

**IGNACIO ANASTACIO,  
Plaintiff,**

**v.**

**PALAU PUBLIC UTILITIES  
CORPORATION,  
Defendant.**

**v.**

**REPUBLIC OF PALAU,  
Third-Party Defendant.**

CIVIL ACTION NO. 04-206

Supreme Court, Trial Division  
Republic of Palau

Decided: January 4, 2011

[1] **Property:** Ejectment; **Property:**  
Trespass

Trespass and ejectment are actions rooted in a plaintiff's right to possess real property. A right to exclusive use of property is sufficient in and of itself to provide a basis to bring an action in trespass and ejectment against unwanted occupiers during the term of the lease.

[2] **Property:** Licenses

A license is permission to engage in a particular act or series of acts upon the land of another without possessing an interest in the land.

[3] **Property:** Licenses

A license may be created by parol, writing, or implication, so long as the proper intent to permit the particular actions appears.

[4] **Property:** Licenses

A license may become irrevocable where the licensee makes great expenditures and permanent improvements in justifiable reliance on the licensor.

[5] **Property:** Licenses; **Property:** Easements

If a license becomes irrevocable, it is indistinguishable from an easement.

[6] **Property:** Estoppel

If injustice can be avoided only by establishment of a servitude, the owner or occupier of land is estopped to deny the existence of a servitude burdening the land when: the owner or occupier permitted another to use that land under circumstances in which it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked, and the user did substantially change position in reasonable reliance on that belief.

[7] **Property:** Estoppel; **Property:** Licenses

Estoppel based on license applies where a land owner or occupier gives permission to another to use the land, but does not

characterize the permission as an easement or profit, and does not expressly state the duration of the permission. Normally the change in position that triggers application of the rule is an investment in improvements to the servient estate.

[8] **Property:** Servitudes; **Property:** Statute of Frauds

Ordinarily, to create a servitude, the creation of the servitude must comply with the statute of frauds. However, a servitude may still be created even if it does not satisfy the statute of frauds.

[9] **Property:** Servitudes; **Property:** Statute of Frauds

The consequences of failure to comply with the Statute of Frauds do not apply if the beneficiary of the servitude, in justifiable reliance on the existence of the servitude, has so changed position that injustice can be avoided only by giving effect to the parties' intent to create a servitude.

[10] **Property:** Servitudes

If the parties have fully negotiated a servitude arrangement, but contemplate that a written document will be executed to finalize the transaction, giving effect to the oral arrangement ordinarily will not be justified.

[11] **Property:** Ejectment; **Property:** Trespass

The basis of a suit in ejectment is that a defendant in possession is a trespasser as against a plaintiff holding title and right to immediate possession. A trespass is a continuing wrong. Suit to end trespass can be brought at any time while the wrong continues. A suit to end wrongful possession is a cause of action arising on the day suit is brought against the possession.

[12] **Property:** Laches; **Equity:** Laches

Laches is a purely equitable doctrine which cannot be invoked in a legal, or non-equitable, action.

[13] **Property:** Ejectment; **Property:** Laches; **Equity:** Laches

Because ejectment is a legal remedy and states a claim at law not in equity, the doctrine of laches is not applicable.

[14] **Property:** Trespass; **Property:** Laches; **Equity:** Laches

A trespass action is an action in law, and thus laches is not a proper defense.

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 Counsel for Third-Party Defendant: Palau Attorney General

KATHLEEN M. SALII, Associate Justice:

## INTRODUCTION AND PROCEDURAL BACKGROUND

The background of this case is set forth in the Court's June 12, 2008, Decision as well as in the January 8, 2010, Opinion in Civil Appeal No. 08-042. The salient facts are not disputed. Briefly, the case concerns an electric power substation and associated facilities located on land owned by Yuzi Mesubed and leased by Ignacio Anastacio, Plaintiff herein. The land, known as *Rengesuul* and which consists of approximately 11, 139 square meters, was acquired by Mesubed in a land exchange with Airai State Public Lands Authority, and deeds to confirm the exchange were executed in 1987. Around the mid-1980s, Mesubed consented to the Republic's construction of an electric power substation on a portion of *Rengesuul*, provided that the parties enter into a lease agreement and the Republic would pay rent for the use of the land. The Republic built the substation on a portion of *Rengesuul* consisting of approximately 2,000 square meters, despite the fact that no lease agreement was ever executed. Following completion of the substation in 1986, the Republic maintained the substation until 1994, when it conveyed its interests therein to PPUC. PPUC has since maintained the substation.

