitted by both parties, it is undisputed that Plaintiff was not a bona fide purchaser for value. Although Plaintiff lived in Guam from 1960-1999, he visited Idub in Palau during the early 1990's. As he stated in his affidavit, he understood his mother Idub to be giving Defendant a use right to the property. Although he did not see the actual deed of transfer from Idub to Defendant until after his complaint herein was filed, his affidavit makes clear that he was aware of a conveyance of some sort of interest in *Babelbai* to Defendant. 66 Am. Jur. 2d *Records and Recording Law* § 142 (2001) (bona fide purchaser must have "had no notice and [known] no fact sufficient to put him or her on inquiry as to the other's equity"); *Estate of Jonas Olkeriil*, 4 ROP Intrm. 43, 48 (1993) ("A bona fide purchaser is by definition one who purchases for value in good faith and without notice."). Unfortunately for Plaintiff, the deed of transfer transferred exclusive right and fee simple ownership of *Babelbai* – not merely a use right – to Defendant. The fact that he did not know the exact nature of Defendant's claim to *Babelbai* does not alter the fact that he had notice that Defendant had some sort of claim to the land.¹

Moreover, Defendant's residence at *Babelbai* is alone sufficient to constitute constructive notice to Plaintiff of Defendant's rights to the property. *Ueki*, 5 ROP Intrm. at 78 ("The general rule is that actual possession of real estate is constructive notice of the rights of the possessor and of all facts connected therewith' which a reasonable inquiry, made of the possessor, would disclose.") (quoting 77 Am. Jur. 2d *Vendor and Purchaser* § 688 (1997)).

Similarly, the language of the 1994 deed of transfer of *Babelbai* to Plaintiff states that the conveyance was being made in consideration of the love and affection of Idub for her son. Based on these facts, Plaintiff is not a bona fide purchaser for value of the property without notice of a prior conveyance by Idub. 66 Am. Jur. 2d, *supra*, § 142 (bona fide purchaser for value must have "parted with a valuable consideration . . . by paying money or other thing of value, assuming a liability, or incurring an injury"). His claim to *Babelbai* is therefore not entitled to the protection of the recording statute against the common law principle that one cannot sell what one does not own. *See Teblak*, 7 ROP **L246** Intrm. at 2-3. Accordingly, Defendant's failure to record her earlier deed is not fatal to her claim of ownership to *Babelbai*. Based on these undisputed facts, Plaintiff has no interest in *Babelbai* because Idub had already given the land away to Defendant six years earlier and thus had nothing to convey.

III. Land Claims Hearing Office's Determination of Ownership

On June 10, 1999, the LCHO issued certificates of title in Plaintiff's name for both lots based on the 1994 deed of transfer. A certificate of title is *prima facie* evidence of ownership and is conclusive on all persons who have notice of the proceedings. *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 158 (2000). Courts have, however, permitted collateral attacks on certificates of title where the certificates were issued without a hearing or determination of ownership and were based solely on documents purporting to transfer title. *Uchel v. Deluus*, 8 ROP Intrm. 120, 121 (2000) (citing *Emaudiong v. Arbedul*, 5 ROP Intrm. 31, 35 (1994)); *Obak v. Bandarii*, 7 ROP Intrm. 254 (Tr. Div. 1998).

¹ Defendant also fails to qualify as a bona fide purchaser for value as there is no evidence in the record that Defendant paid valuable consideration of the land.

Obak v. Frank, 13 ROP 243 (Tr. Div. 2006)

Here, it is not disputed that the LCHO issued both the determinations of ownership and the certificates of title for *Babelbai* to Plaintiff without providing notice to Defendant of Plaintiff's claims or conducting a hearing. Accordingly, the validity of the certificates in Plaintiff's name is reviewable by this Court. It is undisputed that Plaintiff's request for issuance of new determinations of ownership and certificates for *Babelbai* in his name was based on the 1994 Deed. Based on such a record, their issuance to Plaintiff was erroneous because the purported grantor, Idub, having conveyed the land to Defendant six years earlier, had no interest in *Babelbai* to convey to Plaintiff. Accordingly, the Land Court is instructed to cancel the existing certificates of title for *Babelbai* in Plaintiff's name and to issue new ones in Defendant's name in accordance with this decision and pursuant to its rules.

CONCLUSION

Based on the undisputed facts presented by both parties, the Court finds no evidence demonstrating a genuine factual dispute on a material issue. These undisputed facts support the conclusion that Defendant is the proper owner of the lands known as *Babelbai*. Accordingly, Defendant's motion for summary judgment is GRANTED. For the same reasons, Plaintiff's motion is DENIED.