

**NANCY R. CAMACHO,
Appellant/Cross-Appellee,**

v.

**EBIL RAIMEI SARIANG N. OSARCH,
Appellee/Cross-Appellant.**

CIVIL APPEAL NO. 11-025
Civil Action No. 06-288

Supreme Court, Appellate Division
Republic of Palau

Decided: May 8, 2012

[1] Appeal and Error: Standard of Review

Factual findings of the Trial Division will not be set aside by this Court unless we are left with a definite and firm conviction that an error has been made. We affirm so long as the findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion.

[2] Judgments: Stipulations

A stipulation is in the nature of a contract, and its interpretation is a matter of law.

[3] Appeal and Error: Standard of Review

Where there is evidence in the record to support the Trial Division’s determination, we cannot say that no reasonable trier of fact could have reached the same conclusion.

[4] Custom: Burden of Proof

In order for a trial court to make a finding concerning the content of a claimed custom, the party proffering the custom has the burden of proving its tenets by clear and convincing evidence

[5] Appeal and Error: Clear Error

Inconsistencies in reasoning may be the basis for a “firm conviction” that the Trial Division erred in its factual determination.

[6] Appeal and Error: Clear Error; Appeal and Error: Remand

Remand is usually appropriate for the trial court to clarify its decision if a clear error is found.

[7] Judgments: Stipulations

Stipulations are generally enforceable by courts, but a stipulation’s effect will be restricted to the intent manifested by the parties in the agreement.

[8] Judgments: Stipulations

If we cannot determine the content of a stipulation, then it is unenforceable and void.

Counsel for Appellant: Oldiais Ngiraikelau
Counsel for Appellee: Salvador Remoket

KATHLEEN M. SALII, Associate Justice;
ALEXANDRA F. FOSTER, Associate Justice;
ROSEMARY SKEBONG, Associate Justice Pro Tem.

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

PER CURIAM:

Nancy Camacho appeals the Trial Division's decision in favor of Ebil ra Imei Sariang N. Osarch and its determination that a stipulation entered into by the parties is binding. Osarch cross-appeals, disputing a factual finding by the Trial Division. For the reasons set forth below, the judgment is affirmed in part and reversed in part, and the matter is remanded.

BACKGROUND

Appellee Ebil ra Imei Sariang Osarch is the highest ranking female title-holder of Imei Clan. Appellant Nancy Camacho is also a member of Imei Clan as a descendant of a man named Odesongel. Camacho's father, Renguul Obeketang, bore the title Adelbai ra Imei, the highest male title of Imei Clan. When he died, Camacho sought to have him buried at Imei's odesongel. Osarch was not consulted, and Obeketang was buried at the odesongel.

Osarch brought suit. She initially sought a temporary restraining order, but then agreed to allow the burial of Obeketang at the odesongel pursuant to a stipulation. The content and effect of the stipulation are contested on appeal.

The case proceeded to trial. Witnesses testified regarding Palauan custom and the parties' family histories. The two expert witnesses agreed on the relative strengths of different types of clan members. Ochell clan

members, whose membership comes by way of an unbroken line of female ancestors, are stronger than ulechell members, whose line to the clan is through a male. Imei has no ochell members; therefore, its ulechell members are the strongest members of the clan. Weaker than ulechell members are the "drifted" and "borrowed" members of the clan, ultechakl and terruaol. These individuals are not members of the clan by blood, but such members may gain strength within a clan over time through their service to the clan.

It was undisputed that Osarch is an ulechell member of Imei Clan. However, several witnesses brought into question Camacho's assertion of ulechell status. According to the testimony and family tree submitted by Osarch, Camacho's and Obeketang's line became part of the Clan via Belui, a Yapese stonemason recruited by a previous Adelbai ra Imei to come and construct an odesongel for Imei. Belui had a child with a woman from Ngisuus, who was unable to raise the child. The child was taken in by the Adelbai ra Imei and named Odesongel, in honor of his father's construction of the odesongel for the Clan. Camacho's witnesses admitted that they could not say the manner in which Odesongel came to be part of Imei Clan, but several of Camacho's relatives, going back to Odesongel, have held the highest titles in the Clan.

Against this genealogical backdrop, each side offered an expert witness on Palauan custom to testify regarding who may be buried where. Appellee's expert, William Tabelual, testified that in a clan with no ochell members, the ulechell members may decide where a person will be buried. Appellant's

expert, Wataru Elbelau, testified that generally a title-bearer, particularly someone bearing the highest title, should be buried at a clan's odesongel. But Elbelau went on to state that a person who is terruaol—a non-blood member of a clan—is not automatically buried at the odesongel and that the female title-holder may decide where he is buried.

