

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)  
**UCHELIYOU CLAN,**  
**Plaintiff,**

v.

**ESTATE OF ADELBAI REMED, represented**  
**by Johannes Adelbai,**  
**Defendant.**

CIVIL ACTION 02-071  
(Consolidated) 03-213

Decided: May 28, 2009

p.326

ALEXANDRA F. FOSTER, Associate Justice:

Plaintiff, Ucheliou Clan alleges that its Chief, or Remesechau, Adelbai Remed used the Land Court system to fraudulently convert Ucheliou Clan land known as Meketekt, Olsongeb and Ngermeltel into his own personal land. The Estate of Adelbai Remed<sup>1</sup> denies such fraud, and alleges that Remed properly sought, and received, Determinations of Ownership for land, which it refers to solely as “Meketekt,”<sup>2</sup> as his personal property. The case turns on whether Plaintiff had proven that its Chief defrauded them. For the reasons detailed below, the answer is yes. Adelbai Remed fraudulently sought to appropriate Clan land for his own personal use.

Pursuant to ROP R. Civ. P. 52(a), the Court now sets out the findings of fact and conclusions of law underlying this decision.

### **BACKGROUND**

On February 26, 2002, Plaintiff Ucheliou Clan filed a complaint against Adelbai Remed, and Land Court and “Jane Does 1-3.” In the complaint, the Clan alleged that Adelbai Remed (“Remed”), as Remesechau, fraudulently converted Clan land into his own personal land, with the assistance of the Land Court and Jane Does 1-3. The Clan sought compensatory and p.327 punitive damages of \$5,000 and \$10,000, attorney fees and costs, and return of the Clan land.

On March 18, 2002, Defendant Land Court moved to dismiss the claims against the Land Court under ROP R. Civ.P 12(b)(6). It alleged that it had abided by the notice requirements, and otherwise acted pursuant to, and in compliance with, its statutory authority, and therefore Plaintiff failed to state a cause of action upon which relief could be granted. On March 19, 2002, the Land Court filed its answer to the complaint.

Defendant Adelbai Remed filed his answer on April 12, 2002. Remed alleged that

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<sup>1</sup>Adelbai Remed died on May 2002, while this litigation was pending. The Estate of Adelbai Remed was substituted as Defendant in this matter.

<sup>2</sup>Documents refer to the same property as “Mektekt” and “Mketekt.”

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)

Plaintiff's complaint should be dismissed first, on the ground of *res judicata*, second, for failure to state a claim upon which relief could be granted, and third, because "the determination of ownership 07-220 and 07-221 have preclusive effect against Plaintiff's claim."

On June 28, 2002, Justice Salii issued a Decision and Order, finding that the Land Court was entitled to summary judgment and denying Plaintiff's claim against the Land Court. The Court concluded that the Land Court complied with the notice requirements. First, "[n]otice of the hearing was duly served on Adelbai Remed as Chief Remeschau of Ucheliou Clan in accordance with 35 PNC §[1309](b)(3)(C),<sup>3</sup> which provides that service of the notice of hearing to a lineage or clan shall be delivered to the senior male title-holder for the lineage or clan." Second, the Court adopted the affidavit of Flavin Uro, the Airai Land Registration Officer at the relevant time. He averred that, on August 16, 2000, and again on September 7, 2000, he posted notice of Hearing, Monumentation and Mediation Session at the Airai State Office and the Bai ra Miich, "the principal meeting place in Ngetkib Hamlet." Further, Mr. Uro averred that he "served Notice upon all persons personally known to me to claim an interest in the land in the manner of service circled below." He circled "a. Service in the same manner as a civil summons (delivery to person, usual residence or place of business with person over the age of 18 then residing or employed therein)." He did not list a date for this service. Again, on February 7<sup>th</sup>, he "delivered a second and final Notice upon all persons personally known to me to claim an interest in the land in the same manner as circled above[.]" Although this time, he gave a day and a month, he did not list a year. He further averred that he "delivered the Notice to the local FM Eco-Paradise and AM T8AA radio stations for advertisements" on August 16, 200, and mailed Notice to the Palau consular offices in Saipan, Washington, D.C., Guam and Japan on p.328 August 17, 2000. He finally averred that on August 16, 2000, and again on September 6, 2000, he delivered Notice to the Association of State Governors of Palau. Mr. Uro signed the affidavit on April 10, 2001. On April 2, 2001, Land Court Judge Daniel Cadra held the scheduled hearing. No one appeared. On April 12, 2001, he issued an Adjudication of Uncontested Claim granting "Meketekt," Lot Nos. 01 N 002-019 and 01 N 002-018, to Adelbai Remed. Pursuant to the Judge's Order, Determinations of Ownership Nos. 07-220 and 07-221 issued to Adelbai Remed as sole owner of "Meketekt," Lot Nos. 01 N 002-019 and 01 N 002-018, in fee simple. In April, 2006, Certificates of Title issued, consistent with the Determinations of Ownership.

