DIRRAMERKONG UCHERREMASECH, KEDEI TEOCHO, DILYOLT UCHERREMASECH, and MARINO HIROICHI,
Appellants,

v.

FUYUKO HIROICHI,
Appellee.

CIVIL APPEAL NO. 09-009
Civil Action Nos. 02-061, 02-119

Supreme Court, Appellate Division
Republic of Palau

Decided: May 14, 2010[1]

[1] **Constitutional Law:** Interpretation**; Statutory Interpretation:** Ambiguity

The first rule of construing a statute or constitutional provision is that the Court begin with the express, plain language used by the drafters and, if unambiguous, enforce the provision as written. The Court should read the drafters' language according to its common, ordinary, and usual usage, unless a technical word or phrase is used.

[2] **Constitutional Law:** Interpretation**; Statutory Interpretation:** Ambiguity

Ambiguity exists where a provision or term is capable of being understood by reasonably well-informed persons in two or more

[1] The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

different senses. If a provision is unambiguous, we do not even begin the task of interpreting it.

[3] **Constitutional Law**: Interpretation

When ascertaining the plain meaning of a constitutional provision, the Court should read an article's sections together, not as parts standing on their own. The Court should assume that the drafters inserted every part of the article for a purpose and attempt to avoid a construction of one provision that would render another superfluous. The Court should attempt to find that all sections and provisions of the Constitution are in harmony.

[4] **Constitutional Law:** Citizenship; **Property:** Acquisition Limited to Palauans

For citizenship under Article III, Section 1, of the ROP Constitution one must demonstrate (1) that she was a citizen of the Trust Territory immediately prior to the effective date of the Constitution; and (2) that she has at least one parent of recognized Palauan ancestry. The term "parent" in Section 1 includes an adoptive parent of recognized Palauan ancestry.

[5] **Appeal and Error:** Preserving Issues

A litigant who does not raise an argument before the trial court waives that issue and may not pursue it for the first time on appeal. The trial court must first have an opportunity to opine on, or at least consider, an issue before an appellate court has anything to review.

[6] **Civil Procedure:** Admissions

Rules 8(b) and 8(d) of the Rules of Civil Procedure exist so that the parties may establish at the outset those allegations that are not in dispute and will not be an issue at trial, as opposed to those that are contested and will require proof for the plaintiff to prevail. Consequently, an admission in a pleading is generally treated as binding on the parties and on the court.

[7] **Property:** Mortgage

A mortgage is a contract whereby the mortgagor pledges real property to a mortgagee as security for the mortgagor's performance of some act or obligation. It must be in writing, recorded, and should contain a legal description of the mortgaged property, a description of the obligations for which the property will serve as security, and the names and addresses of each mortgagor and mortgagee.

[8] **Property**: Mortgage

In certain circumstances, a document that purports to be a deed might be properly interpreted by a court as a mortgage. Whether a deed is in fact a security instrument depends on several factors.

Counsel for Dirramerkong, Kedei, and Dilyolt: Carlos H. Salii

Counsel for Marino Hiroichi: John K. Rechucher

Counsel for Appellee: Siegfried B. Nakamura

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; HONORA E.

REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

This appeal concerns the rightful ownership of certain land in Peleliu State. The trial court determined that the late Hiroichi Ucherremasch properly transferred the disputed property to his wife, Fuyuko, who, although born of Japanese parents, was eligible to acquire a property interest in Palau. Appellants, Hiroichi's sisters and son, appeal the court's decision and seek to eject Fuyuko from the land and house she has inhabited for over twenty-five years. For the reasons below, we find no error in the trial court's decision.

BACKGROUND

This dispute concerns land known as *Bkulasang* and *Ibesachel*, located in Ngerchol Hamlet, Peleliu State. The story begins with a man named Ucherremasech, who had one son, Hiroichi, and five daughters.[2] Upon his death years ago, Ucherremasech's property, including *Bkulasang* and *Ibesachel*, was transferred to his children to share equally. In 1990, a Determination of Ownership named Hiroichi and his five sisters the fee simple owners of *Bkulasang* as tenants-in-common, and in 1998, the siblings obtained a Certificate of Title reflecting their joint ownership.

Bkulasang is a large property comprised of various plots of land.[3] This dispute is over one particular tract, on which the Trust Territory government built three houses. This land is bordered by the sea to the north and a main road to the south, and there is a house near the water and another near the road. From 1984 until his death, Hiroichi and his second wife, Fuyuko, lived in the third house, located in the middle of the property. Fuyuko continues to live there today.

This family dispute started sometime prior to 2000, when Hiroichi sought a bank loan to finance renovations to his house. At the time, *Bkulasang* was one large property, and Hiroichi attempted to use his interest in it as collateral for the loan. But the bank denied his application over concerns that the land contained too many owners, and it advised him that his chances of receiving the loan would improve if he segregated a smaller portion of the property and was its sole owner.

Consequently, Hiroichi informed his siblings that he needed to use a portion of *Bkulasang* as collateral for a loan. He intended to use the land containing his house and the one near the road (but not the land containing the house near the sea). He hired a surveyor to demarcate the smaller portion of the property, and he placed rebar near the road to mark the boundaries. On January 31, 2000,

[2] Hiroichi has three biological sisters, Dirramerkong Ucherremasech, Kedei Teocho, and Dilyot Ucherremasech. His other two siblings are half-sisters, namely Bosech Itpik and Ngetechuang Aitaro. At trial, three of Hiroichi's sisters were deceased, Dirramerkong was no longer mobile enough to come to court, and only Kedei testified.

