*Children of Ngiramechelbang Ngeskesuk v. Brikul, et al.*, 14 ROP 164 (2007)

**CHILDREN OF NGIRAMECHELBANG NGESKESUK,**
**Appellant,**

**v.**

**RENGULBAI BRIKUL,**
**DUYANG KATOSANG, and**
**TERUO NGIRABEDECHAL,**
**Appellees.**

CIVIL APPEAL NO. 07-014
Civil Action Nos. 02-115, 02-116, 02-118, 02-119, and 02-164

Supreme Court, Appellate Division
Republic of Palau

Argued: September 17, 2007
Decided: September 27, 2007

Counsel for Appellant: Mariano W. Carlos
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Counsel for Appellee: J. Roman Bedor

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice, LOURDES F. MATERNE, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

NGIRAKLSONG, Chief Justice:

Appellant Children of Ngiramechelbang Ngeskesuk appeals the judgement of the Trial Division awarding portions of land to the Appellees. Having considered the arguments of the parties, we reverse the judgment of the Trial Division.

## BACKGROUND

The parcels of land in dispute are part of Cadastral Lot Nos. 007 A 20 and 007 A 21 (Tochi Daicho Lot No. 1459), and Cadastral Lot No. 007 A 13 (Tochi Daicho 1460) (hereinafter referred to as "Lots 1459 and 1460"). The Children of Ngiramechelbang Ngeskesuk ("the Children") were awarded certificates of title to the entirety of Lots 1459 and 1460 in 1991 and 2000 following a series of cases involving disputes over these and other lots in Ngerkebesang Hamlet, the most important of which for purposes of the present appeal is *Torul v. Arbedul*, 3 TTR 486 (Tr. Div. 1968).[1] In *Torul*, the Trial Division of the Trust Territory High Court awarded

[1]There were also three other cases involving Lots 1459 and 1460. Years after *Torul*, the Palau District

Lots 1459 and 1460 to the heirs of Dirrablong, represented by Ngeskesuk.[2]

Appellees Rengulbai Brikul, Duyang ⊥166 Katosang, and Teruo Ngirabedechal claim the land is owned by Kelaolbai Lineage. In the 1950's, Brikul, Katosang's husband, and Ngirabedechal's uncle all built houses on portions of Lots 1459 and 1460. The Appellees claim that they received permission to build their houses on the property from the Lineage. Neither the Appellees nor Kelaolbai Lineage filed any claim of ownership for the land.

In 2002, the Children filed an action to eject the Appellees from the land. In 2003, judgment was entered for the Children and the Appellees appealed. On appeal, this panel upheld part of the Trial Division's findings, but remanded on the specific issue of whether Appellees had established the elements of adverse possession. *See Brikul v. Matsutaro*, 13 ROP 22 (2005). On remand, the Trial Division found that the Appellees had met the requirements for adverse possession and granted them ownership of the portion of Lots 1459 and 1460 that they occupy.

## STANDARD OF REVIEW

This Court employs the *de novo* standard in evaluating the lower court's conclusions of law. *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 46 (2006). Factual findings are reviewed using the clearly erroneous standard. *Id.* Common law adverse possession presents a mixed question of law and fact. *Seventh Day Adventist Mission of Palau, Inc. v. Elsau Clan*, 11 ROP 191, 193 (2004).

## ANALYSIS

Appellees claim that because they have lived on the property, uninterrupted, for over twenty years, Kelaolbai Lineage has acquired ownership of the property through adverse

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Land Commission determined that Dirrablong's "heirs" were her brothers, sisters, and adopted son. This finding was affirmed in *Ngeskesuk v. Solang*, 6 TTR 505 (Tr. Div. 1974).

In 1977, the five heirs of Dirrablong deeded the two lots to Ngiramechelbang's six children. In 1989, the Appellate Division of the Supreme Court addressed a quiet title action, in *Children of Ngeskesuk v. Espangel*, 1 ROP Intrm. 682 (1989), filed by the children of Ngiramechelbang against Esebei Espangel. Espangel claimed he had purchased Lots 1459 and 1460 from Ngiramechelbang in 1968 after the *Torul* decision. The court, however, held that any alleged sale between Ngiramechelbang and Espangel was invalid because it was in violation of Palauan custom. The court further held Espangel was bound by the earlier Land Commission Determination of Ownership, since he had failed to file an appeal despite being aware of the issuance of the determination.

Finally, in *Rengulbai v. Solang*, 4 ROP Intrm. 68 (1993), various quiet title actions were filed following the deaths of Ngiramechelbang and his sister, Ebil Rengulbai (original heirs of Dirrablong). However, the only issue in the case relevant to the present matter is the court's affirmation that Lots 1459 and 1460 belonged to the children of Ngiramechelbang.

[2]The court in *Torul* stated: "The portion of the land in question outlined in red on Sketch SK-230-B on file in this action, intended to represent Lots Nos. 1448, 1449, 1450, 1456 to 1460 inclusive . . . is owned by the heirs of Dirrablong . . . ."

possession and/or by the running of the statute of limitations. To acquire title by adverse possession, the claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years. *Brikul v. Matsutaro*, 13 ROP 22, 25 (2005). Where any one of these elements is lacking, adverse possession does not apply. *Otobed v. Ongrung*, 8 ROP Intrm. 26, 28 (1999). A party claiming title by adverse possession bears the burden to affirmatively prove each element of adverse possession. *Seventh Day Adventist Mission*, 11 ROP at 193.