On May 27, 2004, Plaintiff filed an unopposed motion to consolidate this matter with the Estate of Adelbai Remed, Civil Action 03-213. The Court granted the motion and this case was transferred to this Court's predecessor, Justice Miller.

After several failed attempts at settlement and trial, this matter was tried before this Court on March 18 and 19, 2009, and continued -at Defendant's request- to May 11, 2009, for final testimony.

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<sup>3</sup>The Order inadvertently omitted the number. The Motion to Dismiss cited 35 PNC §1308, specifically §1308(b)(1) through (8), and not § 1309. § 1308 is entitled "Mandatory mediation sessions"; §1308(b) only numbers up to (5); and there is no (b)(3)(c). 35 PNC §1309, however, is entitled "Notice of hearing and mandatory monumentation and mediation sessions; filing of claims"; §1309(b) numbers from (1) to (8); (b)(3)(c) requires "hand delivery to the senior male title holder" if the claimed interest is "in the case of a clan or lineage." The Court will therefore proceed under the assumption that the parties and the Court were referencing 35 PNC §1309.

## FINDINGS OF FACT

In 1976, Adelbai Remed, as Remesechau, participated in the monumentation of Ucheliou Clan land. At the time, the property was listed as “Meketekt.” “Tochi Daichio Type of Ownership” was “Ucheliou Clan.” “Tochi Daicho Owner” was listed as “Adelbai Remesechau.”<sup>4</sup> “Name of Claimant” was “Adelbai.” “Type of Ownership claimed” was answered, “as Ucheliou Clan Administer [sic] land,” the drafter wrote, “was appointed by senior rubak and under domain of my title [sic].” The monuments were set on September 14, 1976, and the Field Recorder, Roger Iluches, certified that the record accurately reflected information provided by the claimant or his representative on the date indicated, and that the listed witnesses, to include “Adelbai,” were present at the time of monumentation. As reflected by the document, Adelbai Remed was Remeschau[sic], or chief, at the time of the monumentation. The handwritten sketch reflects that “mketekt” is surrounded by the “sea shore,” “Ngermelkii (Taro Patch), “ ”Imongos,” “You,” “Keblau” and “Meketang (taro paddy).”

On July 8, 1996, Adelbai Remed filed an Application for Land Registration for “Meketkt.” In stark contrast to the 1976 document, Remed and his representative, Ellen Adelbai,<sup>5</sup> wrote “unknown” in response to “[t]he land is listed in Tochi Daichio and numbered as.” The application then asked, “[i]f not listed in the Tochi p.329 Daichio, indicate its known lot number or other known description” and the applicant and his representative, Ms. Adelbai, responded: “It is located under You and above Ngermeltel.” Later, the application asked for the name listed in the Tochi Daichio as the owner, and the applicant responded, “Adelebai Remed.” In response to, “Applicant’s explanation of his relationship to the person or trustee listed in the Tochi Daichio,” the applicant stated “Self.” And in response to, “[a]pplicant’s explanation of his interest claimed in the land,” the applicant stated, “would like to have certificate of title.” When asked, “[w]hat is the ownership status of this land today?” The applicant checked the box next to “Lineage” (and not “Individual” or “Clan”), and listed the name of the owner as “Adelbai Remed.” The applicant listed, Suars Remed, Dilubch Misch, and Ellen Adelbai as witnesses who would “testify on behalf of the applicant’s claim.” When asked to list the documents “in support of his claim,” the applicant listed “Family History.” The applicant answered, “Adelbai Remed Family,” when asked who would inherit the land when the applicant died. <sup>6</sup> When asked of the applicant’s “knowledge of ... adverse claimants or applicants to ths land,” the applicant answered, “not known.” The applicant indicated that there was no other “relevant information” to convey, and certified that these statements were correct “to the best of my (our) knowledge and belief.” Remed signed the application.

