

**ESTATE OF ADELBAI REMED,
Appellant,**

v.

**UCHELIOU CLAN,
Appellee.**

CIVIL APPEAL NO. 09-020
Civil Action Nos. 02-071, 03-213

Supreme Court, Appellate Division
Republic of Palau

Decided: August 17th, 2010

[1] **Torts:** Fraud

To demonstrate fraud where the defendant fails to disclose information (fraudulent concealment), plaintiff must demonstrate (1) a fiduciary, confidential, or similar relationship creating a duty to disclose; (2) actual concealment of a material fact, that is, one that defendant knows may justifiably induce the plaintiff to act or refrain from acting, with an intent to mislead another; and (3) justifiable reliance by the plaintiff to his or her detriment.

[2] **Torts:** Breach of Fiduciary Duty

A fiduciary relationship is one in which a person is under a duty to act for the benefit of another within the scope of the relationship.

[3] **Torts:** Breach of Fiduciary Duty

A fiduciary duty arises as a matter of law in certain formal relationships—such as attorney-client, partnership, or trustee-beneficiary—but it is not confined to these categories. Rather, the duty extends to all

relations in which confidence is reposed, and in which dominion and influence resulting from such confidence may be exercised by one party over another.

[4] **Torts:** Breach of Fiduciary Duty

Once a fiduciary or confidential relationship is established, it is the duty of the person in whom the confidence is reposed to exercise the utmost good faith in the transaction with due regard to the interests of the one reposing confidence, to make full and truthful disclosures of all material facts, and to refrain from abusing such confidence by obtaining any advantage to himself or herself at the expense of the confiding party. A fiduciary or one in a confidential relationship is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.

[5] **Torts:** Breach of Fiduciary Duty

Even when a relationship does not constitute a formal fiduciary relationship, the duty to speak or disclose information may arise based on the particular circumstances and factors such as the relationship between the parties, the relative knowledge of the parties, the materiality of the particular fact in question, or the parties' relative opportunity to ascertain that fact.

[6] **Torts:** Breach of Fiduciary Duty;
Custom: Title Holders

A clan's chief male titleholder owed the clan a fiduciary or confidential duty in managing the clan's property, where he had served in this capacity for many years, the clan reposed trust in his management, he possessed greater access to information than other clan

members, and he received information he knew to be material to the clan.

[7] **Appeal and Error:** Clear Error

Where there are two competing versions of the facts, each supported by admissible evidence, the court's choice between them cannot be clear error. The Appellate Division does not reweigh the evidence below, and whether it would reach the same conclusion upon hearing the evidence for the first time is unimportant. The Court's responsibility on appeal is to ensure that the lower court's factual findings are supported and valid.

Counsel for Appellant: John K. Rechucher

Counsel for Appellee: Moses Uludong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; RICHARD H. BENSON, Part-time Associate Justice.

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

PER CURIAM:

The Estate of Adelbai Remed (hereinafter "the Estate") appeals the trial court's determination that Remed, as chief titleholder of his Clan, fraudulently concealed information from Clan members as a means of acquiring individual ownership to certain Clan-owned property. The trial court vacated two Determinations of Ownership concerning the disputed land and awarded the property to Ucheliou Clan. After considering the Estate's arguments, we find no error below.

BACKGROUND

This case concerns the proper ownership of three adjoining parcels of land in Airai: *Meketekt*, *Olsongeb*, and *Ngermeltel*. *Ngermeltel* is a taro patty; *Meketekt* is a sloping property nearby; and *Olsongeb*, nearest the water, is important to Ucheliou Clan because it is the chief male titleholder's mangrove channel and purportedly the point where members first arrived on the property. Ucheliou Clan now claims that Adelbai Remed fraudulently acquired individual title to this land, which it avers has belonged to the Clan for many years.

Adelbai Remed was born in 1912 as one of eleven children. Several of his siblings were adopted out to other families. Many years ago, Remed became Remesechau, Ucheliou Clan's chief male titleholder, and his sister, Swars Remed, was the female counterpart, or Dil-Remesechau, for a long time prior to her death.

