Wong v. Obichang, 16 ROP 209 (2009)
BALANG ULANG S. WONG AND BLITANG YOICHI SINGEO,
Appellants,

v.

ESUROI OBICHANG,
Appellee.

CIVIL APPEAL NO. 08-044
Civil Action Nos. 06-169 & 06-170

Supreme Court, Appellate Division
Republic of Palau

Decided: July 7, 2009[1]
p.210
Counsel for Appellants: Carlos Hiros Salii

Counsel for Appellee: Susan Kenney-Pfalzer

BEFORE: ALEXANDRA F. FOSTER, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem; RICHARD H. BENSON, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

In this appeal, Appellants challenge the trial court's decision to award the land known as Tesei to Appellee. Because the trial court did not err in rejecting Appellants' collateral attack on a certificate of title, we **AFFIRM**.

BACKGROUND

A. LCHO/Land Court Proceedings

The events giving rise to the present dispute occurred approximately twenty years ago. In 1989, Toribiong Medemedemk filed a claim with the Land Claims Hearing Office ("LCHO") for a land known as Tesei in Peleliu. In his application for land registration, Toribiong claimed the land on behalf of an unspecified "telungalk." [2] According to Appellants, their mother, Balang

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[1]The parties did not request oral argument pursuant to ROP R. App. P. 34(a).

[2]The Palauan-English Dictionary defines "telungalek" as "extended family." Lewis S. Josephs, *New Palauan-English Dictionary* 324 (1990); *cf. id.* at 264 (defining "ongalek" as "nuclear family"). The Court takes judicial notice of the fact that the term "telungalek" also refers to a lineage within a clan. *See* ROP R. Evid. 201; see also Op. Brief at 12 (Appellants use terms "lineage" and "telungalk"

Toyomi Singeo, also filed a claim for Tesei in 1989, but she claimed the land on behalf of Sau Lineage. Appellants argue that Toyomi withdrew her claim because Toribiong said that he was claiming the land for Sau Lineage. Although the Land Court file does not contain a copy of Toyomi's alleged claim, Toyomi did write on Toribiong's claim that she allowed him to claim Tochi Daicho Lot Nos. 1981, 1982, and 1985.

The LCHO held a hearing regarding Tesei in 1990. At this hearing, Toribiong claimed Tesei for himself and his nieces Hanako Ngiraibuuch and Appellee Esuroi Obichang. Appellants allege that Toyomi did not attend this hearing because she had withdrawn her claim. On August 4, 1990, the LCHO issued a Determination of Ownership that awarded Tesei to Toribiong, Hanako, and Appellee in fee simple as tenants in common. [3] No one appealed this Determination of Ownership. For reasons not apparent from the record, a certificate of title was not issued for Tesei in 1990.

In July 2001, almost eleven years after the LCHO issued the Determination of Ownership, Balang Toyomi Singeo died. Toribiong Medemedemk died in 2004. On May 9, 2005, the Land Court issued a certificate of p.211 title for Tesei. The certificate listed Toribiong Medemedemk, Hanako Ngiraibuuch, and Esuroi Obichang as owners of the land. The Land Court also issued certificates of title in Toribiong's name for lands known as Mecherchar and Ngebedech.

B. Trial Court Proceedings

On July 14, 2006, Appellee Esuroi Obichang filed a petition to settle the estate of Toribiong Medemedemk. Appellee requested that the trial court award her Toribiong's interests in Mecherchar, Ngebedech, and Tesei. This estate proceeding was at least partially consolidated with the estate proceeding of Hanako Ngiraibuuch, Appellee's sister. Appellee sought Hanako's interest in Tesei as well. Because there was no dispute regarding Mercherchar and Ngebedech, the trial court awarded Toribiong's interests in these lands to Appellee.

There was a dispute, however, regarding Tesei. Appellants, representing Sau Lineage, [4] argued that the certificate of title for Tesei was invalid because it was procured by fraud. Specifically, Appellants asserted that Toribiong induced Toyomi to withdraw her claim to Tesei by falsely representing that he, too, was claiming the land for Sau Lineage, when in actuality he claimed the land for himself and his nieces.