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<sup>4</sup>It appears that the handwritten note was cut-off; the Court suspects that the answer originally read; “Adelbai Remesechau.”

<sup>5</sup>Ellen Adelbai testified that she went to the land registration office in Airai with her father, Adelbai Remed. She filled out this 1996 document at her father’s direction, and Remed reviewed the document before signing it. Rosania Masters, Plaintiff’s witness, conceded that the signature on the 1996 document was that of Adelbai Remed. Both Ms. Masters and Ms. Adelbai testified that Remed was of sound mind in 1996.

<sup>6</sup>Ellen Adelbai originally wrote “Ucheliou Clan,” crossed it out, and replaced it with “Adelbai Remed Family.” She testified that she crossed it out at her father’s request. Plaintiff alleges that she crossed it out after her father signed the document.

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)

Several Ucheliou Clan members, including Kerungil Augustine, Otobed Adelbai, Rosania Masters, Dilores Adelbai and Ellen Adelbai, testified that the property referred to as “Meketekt” in the 1976 filing is actually three adjoining properties, Ngermeltel, Meketekt and Olsongeb, all of which belonged to Ucheliou Clan. Ngermeltel was the Ucheliou Clan’s taro patty. Meketekt was the sloping property, which adjoined Ngermeltel and Olsongeb. Olsongeb was the property closest to the water. Olsongeb was especially important to the Clan, because it was the Remesechau’s mangrove channel. According to Ucheliou Clan legend, members of the Clan first pulled onto this land at this point. Because of its importance to the Clan, Ms. Masters asked Mr. Uro to divide the property previously designated as “Meketekt” into the three above-listed properties at the monumentation in 2000. Mr. Uro refused. He told Ms. Masters that this land was all going to the same people anyway, so it did not need to be subdivided.

Dilores Adelbai is now 67 years old. 62 years ago, when Dilores was five years old, she lived on Olsongeb with her adopted mother, Suars Remed.<sup>7</sup> She lived in a house on Olsongeb with several other Ucheliou Clan members. At that time, she knew that Olsongeb, Ngermeltel and Meketekt belonged to her Clan, the Ucheliou Clan. In fact, she remembers her father Remed, and other Ucheliou Clan members, telling her that Olsongeb and Meketekt were Ucheliou Clan land. Otobed Adelbai, who is now 73, also lived in the house at Olsongeb with other Ucheliou p.330 Clan members when he was a young adult. He too remembered being told that Olsongeb, along with the adjoining properties of Ngermeltel and Meketekt, belonged to the Ucheliou Clan.

Dilores stated that she spoke with her father, Remed, soon after the 1976 monumentation. She remembered the dates because at that time she lived in Guam, and in 1975 typhoon Pamela hit Guam. Remed was in Guam helping her recuperate from typhoon Pamela when Otobed called him to tell him that they were monumenting Ucheliou Clan land. Remed flew to Palau to attend the monumentation and then returned to Guam. Upon his return, Remed told Dilores that all three properties had been lumped into one property named Meketekt. She asked him why he had lumped all three properties into one. He answered that he did not want to spend the money to purchase additional stone markers to properly monument the three separate properties.

Many years later, in around 1990, when Dilores returned to Palau, she informed Suars that Remed had lumped all three properties together as one. Suars responded, “that’s not the way it is supposed to be,” and was very disappointed with her brother’s actions. Dilores also told another strong senior Ucheliou Clan member named Elchesel that Remed had lumped all three properties into one. She told Elchesel, because Elchesel cultivated taro on the Ngermeltel taro patch. Elchesel was also unhappy about Remed’s decision, because she and her children cultivated that taro patch. Finally, she also told Remed’s brother, Ebas, in 1993. To Dilores’ knowledge none of these people did anything to correct the error.

Even though Remed’s Application for Land Registration was apparently filed in July of 1996, senior members of the Ucheliou Clan did not know of the application. Rosania Masters testified that she only learned of the application after the land had been awarded to Remed in

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<sup>7</sup>Suars was also Adelbai Remed’s sister, and a strong senior member of the Ucheliou Clan.