In 1998, Anastacio leased the entirety of *Rengesuul* from Mesubed for a period of fifty years. During the lease negotiation, Anastacio was aware of the existence of the

substation and ten power poles on the property; PPUC has since put up additional power poles as well as some machinery thereon. In 2001, Anastacio wrote to the PPUC Chairman and Board of Directors requesting either rental payment or removal of PPUC's operations on *Rengesuul*. PPUC responded by declining to pay rent and instead informed Anastacio that it would charge him \$800 for the removal of each power pole. Anastacio then filed this action against PPUC and the Republic for trespass and ejection.

Following a trial, judgment was entered in favor of PPUC and the Republic dismissing Plaintiff's claims of trespass and ejection. In so holding, this Court concluded that because Plaintiff was aware of PPUC's occupation of the land rent-free when he entered into the lease with Mesubed, he was not entitled to bring any action against PPUC. On appeal, the matter was remanded for consideration of whether PPUC has a right to maintain its operations on *Rengesuul* that Anastacio cannot revoke, and whether PPUC is liable to Anastacio regarding the more recent activity since the time of the lease agreement. The Appellate Division held that whether Anastacio knew of PPUC's occupation of a portion of the land is not conclusive to whether he has the right to recover; rather, because this court did not discuss or define PPUC's status vis-à-vis *Rengesuul*, that is, whether PPUC is a trespasser, a revocable licensee, an irrevocable licensee, or something else altogether, remand was necessary in order to determine whether

PPUC's status in order to determine whether Anastacio has the right to recover from PPUC and the Republic. The following discussion constitutes the Court's findings of fact and conclusions of law on remand.

## DISCUSSION

[1, 2] As pointed out by the Appellate Division, trespass and ejection 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.”). Under the terms of the 1998 lease agreement, Plaintiff leased the entirety of *Rengesuul* from Mesubed with the right to the “exclusive use of the property.” Mesubed-Anastacio Lease Agreement at ¶ 3. This right is sufficient in and of itself to provide a basis to bring an action in trespass and ejection against unwanted occupiers during the term of the lease. Such right is inherent in the exclusive right to possess real property, and it is not necessary for a separate assignment of the right to sue or to seek rental payments. *See* Restatement (Second) of Torts §158.

### A. PPUC's status vis-à-vis Rengesuul

#### 1. Irrevocable License

[3,4] A license is permission to engage in a particular act or series of acts upon the land of

another without possessing an interest in the land. *Ulechong v. PPUC*, 13 ROP 116, 121 (2006) (citing 25 Am. Jur. 2d Easements and Licenses § 117 (2004)). A license may be created by parol, writing, or implication, so long as the proper intent to permit the particular actions appears. *Ulechong*, 13 ROP at 121 (citing 25 Am. Jur. 2d Easements and Licenses § 118). Further, a license is revocable at will by the owner of the burdened land. 25 Am. Jur. 2d Easements and Licenses § 122. See also Restatement (Third) of Property: Servitudes § 1.2 cmt. g (2000) (explaining the difference between a license and an easement).