In 1976, Remed sought to register the disputed property and attended its monumentation. In the filings, Remed combined the three lots and labeled them as solely "*Meketekt*."¹ Remed claimed the land on behalf of Ucheliou Clan, stating that the "Tochi Daicho Type of Ownership" was Ucheliou Clan; that he claimed ownership "as Ucheliou Clan Administer [sic] by Adelbai Remeschau;" and that he acquired the land as "senior rubak and under domain of my tittle

[sic]." The claim contains a handwritten sketch of the property.

Years went by, with Remed and others using the property and with little dispute or concern over its ownership. Several witnesses testified at trial that this property belonged to Ucheliou Clan and held special significance. Many also stated that Remed and other elder Clan members told them that this was so. Clan members also testified that they relied on Remed, as Remesechau, to manage Clan-owned property and any claims thereto, although other senior Clan members were required to consent or authorize certain transfers and conveyances. After Remed received notice of a monumentation or hearing concerning land potentially owned by the Clan, he would typically request one of his relatives to attend the proceeding.

On July 8, 1996, Adelbai Remed filed another Application for Land Registration for *Meketekt*—this time, however, as his own individual property. Contrary to the 1976 filing, he stated that he was the Tochi Daicho owner in his own right, rather than on behalf of Ucheliou Clan. When asked who would inherit the property, "Ucheliou Clan" was written and crossed out, replaced by "Adelbai Remed Family." For some reason, Remed checked the box corresponding with a claim for "Lineage" property, rather than "Clan" or "Individual." Remed signed the form, and his daughter, Ellen Adelbai, was also present for his signature.

Several Ucheliou Clan members testified that they had no knowledge of Remed's 1996 individual claim to *Meketekt* until after he was awarded ownership in April 2001. They claimed that the Land Court's

¹ For simplicity, the Court will refer to the three lots in question only as *Meketekt* for the remainder of this Opinion, unless specifically noted otherwise.

notices of the monumentation and hearing were served upon Remed only, and he said nothing to other Clan members. The Estate, however, through Ellen Adelbai, produced some evidence that Remed notified the Clan of his intent to pursue *Meketekt* as his individual property. Specifically, Ellen claimed that Remed held two family meetings, at which he was purportedly upset because certain Clan members had used part of the property as collateral for loans.

Remed's 1996 claim was monumented in 2000. Ellen Adelbai attended on Remed's behalf. Also present was Rosania Masters, a senior member of Ucheliou Clan. Masters testified that she was often enlisted to help Remed with land issues, including monumentations, but no one informed her of this one. She stated that she attended the monumentation because a friend and nearby landowner informed her that the Land Registration Officer was monumenting property that might affect her friend's claims. Knowing that her friend's land was near *Meketekt*, Masters decided to attend as well. She brought the 1976 record of Remed's claim, which the Land Registration Officer was also using for reference—she had never seen the 1996 claim. Masters stated that she did not think twice about Ellen Adelbai's presence at the proceeding, because she was another Clan member and was presumably there for Remed and on the Clan's behalf.

The Land Court held a hearing concerning the property on April 2, 2001. No one attended, and the Land Court therefore awarded the property to Remed as the sole claimant. Ucheliou Clan states that only then did it learn of what had transpired. It attempted to appeal the Land Court's decision,

but the Supreme Court rejected it because the Clan was not a party to the proceeding. The Clan thus filed this lawsuit, naming both Remed and the Land Court as parties,² alleging that Remed fraudulently obtained ownership of *Meketekt*, and seeking damages and return of the Clan's land.

The trial court granted summary judgment in favor of the Land Court, finding that it had complied with the relevant notice requirements for claims to *Meketekt*.³ Specifically, it served notice of the monumentation and hearing on the Clan by delivering it to Adelbai Remed, the Clan's chief male titleholder, as required by 35 PNC § 1309(b)(3)(C). The Land Court also posted notices of a Hearing, Monumentation, and Mediation Session at the appropriate locations, mailed them to overseas consular offices, and broadcast them on the radio. The court below therefore dismissed the Land Court as a party to the proceeding giving rise to this appeal.