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)

2001. Other members of the Ucheliou Clan remained unaware of the 1996 filing up to their testimony at this trial.

However, Ellen Adelbai testified to two meetings, both around 1995, which were called by Adelbai Remed and which -if credited- reveal that some strong senior members were aware of Remed's plan to transfer the land to himself. At those meetings, Remed reportedly expressed his displeasure at other clan members' attempts to use Ucheliou Clan property as collateral on loans, without first gaining his approval. He grew so incensed at his fellow clan members' actions that he informed them that he was going to put certain Ucheliou Clan properties in his name. No one objected. In attendance at these meetings were Ebas Ngiraloi, Olkeriil Saburo, Suars Remed, Dilubch Misch, Elchesel Matchiau, Johannes Adelbai, and Ellen Adelbai. Thereafter, Remed summoned his daughter Ellen to join him at the Land Registration Office to register certain Ucheliou Clan lands as his personal property. At the same time, Remed also sought to transfer other Ucheliou Clan properties to himself. Those properties included Imongas, Meselch/Ngermeltel, Delul and Telbadl. *See Estate Exhs. S through S5.*

Although the Court does not question Remed's danger at finding out that Clan members were using Clan land as collateral for their bank loans, the Court does question the likelihood that **p.331** these meetings occurred exactly as relayed by Ms. Adelbai. First, all of the attendees of the meeting are deceased, except for one, Dilubch Misch, and she is undoubtedly very odd[sic], so no corroboration is available. Second, why would Dilubch or Suars or any of the other attendees not report the outcome of these meetings to their daughters and siblings, such as Rosania Masters, Otobed Adelbai and Dilores Adelbai? Rosania, Otobed and Dilores were undoubtedly interested parties, and strong senior members of the Ucheliou Clan at the time of the meetings. Third, as reflected by the exhibits, Remed issued statements about many of his actions, why did he not issue anything concerning his decisions reached at these meetings? Furthermore, why did Remed not have the strong senior members sign off on an agreement transferring the land? Remed had been managing his and the Clan's lands for over 20 years. He undoubtedly knew of the requirement that strong senior members must agree to any transfer of Clan land.<sup>8</sup> Although meetings may have occurred between Remed and his family in 1995, the

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<sup>8</sup>In closing, Defendant argued that these three properties had always belonged to Remed individually, and he did not need the agreement of strong senior members to transfer the land to himself. This statement is rebutted by the 1976 Land Acquisition Record, which states that the property was claimed as Ucheliou Clan property, with Remed as its Chief. Defendant counters that Remed did not fill out this document, so the Court cannot rely on it as an accurate reflection of Remed's statements. The drafter of the document, the Field Recorder, relied upon "the Claimant or his representative" when drafting the document. The Claimant is listed as Adelbai Remed. Further, Defendant has provided no evidence to show that the Field Recorder had any reason to fabricate this document. Finally, Remed knew how to claim land for himself and his family; he did so without mentioning the Ucheliou Clan or his title as Remaschau. *See, e.g.*, Plaintiff Exh. 6. The Court can comfortably conclude that the 1976 Land Acquisition Record is an accurate reflection of what Remed told the Field Recorder at the time the claim was originally monumented in 1976, and that he was claiming this land, Meketek, for the Ucheliou Clan.

Defendant relies on *Estate of Masang v. Marcil*, 13 ROP 171 (2006), to bolster his contention that a Land Acquisition Record is not a claim and does not reflect the views of the Claimant. The *Estate of Masang* Court held that a Land Acquisition Record cannot serve as notice of a claim, as required by Rule 10 of the Land Court. 13 ROP at 173. This holding does not bar this Court's conclusion that the

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)

Court doubts that he told the attendants that he was going to transfer these properties into his own name. It is more likely that, in a fit of pique, after learning of yet another improper use of Ucheliou Clan property, Remed marched to the Land Registration Office with his daughter and had these Ucheliou Clan lands, to include Meketekt, transferred to become his own personal property. Even if Remed had held these meetings, however, he did not include all of the senior strong members of the Clan. Further, it is far from clear that he sought, and received, the agreement of those who did attend the meeting. Therefore, any land transfer based on those meetings would have been invalid.

