

**IGNACIO ANASTACIO,
Appellant,**

v.

**PALAU PUBLIC UTILITIES
CORPORATION and REPUBLIC OF
PALAU,
Appellees.**

CIVIL APPEAL NO. 08-042
Civil Action No. 04-206

Supreme Court, Appellate Division
Republic of Palau

Decided: January 8, 2010

[1] **Appeal and Error:** Standard of Review

The Appellate Division reviews a lower court’s interpretation of a contract *de novo*.

[2] **Property:** Ejectment

The right to exclusive possession of real property is sufficient to provide a basis to bring an action in trespass or ejectment against an unwanted occupier.

[3] **Property:** Licences:

The right to possess real property includes the right to terminate a revocable license to occupy the land, but does not include the right to terminate an irrevocable license to occupy the land. The transfer of the right to possess real property automatically terminates limited privileges to occupy land.

Counsel for Appellant: Raynold B. Oilouch

Counsel for Palau Public Utilities Corp.:
Oldiais Ngiraikelau

Counsel for Republic of Palau: Nelson J. Werner

BEFORE: LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Ignacio Anastacio brought an action in trespass and ejectment against Palau Public Utilities Corporation (“PPUC”) and the Republic of Palau (“the Republic”) before the Trial Division. The court below entered judgment in the defendants’ favor and ordered that Anastacio take nothing. Anastacio appealed that ruling to this Court and, for the reasons stated herein, we reverse and remand to the Trial Division for further consideration.¹

BACKGROUND

Neither Anastacio nor PPUC objects to the Trial Division’s findings of fact. The Republic claims some error in the trial court’s findings, but these alleged discrepancies are not material for the purposes of this appeal.

¹ Although the Republic requested oral argument, we deemed such argument unnecessary for resolution of this matter and therefore treat this case as submitted on the briefs in accordance with ROP R. App. P. 34(a).

Therefore, we adopt, without review, the findings of fact of the Trial Division for the purposes of this appeal. *See* Civ. Act. No. 04-206, Decision at 2-4 (Tr. Div. June 12, 2008).

Dr. Yuzi Mesubed acquired ownership of a parcel of land located in Ngetkib, Airai, through a land exchange with the Airai State Public Lands Authority. The land Mesubed acquired is known as *Rengesuul*. Mesubed began exercising his authority over *Rengesuul* in 1985, but deeds were not executed to confirm the transfer until 1987.

Sometime in the mid-1980s officials representing the Republic approached Mesubed and requested permission to construct an electric power substation on a portion of *Rengesuul*. Mesubed consented to the substation provided that the parties would enter into a lease agreement and the Republic would pay rent for the use of the land. No lease agreement was executed, but the Republic nonetheless built the substation on *Rengesuul*.

The substation was completed in 1986. The Republic maintained the substation until 1994 when it conveyed its interests in the substation to PPUC. PPUC has maintained the substation since that time. The substation is contained within a portion of *Rengesuul* measuring approximately 2,000 square meters. *Rengesuul* comprises approximately 11,139 square meters in total.

In 1998 Anastacio negotiated a lease agreement with Mesubed and leased the entirety of *Rengesuul* from Mesubed for a period of fifty years. At the time of the lease Anastacio was aware of the substation as well as ten power poles on the property. Since the

execution of the lease, PPUC has erected an additional three or four more power poles and has placed some machinery on the property. On September 24, 2001, Anastacio wrote to the PPUC Chairman and Board of Directors requesting rental payment from PPUC or removal of PPUC's operations on *Rengesuul*. PPUC declined and stated that it would charge Anastacio \$800 for the removal of each power pole.

Anastacio filed a complaint in the Trial Division against PPUC for trespass and ejectment. That complaint was later amended to include the Republic as a defendant. After hearing the evidence at trial, the court below issued judgment in the defendants' favor. Anastacio filed a timely appeal.

STANDARD OF REVIEW

[1] The trial court's conclusions of law, including the interpretation of a contract, are reviewed *de novo* on appeal. *See Estate of Rechucher v. Seid*, 14 ROP 85, 88-89 (2007).

DISCUSSION

The Trial Division set forth two bases for its denial of Anastacio's claims: (1) the lease agreement between Anastacio and Mesubed did not assign the right (if any exists) to seek or receive rental payments from PPUC or the Republic; and (2) Anastacio cannot now complain about PPUC's presence on the land because he entered into the lease agreement with knowledge of that presence. *See* Civ. Act. No. 04-206, Decision at 5-6 (Tr. Div. June 12, 2008). Because these bases do not, *a fortiori*, demand the denial of Anastacio's claims, the judgment of the Trial

Division is reversed and this matter is remanded for further consideration.

