EBUKEL NGIRALMAU,
Appellant,

v.

IWONG KINTARO, MERLYN MALSOL, and IBUUCH NGIRIOU,
Appellees.

CIVIL APPEAL NO. 11-018
Civil Action No. 09-246

Supreme Court, Appellate Division
Republic of Palau

Decided: June 21, 2012

[1] **Civil Procedure:** Motions for Relief from Judgment

Fraud upon the court as distinguished from fraud on an adverse party, is limited to fraud which seriously affects the integrity of the normal process of adjudication. It is not fraud between the parties or fraudulent documents, false statements or perjury, but where the impartial functions of the court have been directly corrupted.

[2] **Civil Procedure:** Motions for Relief from Judgment

Palau has no fraud on the court statute, nor does any of case law establish its elements. The Rules of Civil Procedure, however, contemplate the availability of fraud on the court as a cause of action, and, to the limited extent the Appellate Division has previously opined on the topic, it has noted that fraud on the court is typically confined to the most egregious cases such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged.

Counsel for Appellant: Siegfried Nakamura
Counsel for Appellees: Scott Hess

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

This appeal arises from the Trial Division's decision of May 17, 2011, in which the court entered judgment against Appellant Ebukel Ngiralmau in her fraud action against Appellees. Ngiralmau argues that the Trial Division improperly applied the law of fraud and failed to construe her claim as one for fraud on the court. We reverse the decision of the Trial Division.

BACKGROUND[1]

This action is borne of a land dispute. Appellant Ngiralmau is the daughter of Mengesebuuch. Ngiralmau has three sisters: Kesau, Isemei, and Ungilredechel. Kesau had three daughters, Ngiralmau's nieces, and they are the Appellees: Iwong Kintaro, Merlyn Malsol, and Ibuuch Ngiriou. In 1988, all four daughters of Mengesebuuch went to the Land

[1] With limited exception noted below, the parties do not contest the Trial Division's conclusions of fact. Thus, we accept as true the Trial Division's factual findings.

Claims Hearing Office (LCHO) together to file a joint claim to Tochi Daicho Lots 274 and 275. These lots were listed in the Tochi Daicho as the individual properties of Mengesebuuch, and the LCHO formally docketed the Mengesebuuch daughters' joint claim.

On July 27, 1997, according to the testimony of Land Court official Chamberlain Ngiralmau, Appellee Iwong Kintaro asked Chamberlain Ngiralmau to cross out the names of Mengesebuuch's daughters on the claim to Tochi Daicho Lots 274 and 275, and to insert her name along with the names of her sisters, Appellees Merlyn Malsol and Ibuuch Ngiriou.[2] Kintaro never informed Ngiralmau that she changed the claim, and Ngiralmau testified she had no knowledge of Appellees' actions until much later. Three months after the names on the claim were changed, Kesau died.

At some point thereafter, the Land Court held a hearing to adjudicate ownership of Tochi Daicho Lots 274 and 275. Ngiralmau testified in this case that she did not receive notice of the Land Court hearing, and she did not appear at it. Kintaro, however, appeared before the Land Court and testified on behalf of Appellees. During the hearing, the Land Court asked Kintaro if Ngiralmau was aware of Appellees' claim and whether Appellees had spoken with Ngiralmau about it. Despite the fact that no such conversation had taken place, Kintaro answered affirmatively and, relying on Kintaro's assertion that Ngiralmau agreed to the arrangement in which Appellees would gain exclusive title to the land instead of the Mengesebuuch daughters, the Land Court awarded the land to Appellees.

Several years later, around late 2009 or 2010, Ngiralmau discovered Appellees' alleged fraud and brought suit.[3] Her complaint did not specifically delineate a cause of action, but its allegations focused on Appellees' deceit and the effect it had on the Land Court. Specifically, Ngiralmau alleged that all members of Mengesebuuch's family, including all three Appellees, agreed that Tochi Daicho Lots 274 and 275 would become the property of the four Mengesebuuch daughters. She further alleged that, because of that agreement, she did not attend the Land Court hearing to adjudicate ownership of the land, and that she instead relied on Appellees to represent the interests of the family. Ngiralmau's complaint then claimed that Appellees made several false and material statements to the Land Court, upon which the Land Court relied, thereby depriving Ngiralmau of her interest in her mother's land.

To evaluate Ngiralmau's complaint, the Trial Division held a four-day trial in

[2] Iwong Kintaro disputes this. She testified that her mother, Kesau, was the one who asked that Appellees' names be inserted on the claim, and that she does not know who crossed out the names of the other Mengesebuuch daughters. The Trial Division, however, did not find Kintaro's testimony credible. Instead, it credited Chamberlain Ngiralmau's testimony that Kintaro herself was the one who requested the changes.

[3] The Trial Division's findings of fact indicate that Ngiralmau uncovered the alleged fraud in 2010 when she went to the Land Court office to check on paperwork for the lands. Ngiralmau's complaint in this action, however, was filed in November 2009, thus making the date on which she discovered the fraud unclear from the record.