Besides Remed, no member of the Ucheliou Clan received actual notice of the monumentation. Rosania Masters attended the monumentation of Meketekt in 2000 by chance. As one of the Clan members charged with handling Clan land issues, she often attended monumentations at Remed's direction, but Remed did not inform her about this one.<sup>9</sup> She heard about it through her friend, Christina Meluat, who knew that the Land Registration Officer would be monumenting land which affected Ms. Meluat's Clan's land, Ngermelkii and Ads. Since those properties neighbored Ucheliou Clan land, Ms. Masters decided to attend the monumentation with Ms. Meluat. She brought her copy of the 1976 document bounding Meketekt. The 1996 document was not in her files for the Ucheliou Clan. Mr. Uro had brought the same 1976 document to the monumentation.<sup>10</sup> Ms. Masters did not see the 1996 document at the monumentation. Also present at the monumentation were Ellen Adelbai, Christina Meluat, Dengir Masami, Alberta Rengiil, and Samuel, another one of Remed's children.<sup>11</sup> Samuel, Ms. Masters and Ms. Meluat cleared the brush to find the monuments which had been placed on the property back in 1976, and Mr. Uro based his boundary drawings on the 1976 document and the 1976 markers.

Relying on the 1976 document, and having been told nothing to the contrary by those attending the monumentation, Ms. Masters assumed that she was assisting Mr. Uro in monumenting Ucheliou Clan land. Ellen Adelbai knew that she was attending the monumentation for her father's 1996 claim, but apparently she said nothing about that to Rosania. Not surprisingly, the "Claim Monumentation Record" reflects that Ellen Adelbai appeared to represent the interests of Adelbai Remed, and no mention is made of Rosania Masters. *See* Estate Exh. E.

No one attended the Land Court hearing in April, 2001, *see* Estate Exh. G, and the Land Court issued the determinations of ownership to Remed on the same day. *See* Plaintiff's Exhs. 1 and 2. It is uncontested that, besides Remed, no members of the Ucheliou Clan received actual

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Field Recorder was relying on Remed's statements when he filled out the Land Acquisition Record.

<sup>9</sup>Ms. Masters testified that typically, during 2000, Remed would receive notice concerning a monumentation or hearing, and he would call one of his relatives to attend the monumentation or hearing. Remed was Ms. Masters' maternal uncle, and she lived in Airai, so he would recruit her to attend monumentations or hearings.

<sup>10</sup>It is not surprising that Mr. Uro only brought the 1976 document, and did not produce -or rely on- the 1996 document. Only the 1976 document had a sketch of the property.

<sup>11</sup>Ms. Masters knew that another one of Remed's children attended the monumentation, but she could not remember which one. Ellen Adelbai testified that she attended the monumentation with her brother, Remed's son, Samuel.

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009) notice of the hearing. Although Mr. Uro avers that he posted notice and requested broadcasts of the hearing and monumentation, as required, only Remed received actual notice of the monumentation and the hearing. All of the Ucheliou Clan members who testified stated that they saw no posted notice, nor did they hear the notice on the radio.<sup>12</sup>  
p.333

## CONCLUSIONS OF LAW

To prove fraud, the moving party must show that: (1) Adelbai Remed made a fraudulent misrepresentation of fact, opinion or law; (2) Adelbai Remed made the misrepresentation with the purpose of inducing the Clan to act upon it; (3) the Ucheliou Clan justifiably relied on the misrepresentation; and (4) the Ucheliou Clan was damaged as a result of that reliance. *See Isimang v. Arbedul*, 11 ROP 66, 74 (2004). Here, however, Adelbai Remed made no fraudulent misrepresentation to he[sic] Ucheliou Clan. The problem is the opposite; he said nothing. The Court has found no law concerning fraud by concealment or nondisclosure in Palau. It will therefore rely on law from the United States to resolve the issue of whether Adelbai Remed is liable to the Ucheliou Clan for fraud. *See* 1 PNC § 303. [1],[2] “[T]he concealment of a fact that one has the duty to disclose may serve as a substitute element for an affirmative false representation in a fraud action.” 37 Am. Jur 2d Fraud and Deceit § 200. Remed is liable for nondisclosure where (1) he maintained “a fiduciary or other similar relation of trust and confidence” with the Ucheliou Clan; (2) he failed to disclose to the Ucheliou Clan “a fact that he knows may justifiably induce the [Clan] to act or refrain from acting”; and (3) the Clan justifiably relied on this nondisclosure to its detriment. Restatement (Second) Torts § 525, 551. Plaintiff has carried its burden as to each element.<sup>13</sup>

### (1) A Fiduciary Relationship Creating a Duty to Disclose

Did Adelbai Remed have a fiduciary relationship with the Ucheliou Clan, which created a duty to disclose his 1996 filing of the application for land registration to his Clan? The answer is yes.