The trial court rejected Appellants' fraud argument and transferred Tesei to Appellee as her individual property. The court cited *Irikl Clan v. Renguul* , 8 ROP Intrm. 156 (2000), for the proposition that a certificate of title is prima facie evidence of land ownership. Tr. Ct. Decision at

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interchangeably).

[3]The 1990 Determination of Ownership mistakenly listed Baerdong Ngiraibuuch as an owner of Tesei. At Toribiong's request, the LCHO later issued a corrected Determination of Ownership that did not mention Baerdong.

[4]Appellants initially filed their claim on behalf of Tesei Clan. The trial court allowed Appellants to change their claim to one on behalf of Sau Lineage over Appellee's objection.

2. The trial court then noted that Appellants were attempting to collaterally attack a certificate of title by claiming fraud. *Id.* After setting out the elements of fraud, the trial court found that Appellants' claim failed for several reasons. "First of all, the alleged fraud took place in 1989, some 26 years ago and as petitioner correctly points out in her closing argument, what we have here is one simple double hearsay statement that 'Toribiong was going to claim for the lineage.'" *Id.* at 3. The "original parties to the fraud are long gone," the trial court pointed out, and "without Balang here to say Toribiong's false statement induced her to withdraw her claim and without Toribiong here to defend his actions, [Appellants'] claim of fraud is at best tenuous." *Id.* The trial court further noted that there was no "concrete evidence" that Toribiong was supposed to claim Tesei for Sau Lineage in the first place. *Id.* The upshot was that "Balang's supposed written withdrawal on the claim form and claimants hearsay testimonies does not constitute clear and convincing evidence of fraud." *Id.*

STANDARD OF REVIEW

We review trial court findings of fact for clear error. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). "When reviewing for clear error, if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Appellate Division is left with a definite and firm conviction that a mistake has p.212 been committed." *Id.*; *see also Ho v. Liquidation Comm. of Nanjing Orientex Garments, Co.* , 11 ROP 2, 8 (2002). Where there are two permissible views of the evidence, the trial court's choice between them cannot be clearly erroneous. *Masters v. Adelbai* , 13 ROP 139, 141 (2006). We review trial court legal conclusions *de novo*. *Esebei v. Sadang*, 13 ROP 79, 81 (2006).

DISCUSSION

Appellants raise two arguments on appeal. First, Appellants argue that the trial court committed reversible error when it cited *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 158 (2000), for the proposition that a certificate of title is prima facie evidence of land ownership. According to Appellants, the facts of *Irikl Clan* are so different from those in the present case that it was prejudicial for the trial court to rely on this precedent in coming to its conclusion.

We disagree with Appellants' analysis. The trial court did not cite *Irikl Clan* because its facts were similar to those in the present case. Rather, the trial court cited *Irikl Clan* for a pure proposition of law: a certificate of title is prima facie evidence of land ownership. This comes directly from 35 PNC § 1314(b), which provides that a certificate of title "shall be conclusive upon all persons so long as notice was given as provided in section 1309, and shall be prima facie evidence of ownership subject to any leases or use rights of less than one year, which need not be stated in the certificate." 35 PNC § 1314(b). Consequently, it was not erroneous for the trial court to cite *Irikl Clan*.

Appellants do, however, touch upon an issue that bears further explanation. Although Appellants focus on the citation to *Irikl Clan* , their primary complaint is that the trial court "relied" on a certificate of title that Appellants believe was procured by fraud. Appellants

concern is understandable, and Palauan courts have allowed collateral attacks on certificates of title in certain situations, namely "where the certificate of title was . . . issued without a hearing or determination of ownership that could have been appealed." *Uchel v. Deluus* , 8 ROP Intrm. 120, 121 (2000); *see also Emaudiong v. Arbedul*, 5 ROP Intrm. 31, 35 (1994); *Obak v. Bandarii*, 7 ROP Intrm. 254 (Tr. Div. 1998). Appellants cannot pursue a classic collateral attack because in this case there was notice, a hearing, and an appealable determination of ownership. That being said, equity would seem to favor allowing a certificate of title to be rebutted by proof of fraud.

