

Esebei v. Sadang, 13 ROP 79 (2006)

**MASAO SABO ESEBEI,
Appellant,**

v.

**MAD RA ROSS ETIBEK PETER SADANG, RENGIL RA OKRENG LEONG IMEONG,
RECHEBEI RATIABED AUGUST NGIRAR, TBEKRIU ER IOU OLIKONG
KATOSANG, TBEKRIU ER BAB RICKY MECHOL, and BEDUL ER BAB MASA HARU
MAIDESIL,
Appellees.**

CIVIL APPEAL NO. 05-008

Civil Action No. 99-2

Supreme Court, Appellate Division
Republic of Palau

Argued: March 7, 2006

Decided: March 8, 2006

Counsel for Appellant: Raynold B. Oilouch

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Counsel for Appellees: Johnson Toribiong

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
JANET HEALY WEEKS, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice,
presiding.

PER CURIAM:

Appellant Masao Sabo Esebei ¹ challenges the trial court's order requiring his father, Espangel Esebei Arbedul, to return \$33,000 and account for \$130,000 of proceeds from a lease of property in Ngerkebesang Hamlet. A brief oral argument was held on March 7, 2006, at which the parties did not stray from the arguments presented in their briefs. Having considered the arguments of the parties, we affirm the judgment of the trial court.

¹ This appeal was initially filed by Masao's father Espangel Esebei Arbedul, but he has since passed away. On March 6, 2006, Masao filed a motion to substitute appellant. In lieu of issuing a separate order, the Court grants the motion and has incorporated the change into this opinion.

BACKGROUND

This appeal concerns the proceeds from a lease of real property known as *Umetate* and identified as Lot 003 A 07. *Umetate* is located in Ngerkebesang Hamlet in Koror State. Prior to World War II, this lot was a marine area situated below the high water mark. During the war, the Japanese Navy used soil from adjacent land owned by the Japanese government to create the lot. This lot became public land under the Trust Territory Government, as successor to Japanese government-owned land. In June 1973 and after receiving several statements by local chiefs, the Land Commission determined that *Umetate* was owned by Ngerkebesang Hamlet. It issued a Certificate of Title, listing the fee simple owner as “Arkebesan Hamlet; Espangel, Omrekongel Clan, Obak, Iuong Clan, Rengiil, Eluill Clan; and Rechebei, Odilang Clan, Espangel Esebei Arbedul, spokesman; Trustees.”²

On May 7, 1997, the hamlet’s four high chiefs—namely Esebei Arbedul (Chief Espangel), Imeong Etibek (Chief Obak Ra Iuong), Francisco Gibbons (Chief Rengiil Ra Eluil), and Singich Katosang (Chief Rechebei Ra Odilang)—signed a fifty-year lease renting *Umetate* to Tosiwo Nakamura for \$333,615.00. Out of that money, \$33,361.50 was paid on the date of the execution of the lease agreement, and the remainder was paid within sixty days of that date. The first payment went directly to Arbedul, and he has since exhausted the money for personal use. The second payment totaled \$300,253.50, of which each of the four signatory chiefs received \$50,000. The remaining \$100,253.50 was kept by Arbedul.

Appellees are six title bearers of Ngerkebesang Hamlet. They filed this lawsuit, arguing that—with the exception of the \$50,000 paid to each of the four high chiefs—the money should be used for the benefit of the hamlet. The trial court agreed. It determined that Arbedul had a fiduciary duty preventing him from using hamlet money for his personal use. The trial court based its decision on both a trust relationship and **181** Palauan custom. It found that Arbedul used the initial \$33,000 for his personal interests, and the court required him to return that sum to Ngerkebesang Hamlet. It further required Arbedul to account for \$130,000 of the rental proceeds.

Arbedul presents five issues on appeal. First, he contends that the plaintiffs lacked standing to challenge the distribution of rental proceeds. Second, he claims the trial court improperly found that a trust was created. Third and fourth, Arbedul asserts that the trial court failed to consider evidence supporting the fact that four chiefs are permitted to make binding decisions regarding the distribution of rental proceeds, and that Arbedul, as Chief Espangel, has the power to use and expend money owned by Ngerkebesang Hamlet. Fifth, he argues that the trial court miscalculated the figures and required him to do an accounting of and repay more money than was challenged by the plaintiffs.