[3] *Bkulasang* contains at least Lots 051 R 01, 051 R 02, and 051 R 03, although it may be larger. Only those lots are relevant to this appeal.

three of Hiroichi's sisters, Dirramerkong, Dilyolt, and Kedei, signed a deed by which they conveyed their interests in the subdivided portion of *Bkulasang* to Hiroichi.[4]

The January 2000 document, entitled "Deed of Transfer," notes the sisters' joint interests in *Bkulasang*, stating also that Ngetechuang had passed away. The document then reads:

> That we the undersigned surviving sisters of Hiroichi Ucherremasech do hereby agrees [sic] with our consents and without force to transfer and quitclaim a parcel of our property described above to our brother, Hiroichi Ucherremasech.
>
> That the area of the parcel of our land that we all agrees [sic] to transfer and quitclaim to our brother, Hiroichi Ucherremasech, is *6,555* square meters.
>
> That said parcel of our land is described as follows: 051 R02 with an area of 6,555 square meters bounded to the North by saltwater to the South by the main road to the East by 051 R03 and to the West by 051 R01.
>
> That our brother, Hiroichi Ucherremasech, shall have a full power and authority to control that said parcel of our land. We all agrees [sic] to loose [sic] our interests to the said parcel of our land.

The three sisters each signed the Deed of Transfer before a notary public, whose signature and seal also appear on the document.

At trial, the parties disputed the validity of the January 2000 Deed of Transfer. The trial court afforded the most credit to the testimony of the notary public, Becheseldil "Taruu" Nakamura. Nakamura recalled that she met with two of the sisters, Dilyolt and Dirramerkong, in a room with Hiroichi, Dilyolt's son Johnny, and Fuyuko's son Willy. Nakamura explained to the women that they did not have to sign the document and asked them whether they were on medication, able to understand what they were signing, and if they were "not of right mind." The two sisters assured her that they understood. Nakamura then read the Deed of Transfer in both English and Palauan, also explaining that the ownership, power, and control of the property would go to Hiroichi. Nakamura testified that at one point, Dirramerkong tried to stop her from reading because she claimed to already know what the document was about. Nakamura persisted in reading the entire document, however, and both women signed it.

[4] Hiroichi's two half-sisters, Ngetechuang and Bosech, did not sign the deed of transfer. Ngetechuang had passed away at that time, and Bosech was in poor health and passed away later that year. Although both sisters had adult children, nothing in the record suggests that Hiroichi or his other three sisters conferred with the descendants before executing the transfer.

Nakamura then went to Dilyolt's house, where she met Kedei, the third sister, and her son John. Nakamura informed Kedei that her sisters had already signed the Deed of Transfer, and she detailed the document in much the same way as she had to Dilyolt and Dirramerkong. Nakamura read the entire document to Kedei in Palauan, and Kedei signed it. Nakamura notarized the document and later testified that she believed the three sisters understood what they were signing.

The sisters argued at trial that Hiroichi had deceived them. According to them, Hiroichi merely requested to use part of their property as collateral for a loan that would fund renovations and other improvements to his home. In discussions with Hiroichi about the matter, the sisters reminded him of their father's wish that the property never be transferred outside the family. They claimed that Hiroichi did not explain that he was obtaining full ownership of the land, and they claimed ignorance of the nature of the Deed of Transfer, believing it merely granted permission to use the property as collateral, not an outright transfer.

On December 29, 2000, approximately a year after the sisters executed the Deed of Transfer, Hiroichi signed a document entitled "Dikesel A Kloklel A Hiroichi Ucherremasech" ("Dikesel"). The Dikesel purported to transfer some of Hiroichi's properties to his wife, Fuyuko, and some to his son, Marino. Among the land transferred to Fuyuko was the disputed subdivided plot on *Bkulasang* that was the subject of the 2000 Deed of Transfer. Hiroichi signed the Dikesel before a notary public. He died approximately two months later.

The parties offered competing interpretations of the Dikesel at trial, each supported by an expert on Palauan custom. According to Marino, the Dikesel was a final will and testament; Fuyuko maintained, however, that the Dikesel was an inter-vivos transfer effective upon execution.

Fuyuko presented testimony that Hiroichi signed the Dikesel before a notary, that he understood the document, that he was not on any medication, and that he felt no compulsion to sign. The trial court credited the testimony of the notary, Pamela Anastasio, who testified that she fully explained the document to Hiroichi and read it to him in Palauan. Anastasio believed that Hiroichi understood what he was signing. Fuyuko also testified that Hiroichi had previously declared his intention to give her the property on which their house was built (the subdivided lot on *Bkulasang*), but she had no role in preparing or drafting the Dikesel.

Not even one month after signing the Dikesel, on January 19, 2001, Hiroichi signed a Deed of Conveyance purporting to convey his interests in twelve properties to his son, Marino. Marino testified that he was close to his father, and although he lived in Saipan, he returned home to Peleliu on several occasions. Marino claimed that on one of those trips, Hiroichi gave him some land documents and told Marino to procure the appropriate paperwork to transfer certain lands to him. Marino did not do anything concerning this matter for many years. When Marino learned that Hiroichi was sick, he returned to Palau and had an attorney draft the Deed of Conveyance.

