Ngarmesikd Council of Chiefs v. Rechucher, 15 ROP 46 (2008)

NGARMESIKD COUNCIL OF CHIEFS
and NGARLEI COUNCIL OF CHIEFS,
Appellants,

v.

NGIRCHOTEOT JOHN K. RECHUCHER
and TULEI RA OTEOT ISAAC STEPHANUS,
Appellees.

CIVIL APPEAL NO. 07-007
Civil Action No. 04-377

Supreme Court, Appellate Division
Republic of Palau

Decided: February 6, 2008[1]

Counsel for Appellants: Johnson Toribiong

Counsel for Appellees: John K. Rechucher

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem.

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

SKEBONG, Justice:

This matter concerns an appeal from the decision and judgment of the Trial Division, dated December 29, 2006. The Trial Division held that Appellants, the traditional chiefs of Ngkeklau Village, had no justifiable grounds upon which to impeach Appellees John Rechucher and Isaac Stephanus as members of the Ngkeklau Village Council of Chiefs.

BACKGROUND

Appellee Rechucher held the title Ngirchoteot, the second ranking chief among the Council of Chiefs. Appellee Stephanus held the title Tulei ra Oteot, the sixth ranking chief among the Council of Chiefs. Both are from the Oteot Clan. The facts leading up to the impeachment of Appellees are as follows.

Two parcels of land were leased by the Oteot Clan to the Ngkeklau Village and were used

[1] Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

by the village for kitchen, benjo (toilet), and ⊥47 shower. When the lease ended, the Clan wanted its land back. Appellants, through their spokesperson, asked Appellees to return the lands to the village. Appellees consulted the Clan decision makers, and the Clan, through Appellees, made a counteroffer. The Council of Chiefs rejected the counteroffer and declared that Appellees would be impeached and removed from their positions in the council if the Oteot Clan did not return the lands to the village. Subsequently, the Council impeached and removed Appellees and placed notices in the newspapers and on the radio.

Following the impeachment and publication, Appellees brought claims of libel and disrespect against the councils and the members. Trial was held before Chief Justice Ngiraklsong on December 19, 2006. The trial court declared that the Council of Chiefs had no grounds under traditional law or modern standards for the impeachment but that the Plaintiffs (now Appellees) had failed to prove damages to support their claims of libel and disrespect. The court also declined to order the council to readmit the plaintiffs, but stated, rather, that "the best remedies in the short and long run can only come from the parties themselves." This appeal followed.

STANDARD OF REVIEW

The trial court's findings of fact are reviewed for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Dilubech Clan v. Ngaremlengui State Pub. Lands Auth.,* 9 ROP 162, 164 (2002). Conclusions of law are reviewed *de novo. Roman Tmetuchl Family Trust v. Whipps,* 8 ROP Intrm. 317, 318 (2001). Review of a trial court's declaratory judgment is likewise reviewed *de novo* under *Matlab v. Melimarang,* 9 ROP 93, 96 (2002).[2]

DISCUSSION

Appellants argue that the decision of the ⊥48 Council of Chiefs is not subject to reversal

---

[2] *Matlab* represents a seemingly inexplicable departure from the holding *of Filibert v. Ngirmang,* 8 ROP Intrm. 273, 276 (2001), which adopted an abuse of discretion standard for review of a declaratory judgment. The *Matlab* court relied upon authority from the Seventh Circuit Court of Appeals for its adoption of a *de novo* standard *of* review.

Filibert relied on the United States Supreme Court case *Wilton v. Seven Falls Co., 115* S.Ct. 2137 *(1995). Wilton* resolved a conflict among the circuits over the proper standard *of* review when a District Court declined to entertain a declaratory judgment action. The *Wilton* court noted that the text of the Declaratory Judgment Act confers upon the trial judge a "unique and substantial discretion" in deciding whether to declare the rights of litigants. *Id*. at 2142. The court explicitly rejected the position taken by some circuits (like the Seventh) that were applying a *de novo* standard.

While *Matlab* is the more recent Palauan decision and therefore controlling, we note that it rests on Seventh Circuit precedent that was superceded by the very authority on which the earlier *Filibert* standard was based. The issue is academic in the present case because we affirm even under *de novo* review, but a court confronted with the appropriate set *of* facts may need to revisit the *Matlab* holding.

by the Court, and therefore this Court should vacate the judgment of the Trial Division. Because the judgment of the Trial Division did nothing more than declare the process underlying the alleged impeachment invalid under customary law, Appellants' argument is not well made. We find the court properly limited its judgment to the matter in controversy and therefore affirm.

