

**MADLINE NGIRAIDONG, SUREOR
NGIRAILEMESANG, URRIK
NGIRAILEMESANG, NGERBUNS
NGIRAILEMESANG, and OLGAEL
NGIRAILEMESANG,
Appellants,**

v.

**KOROR STATE GOVERNMENT,
KOROR STATE PUBLIC LANDS
AUTHORITY,
Appellees.**

CIVIL APPEAL NO. 10-041
Civil Action No. 09-111

Supreme Court, Appellate Division
Republic of Palau

Time Associate Justice; and RICHARD H. BENSON, Part-Time Associate Justice.

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

PER CURIAM:

Appellants Madeline Ngiraidong, Sureor Ngirailemesang, Urrik Ngirailemesang, Ngerbuns Ngirailemesang, and Olgael Ngirailemesang seek review of the Trial Division’s September 30, 2010 Decision that concluded, among other things, that the lease between the Koror State Public Lands Authority and Appellants is enforceable. For the following reasons, we **AFFIRM** the Trial Division.

Decided: September 12, 2011

BACKGROUND

[1] **Property:** Lease

One cannot convey interests in land that one does not own title, rights, or interest in.

[2] **Property:** Lease

A lessee cannot challenge a lessor’s title to property or claim that a third party has superior title.

Counsel for Appellant: Roman Bedor
Counsel for Appellees Koror State Government, Koror State Public Lands Authority: Mark P. Doran
Counsel for Appellee Koror State Public Lands Authority: Mark Jerpersion

BEFORE: KATHLEEN M. SALII, Associate Justice; KATHERINE A. MARAMAN, Part-

This case concerns the lease of Lot No. 41023, property on Arakabesan Island. In 1962, the Trust Territory Government quitclaimed all claims to Arakabesan Island—with the exception of two “Government Retention Areas”—to eight clans. In 1985, the Ngarkabesang Hamlet Council of Chiefs issued a lease to Francisco Ngirailemesang for Lot No. 41023. Then, on July 19, 1991, the Koror State Public Lands Authority (“KSPLA”) and Francisco Ngirailemesang entered into a twenty-five year lease for the same property. The lease permitted commercial activities, specifically providing that Francisco may operate a restaurant, marina, gift shop, or space rental on the property. Under the agreement, rent of \$2,125 to \$2,583 per year would be due from 1991 until 2011, along with gross receipts rent of 1% from the businesses. The agreement

also provided that KSPLA could enter the property if Francisco abandoned it, failed to pay rent properly, or failed to abide by any other condition of the lease. The terms of the agreement required KSPLA to issue notice of the breach. Thirty days after issuing notice it could collect money or move to enforce the agreement, and ninety days after issuing notice KSPLA could repossess the property.

After Francisco died in 1996, his family, Appellants herein, became the legal owners of Francisco's properties. In 1998, KSPLA issued a new lease naming Appellants as lessees. Under the new lease, annual rent was set at \$12,621, 2% of gross receipts, and past due rent would accrue interest at 12% and a late fee of 5% of the rent. The new lease included the same notice terms KSPLA must follow in the event of default.

On September 23, 2005, after Appellants had not paid rent for a long period of time, KSPLA sent a "Notice of Commercial Lease Termination and Default." Madeline Ngiraidong responded in a letter stating that she had no money, was trying to complete construction on a building that would provide income, but had been denied a building permit on the property. Despite this correspondence, Appellants still made no payments, and on June 2, 2009, KSPLA's legal counsel wrote to Madeline informing her of termination and attaching the 2005 letter. Madeline testified at trial that she did not receive the letter. After that date, KSPLA or KSG employees entered the property and bulldozed some portions of it, and Appellants thereafter brought suit against KSG, claiming that KSG and its employees trespassed on their property and seeking damage to the rental property.

KSG joined KSPLA, and KSPLA filed a counterclaim seeking ejectment and damages for back rent, interest, penalty fees, and costs of maintaining the property. Appellants responded that KSG and KSPLA had no rights to the land because it belongs to the Council of Chiefs pursuant to the 1962 Settlement Agreement with the Trust Territory Government.

After denying Appellants' motion for summary judgment and KSG and KSPLA's motion to dismiss, the Trial Division held a trial to resolve whether Appellants were lawful lessees, whether KSPLA and KSG trespassed upon Appellants' land, and whether KSPLA has a right to the leased property. The court explicitly stated that it would not consider the validity of the lease between Appellants and the Council of Chiefs.