The Clan's claim against Adelbai Remed⁴ proceeded to trial. The court received evidence from several witnesses on behalf of

² The Clan also included as defendants "Jane Does 1-3," planning to name them after additional discovery. The Clan never named the additional defendants.

³ The summary judgment decision in the Land Court's favor was issued by Justice Salii. The claims against the Estate of Adelbai Remed ultimately went to trial before Justice Foster, whose decision is the subject of this appeal.

⁴ Remed died on May 1, 2002, and the Estate of Adelbai Remed was substituted as a defendant.

Ucheliou Clan, as well as Ellen Adelbai on behalf the Estate. In its decision, the trial court first noted the discrepancies between the 1976 land registration documents and Adelbai Remed's 1996 claim to *Meketekt*, land which the court found to be important to Ucheliou Clan. The court then found that Clan members had no actual notice of Remed's 1996 claim, nor the hearing and monumentation. The court acknowledged Ellen Adelbai's testimony concerning the family meetings about the land, but it discredited at least portions of her version of events. All of the alleged attendees were either deceased or too old to testify at the time of trial, and despite the typical procedure of recording such meetings and notifying other strong Clan members, no one disclosed the information from these meetings to anyone, such as Rosania Masters (who often assisted with land issues) and Otobed Adelbai (who later became Remesechau). Thus, the court found that even if the meetings occurred, Remed did not divulge his intent to claim *Meketekt* as his own property, and not all senior strong members attended.

Having determined that no other Clan members were on notice of Remed's 1996 claim or the accompanying hearing and monumentation, the trial court analyzed the Clan's fraud claim. First, because Remed did not make an affirmative misrepresentation to the Clan members, the trial court invoked the doctrine of fraud by concealment, that is, Remed's failure to disclose material information which he was under a duty or obligation to disclose. The court determined that, as chief of Ucheliou Clan, Remed owed the other Clan members a fiduciary or confidential duty. Remed had long been responsible for managing Clan property, and

he typically signed claims for property on the Clan's behalf. In this instance, he filed the original 1976 documentation supporting Ucheliou Clan's claim to *Meketekt*, in which he stated that he was claiming as "Ucheliou Clan Administer by Adelbai Remeschau." The court found that the Clan trusted and relied upon its chief to manage its property in the Clan's best interest, a conclusion bolstered by the law permitting the Land Court to serve notice to a clan through its chief male and female titleholders. Other members testified that because of Remed's status as Remesechau there was no need to file a duplicate or competing claim; in fact, such conduct would be viewed as an objection or a challenge to Remed's authority. Finally, the court noted that Remed, as a direct function of his position as Remesechau, possessed greater information about the claim to *Meketekt*, and he knew that his failure to disclose his claim or the accompanying hearing would preclude the Clan from asserting its interests to the property or appearing before the Land Court. As a result, the trial court held that Remed owed the Clan a duty to disclose his individual claim, as well as the notice of monumentation and hearing.

Because Remed was under a duty to disclose, the trial court moved to the remaining elements of fraud. It found that the undisclosed information was material—had the Clan known, they would have acted. It also found that Remed intended to conceal the information, particularly given the inconsistencies between the 1976 and 1996 claims. Finally, the court concluded that the Clan's reliance upon Remed and its failure to investigate the status of *Meketekt* was justifiable and reasonable. He was their chief, and they were entitled to believe that he would

manage the Clan's property for the greater benefit of Ucheliou Clan. After all, he had been acting in that capacity for many years. No other senior members were notified or signed any document to transfer the property.

The trial court therefore found that Remed had acquired title to *Meketekt* as the result of fraud by concealment. It vacated the previous Determinations of Ownership and awarded new ones to Ucheliou Clan, with Otobed Adelbai as trustee. The Estate now appeals.