Among the twelve properties purportedly conveyed to Marino in the 2001 Deed of Conveyance was the subdivided plot in dispute in this case. Of course, Hiroichi had already conveyed this property to Fuyuko in the Dikesel. As with the other documents, Hiroichi signed the Deed of Conveyance before a notary public, although this time he was in the hospital. The notary did not ask Hiroichi whether he was on any medication, and she merely summarized the document to Hiroichi in Palauan. Hiroichi, however, confirmed that he understood it and signed the document.

For a reason that is unclear, Marino enlisted a notary public to witness Hiroichi's signature on the Deed of Conveyance a second time, on February 23, 2001. At this point, Hiroichi was weak and indicated that he understood the notary only by nodding his head. He could not physically sign the document, so he placed a fingerprint on it instead. Later that same day, Hiroichi passed away.

The trial court cited a variety of circumstances and inconsistent testimony undermining the validity of the January 2001 Deed of Conveyance and the second execution on February 23. But whatever the effect of that document, Hiroichi intended to transfer some land to his son Marino. Hiroichi had previously asked Dirramerkong to move from the house near the sea to clear room for Marino, and the Dikesel transferred that house and other nearby property to him.

After considering all of the evidence, particularly the circumstances surrounding the Dikesel and the 2001 Deed of Conveyance, the trial court concluded that Hiroichi was not fully apprised of the land he purportedly was transferring to Marino in the 2001 Deed of Conveyance. The court noted that Marino, not Hiroichi, had drafted the Deed of Conveyance, and the notary only summarized it rather than read it verbatim. Furthermore, the court cited some confusion in the listed Cadastral Lot Numbers associated with the various plots of land on *Bkulasang*. The plot 051 A 02 properly represents the house near the sea, which was granted to Marino, but after Hiroichi subdivided the lot to obtain his loan, the surveyor also wrote the new number for the plot containing the other two houses as 051 A 02. As a result, the court found that Hiroichi was not attempting to undo his prior transfer to Fuyuko or give away land that he had already transferred, but rather that he believed he was conveying any remaining interests in his property.

After the eldecheduch, Fuyuko remained in her house on *Bkulasang*. The sisters attempted to convince her to leave, but Fuyuko filed this action to quiet title to the land.

The appellants claimed, based on a variety of arguments, that Hiroichi's 2000 transfer of the disputed subdivided plot to Fuyuko was invalid and unenforceable. First, they asserted that Fuyuko was not a true Palauan citizen and therefore could not acquire title to land in Palau. Fuyuko was born in Palau in 1936. Her biological parents are Japanese, but they returned to Japan when Fuyuko was only eight years old. A Palauan couple, Rebluud Ngiraibibngiil and Etebai Dirraiyebukl, adopted and raised Fuyuko, and she has lived in Palau for her entire life. She was a citizen of the Trust Territory before Palau's independence, and the trial court

found that she became a citizen of Palau at the date the Constitution took effect.[5] Fuyuko has voted in every election as a citizen of Palau, and she has had a Palauan passport—listing her nationality as Palauan—since 1960.

Second, the sisters claimed that the court should enforce their father's wish that *Bkulasang* be passed to his children's children, and not outside the family. Third, the sisters challenged the validity of their January 2000 Deed of Transfer, specifically arguing that it was fraudulent and that the Deed did not sufficiently describe the subject property. Fourth, the sisters averred that the Dikesel, signed in December 2000, was not an inter-vivos transfer and thus did not pass Hiroichi's interest in the subdivided lot to Fuyuko.

The trial court found against the appellants. It first held that Fuyuko was entitled to acquire title to land in Palau because she is a Palauan citizen under Article III, Section 1 of the Constitution. The court then determined that Ucherremasech's wishes, expressed to his children, were not enforceable and were also undermined by Ucherremasech's own previous transfers to individuals outside the family. The court then turned to the January 2000 Deed of Transfer and found that it was not procured by fraud, and it adequately described the property being transferred from the sisters to Hiroichi. Therefore, Hiroichi validly possessed his sisters' interests in the subdivided property. The court next determined that the Dikesel was a valid inter-vivos transfer conveying Hiroichi's interest in the subdivided lot to Fuyuko.[6] Because the descendants of Hiroichi's other two sisters, Bosech and Ngetechuang, did not consent to the initial transfer in 2000, Hiroichi only owned—and could only convey—the property as a tenant-in-common with those descendants. Therefore, as the result of the valid transfer to Fuyuko, Hiroichi retained no interest in the subdivided lot capable of transfer to Marino via the 2001 Deed of Conveyance. The court concluded by holding that Fuyuko holds Hiroichi's interest in the subdivided parcel, meaning that she owns the land as a tenant-in-common with the descendants of Bosech and Ngetechuang; the court then determined that, as a matter of equity, Fuyuko may remain in her house on the property. Marino and the three sisters now appeal.