**[5-8]** However, “[a] license may . . . become [sic] irrevocable where the licensee makes great expenditures and permanent improvements in justifiable reliance on the licensor.” 25 Am. Jur. 2d Easements and Licenses § 122. If a license becomes irrevocable, it is indistinguishable from an easement. Restatement (Third) of Property: Servitudes § 1.2 cmt. g. An irrevocable license is a license that becomes an easement by estoppel pursuant to Restatement (Third) of Property: Servitudes § 2.10 *Id.* In particular, Section 2.10 provides:

If injustice can be avoided only by establishment of a servitude, the owner or occupier of land is estopped to deny the existence of a servitude burdening the land when: (1) the owner or occupier permitted another to use that land under circumstances in which it was reasonable to foresee that the user would substantially

change position believing that the permission would not be revoked, and the user did substantially change position in reasonable reliance on that belief . . . .

Restatement (Third) of Property: Servitudes § 2.10. This rule is sometimes described as the executed- parol-license doctrine, *Id.* at § 2.10 cmt. e, and applies “where a land owner or occupier gives permission to another to use the land, but does not characterize the permission as an easement or profit, and does not expressly state the duration of the permission.” *Id.* “Normally the change in position that triggers application of the rule . . . is an investment in improvements . . . to the servient estate . . . .” *Id.*

In this case, the undisputed facts in evidence do not give rise to a revocable license, but to an irrevocable license or easement by estoppel. Mesubed gave permission to the Republic to build a substation on *Rengesuul*. The permission was a simple oral license, initially revocable by Mesubed, and did not state the duration of the permission or characterize the nature of the permission, whether a license, an easement, or other interest. However, the Republic invested great expenditures and permanent improvements on *Rengesuul* by building the substation and installing power poles, in justifiable reliance on Mesubed’s permission to use the land for that purpose. As such, the license became irrevocable. Put another way, an easement was created by estoppel because Mesubed permitted the Republic to use part of *Rengesuul* for a substation and it was reasonable to foresee that the Republic would build a substation on it, believing that the

permission would not be revoked. The Republic did, in fact, build a substation on the land, and Mesubed is estopped as a matter of law, in the interests of justice, from denying that such an easement exists.

## 2. Servitude by Prescription

**[9, 10]** Certain circumstances may give rise to an exception to the Statute of Frauds or a servitude created by prescription, but none of the routes which would create such a servitude apply to the facts herein. Ordinarily, to create a servitude, the circumstances of creation must comply with the Statute of Frauds. Restatement (Third) of Property: Servitudes § 2.7. However, a servitude may still be created even if it does not satisfy the Statute of Frauds. *Id.* at § 2.9. “The consequences of failure to comply with the Statute of Frauds . . . do not apply if the beneficiary of the servitude, in justifiable reliance on the existence of the servitude, has so changed position that injustice can be avoided only by giving effect to the parties’ intent to create a servitude.” *Id.*

**[11]** The Court holds that the Statute of Frauds does not apply here for two reasons. First, this rule “applies only where the parties intended to create an easement, but did not formalize their agreement as required by the Statute of Frauds.” *Id.* at § 2.9 cmt. e. Here, it is not clear that the permission granted by Mesubed for the Republic to use the land was intended to create an easement. Mesubed gave the Republic permission to use the land, which the law treats as a license. Second, “[i]f the parties have fully negotiated a servitude arrangement, but contemplate that a written document will be executed to finalize the transaction, giving effect to the oral arrangement ordinarily will not be justified.”

*Id.* This is similar to what happened in this case. Mesubed gave the Republic oral permission to use *Rengesuul*, with the intention of entering into a written lease agreement and for the Republic to pay rent for use of the land; however, no lease agreement was ever executed. If the parties had in fact intended to create a servitude in favor of the Republic, the Republic would not have been justified in relying on the tentative oral agreement because the parties had contemplated a final written agreement. Because it is not clear that Mesubed and the Republic intended to create a servitude in the first place and because the parties contemplated a written document to finalize the transaction, the exception to the Statute of Frauds does not apply here to recognize that the Republic had an easement on *Rengesuul*.