ANALYSIS

The Estate of Adelbai Remed raises a variety of arguments in its appeal, several of which are scattered multiple times throughout three broadly titled sections. Most assertions relate to the trial court's factual findings, which we review for clear error. *Sambal v. Ngiramolau*, 14 ROP 125, 126 (2007). Under this standard, we will not reverse the court's factual determination unless it lacks evidentiary support "such that no reasonable trier of fact could have reached the same conclusion." *Id.* The Estate raises at least one issue of law, which we review de novo. *Estate of Rechucher v. Seid*, 14 ROP 85, 88-89 (2007).

The Estate's primary contentions on appeal are that the trial court erred by finding (1) that Adelbai Remed, as Remesechau of Ucheliou Clan, owed the Clan a fiduciary duty; (2) that the members of Ucheliou Clan did not know about Remed's 1996 claim to *Meketekt* as his individual property; and (3) that Remed failed to disclose an unknown fact that he knew would induce the Clan to refrain from claiming its land. The Estate also makes

several cursory and undeveloped arguments, but we address the primary issues below.

I. Existence of a Duty to Disclose

The Estate's most prevalent argument is that Adelbai Remed had no duty or responsibility to inform the members of Ucheliou Clan about his 1996 claim and the accompanying monumentation and hearing. It contests the trial court's finding that Clan members reposed trust and confidence in Remed. It also avers that this is a question of Palauan custom, but the Clan did not present expert custom evidence. The Estate's positions are unavailing for multiple reasons.

[1] Ucheliou Clan claimed that Remed secured ownership of *Meketekt* by fraudulently concealing his individual claim, as well as the Land Court's notices of monumentation and hearing. As the trial court correctly noted, to demonstrate fraud where the defendant fails to disclose information (as opposed to an affirmative misstatement), the plaintiff must demonstrate (1) a fiduciary, confidential, or similar relationship creating a duty to disclose; (2) actual concealment of a material fact, that is, one that defendant knows may justifiably induce the plaintiff to act or refrain from acting, with an intent to mislead another; and (3) justifiable reliance by the plaintiff to his or her detriment. *See* Restatement (Second) of Torts §§ 525, 551 (1998); 37 Am. Jur. 2d *Fraud and Deceit* § 200 (2001).⁵ The Estate's challenge on appeal focuses primarily on the first element: whether Remed owed the Clan

⁵ In the absence of Palauan law, this Court refers to U.S. common law principles. 1 PNC § 303.

a duty to disclose information concerning his claim to *Meketekt*.

[2, 3] This Court has previously defined a fiduciary relationship as one in which a person is under a duty to act for the benefit of another within the scope of the relationship. *See Esebei v. Sadang*, 13 ROP 79, 82 (2006) (citing Black’s Law Dictionary, 1315 (8th ed. 2004)); *see also Isimang v. Arbedul*, 11 ROP 66, 74 (2004). A fiduciary duty arises as a matter of law in certain formal relationships—such as attorney-client, partnership, or trustee-beneficiary—but it is not confined to these categories. Rather, the duty “extends to all relations in which confidence is reposed, and in which dominion and influence resulting from such confidence may be exercised by one party over another.” 37 Am. Jur. 2d *Fraud and Deceit* § 32. “For purposes of fraud, a ‘legal duty’ may . . . arise when special confidence is placed in someone thereby giving that person a position of superiority and influence.” *Id.*

[4, 5] Once a fiduciary or confidential relationship is established, “it is the duty of the person in whom the confidence is reposed to exercise the utmost good faith in the transaction with due regard to the interests of the one reposing confidence, to make full and truthful disclosures of all material facts, and to refrain from abusing such confidence by obtaining any advantage to himself or herself at the expense of the confiding party.” *Id.* § 31; *see also id.* § 207. Even when a relationship does not constitute a formal fiduciary relationship, the duty to speak or disclose information may arise based on the particular circumstances and factors such as the relationship between the parties, the relative knowledge of the parties, the

materiality of the particular fact in question, or the parties’ relative opportunity to ascertain that fact. *See id.* § 204. A fiduciary or one in a confidential relationship “‘is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.’” *Isimang*, 11 ROP at 74 (quoting Restatement (Second) of Torts § 874 (1979)).