ANALYSIS

The appellants raise three issues for this Court's review. First, we must determine whether Fuyuko was entitled to acquire title to property in Palau; if not, any purported conveyance would have been ineffective. Second, the sisters assert that the trial court erred in its treatment of the 2000 Deed of Transfer. Finally, the sisters assert that the trial court clearly erred by overlooking Kedei's testimony that she did not intend to transfer her full interest to Hiroichi; rather, they assert that the court should have treated the 2000 Deed of Transfer as a mortgage.

---

[5] As explained below, Appellants challenge the Trial Division's finding that Fuyuko was in fact a Trust Territory citizen in the first place.

[6] On appeal, the appellants do not challenge the trial court's ruling that the Dikesel was a valid inter-vivos transfer of Hiroichi's property interest to Fuyuko. We therefore limit our review to whether Hiroichi had any interest to convey based upon the January 2000 Deed of Transfer.

The appellants raise questions of both law and fact. We review the trial court's legal conclusions *de novo* and its factual determinations for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). We will not set aside a finding of fact so long as it is supported by evidence such that any reasonable trier of fact could have reached the same conclusion, unless we are left with a definite and firm conviction that an error has been made. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006).

I. Fuyuko's Citizenship

Article XIII, Section 8 of the Palau Constitution provides that "[o]nly citizens of Palau . . . may acquire title to lands or waters in Palau." The Constitution defines a "citizen" in two ways: (1) "[a] person who is a citizen of the Trust Territory of the Pacific Islands immediately prior to the effective date of this Constitution and who has at least one parent of recognized Palauan ancestry," ROP Const., art. III, § 1; and (2) "[a] person born of parents, one or both of whom are citizens of Palau or are of recognized Palauan ancestry." ROP Const. amend XVII; *see also* ROP Const. art. III, § 2, *repealed by* ROP Const. amend. XVII.[7]

The parties do not dispute Fuyuko's ancestry, but they disagree about its effect on her citizenship. As noted above, Fuyuko was born in Palau in 1936 to parents of Japanese ancestry. This fact renders her ineligible to qualify as a Palauan citizen under the Seventeenth Amendment (or the original version of Article III, Section 2) because she was not "born of" a Palauan parent. There is also no dispute, however, that both of Fuyuko's adoptive parents were of recognized Palauan ancestry. This case therefore turns on the proper interpretation of Article III, Section 1, specifically whether an adoptive parent may constitute a "parent of recognized Palauan ancestry" under that section. If the Court concludes that an adoptive parent qualifies, it must then consider whether Fuyuko was a Trust Territory citizen immediately prior to the Palau Constitution's effective date.

A. Definition of "Parent" in Article III, Section 1

The Constitution provides for Palauan citizenship for any person who was a Trust Territory citizen at the time the Palau Constitution took effect and "who has at least one parent of recognized Palauan ancestry." ROP Const., art. III, § 1. The question presented by this case is whether Fuyuko, adopted by Palauan parents in 1944—long

[7] The Seventeenth Amendment was enacted on November 19, 2008. This provision amended Article III, Section 4 and repealed Article III, Sections 2 and 3. Section 2 of Article III, as originally drafted, stated that "[a] person born of parents, one or both of whom are citizens of Palau is a citizen of Palau by birth." The Seventeenth Amendment therefore expanded the original Section 2 to include as Palauan citizens those individuals born of parents who are of recognized Palauan ancestry, not solely those born of Palauan *citizens*. The trial court analyzed this case under Article III, Sections 1 and 2, despite the repeal of the latter. The amendment, however, does not change the Court's analysis for purposes of this opinion. This case concerns the interpretation of Article III, Section 1, which uses only the language "one parent of recognized Palauan ancestry." To the extent that this Court refers to Section 2, it is to compare it with Section 1 of the Constitution as originally drafted.

before the Palauan Constitution took effect—meets Section 1's requirements.

[1, 2] The first rule of construing a statute or constitutional provision is that we begin with the express, plain language used by the drafters and, if unambiguous, enforce the provision as written. *See Lin v. Republic of Palau*, 13 ROP 55, 58 (2006). The Court should read the drafters' language according to its common, ordinary, and usual usage, unless a technical word or phrase is used. *See Dalton v. Bank of Guam*, 11 ROP 212, 214 (2004); *see also Yano v. Kadoi*, 3 ROP Intrm. 174, 182-83 (1992). Ambiguity exists where a provision or term is "capable of being understood by reasonably well-informed persons in two or more different senses." *Uherbelau*, 12 ROP at 185 (quotations omitted). If a provision is unambiguous, we do not even begin the task of interpreting it. *Id.*; *see also Senate v. Nakamura*, 7 ROP Intrm. 212, 216-17 (1999) ("[I]f the language of a statute is clear, the Court does not look behind the plain language of the statute to divine the legislature's intent in enacting the legislation.").

[3] When ascertaining the plain meaning of Article III, the Court should read its sections together, not as parts standing on their own. *See* 73 Am. Jur. 2d *Statutes* § 103 ("Sections and acts in pari materia, and all parts thereof, should be construed together and compared with each other."); *see also Erlenbaugh v. United States*, 409 U.S. 239 (1972) (noting "the principle that individual sections of a single statute should be construed together"). The Court should also assume that the drafters inserted every part of Article III for a purpose and attempt to avoid a construction of one provision that would render another superfluous. *See* 73 Am. Jur. 2d *Statutes* § 164 ("As a general rule, a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."). This is particularly true concerning constitutional provisions: "Applying sound principles of constitutional construction, . . . it is the function of this court in interpreting the Constitution to find . . . that all sections and provisions of the Constitution are in harmony. Should a discordant note be heard among two or more provisions of the Constitution, it is our task to bring them into harmony if such is possible." *Fritz v. Salii*, 1 ROP Intrm. 521, 544-45 (1988).