It is undisputed that, while he was chief, Adelbai Remed managed the land claims of the Ucheliou Clan. Ms. Masters explained that although she would sometimes fill out claims for

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<sup>12</sup>All of the Ucheliou Clan members, except for Ellen Adelbai; she was not asked whether she had read a posted notice or heard a radio announcement concerning the monumentation or hearing.

<sup>13</sup>The standard of proof for fraud is as yet unresolved in Palau. It is either “clear and convincing” or “preponderance of the evidence.” *See Arbedul v. Isimang*, 7 ROP Intrm. 200, 201 n.2 (1999). Either way, Plaintiff met its burden in this case.

In closing, Defendant argued that the Court should be guided by the standard to set aside a Determination of Ownership. “[A] person may collaterally attack a determination of ownership rendered by the Land Commission on the grounds that the statutory or constitutional procedural requirements were not complied with, but that person has the burden of proving non-compliance by clear and convincing evidence.” *Nakamura v. Isechal*, 10 ROP 134, 136 (2004) (citing *Ucherremasech v. Wong*, 5 ROP 142, 147 (1995)). The argument underlying these claims is one of due process, namely that the claimant did not file with the oversight body, because he or she was not properly informed. Plaintiff here is not arguing a due process violation, he is arguing fraud. Even if the standard were one of due process, Plaintiff has met the clear and convincing bar.

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)

Ucheliou Clan property, Remed would always p.334 sign the document as the claimant. This statement is supported by the exhibits, which reflect that all land claims for the Ucheliou Clan were signed by Remed as claimant.

In 1976, Remed was called in to attend the monumentation of the property at issue in this litigation. He assisted in the monumentation of the land. He had it named Meketekt. He claimed it on behalf of the Ucheliou Clan as Remesechau of the Clan. Throughout the 1976 Land Acquisition Record, it is clear that Remed sought title to the land for the Ucheliou Clan as its chief, not for himself personally. He admits to a fiduciary duty in the 1976 document when he claims ownership of the land “as Ucheliou Clan administer [sic] by Adelbai Remeschau,” and explains that he acquires ownership of the land only through his appointment “by senior rubak and under domain of my title [sic].”

Remed had a duty to disclose for several reasons. First, he stood in a fiduciary relationship with his Clan. The assumption underlying the clan’s trust in its chief, and the government’s notice decisions, is that the chief has a fiduciary duty to his clan to properly manage clan properties. 37 Am. Jr. 2d *Fraud and Deceit* § 207 (“The duty of honest advice and full disclosure arises, for purposes of a fraud claim based on non-disclosure, where one party reposes confidence in the integrity of another and the other party in advising voluntarily assumes and accepts the confidence, and when such confidence is reposed and accepted, the person trusted is liable for concealing facts which by reason of the relationship the person should disclose.”). Where a Clan relies on its chief to properly manage clan lands, transferring clan property to personal property, without any notice, is a breach of that fiduciary duty. Ms Masters testified that she did not file a claim for the land demarcated as Meketekt, because she was aware of Remed’s 1976 claim of this land for the Ucheliou Clan. Here was no need for a duplicate filing. Further, Remed was the Chief and, as chief, he filed the claim. <sup>14</sup> If someone else filed a claim, it would look like that person objected to Remed’s claim, or even to Remed’s primacy as Chief. The Ucheliou Clan is not alone in relying on its chief to manage its land claims. The rules for filing land claims incorporates this understanding when it allows the Bureau of Lands and Surveys to serve notice of land monumentation and mediation sessions “by hand delivery to the senior male title holder” “in the case of a clan or lineage.” 35 PNC § 1309(b)(3)(C).