Here, the trial court allowed Appellants to collaterally attack Toribiong's certificate of title. The trial court heard Appellants' fraud argument, addressed it, and rejected it. Because Appellants were given the opportunity to make their collateral attack, their concerns about the trial court's reliance on the certificate of title are misplaced. Appellants' belief that Toribiong engaged in fraud does not make the certificate disappear. Because there was a certificate of title, Appellants were required to prove fraud before turning to the question of who owned Tesei.

Appellants' second argument is that they did prove fraud, but the trial court improperly rejected their claim. Appellants do not contend that the trial court misstated the law. Instead, they p.213 take issue with some of the findings in the trial court's decision and assert that there was sufficient evidence of fraud to justify setting aside the certificate of title. In their own words, Appellants "are asking this Court to make good of Toribiong Medemedemk's promise to their mother Balang Toyomi Singeo that he, Toribiong was claiming Tesei on behalf of and for Sau Lineage and not for himself and his nieces." Op. Brief at 8.

The problem for Appellants is that the trial court found that there was insufficient evidence that Toribiong made any promise, and we hold that this finding was not clearly erroneous. Fraud requires a false representation or the concealment of a material fact. Here, the only evidence that Toribiong made any representation to Toyomi is (1) Appellant Wong's testimony regarding what Toyomi said Toribiong said; and (2) Toyomi's handwritten note on Toribiong's application that said that she was allowing him to claim Tesei. Appellants assert that Appellant Wong's statements fall within exceptions to the hearsay rule. This is irrelevant. The trial court admitted the statements. It did not, however, find them credible or sufficient to establish fraud. We do not second guess trial court credibility determinations, *Palau Pub. Lands Auth. v. Tab Lineage* , 11 ROP 161, 165 (2004), and Appellants have not given us any reason to depart from this longstanding policy. Nor is it the job of appellate courts to reweigh the evidence, which is what Appellants would like us to do. *See Dokdok v. Rechelluul*, 14 ROP 116, 119 (2007) (noting that under the clear error standard "the Appellate Division will not reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence").

Likewise, the handwritten note on Toribiong's land application states only that Toyomi was allowing him to claim certain parcels of land. It says nothing about what Toribiong might have said to Toyomi. It is at best inferential and weak evidence of a misrepresentation. When the trial court stated that there was no concrete evidence to support the Appellants' allegation of fraud, the trial court was not making a clear error.

Appellants' remaining arguments also fail. The trial court stated that the alleged fraud

took place in 1989. Appellants contend that while "[i]t is true that the conversation between Balang and Toribiong took place in 1989," the fraud could have taken place as late as the 1990 hearing, when Toribiong claimed on behalf of himself and his nieces. Op. Brief at 11. Whether the alleged fraud took place in 1989 or 1990, it remains true, as the trial court noted, that "without Balang here to say Toribiong's false statement induced her to withdraw her claim and without Toribiong here to defend his actions, the claimants' claim of fraud is at best tenuous." Tr. Ct. Decision at 3. One year makes no substantive difference. Appellants also assert that Toyomi's failure to object to Toribiong's actions for over a decade should not be held against her because his fraud was not discoverable until 2005, when the certificate of title was issued, several years after her death. This argument ignores that the LCHO issued a Determination of Ownership for Tesei in 1990.

Finally, we note that Appellants spend much of their brief recounting the history of Tesei, familial relationships, and discrepancies between Toribiong's and Appellee's versions of how they p.214 came to own Tesei. All this discussion misses the point. In order to overcome the certificate of title, Appellants were required prove fraud. The trial court found that Appellants had not met their burden, and Appellants have not demonstrated that this conclusion was wrong, let alone clearly erroneous.

CONCLUSION

The judgment and decision of the trial court are **AFFIRMED**.