With these principles in mind, we turn to Sections 1 and 2 of Article III, as originally drafted. After examining the common usage of the language in the two provisions, as well as their interrelationship and their most logical and reasonable construction, we find no ambiguity in Section 1 and need not step beyond the text to refer to the provision's constitutional history.

Beginning first with the plain meaning of the term "parent," it is commonly defined as "[t]he lawful father or mother of someone." *Black's Law Dictionary* 1144 (8th ed. 2004). This popular legal dictionary goes on to note that "[i]n ordinary usage, the term denotes more than responsibility for conception and birth. The term commonly includes . . . the adoptive father or the adoptive mother of a child . . . ." *Id.* Thus, without express language modifying the term "parent," its common usage would include adoptive parents.

This usage is bolstered by reading Sections 1 and 2 together. In Section 1, the drafters referred only to a "parent" and used the verb "has." In Section 2, however, the drafters inserted additional language: "A person *born of* parents, one or both of whom are citizens of Palau . . . ." (emphasis added). The drafters' inclusion of the "born of" language in Section 2—while omitting it from Section 1—indicates their understanding that this additional language was necessary to clarify that one's *biological* parents must be Palauan before granting citizenship under Section 2.[8] Likewise, they presumably left this "born of" language out of Section 1 for a reason.[9]

Furthermore, adopting Marino's interpretation of Section 1—that "parent" means only one's biological parent—would render the entire provision redundant and superfluous when read alongside Section 2. Under such a construction, Section 2 would have encompassed every person covered by Section 1. Section 2 provides that any biological child of at least one Palauan citizen is considered a Palauan citizen as well. Similarly, the Second and Seventeenth Amendments both provide that anyone "born of" at least one parent of recognized Palauan ancestry is a citizen of Palau by birth. There would be no need for Section 1 if the term "parent" therein was limited to biological parents, and the requirement that one be a Trust Territory citizen prior to the effective date of the Constitution would be meaningless. If one were the *biological* child of at least one parent of recognized Palauan descent, then she would have been a Palauan citizen under the former Section 2, the Second Amendment, or, now, the Seventeenth Amendment. The only logical reading of Section 1 is that it encompasses a broader class of individuals than those formerly covered by Section 2.

[4] The Court finds the plain language of Article III, Section 1 to be unambiguous, particularly when read in conjunction with Section 2. For citizenship under Section 1, one must demonstrate (1) that she was a citizen of the Trust Territory immediately prior to the effective date of the Constitution; and (2) that she "has at least one parent of

---

[8] Similarly, Article III, Section 4, which concerns naturalization, states: "A person *born of parents*, one or both of whom are of recognized Palauan ancestry, shall have the right to enter and reside in Palau and to enjoy other rights and privileges as provided by law, which shall include the right to petition to become a naturalized citizen of Palau . . . ." Likewise, the Second Amendment provided: "A person *born of parents*, one or both of whom are or [sic] recognized Palauan ancestry, is a citizen of Palau by birth. . . ," and, as already mentioned, the Seventeenth Amendment also includes the same "born of" language. These provisions, located in the same Article of the Constitution, are further evidence that the drafters understood the need for a distinction between a "parent" and a biological parent and knew how to create it.

[9] Although we need not venture into the murky waters of the Constitution's history and the drafters' intent, we observe that the trial court correctly noted that an earlier draft of Section 1, as recorded in the Palau Constitutional Convention Committee Report, had *included* the same "born of" language that is found in Sections 2 and 4 of Article III, as well as the Seventeenth Amendment. At some point, the drafters removed this language from Section 1 but retained it in Sections 2 and 4, creating at least an inference that the omission was intentional and purposeful.

recognized Palauan ancestry." The Court holds that the term "parent" in Section 1 includes an adoptive parent of recognized Palauan ancestry.[10] Fuyuko meets this requirement due to her 1944 adoption by two Palauan parents, and we move to the issue of her Trust Territory citizenship at the time the Constitution took effect.

B. Fuyuko's Status as a Trust Territory Citizen

Marino also asserts that Fuyuko was not a Trust Territory citizen prior to the effective date of the Constitution, and she therefore could not become a Palauan citizen under Article III, Section 1. Marino makes two arguments based on the former Trust Territory Code. First, he asserts that Fuyuko's birth in Palau was not enough to render her a Trust Territory citizen under 53 TTC § 1. Second, he argues that no other Trust Territory law granted her citizenship, including the naturalization statute, 53 TTC § 2.

Section 1 of Title 53 of the Trust Territory Code reads: "All persons born in the Trust Territory shall be deemed to be citizens of the Trust Territory, except persons, born in the Trust Territory, who at birth or otherwise have acquired another nationality." Despite that Fuyuko was born in Palau over seventy years ago, adopted by Palauan parents at age eight, was over fifty years old at the time of independence, has lived in Palau for her entire life, was married to a Palauan man, has a Palauan passport, and has voted in every Palauan election, Marino claims that her birth to Japanese parents made her a Japanese citizen from the start, rendering her unable to attain citizenship in the Trust Territory under 53 TTC § 1.