October 2010 and then issued its Decision and Judgment. Applying the test for fraud against an adverse party, the Trial Division found that "[Appellee] Iwong Kintaro falsely testified at the Land Court hearing for Tochi Daicho Lot Nos. 274 and 275," and that "[t]he presiding Judge relied on the false testimony and awarded [those] lots to the [Appellees]." Nevertheless, the Trial Division also found that Kintaro's perjury was directed exclusively toward the Land Court and not toward Ngiralmau, and that Ngiralmau presented no evidence that she relied on Kintaro's false statements to her detriment. Thus, the Trial Division concluded that, while Appellees may have lied to the Land Court, they did not defraud Ngiralmau. Accordingly, the Trial Division entered judgment in favor of Appellees.

Ngiralmau lodged the instant appeal. On appeal, she argues that her complaint was one for fraud on the court, not fraud against an adverse party, and that the Trial Division erroneously applied the law of the latter in lieu of the former. She also argues that if the Trial Division had properly construed her claim as one for fraud on the court, she would have prevailed because the Trial Division determined that Kintaro secured her victory at the Land Court through deceit. Ngiralmau does not, however, challenge the Trial Division's findings of fact.

STANDARD OF REVIEW

Ngiralmau's appeal concerns only questions of law. We apply a *de novo* standard of review to all questions of law determined by the Trial Division. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

ANALYSIS

[1] Ngiralmau's sole argument on appeal is that her cause of action was not fraud against an adverse party,[4] as the Trial Division believed, but rather fraud on the court, which is a completely distinct cause of action.

"'[F]raud upon the court' as distinguished from fraud on an adverse party, is limited to fraud which seriously affects the integrity of the normal process of adjudication." *Ngerketiit Lineage v. Ngirarsaol*, 9 ROP 27, 30 n.3 (2001). It "is not fraud between the parties or fraudulent documents, false statements or perjury, . . . but where the impartial functions of the court have been directly corrupted." *Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 89 (1997) (quotation omitted); *see also Hazel-Atlas Glass Co. v Hartford Empire Co.*, 322 U.S. 238, 64 S. Ct. 997 (1944).

[2] Palau has no fraud on the court statute, nor does any of our case law establish its elements. Our Rules of Civil Procedure, however, contemplate the availability of fraud on the court as a cause of action, *see* ROP R. Civ. P. 60(b), and, to the limited extent we have previously opined on the topic, we have noted that fraud on the court is "typically confined to the most egregious cases such as bribery of a judge or juror, or improper

[4] To establish a claim of fraud against an adverse party, a plaintiff must prove that the defendant "(1) made a fraudulent misrepresentation of fact, opinion, or law (2) with the purpose of inducing the plaintiff to act upon the representation, (3) that the plaintiff justifiably relied on the representation, and (4) was damaged as a result of that reliance." *Beches v. Sumor*, 17 ROP 266, 273 (2010) (citations omitted).

influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged," *Secharmidal*, 6 ROP Intrm. at 89 (quotation omitted). Nevertheless, United States courts vary widely in their determination of what constitutes fraud on the court. *See* 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2870 (2d ed. 1995) (discussing Fed. R. Civ. P. 60(b) and its interpretations).

In this case, a close reading of Ngiralmau's complaint sheds light on her intentions. Though her complaint failed to explicitly announce "fraud on the court" as a cause of action, its allegations and relief requested indicated her objective. For example, the complaint highlighted in detail the Land Court's reliance on the allegedly false statements and, as a remedy, Ngiralmau requested that the Land Court's determination of ownership be vacated. This type of relief is consistent with fraud on the court, not with fraud on an adverse party, and Ngiralmau made no request for money damages or other relief directly from Appellees, as one might expect in an action for fraud on an adverse party.[5] At trial, much of the testimony focused on whether Appellees lied to the Land Court, and Ngiralmau's closing argument proclaimed that "[a]t the end of the day, Your Honor, we believe that there was, plainly, that there was fraud on the court. [sic]."

Although the parameters of fraud on the court are ill-defined, the complaint and trial testimony in this case establish that Ngiralmau advanced such a claim. *See Tulop v. Palau Election Comm'n*, 12 ROP 100, 106 (2005) (holding that a claim must be advanced at trial to be considered on appeal). Consequently, we hold that the Trial Division erred when it did not address fraud on the court as a distinct claim.[6]

CONCLUSION

For the forgoing reasons, we **REVERSE** the decision of the Trial Division and **REMAND** this case for further proceedings consistent with this Opinion.

[5] Appellees do not rebut this or any other point raised by Ngiralmau. In fact, Appellees' response brief fails to discuss or even to mention fraud on the court, Ngiralmau's only argument on appeal.

[6] This is not to say that Ngiralmau did not also advance a fraud on an adverse party claim. Even a cursory review of the record below reveals that she did. Thus, we do not hold that the Trial Division erred in applying the law of fraud on an adverse party. Rather, we hold that the Trial Division also should have analyzed Ngiralmau's fraud on the court claim. Our holding reflects no opinion on the merits of Ngiralmau's fraud on the court theory, as that question is not before us.