Second, Remed had access to greater information than his Clan, since the Bureau of Lands and Surveys gave notice directly to Remed concerning not only his properties, but also Clan properties. *Id.* at § 205 (“The duty to disclose may also arise from particular circumstances such as where one party to a contract has superior knowledge and is relied upon to disclose this knowledge.”). Ms. Masters also testified that Remed would receive notice of monumentations and hearings from the Bureau of Lands and Surveys and, if he was not able to attend, he would assign another Clan member to attend. p.335 That is exactly what happened here. The Land Registration Officer Flavin Uro notified Remed of the monumentation and the hearing, but Remed chose not to notify the Clan, because he had claimed the land as his own. This access to greater information carried with it a concomitant duty to disclose.

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<sup>14</sup>Ms. Augustine and Mr. Otobed Adelbai confirmed that, while he was alive, Remed would file claims for the Clan as Remesechau. They knew that he was claiming properties for Ucheliou Clan back in 1976.

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)

Third, Remed knew that his actions -or inaction- would induce the Clan to refrain from acting, where it otherwise would have acted. *Id.* at § 204 (“The duty to disclose and the corresponding liability for a failure to disclose may also arise when a party fails to exercise reasonable care to disclose a material fact which may justifiably induce another party to act or refrain from acting, and the nondisclosing party knows that failure to disclose such information to the other party will render a prior statement or representation untrue or misleading.”) When Remed decided to transfer Ucheliou Clan land to be his own personal property, he had a duty to disclose this decision to his Clan, so that they could object if they disagreed with the transfer. His failure to disclose his 1996 filing, which rendered the 1976 record “untrue or misleading,” was a breach of his fiduciary duty to his Clan.

## **2. Failing to Disclose a Fact That Defendant Knows May Justifiably Induce Plaintiff to Act or Refrain From Acting**

Did Remed conceal the 1996 Application for Land Registration from the Ucheliou Clan with the intent to mislead the Clan, and the expectation that the Clan would rely upon this concealment to refrain from acting? The answer is yes.

Remed obviously had knowledge of the 1996 document. He signed it. The lack of notice to any of the senior Clan members reflects a clear intent to conceal the 1996 Application. Concealment from the Clan was the only way in which Remed could gain control of this property. The witnesses testified that this property, especially Olsongeb as the Remesechau's channel, was a critical part of their Clan's history. Plaintiff's witnesses added that if they had known of Remed's attempt to wrest this land from Ucheliou Clan control, they would have opposed his action. Concealment was critical to achieving Remed's goal.

Further proof of Remed's intent to conceal comes in comparing the 1976 Land Acquisition Record to the 1996 Application for Land Registration. In 1976, Remed listed the Ucheliou Clan under "Tochi Daichio Type of Ownership" with himself, as Remesechau, listed as the owner. In the 1996 Application, he answers that the Tochi Daichio listing is "unknown." He adds later that he, "Adelbai Remed," and not the Clan Chief title of "Adelbai Remesechau," listed as the Tochi Daichio owner. Although there is a place to list his name as a trustee, he leaves that space blank, and answers the question: "Applicant's explanation of his relationship to the person or the trustee listed in the Tochi Daichio?" as "Self." He lists "Adelbai Remed Family" when asked who will inherit the land. Finally, despite prompting, he expresses no knowledge of any potential adverse claimants. Although provided with ample opportunities throughout the Application, he never once mentions the Ucheliou Clan, the Clan's interest in this property, or his role as trustee of Ucheliou p.336 Clan lands through his title Remesechau.<sup>15</sup>

Defendant argued that Remed did not actively conceal his application, he just did not show it to the Clan. In this situation, this is a distinction without a difference. Although "as a general rule, to constitute fraud by concealment or suppression of the truth there must be something more than mere silence or a mere failure to disclose known facts, ... silence is equivalent to a false representation ... where circumstances impose a duty to speak and one deliberately remains silent." 37 Am. Jr.2d *Fraud and Deceit* § 203. See also *id.* at § 204 ("one cannot properly withhold the truth from those who have reason to expect information from him or her"). As discussed above, Remed had a fiduciary duty to his Clan to care for Clan land. Based on this fiduciary relationship, he had a duty to speak, a duty to disclose his plan to make Clan land -especially this Clan land- his own.