[5] Marino's argument is shaky, but we need not reach its merits because he never propounded it before the trial court. A litigant who does not raise an argument before the trial court waives that issue and may not pursue it for the first time on appeal. *Nebre v. Uludong*, 15 ROP 15, 25 (2008); *Basilius v. Basilius*, 12 ROP 106, 110 (2005); *Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) (going so far as to state that "[n]o axiom of law is better settled"); *Ngaraard State Pub. Lands Auth. v. Rechucher*, 10 ROP 11, 12 (2002). The reason for this principle is clear: the trial court must first have an opportunity to opine on, or at least consider, an issue before an appellate court has anything to review.[11]

[10] The Court, of course, confines its holding to the facts before it. Here, Fuyuko Hiroichi was adopted in 1944, long before Palau's Independence or the effective date of the Constitution. Today's holding is therefore limited to circumstances in which the person claiming citizenship under Section 1 was adopted during the time of the Trust Territory government. The Court is not holding that adoption to a Palauan parent, alone, is sufficient to confer citizenship under Section 1, which expressly requires that one also have been a Trust Territory citizen at the Constitution's effective date. Nor is the Court holding that an adoption of a former Trust Territory citizen occurring *after* the Constitution took effect would be sufficient under Section 1. Those are not the facts before the Court, and it expresses no opinion on them.

[11] There are limited exceptions to the general rule: where the issue raised for the first time on appeal would "prevent the denial of fundamental rights, especially in criminal cases where the life or liberty of an accused is at stake," or where the court should "consider the public good over the personal interests of the litigants"

Marino did not challenge Fuyuko's Trust Territory citizenship until his appeal. More significantly, the parties stipulated at trial, before the court, that Fuyuko was a Trust Territory citizen. The trial court therefore had no reason to question Fuyuko's status as a Trust Territory citizen, nor did Fuyuko have any need to present evidence to prove it.

What's more, Marino and the other appellants admitted that Fuyuko was a Palauan citizen from the beginning of this case. In the first paragraph of Fuyuko's complaint,[12] filed on June 18, 2002, she alleged that she "is a citizen of Palau residing in Palau." In a joint Answer and Counterclaim filed on July 31, 2002, the defendants, including Marino, admitted to this paragraph. Marino, recognizing that his individual claims to some of the property might conflict with the other defendants, retained new counsel and filed an Amended Answer and Counterclaim on November 29, 2002. In it, he *again* admitted to paragraph one of Fuyuko's complaint. Finally, in the first paragraph of his Counterclaim, he averred "[t]hat Counterclaim Plaintiff [Marino] and Counterclaim Defendants [Fuyuko and all other claimants to the property] are residents and citizens of the Republic of Palau," an allegation that Fuyuko then admitted in her answer to Marino's pleading.[13]

[6] Rule 8 of the ROP Rules of Civil Procedure governs pleadings, which are documents that represent the road map for the litigants' journey toward trial. Rules 8(b) and (d)—which provide that a party must admit or deny each averment upon which the opposing party relies and that the failure to deny such an averment will be deemed an admission—exist so that the parties may establish at the outset those allegations that are not in dispute and will not be an issue at trial, as opposed to those that are contested and will require proof for the plaintiff to prevail. *See* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil* § 1261 (3d ed. 2004). Consequently, an admission in a pleading is generally treated as binding on the parties and on the court. *See April v. Palau Pub. Utilities Corp.*, 17 ROP 18 (2009) (refusing to inquire into an issue already "admitted by the most formal means possible"); *see also* 61A Am. Jur. 2d *Pleading* § 407; 29A Am. Jur. 2d *Evidence* §§ 784, 788; *cf. Palau Marine Indus. Corp. v. Pac. Call Invs., Ltd.*, 9 ROP 67, 71 (2002) (holding that even withdrawn or amended pleadings can constitute an admission). Marino attacks Fuyuko for failing to present evidence that she was a Trust Territory citizen, but, given his admissions,[14]

---

or if "the general welfare of the people is at stake." *Ulechong v. Morrico Equip. Co.*, 13 ROP 98, (2006) (citing *Tell v. Rengiil*, 4 ROP Intrm. 224, 226 (1994)). There may be others, such as an argument that the court lacks subject matter jurisdiction, which can never be waived, *see id.* n.5, but Marino has not averred that any exception applies.

[12] We may consider the parties' pleadings as part of the record on appeal. ROP R. App. P. 10(a).

[13] Fuyuko denied that Marino was a resident of Palau; she admitted all other averments in paragraph one of Marino's Counterclaim, including that she was a citizen of Palau.

[14] The Court relies on Marino's admissions only to find that Fuyuko was a citizen of the Trust Territory, not as the basis for finding her to be a citizen of Palau. Although Marino admitted that Fuyuko is a Palauan citizen in his pleadings,

she had no reason to believe such proof was necessary.