STANDARD OF REVIEW

The lower court’s conclusions of law are reviewed using the *de novo* standard. *Tsai v. ROP*, 9 ROP 142, 143 (2002). The factual findings of the trial judge will be disturbed only if

² Arkebesan Hamlet is another name for Ngerkebesang Hamlet.

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they are clearly erroneous. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). 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 State Pub. Lands Auth.*, 9 ROP 162, 164 (2002).

ANALYSIS

A. Trust and Fiduciary Relationship

Although Appellant's first argument in his brief relates to the standing of Appellees, we must first resolve the issue of whether the trial court improperly found that a trust was created by the Land Commission's determination. In so finding, the trial court recounted the historical creation of *Umetate*. It was created when the Japanese Navy filled in the marine lot with soil from adjacent land that the government also owned. Because *Umetate* was owned by the Japanese government, the lot became public land under the Trust Territory Government pursuant to 67 TTC § 1. Therefore, it was never owned privately, and when it came time for the Land Commission to determine the owner of *Umetate*, the Commission could not return the land to its previous owner. Accordingly, the Land Commission requested and received a statement by the chiefs of the eight clans of Arkebesan Island that indicated that Ngerkebesang Hamlet should own *Umetate* under Palauan custom. It then issued a title to "Arkebesan Hamlet; Espangel, Omrekongel Clan, Obak, Iuong Clan, Rengiil, Eluill Clan; and Rechebei, Odilang Clan, Espangel Esebei Arbedul, spokesman; Trustees."

The trial court found this act created a trust with Ngerkebesang Hamlet as the owner of *Umetate*, the residents of the hamlet as beneficiaries, and the four chiefs as trustees. It determined that under this trust relationship, Arbedul had a fiduciary duty preventing him from profiting in his own personal capacity. Appellant challenges this ruling by arguing that several of the essential elements of a trust are not present. It is important to note, however, the trial court's underlying reasoning for finding a fiduciary duty is based on both a trust relationship and Palauan custom. On appeal, this Court need only determine that one of those two foundations is accurate. 5 Am. Jur. 2d *Appellate Review* § 829.

182 At trial, evidence was presented that the four high chiefs of Ngerkebesang Hamlet have the power to make decisions regarding the appropriation of hamlet money. Testimony by Moses Mokoll also indicated that the village money held by the high chief cannot be used for his personal purposes and should be used on community projects. Herein lies the fiduciary nature of the four highest hamlet chiefs. *See* Black's Law Dictionary, 1315 (8th ed. 2004) (defining a fiduciary relationship as one "in which one person is under a duty to act for the benefit of another within the scope of the relationship").

Proof of custom must be proved by clear and convincing evidence. *Iderrech v. Ringang*, 9 ROP 158, 161. A trial court's finding as to a custom's existence is reviewed under the clearly erroneous standard. *Ngeribongel v. Gulibert*, 8 ROP Intrm. 68, 70 (1999). The expert testimony of Moses Mokoll indicated that the village money held by the high chief cannot be used for his personal purposes and should be used on community projects. The other expert witness, Wataru

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Elbelau, testified that he did not know whether it was appropriate under custom for the four chiefs of the hamlet to decide to keep property themselves and not use any of it for the village. Based on this testimony and without evidence directly rebutting this support, the Court cannot find that the trial court was clearly erroneous in finding a fiduciary duty in the circumstances under Palauan custom.

B. Standing

Arbedul argues that the plaintiffs have no standing as individual persons to represent Ngerkebesang Hamlet. This Court takes a “broad view of what and by whom matters may be brought before the Court.” *Skebong v. ROP Envtl. Quality Protection Bd.*, 8 ROP Intrm. 83, 85 (1999). While the key to standing is an actual or threatened injury, only slight injury is required, and “an identifiable trifle is enough for standing to fight out a question of principle.” *Becheserrak v. ROP*, 5 ROP Intrm. 63, 67 (1995).

Because Palauan custom supports a fiduciary relationship in these circumstances, the plaintiffs had standing to challenge the use of hamlet monies because beneficiaries have standing to challenge the fiduciaries’ actions. *See, e.g.*, Restatement (Third) of Trusts § 45, cmt. f (2003) (stating that any member of a class can file a lawsuit to redress or enjoin a breach of trust); 18B Am. Jur. 2d *Corporations* § 1462 (stating that stockholders have standing to file derivative, and in some cases direct, lawsuits against corporate officers and directors for breach of fiduciary duty).