Turning to this case, we find no error in the trial court’s conclusion that Adelbai Remed, then Remesechau of Ucheliou Clan, owed a duty to Clan members to disclose information concerning the disposition of *Meketekt*. Before addressing the evidence supporting the court’s finding, we note that counsel for the Estate, in three separate statements during closing argument, conceded that Remed owed the Clan’s members a fiduciary duty under Palauan custom because of his role as Remesechau. (Tr. at 157-58.) On the third occasion, the Court interjected and sought to clarify counsel’s position, asking: “[J]ust so I’m clear. You are not saying that it was his own private land anyway so he didn’t have a fiduciary duty to disclose. You are saying that he did have a fiduciary duty and he did disclose, is that correct?” (*Id.* at 158.) Counsel responded by saying, “Yes, yes. In a way, it is. I mean the Court is right. . . . What we are saying is that it is his land, if he didn’t bear the title Remesechau of the clan, he would claim it without notifying anybody. But because of the fact that he did, then he did have a duty to inform if he changed to apply or to claim for his personal interest or ownership in the land.” (*Id.*) In other words, the Estate’s position at trial was not that Adelbai Remed lacked a duty to disclose his individual claim to *Meketekt*, but rather that he fulfilled this duty by notifying the Clan’s members.

Nonetheless, the trial court's conclusion was appropriate in light of the facts of this case and the established relationship between a chief and the clan he or she represents. The record indicates that a fiduciary relationship existed concerning Remed's management of Clan-owned property, including those lands for which the Clan might have a claim. At a minimum—and whether dubbed a formal “fiduciary” relationship or some other “confidential” one—the circumstances of this case demonstrate that Remed had a duty not to use his position to acquire property to which the Clan has a legitimate claim, while withholding material information about the property's status.

Applying the principles listed above, no one disputes that Remed was Remesechau of Ucheliou Clan, nor is there any debate that he was responsible for managing Clan-owned property in the Clan's best interests. Remed monumented *Meketekt* in 1976, and several witnesses testified that he was typically responsible for filing claims for property claimed by the Clan. The members of Ucheliou Clan entrusted him to perform this role: Rosania Masters stated that filing such claims was Remed's “duty” and “responsibility,” (Tr. at 28); Kerungil Augustine testified that Remed, as chief, had the exclusive responsibility for this task, (*id.* at 47-48); and Otobed Adelbai, the current Remesechau, testified that Remed “was the head of Ucheliou clan so it was his responsibility to claim the lands for the clan,” (*id.* at 51). Even Adelbai Remed himself, in a letter to other members of Ucheliou Clan which was cited in the Estate's brief, asserted his control and dominion over land

management for the Clan. The Estate's brief states:

In that letter, Adelbai Remed told everyone that: I am the head of Ucheliou Clan and Telbadel Lineage with authority based on traditional customs of Palau and Airai. So, no land or property within or on any land owned by the clan can be given away or be sold without my consent. . . . My consent for transer of lands, mortgage of lands, or sale of lands will be expressed in writing with my signature.

(Appellant's Br. at 17 (citing Estate Exh. K).)

[6] This evidence is more than sufficient to demonstrate that Remesechau Remed owed the Clan a fiduciary duty in managing the Clan's property. The members clearly reposed confidence and trust in Remed to act in their best interest. Remed voluntarily accepted this confidence and exercised authority over Ucheliou Clan property throughout his life. Several witnesses testified that they often deferred to Remed and, on occasion, declined to object to or challenge his authority out of respect. Rosania Masters testified that neither she nor any other member filed a claim to *Meketekt* because they knew of Remed's 1976 claim on the Clan's behalf, and they trusted him to pursue that claim. The Estate also asserts that Ucheliou Clan produced no customary evidence to support its allegation that Remed owed the Clan a fiduciary duty under Palauan custom. But a fiduciary or confidential relationship is a fact-sensitive inquiry turning on the relations between two

individuals at a given point in time for a particular subject. The testimony of several witnesses, the generally accepted role of a chief in Palauan society,⁶ as well as counsel's admission that Remed owed such a duty under Palauan custom, were sufficient to support the trial court's conclusion.