The Court finds that Fuyuko is a citizen of Palau. Not only did Marino fail to contest her citizenship below and admit that she is a Palauan citizen, there was more than enough evidence that she was a Trust Territory citizen and was adopted in 1944, during the Trust Territory government, by two parents of recognized Palauan ancestry. She qualified as a citizen under Article III, Section 1. As such, Fuyuko was eligible to acquire title to land in Palau under Article XIII, Section 8.

II. Validity of the January 2000 Deed of Transfer

Appellants' next challenge is that the Deed of Transfer conveying the three sisters' interest in the subdivided plot of land on *Bkulasang* was invalid. Specifically, they assert that the court improperly altered the language of the Deed to change the parties' intention.

The appellants' argument fails at its initial premise, *i.e.,* that the trial court "unilaterally and after the fact, reformed the deed so that 051 R 02 now should read as 051 R 03A." (Appellants' Br. at 8.) The trial court made no such reformation. The trial court's duty was to interpret the meaning of a potentially ambiguous portion of the Deed of Transfer. It did so, properly, and its use of "051 R 03A" to describe the property in question was merely for convenience. It did not alter the deed.

The confusion on this point resulted from use of a cadastral map prepared by the Bureau of Lands and Surveys. After Hiroichi decided to split up *Bkulasang* to obtain his loan, he hired a surveyor to mark the new lots. The surveyor performed the work, but on the final map, labeled 051 R 00, there are two parcels marked 051 R 02. One is a smaller plot identified by a typewritten 051 R 02; the

---

which would typically bind the parties, the trial court addressed the constitutional issue in its Decision because it came to light at trial, where counsel for both parties questioned Fuyuko about her heritage and mentioned it during closing arguments. According to Rule 15(b) of the Rules of Civil Procedure, if the parties expressly or impliedly consent to try an issue not raised by the pleadings, the court shall treat that issue "in all respects as if they had been raised by the pleadings" and may amend the pleadings to conform to the evidence produced. ROP R. Civ. P. 15(b); *see also* 61A Am. Jur. 2d *Pleading* § 809. The most common way a party impliedly consents to trying a new issue is by failing to object (or affirmatively responding) to the production of evidence relevant to the new issue. *Id.* §§ 382, 822, 826. If this occurs, a formal motion to amend may not be necessary, and the trial court's judgment can effectuate the amendment. *Id.* § 815. Such an amendment is often recognized as an exception to the general rule that a defendant's failure to timely raise an affirmative defense constitutes waiver. *See id.* § 830. Here, Fuyuko did not object to evidence concerning her Palauan citizenship and instead proceeded to try the issue before the trial court. The issue of Fuyuko's Trust Territory citizenship, however, did not arise at trial. This Court therefore need not determine the appropriateness of trying the issue of her Palauan citizenship or whether the pleadings were effectively amended to conform to the evidence pursuant to Rule 15(b). Instead we use Marino's admissions as further support for finding that she was a Trust Territory citizen immediately prior to the effective date of the Palau Constitution.

other is larger with the number 051 R 02 written by hand. The larger plot is 6,555 square meters and contains two of the three government houses mentioned above. It is bordered on the north by the ocean, on the south by the main road, on the west by 051 R 01, and on the east by 051 R 03. The smaller plot, which Hiroichi later conveyed to Marino, contains the house by the sea.

Appellants argue that the 2000 Deed of Transfer—which lists the lot being transferred simply as 051 R 02—is unclear as to whether it refers to the area described by the typewritten 051 R 02, the handwritten 051 R 02, or some combination. To be given effect, a deed should adequately describe the property, which means some definite way to identify the land, such as the lot's configuration or its size. *See Salii v. Omrekongel Clan*, 3 ROP Intrm. 212, 213-14 (1992).

At trial, the surveyor testified that he made a mistake in labeling the cadastral map, and the parcel identified by the handwritten 051 R 02 should have been denominated as a different lot, for example 051 R 03A. The trial court, acknowledging the mistake, stated in a footnote that to avoid confusion, it would refer to the smaller, typewritten plot as 051 R 02, and to the larger, handwritten plot as 051 R 03A. The two lots numbered 051 R 02 are obviously two separate parcels of land, and the trial court used two separate means of identifying them. The trial court could have used a different number or name, but it would not have changed the property reflected on the map, nor would it have amended the parties' intentions as expressed in the Deed of Transfer. The trial court's inquiry remained the same: which part of *Bkulasang* did the sisters intend to convey to Hiroichi?

Turning then to the court's interpretation of the Deed of Transfer, the court faced an ambiguous term in the document because it referred only to "051 R 02," a description that could have meant either of the lots. The court was entitled, therefore, to use extrinsic evidence to resolve the ambiguity. *See, e.g.*, *Carlos v. Whipps*, 6 ROP Intrm. 43, 44 (1996) ("In general, a deed is void if the language used to describe the land being conveyed is not sufficiently certain. In such cases of uncertainty, the courts have allowed the use of extrinsic evidence to determine the true intent of the parties." (citation omitted)). The primary extrinsic source was Cadastral Map 051 R 00, which, when read in conjunction with the description of the property on the Deed of Transfer, conclusively establishes that the Deed referred to the larger lot marked with the handwritten 051 R 02, not the smaller one identified by the typewritten 051 R 02. In addition to the lot number, the Deed described the subject property as "an area of 6,555 square meters bounded to the North by saltwater to the South by the main road to the East by 051 R 03 and to the West by 051 R 01." This description accurately describes only one plot of land within *Bkulasang*: the lot identified by the handwritten 051 R 02, which the trial court referred to as 051 R 03A.