C. Authority of the Four High Chiefs and/or the Espangel to Use the Hamlet’s Moneys

Arbedul argues that the trial court did not consider evidence that the four chiefs and the Espangel are authorized to determine how money belonging to the hamlet should be used. Alternatively, he contends that it is not clear from the record whether the trial court considered this evidence. Arbedul suggests this Court should remand the case so that the trial court may consider the evidence or describe how it treated that evidence.

A lower court “must issue findings of fact and conclusions of law that make clear the basis for its determination,” but it “need not reiterate every fact presented at trial because the availability of a transcript allows meaningful review to take place.” *Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 72 (2003). The trial court’s findings do not violate this **183** rule.

The trial court found that the Espangel must expend the money for the benefit of Ngerkebesang Hamlet. Thus, it required Arbedul to return the hamlet’s money that was admittedly used for his personal benefit and account for all of the lease proceeds from *Umetate*. Implicit in this ruling is that the four chiefs and the Espangel can determine how to use the hamlet’s money so long as it is for the benefit of the hamlet.³ This is not the first time a court has made such a finding related to Palauan custom. In *Ngerdelolek Village v. Ngerchol Village*, 2

³ In fact, the trial court’s findings refer to this in two different sections. First, the issue is mentioned in the fact section, in which it is stated that “there is no evidence to show that any of the money was expended for Ngerkebesang Hamlet.” Second, the Court mentions Moses Mokoll’s testimony that “the money belongs to the people of the village, the whole village.”

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TTR 398 (1963), the Trust Territory court determined that the village decision makers could reassign public land to others so long as the land is “used for things they reasonably considered to be a public use.” *Id.* at 404.

A fair reading of the trial court’s findings leads us to the conclusion that it considered the authority of the four chiefs, including Arbedul, to determine how to use the hamlet’s money. Accordingly, there is no need to remand this issue for a more specific finding.

D. Judgment

Finally, Arbedul argues that the trial court’s order requiring him to return \$33,000 to Ngerkebesang Hamlet and account for \$130,000 of the rental proceeds is improper because it exceeds the plaintiff’s prayer for relief. If the trial court’s order required him to return \$33,000 and account for *an additional* \$130,000, the judgment may be improper. As discussed below, that is not the order of the court.

Tosiwo Nakamura made two payments totaling \$333,615 to lease *Umetate* for fifty years. Of that money, each of the four chiefs received \$50,000 (for a total of \$200,000). The plaintiffs have waived any right to challenge this distribution. The remainder of the rental proceeds is approximately \$130,000, which Arbedul received in two payments, the first of which was approximately \$33,000.⁴ The court found that any money spent for personal use by Arbedul, as opposed to spending for the benefit of the hamlet, must be returned to the hamlet. Therefore, it ordered Arbedul to account for the \$130,000 of challenged rental proceeds in order to determine whether the money was spent for proper purposes. Included within that figure is the \$33,000 that the court found to be spent for Arbedul’s personal use. Thus, the order was not erroneous.

CONCLUSION

In summary, the Court finds that the trial court was not clearly erroneous in finding a fiduciary relationship was created between **184** Arbedul and the hamlet’s residents based on Palauan custom. Based on this finding, the question of whether the trial court appropriately determined that a trust was created by the Land Commission is moot. The plaintiffs had standing as residents (and accordingly, beneficiaries) of the hamlet to challenge the Arbedul’s use of the money. Moreover, the trial court’s findings sufficiently reveal that it considered the authority of the four chiefs and the Espangel, in particular, to determine how to use the hamlet’s money. And finally, the trial court’s order related to the return of money and the accounting is not erroneous. For these reasons, the trial court’s judgment is affirmed.

⁴ The exact remainder amount is \$133,615. The trial court rounded the figure to \$130,000. Similarly, the first payment to Arbedul was in the amount of \$33,361.50, but the trial court rounded this figure to \$33,000. Based on its reasoning, the trial court could have required repayment of \$33,361.50 and an accounting of \$133,615, but because the rounded amounts have not been appealed by the plaintiffs and because the lesser amounts benefit the appellant, this Court will continue to use the rounded figures.