Additional circumstances also support the trial court's conclusion concerning Remed's duty to disclose. Remed had greater access to information than other clan members. *See, e.g.*, 37 Am. Jur. 2d *Fraud and Deceit* § 205. Remed also must have understood that if he did not notify clan members of his individual claim, the monumentation, or the hearing, they would not learn this information and would have no reason to believe that filing a competing claim

⁶ A chief's role in a clan's affairs—particularly concerning claims to disputed property—is evidenced by the Land Court's notice requirements for clans, which mandate that a notice of monumentation, mediation, or hearing be delivered to the clan's senior male and female titleholder. *See* 35 PNC § 1309(b)(3)(c).

The Estate originally named the Land Court as a party to this lawsuit, alleging that it failed to comply with the proper notice provisions, but the trial court resolved this claim on summary judgment. Despite a brief comment in its opening brief that § 1309(b)(3)(C) requires service to *both* the senior male and female titleholders, the Estate does not appear to appeal or contest the trial court's decision regarding the Land Court. The Estate does not name the Land Court as an appellant, nor has the Land Court been served with the Estate's briefs, motions, or other filings in this appeal. We therefore disregard the Estate's assertions concerning the propriety of the Land Court's notice.

was necessary. *See, e.g., id.* § 204. Therefore, given the relationship between Remed and Ucheliou Clan, the reliance and trust placed in Remed to act in the Clan's best interest, the disparity in information related to land claims, and the materiality of that undisclosed information, the trial court did not err in concluding that Remed had a duty to inform the Clan concerning claims to *Meketekt*.

II. Ucheliou Clan's Knowledge of Remed's 1996 Claim

The remainder of the Estate's various arguments relate to the trial court's factual determinations, which, as we stated above, we review for clear error. *Sambal*, 14 ROP at 126. The primary objection is that the evidence did not support the court's finding that other members of Ucheliou Clan were unaware of Remed's 1996 claim to *Meketekt*. For example, the Estate argues that (1) Remed notified the Clan of his individual claim and the Land Court's accompanying notices; (2) the Land Court issued the notice to him in his personal capacity, not as Remesechau, meaning he was not obligated to inform the Clan; (3) Remed treated *Meketekt* as his individual property throughout his life, without objection from Clan members; (4) Remed's 1996 individual claim was a matter of public record, it was advertised on the radio, and certain Clan members may have seen it in the Land Court's file; and (5) Rosania Masters should have been on notice of Remed's individual claim as the result of her presence at the monumentation. Thus, the Estate submits that Ucheliou Clan knew or should have known of Remed's 1996 individual claim.

[7] Each of these arguments was made by the Estate below, and the trial court rejected them. Where there are two competing version of the facts, each supported by admissible evidence, the court's choice between them cannot be clear error. *Id.* at 128. This Court does not reweigh the evidence below, and whether we would reach the same conclusion upon hearing the evidence for the first time is unimportant. *See id.* at 127. Our responsibility on appeal is to ensure that the lower court's factual findings are supported and valid, and we are satisfied that they are in this case.

First, Ucheliou Clan produced testimony that its members had no notice of Remed's 1996 individual claim to *Meketekt* until after the Land Court awarded title to Remed. Rosania Masters testified to this issue at length, stating that she was familiar with Remed's 1976 filing on Ucheliou Clan's behalf and that its members relied on Remed to pursue this claim. She also testified that other Clan members would have opposed Remed's claims if they had known that he was attempting to acquire the property himself. She obtained the 1976 claim before the monumentation and had no reason to know that Remed had filed a competing claim. Importantly, she expressly stated that neither she nor any other member of Ucheliou Clan was notified of the claim, the monumentation, or the hearing. (Tr. at 12.) She did not hear the radio announcement for the claim, nor see the notice posted at the property. (*Id.* at 24.) In addition to Masters's testimony, Kerungil Augustine testified that *Meketekt* is Ucheliou Clan property; that there was no meeting to discuss the land; and that she had no prior knowledge of Remed's 1996 claim. (*Id.* at 36.) Likewise, Otobed Adelbai, the current

Remesechau, testified that he had no knowledge of Remed's 1996 claim, nor any meetings in which clan members supposedly discussed these lands. (*Id.* at 52.)