Similarly, the facts here do not give rise to a servitude created by prescription. A prescriptive use is, *inter alia*, “a use that is made pursuant to the terms of an intended but imperfectly created servitude, or the enjoyment of the benefit of an intended but imperfectly created servitude.” Restatement (Third) of Property: Servitudes § 2.16. Again, it is not clear that Mesubed intended to create a servitude in favor of the Republic, because the undisputed facts are that Mesubed initially granted “permission” for the Republic to use a portion of *Rengesuul* for the construction of a substation, with the intention to execute a written lease. There is nothing to suggest that Mesubed intended to create an easement on the land. “When a property owner gives permission to use property, the law implies that a license was intended. . . [and] that the property owner retain[ed] the right to revoke the license at any time. Permissive uses do not give rise to prescriptive rights, although

they may give rise to creation of servitudes by estoppel . . . .” *Id.* at § 2.16 cmt. f. Thus, because Mesubed’s permission is presumed to be a license, there can be no servitude created by prescription.

### B. PPUC’s Affirmative Defenses

The Appellate Division mandated this Court to review and consider the Affirmative Defenses set forth by PPUC in its answer to Anastacio’s complaint. Two of these affirmative defenses – that PPUC has a superior right of easement to maintain its equipment upon *Rengesuul*, and that Anastacio’s claims are subject to the grant of easement made by the owner of *Rengesuul* to the Republic and PPUC – are addressed in the preceding section.

PPUC submits that Anastacio’s claims are barred by (1) the doctrines of waiver and estoppel, and (2) the doctrines of laches and statute of limitations. As to the doctrine of waiver, PPUC provides no legal basis for this claim. Furthermore, the discussion in the preceding section concerning an irrevocable license or servitude created by estoppel incorporates the doctrine of estoppel.

[12] With regard to the affirmative defenses of laches and statute of limitations, these affirmative defenses do not apply here. “The basis of a suit in ejectment is that a defendant in possession is a trespasser as against a plaintiff holding title and right to immediate possession. A trespass is a continuing wrong. Suit to end trespass can be brought at any time while the wrong continues. A suit to end wrongful possession is a cause of action arising on the day suit is brought against the possession.” *Chutaro v. Sandbargen*, 5 TTR

541, 546 (1971) (citing *Middleton v. Wiley*, 195 F. 2d 844). See also 51 Am. Jur. 2d Limitation of Actions § 168 (2000) (where a tort is continuous, “the statute of limitations runs from the date of each wrong or from the end of the continuing wrongful conduct.”). Here, PPUC’s alleged trespass onto *Rengesuul* would fall under the “continuous tort” rule because the presence of the substation and power poles on the land is permanent and workers for PPUC enter onto the land periodically for maintenance. Thus, the statute of limitations does not bar Anastacio from bringing this action because PPUC’s alleged trespass is continuous, and he properly brought the action while PPUC was still present on *Rengesuul*.<sup>1</sup>

[13-15] As to the doctrine of laches, “laches is a purely equitable doctrine which cannot be invoked in a legal, or non-equitable, action.” *Isimang v. Arbedul*, 11 ROP 66, 75 (2004) (quoting *Ngirausui v. Baiei*, 4 ROP Intrm. 140, 141 (1994)). Because “[e]jectment is a legal remedy and states a claim at law not in equity,” the doctrine of laches is not applicable. 25 Am. Jur. 2d Ejectment § 1 (2004). Likewise, a trespass action is an action in law, and thus laches is not a proper defense. 75 Am. Jur. 2d Trespass § 66 (2007).

<sup>1</sup> Although Anastacio is not barred by the statute of limitations to bring an action for trespass or ejectment, he is limited to recovery for a period of the specified number of years immediately prior to suit, which is six years. See 75 Am. Jur. 2d Trespass § 177 (2007) (explaining the application of the statute of limitations to a continuing trespass); 14 PNC § 405 (statute of limitation is six years).

## CONCLUSION

For the reasons discussed above, the Court finds that 1) PPUC holds an irrevocable license on *Rengesuul* and has a right to maintain its operations on *Rengesuul* that Anastacio cannot revoke and 2) PPUC is not liable to Anastacio regarding the more recent activity since the time of the lease agreement.