The Trial Division found that Anastacio lacks the right to sue PPUC or the Republic for their presence on *Rengesuul* because his lease agreement with Mesubed did not contain a specific provision assigning Mesubed's rights against current occupiers of the land. While the Mesubed-Anastacio lease agreement does not mention the substation or PPUC's activities specifically, it does grant Anastacio the right to "exclusive use of the property." (Mesubed-Anastacio Lease Agrm't, ¶ 3, Apr. 22, 1998.)

[2] Both trespass and ejectment are actions rooted in a plaintiff's right to possess real property. *See* Restatement (Second) of Torts, Ch. 7, Topic 1, Scope Note (1965) ("[The chapters on trespass on land and privilege to enter land] deal with invasions of the interest in the exclusive possession and physical condition of land."). Anastacio, by the terms of the lease agreement, held the exclusive right to possess *Rengesuul*. That right of possession is sufficient to provide Anastacio a basis to bring an action in trespass and ejectment against unwanted occupiers during the term of the fifty year lease. *See* Restatement (Second) of Torts § 158. No separate or explicit assignment of the right to sue or the right to seek rental payments is necessary for Anastacio to bring his action. The right to sue for trespass and ejectment is inherent in the exclusive right to possess real property. *See id.*

Anastacio also appeals the Trial Division's conclusion that he cannot maintain an action because he knew that PPUC was occupying a portion of the land rent-free when

he entered into the lease agreement with Mesubed. The Trial Division failed to define PPUC's status vis-à-vis *Rengesuul*. Depending on PPUC's status relating to the land, Anastacio may or may not be within his rights to demand compensation for PPUC's use of the land.

[3] If PPUC is a common trespasser then Anastacio was free to seek removal or damages for the trespass as soon as he gained a possessory interest. *See* Restatement (Second) of Torts § 158.² Anastacio, armed with his right to current possession, would also be within his rights to terminate any sort of limited or revocable license that Mesubed may have granted (or created through implication) in favor of PPUC or the Republic. *See* Restatement (Second) of Torts § 171(c). Indeed, the transfer of Mesubed's possessory right to the land would automatically terminate a limited privilege to remain on the land. *See id.*; *see also id.* § 171(c) cmt. f ("A consent given by one in possession of land ceases to be effective as conferring a privilege to enter or remain, when

² PPUC argues that Anastacio cannot sue for trespass because he did not possess the land at the time that the Republic (and subsequently PPUC) entered the land. (PPUC Br. at 7, 9-10.) Under this rationale a purchaser of land would have no recourse against a trespasser who was present on the land before the transfer of title. Such a rule would not make for good policy, let alone good neighbors. *See* Restatement (Second) of Torts § 158(b) ("One is subject to liability to another for trespass . . . if he intentionally remains on the land."); *see also id.* § 158(b) cmt. b ("[T]he phrase 'enters land' is for convenience used . . . to include, not only coming upon land, but also remaining on it.").

the interest of the licensor in the land is terminated.”). But if PPUC or the Republic had achieved an irrevocable license then Anastacio cannot—as the name implies—terminate that license. *See id.* cmt. i (“[A] license coupled with an interest may under some circumstances amount to a property interest in the land itself, of a kind which is irrevocable, either by the licensor or by his transferee.”); *see also Ulechong v. Palau Pub. Utils. Corp.*, 13 ROP 116, 121 n.3 (2006).

This determination—whether PPUC’s status is that of trespasser, revocable licensee, irrevocable licensee, or another status altogether—is therefore key to discerning whether Anastacio has the right to recover from PPUC or the Republic in tort. Whether or not Anastacio knew of PPUC’s occupation of a portion of the land is not conclusive. The crucial question is whether PPUC has a right to maintain its operations on Rengesuul that Anastacio cannot revoke. This determination must be made by the Trial Division in the first instance. On remand the Trial Division should consider the parties’ arguments and defenses regarding this question as well as the defendants’ properly pled affirmative defenses. It should further consider whether PPUC is liable to Anastacio regarding the more recent activity since the time of the lease agreement.

CONCLUSION

For the foregoing reasons, we REVERSE the decision of the Trial Division and REMAND this matter for further consideration.