The Estate certainly produced some evidence that Ucheliou Clan members may have known of Remed's 1996 claim. Ellen Adelbai testified about two meetings at which Remed informed some of the Clan's senior members about his intent to claim the property. (*Id.* at 101-04.) This evidence was undermined, however, by the fact that the attendees of these purported meetings are currently deceased or unavailable, and other members who would typically be involved were omitted from these alleged meetings. Furthermore, Ellen Adelbai acknowledged on cross-examination that several Clan members, including Remed's sister and the highest female titleholder, Swars Remed, notified Adelbai that he could not sell, transfer, or convey certain Clan property, (*id.* at 115-18), and that Remed "knew that . . . Ebas Ngiraloi, Olkeriil Saburo, Swars Remed, Dilubech Misech, Elchesel Matchiau have told him, that any property that is transferred is void, and property you sell is void and you are not to do any[thing] . . . unless you get our permission," (*id.* at 118). Despite the presence of some competing evidence, there was ample support for the trial court's findings.

The remainder of the Estate's arguments fail for the same reason. We have already held that Remed owed a duty to inform the Clan, and we have therefore resolved the Estate's assertion that the Land Court's notice to him was personal, rather than as the Clan's representative. That Remed may have treated the property as individual land throughout his life is inapposite to

whether he was required to notify the Clan of his individual claim and the legal proceedings related thereto. Personal use of Clan-owned land does not put the Clan on notice that the person using it intends to seek private ownership. Even accepting the Estate's averment concerning the land's use, as far as the Clan knew *Meketekt* was Clan-owned land to which Remed had *already* filed a claim on the Clan's behalf. As to the assertion that the claim's status as a public record, as well its advertisement on the radio and on the property, provided constructive notice, the testimony at trial was that no Clan member heard the announcement, saw the posting, or otherwise inquired about the land's status. Again, the trial court accepted the testimony that the Clan's members relied on Remed to manage the Clan's land claims. The mere fact that the claim was a public record is insufficient to demonstrate that the members had notice of it. We therefore reject the Estate's challenges.

III. Fraud Determination

Having determined that (1) Remed was under a duty to inform the Clan concerning claims to *Meketekt*, and (2) the Clan was not otherwise aware of Remed's claim, we find that the trial court did not err by concluding that Remed procured title to *Meketekt* through fraud by concealment. Once again, the elements of such a claim are (1) a fiduciary, confidential, or similar relationship creating a duty to disclose; (2) a failure to disclose a material fact, that is, a fact that defendant knows may justifiably induce the plaintiff to act or refrain from acting, with an intent to mislead; and (3) justifiable reliance by the plaintiff to his or her detriment. *See*

Restatement (Second) of Torts §§ 525, 551; 37 Am. Jur. 2d *Fraud and Deceit* § 200.

Remed owed the Clan a fiduciary or confidential relationship to Ucheliou Clan, at least concerning this claim to *Meketekt*. He failed to disclose his individual claim to that land, as well as information about the Land Court proceeding, and the evidence concerning the contrasting 1976 claim and Remed's intended disposition of the property supported the court's conclusion that his concealment was intentional. The information concealed was material—testimony indicated that the Clan deferred to Remed to manage Ucheliou Clan property and any claims thereto, and had the members known of his claim, they would have filed a competing claim on the Clan's behalf. This conduct was justifiable in that the Clan had no reason to question its reliance on Remed until learning that he had obtained *Meketekt*. The trial court's conclusion was therefore proper.

CONCLUSION

For the foregoing reasons, we AFFIRM.