Possession of property is notorious when an adverse claim of ownership is evidenced by such conduct as is sufficient to put a person of ordinary prudence on notice of the fact that the land in question is held by the claimant as his or her own. 3 AM. JUR. 2d *Adverse Possession* § 63 (2002). "The requirement for adverse possession that the possession be hostile does not require ill will or malice, but an assertion of ownership adverse to that of the true owner and all others. Possession is hostile if the possessor holds and claims the property as his or her own, whether by mistake or willfully." *Brikul*, 13 ROP at 25.

The Children contend that while they knew of Appellees' occupation of the land, the Children did not have the knowledge that the Appellees held the property as their own or as Kelaolbai Lineage land. It is not mere occupancy or possession that must be known to the true owner to establish title by adverse possession, but an occupancy that is in opposition to the owner's rights and in ⊥167 defiance of, or inconsistent with, legal title. *See Reinheimer v. Rhedans*, 327 S.W.2d 823, 830 (Mo. 1959). The Children claim that the Appellees merely resided on the property and took no action to claim the property. The mere possession of land does not in and of itself show the possession is notorious or hostile. *See Knight v. Hilton*, 79 S.E.2d 871, 873 (S.C. 1954); *Ramapo Mfg. Co. v. Mapes*, 216 N.Y. 362, 370 (N.Y. 1915). There must be some additional act or circumstance indicating that the use is hostile to the owner's rights. *See Reitsma v. Pascoag Reservoir & Dam, LLC*, 774 A.2d 826, 832 (R.I. 2001).

From the evidence in the record, there is no indication that the Appellees took any action beyond mere possession. The Appellees and the Lineage had numerous opportunities over the years to either claim the land or demonstrate the adverse nature of the Appellees' occupancy. While the Appellees were not required to file any claim in order to demonstrate adverse possession, *see Tmiu Clan v. Ngerchelbucheb Clan*, 12 ROP 152, 155 (2005), they had to do something to demonstrate their hostility under a claim of right. The Appellees gave no verbal or written notice to the Children nor did they make any physical indication such as making improvements. If the Children had received notice of Appellees adverse claim they would likely have acted to protect their property rights as they did when they filed an eviction action against Esebei Espangel after he began improving on the Children's land. Without any additional act or circumstance indicating that the use is hostile to the owner's rights, the Children were not on notice of the Appellees' hostile claim. Therefore, the notorious and hostile elements are lacking and the Appellees cannot establish ownership of the land through adverse possession.

## CONCLUSION

The Appellees did not satisfy all the requirements of adverse possession. Accordingly,

the Trial Division's judgment is vacated and the case is remanded for further proceedings consistent with this opinion.

MILLER, Justice, concurring:

This is a close case, and although my initial inclination was to vote to affirm the Trial Division's judgment in favor of Appellees, I am persuaded by the Chief Justice's opinion to the contrary. I write separately to highlight the key factors underlying my decision and to suggest that the result here might have been different had it been decided in a United States court.

A change of ownership due to adverse possession results from a land owner's failure to act promptly to protect his property and will usually arise, as here, in the context of a possessor's defense to a belated claim for ejectment. For that reason, we have quite properly held that "[t]here is no requirement that a party claiming ownership through adverse possession file any claim whatsoever." *Tmiu Clan v. Ngerchelbucheb Clan*, 12 ROP 152, 155 (2005). Notwithstanding this principle, however, I believe it is critical to this case that although Appellees were already occupying the land since the 1950's, and although the land was the subject of both Land Commission proceedings and repeated litigation, Appellees never once came forward to assert their current claim on behalf of the Kelaolbai Lineage. Given this silence, I believe the ⊥168 Court is right to conclude that Appellees failed to put Appellants on notice that their possession of the land was adverse to Appellant's ownership rights and that the application of adverse possession to take away those rights would be inappropriate and unfair.

Having said all that, I believe that a United States court, presented with the same facts, might well say that any unexplained and unauthorized presence on a person's land should be presumed adverse and should lead to either a demand for rent or an action for eviction. "If there is someone on your land, and you didn't put them there," a court might well say, "then it is your duty to act." Such an attitude, the Court believes, is foreign to Palau where, again as in this case, it is not unusual for landowners to allow others – particularly where there is some relationship between the owner and the possessor[3] – to make use of their lands until they are ready to develop them.[4] For all of these reasons, I concur in the judgment.

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[3]The relationships among the parties to this case, standing alone, are too attenuated (i.e., not close enough) to establish or presume that Appellees' possession of the land was not adverse. But those relationships may help explain why appellants were willing to forgo legal action until recently.

[4]That is not to say that Palauan landowners should not be vigilant about what is happening on their land. Such vigilance need not mean increased litigation, however. It might be sufficient simply to ask possessors to acknowledge in writing that their presence is permissive or non-adverse. Only if such acknowledgment is not forthcoming should further action be necessary.