Having found that the description of the property was sufficiently precise to give effect to the Deed, the only other way that the sisters can avoid the transfer is if they were duped by fraud or some other impropriety during the conveyance. The trial court rejected the sisters' claim that Hiroichi had

fraudulently procured their signatures and found that they understood the document they were signing. These are factual questions reviewed for clear error only. *See Rechirikl*, 13 ROP at 168.

In resolving the question of fraud, the trial court found that the sisters did not prove that Hiroichi made any fraudulent misrepresentation, the first element of a fraud claim. *See Isimang v. Arbedul*, 11 ROP 66, 74 (2004). We agree. The evidence before the trial court was that a notary public read each sister the document in both Palauan and English and that they understood it. The notary even testified that one sister attempted to stop her while reading it, saying that she knew what it was about, but the notary persisted in performing the duties of her job. The sisters' children were present and also assisted in explaining the document to them, and no one objected. Even if Hiroichi stated that he planned to use the land as collateral, the ambiguity of such a statement (for it technically is true), combined with the clarity of the document itself and the overwhelming evidence that the sisters were apprised of its impact by a neutral notary, all counsel against a finding of fraud. Without something more, the court did not err by finding that Hiroichi committed no fraud.

The evidence also supported the trial court's finding that the sisters understood the document they were signing. On appeal, one sister, Kedei, states that "[s]he did not think that by signing the document . . . the land would become Hiroichi's individual property." Instead, she believed that the document merely granted Hiroichi permission to use the property as collateral for a loan. The document itself, however, stated that the sisters agreed "to transfer and quitclaim a parcel of our property described above to our brother, Hiroichi Ucherremasech," and that Hiroichi "shall have a full power and authority to control that said parcel of our land." The Deed concluded in unambiguous terms that the sisters "all agrees [sic] to loose [sic] our interests to the said parcel of our land." The document never mentions a loan, collateral, a right of use (rather than ownership), or any other indicia of anything but a conveyance of full ownership. The notary testified that she read the document to the sisters in both Palauan and English and that she believed they understood it. This is sufficient to support the trial court's conclusion.

III. Mortgage versus Outright Conveyance

The sisters' final argument, one related to the previous issue, is that the trial court should have treated the 2000 Deed of Transfer as a mortgage, not an outright conveyance. The sisters invoke 39 PNC §§ 604(g) and 605, which provide that any interest in real property that may be transferred may also be mortgaged, and defines a "mortgage" as "a contract in which real property is made the security for the performance of an act, usually but not necessarily the payment of debt, without the necessity of change of possession and without the transfer of title."

The sisters' argument fails on multiple fronts. First and foremost, as we just stated in the last section, the 2000 Deed of Transfer was unambiguous and clearly conveyed a full property interest to Hiroichi. The document did not mention a loan, mortgage, or collateral. The sisters were unable to prove that they intended it to be a mortgage, that

they did not understand the document, or that they were fraudulently induced to sign it.

[7] Second, and more fundamentally, the sisters confuse the meaning of a mortgage. It is a contract whereby the mortgagor pledges real property to a mortgagee as security for the mortgagor's performance of some act or obligation. 39 PNC § 604(g). That "act or obligation" is typically to repay a debt, but it may be otherwise. A mortgage must be in writing and should contain a legal description of the mortgaged property, a description of the obligations for which the property will serve as security, and the names and address of each mortgagor and mortgagee. 39 PNC § 621. It must also be recorded. *Id.* § 622.

[8] The appellants are correct that, in certain circumstances, a document that purports to be a deed might be properly interpreted by a court as a mortgage. *See Ngirchehol v. Kotaro*, 14 ROP 173 (2007); *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317 (2001). However, such a document is typically a contract between the mortgagor and the person to whom the obligation will be owed, for example a bank or lender. Whether a deed is in fact a security instrument depends on the following factors:

> (a) the existence of a debt to be secured;
> (b) the survival of the debt after execution of the deed;
> (c) the previous negotiations of the parties;
> (d) the inadequacy of consideration for an outright conveyance;
> (e) the financial condition of the purported grantor; and
> (f) the intentions of the parties.

Ngirchehol, 14 ROP at 176.

It is not difficult to see that the Deed of Transfer in this case is not a mortgage. The sisters' purported transfer of their interest in the property was not made to secure any obligation that they owed to Hiroichi; likewise, Hiroichi did not hold it as a form of security to protect such an obligation. There was no discussion of a debt between Hiroichi and his siblings, consequently there was no debt to survive after the transfer was made. The parties did not intend that the Deed serve as a mortgage in any way, and the trial court did not clearly err by failing to treat it as such.

CONCLUSION

The trial court did not err in determining that the 2000 Deed of Transfer was valid, free of fraud, and sufficiently specific to be given effect. Consequently, Hiroichi Ucherremasch possessed his sisters' interests in the land in question, and he properly conveyed them to his wife of many years, Fuyuko Hiroichi, who is a Palauan citizen under Article III, Section 1 of the Palau Constitution and may acquire title to land in Palau. For these reasons, we AFFIRM.