Rule 57 of the Rules of Civil Procedure provides that in cases of actual controversy within its jurisdiction, "the court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." While the case at bar did not begin with a prayer for declaratory relief,[3] this fact does not impair the ability of the trial judge to provide such relief if the parties are so entitled. Rule 54(c), which is identical in text to Rule 54(c) of the United States Federal Rules of Civil Procedure, provides as follows:

> (c) Demand for Judgment. . . . Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

United States courts, when construing the identical rule 54(c), have held that a court may render a declaratory judgment even though such relief was not demanded in the complaint. *See Dann v. Studebaker-Packard Corp.,* 288 F.2d 201, 216-17 (6th Cir. 1961). Because this Court looks to the interpretations of U.S. courts when construing rules derived from the U.S. federal rules,[4] we adopt this reasoning and hold that declaratory relief may be provided to a party so entitled even though such relief is not specifically requested in the pleadings.

The issue thus becomes whether Rechucher was entitled to declaratory relief. The appropriate test was best articulated in *Espangel v. Diaz,* 3 ROP Intrm. 240 (1992). To determine whether it is appropriate to intervene in a matter of custom, the court must ultimately decide whether intervention is necessary to "quiet controversy, bring peace and settle differences," among the participants in the customary matter. *Id*. at 244. The *Espangel* court found that it was obligated "to determine whether (the) appellee . . . had been wrongfully deprived of a vested right." *Id*. at 245. We believe that the Trial Division was confronted with a similar obligation in the case at bar.

⊥49

The trial court noted that the parties had not practiced their case according to their pleadings and that many issues raised in the pleadings had gone undeveloped in discovery and at

---

[3] There is likewise no evidence that the Plaintiff sought to amend his Complaint at any time.

[4] *See e.g., Gibbons v. Seventh Koror State Legislature,* 11 ROP 97,103 (2004) (holding that interpretations of comparable United States federal rules are used for guidance when construing our rules); *Sadang v. Ongesii,* 10 ROP 100, 102 (2003) (holding that because ROP Rule of Civil Procedure 60(b) is derived from the Federal Rules, it is appropriate to look to the United States authorities for guidance); *Senate v. Nakamura,* 8 ROP Intrm. 190, 192 (2000) (holding that because Palau's declaratory judgment law is based on the Declaratory Judgment Act from the United States, it is appropriate to look to United States law for guidance).

trial. *See* Trial Division Findings of Fact and Conclusions of Law at 5. The primary issue presented to the court at trial and which seemingly defined the controversy between the parties was whether a council of chiefs can expel a member because he cannot convince his clan to donate land to the village.[5]

Expert witness Wataru Elbelau testified that while the council of chiefs has the authority under custom to impeach and remove members for cause, the for cause requirement cannot be overlooked. In other words, custom requires that the council have adequate grounds for impeachment and removal. Elbelau then gave some examples of adequate grounds for impeachment and removal. *See* Tr. at 170, 182. Elbelau was then asked, several times, a hypothetical based upon the facts of the present case and whether a council member's inability to convince his clan to donate land to the council constituted an adequate cause for impeachment and removal. *See* Tr. at 173-75, 180. His answer was repeatedly "no." *Id*. Elbelau went on to state that if removal had been attempted for insufficient cause, then under custom, that removal had no effect whatsoever. *See* Tr. at 185.

It being clear from the evidence that under custom, the removal of appellees from the council was procedurally infirm, a declaratory judgment to that effect was necessary to settle the controversy between the parties. However, in stopping short of ordering the council to reinstate Appellees, the Trial Division's judgment was appropriately narrow. As this Court previously stated in *Sato v. Ngarchelong State Assembly,* 7 ROP 79 Intrm. 79, 81 (198), "although we have the authority to step in to resolve disputes concerning customary matters, this court opts for the exercise ofthe least supervision necessary." 7 ROP 79, 81 (1998). The declaratory judgment of the Trial Division stands, and the parties are charged with responsibility for working out a solution in accordance with that judgment.

CONCLUSION

For the reasons set forth above, the judgment of the Trial Division is affirmed.

[5] The Trial Division found as a matter of fact that the Oteot Clan owned the land in question and had leased it to the village. This factual finding has not been challenged on appeal.