The court thereafter held a trial, finding that the 1998 agreement between Appellants and KSPLA was valid. It held that Appellants violated the agreement in failing to pay rent, but that KSPLA did not enter the property pursuant to the agreement's terms. The court reasoned that KSPLA's termination was not effective because KSPLA rescinded the 2005 notice of termination in responding to Madeline Ngiraidong's correspondence, and the court was convinced by evidence at trial that Madeline never received the 2009 termination letter. Thus, KSPLA and KSG were not entitled to ejectment or damages. However, the court noted that KSPLA had the right to issue proper notice, and then wait the required time periods before enforcing the termination and repossessing the property. As to Appellants' request for monetary damages, the court held that they did not prove damage to a reasonable degree of

certainty.

The Trial Division also considered Appellants' argument that KSPLA did not have the right to enforce the 1998 agreement because the 1962 Settlement Agreement and 1985 lease agreement between Francisco and the Chiefs precluded enforcement of the KSPLA agreement. The court disagreed, reasoning that the 1962 Settlement Agreement returned only the land that had been transferred to the Japanese by the clans or their representatives. *See Torul v. Arbedul*, 3 TTP 486, 491 (1968) (stating that the settlement agreement "must be construed to restore the rights in the lands to those who had acquired such rights directly or indirectly from or under any of the clans named and who last held these rights prior to transfer of a particular part of land to Japanese interests . . ."). Thus, the transfers did not occur automatically in 1962, and clans would have to claim the land at the proper time. Because Appellants did not provide evidence of clan ownership, the court did not make a finding about whether the 1998 lease is invalid because KSPLA and KSG lack title.

The court alternatively reasoned that Appellants, as lessees of property, are estopped from challenging the validity of KSPLA's title to the land and arguing that a third party has better title to the land. *See* 49 Am. Jur. 2d Landlord and Tenant §§ 764, 777. The court noted that this Court has applied this principle in quiet title proceedings, and so the same should apply to Appellants and KSPLA's situation. *Aguon v. Aguon*, 5 ROP Intrm. 122, 129 (1995) ("One cannot defeat a quiet title bill by showing that complainant's claim or interest, otherwise sufficient to support the bill, is subject to superior rights in

third persons who are not parties to the suit.").

The Trial Division thus denied Appellants' requests for declaratory judgment that the lease is void, compensatory damages for the destroyed property, and attorneys fees. The court also denied KSPLA's request for ejectment, declaratory relief and compensatory damages, adding that Appellants have violated the 1998 lease and KSPLA may follow the requirements for lease termination to obtain ejectment and the monetary damages it seeks. Finally, it held that KSPLA failed to show damages it sought related to cleaning up the rental property. This appeal followed.

STANDARD OF REVIEW

We review the trial court's conclusions of law de novo. *Wong v. Obichang*, 16 ROP 209, 212 (2009).

DISCUSSION

[1] Appellants bring one issue on appeal: whether the Trial Division erred in enforcing KSPLA's rights under its lease agreement with Appellants, and estopping Appellants from challenging it. Appellants sole contention is that KSPLA lacks an ownership interest and thus could not lease the property. They cite authority for the proposition that KSPLA cannot convey interest in land that it does not hold title, rights, or interest in. *See Edeyaoch v. Timarong*, 7 TTR 54, 60 (1974); *Thomas v. TTPI*, 8 TTR 40 (1979); *Beans v. Mesechebal*, 8 TTR 107 (1980); *Rechucher v. Ngiraked*, 10 ROP 20 (2002).

[2] Appellants acknowledge that none of the cases cited involve a lessee attacking a lessor's ownership of the property.

Nevertheless, they contend that the law is clear that one must own land to convey any interest, and because KSPLA has no ownership interest, the lease is void. However, as the trial court noted and Appellants have not attempted to rebut, Appellants, as lessees, may not challenge KSPLA's title to the property or assert that a third party—here the Council of Chiefs—has superior title. 49 Am. Jur. 2d Landlord and Tenant §§ 764, 777. Appellants present no authority or argument that this principle should not apply to the scenario at hand, and this Court has accepted that one cannot assert that a third party not involved in the proceeding has superior title. *See Aguon*, 5 ROP Intrm. at 129. We find no error in the court's reasoning.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the Trial Division.