Some might argue that the 1996 application was public and "readily ascertainable." 37 Am. Jr. 2d *Fraud and Deceit* §201 ("when a concealed fact is not peculiarly within a defendant's

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<sup>15</sup>Interestingly, he checks the box for "Lineage" under "Type of Ownership," writes "Adelbai Remed" under "Name of Owner," and puts a check next to "Trustee." Based on the Land Court's Order, it does not appear that the Land Court inquired into this portion of the application, and Remed volunteered no explanation.

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)

knowledge and is readily ascertainable, the failure to disclose that fact does not amount to fraud”). Although the Court agrees that the application was likely public, it would be “readily ascertainable” only if Plaintiff knew to look for it. The onus should not be on the clan to assume perfidy in its chief, and double-check all of his actions.

### **3. Actual, Justifiable Reliance Which Caused Injury**

Was the Ucheliou Clan justified in relying upon Remed? And did the Clan actually rely upon Remed’s concealment to their detriment? The answer to both questions is again yes.

Remed owed a fiduciary duty to the Ucheliou Clan. They had the right to rely upon him. In fact, they did rely on Remed’s concealment, to their detriment. They lost property, property which was precious to the Clan.

Defendant argued that Remed, as Clan Chief, was the one most knowledgeable about Ucheliou Clan land and therefore, if he believed that the land at issue in this case belonged to him personally, and not to the Clan, then the Clan should defer to his belief. Plaintiff’s witnesses and Remed himself contradict that argument. The witnesses testified that they knew this property to be Ucheliou Clan land over 50 years ago. In fact, Remed told his daughter Dilores that Olsongeb, Meketekt and Ngermeltel were Ucheliou Clan land. The best indication that this property was Ucheliou Clan land is the 1976 Land Acquisition Record where, for example, Remed himself stated that he claims ownership of the land “as Ucheliou Clan Administer [sic].”

### **CONCLUSION**

The Court details the questions and p.337 answers in the 1976 and 1996 documents carefully, because they are critical to proving the fraud. In 1976, Remed averred that this land belonged to the Ucheliou Clan, and he was trustee, because of his position as Remesechau of the Clan. By 1996, Remed was claiming the property as his own personal property, and vouching that he knew of no adverse claimants. What changed in the intervening 20 years? Nothing. There is no testimony that Remed purchased this property from the Ucheliou Clan between 1976 and 1996. It is undisputed that senior members of the Ucheliou Clan did not sign any documents or reach any agreement to transfer Olsongeb, Ngermeltel or Meketekt to Remed. It is also undisputed that these properties were not discussed at Remed’s eldecheduch.

The burden for proving fraud lies initially with the movant. Plaintiff has met its burden. The burden then shifts to Defendant to disprove Plaintiff’s claim. Defendant has done little in this regard. Instead, Defendant argues that Remed was entitled to transfer this land, because it was originally his, or just because he was the chief of the Clan. As discussed *supra*, the Court finds that the land was never Remed’s individual property, and Defendant has provided no evidence of Palauan custom that Remed could transfer Clan property to himself solely because of his position as Chief of the Clan.

“As a general rule, one injured by the commission of fraud is entitled to recover such damages in a tort action as will compensate him or her for the loss or injury actually sustained

*Ucheliou Clan v. Estate of Adelbai Remed*, 16 ROP 325 (Tr. Div. 2009)

because of his or her reliance on the misrepresentation and place him or her in the same position that he or she would have occupied but for the fraud ..." 37 Am. Jr.2d Fraud and Deceit §379. The proper remedy for this fraud is to return the property to its rightful owner, so that the Ucheliou Clan can be placed back in the position that it occupied prior to the fraud. Accordingly, the Determinations of Ownership Nos. 07-220 and 07-221, issued to Adelbai Remed, and the Certificates of Ownership which followed, should be vacated and new Determinations of Ownership and Certificates of Title for "Meketekt," described as Cadastral Lot Nos. 058 N 12 and 058 N 13, Worksheet Lot Nos. 01 N 002-018 and 01 N 002-019, as shown in Bureau of Lands and surveys Worksheet Map No. 2001 N 002, should issue for Ucheliou Clan, with Otobed Adelbai as trustee. Although compensatory and punitive damages were originally pled, along with attorney fees and costs, none were sought at trial, and none will be awarded.

A judgment consistent with this decision will issue promptly.