The Trial Division ultimately ruled in favor of Osarch, holding that, although the Defendants were also strong members and ulechell members of Imei, Osarch was entitled by virtue of her status to decide where Obeketang was buried. The court further found that Camacho and the Defendants were liable under the stipulation for the exhumation of the body and \$10,000.00.

Camacho timely appealed, arguing (1) that the stipulation is not effective and (2) that the Trial Division erred in its determination that Osarch has the authority to deny Obeketang's burial at the odesongel. Osarch cross-appealed, claiming the trial court erred in finding that Camacho and her relatives were strong ulechell members of Imei.

STANDARD OF REVIEW

[1, 2] Factual findings of the Trial Division will not be set aside by this Court unless we are “left with a definite and firm conviction that an error has been made.” *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000). We affirm so long as “the findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion.” *Id.*

[3] “A stipulation is in the nature of a contract” and its interpretation is a matter of

law. *Duhamé v. Duhamé*, 453 N.W. 2d 149 (Wis. Ct. App. 1989); *see also Braxton v. United States*, 500 U.S. 344, 350 (1991). We thus review the trial court's interpretation of the stipulation de novo. *See Yalap v. Umetaro*, 16 ROP 126, 127 (2009) (Contractual interpretation is a matter of law and is reviewed *de novo*).

ANALYSIS

I. Camacho's status as an ulechell member of Imei Clan

We first turn to Osarch's argument on cross-appeal that Camacho and her relatives are not ulechell members of Imei. Several witnesses testified that Camacho's ancestor, Odesongel, was the son of Belui, a Yapese stone-worker who was enlisted by Imei to build the clan's odesongel. Based on this allegation, Osarch argues that Camacho and her line cannot be ulechell. However, Camacho and her relatives testified that Camacho and her line were members of Imei Clan and both sides agreed that many of Camacho's ancestors held the titles of Ebil ra Imei and Adelbai ra Imei.

[4] The trial court did not go into detail regarding its conclusion that Camacho is an ulechell member of Imei Clan. However, because there is evidence in the record to support that determination, we cannot say that no “reasonable trier of fact could have reached the same conclusion.” *Kerradel*, 8 ROP Intrm. at 105. The undisputed evidence that, going back to Odesongel, members of Camacho's family have intermittently held the highest clan titles strongly supports the trial court's decision. Because there are facts in the record to support the Trial Division's

determination, we affirm the court's judgment as to Camacho's ulechell status in Imei Clan.

II. Osarch's authority regarding the burial of Obeketang

[5] Camacho argues on appeal that the Trial Division clearly erred in determining that Osarch, the highest ranking female in the Clan, could deny Camacho the privilege of burying Obeketang at the Clan's odesongel. In order for a trial court to make a finding concerning the content of a claimed custom, the party proffering the custom has the burden of proving its tenets by clear and convincing evidence. *Ngirutang v. Ngirutang*, 11 ROP 208, 210 (2004). Camacho contends that there was "no evidence . . . to support the trial court's decision that the custom of burying a title bearer on the clan's odesongel is subject to the desires of the surviving strong member."

[6, 7] Osarch's expert, Tabelual, stated that, in a situation where there are no longer ochell clam members, ulechell members may decide where someone will be buried. The second expert, Elbelau, testified that generally a title-bearing person should be buried on a clan's odesongel, but that the strong female titleholder of the clan would have a say in her counterpart's burial if he was terruoa. The Trial Division found that Camacho and the other Defendants are "ulechell members and are strong members" of Imei Clan yet also found that Osarch had sole authority to determine who could be buried at the Clan's odesongel. This line of reasoning does not square with the uncontroverted expert testimony; nor can it be reconciled with the Trial Division's own conclusion that ulechell members "decide . . . who can be buried at the

odesongel." These inconsistencies give us a "firm conviction" that the Trial Division erred in its factual determination. *Kerradel*, 8 ROP Intrm. at 105 (2000). Remand is appropriate for the trial court to clarify its decision.

III. Whether the stipulation is enforceable

Camacho contends that the Trial Division erred in awarding \$10,000 to Osarch pursuant to a stipulation between the parties. The stipulation, signed by both parties and the court, provides in its second paragraph that

[a]fter [a] trial on [the] merits, if [Osarch] wins her claim that said Defendants Isidoro Tutii, Nancy R. Camacho, Mary Bausoch, and Mike Renguul shall bury the body of Renguul Obeketang shall promptly exhume the body of Renguul Obeketang from Imei land; restore the property as much as practicable to its original state; and shall be jointly and severally liable for damages in the amount of US\$10,000.00 to [Osarch]. (sic)

In exchange, Osarch agreed not to pursue a temporary restraining order and to allow Obeketang to be buried at Imei's odesongel.

[8] Stipulations are generally enforceable by courts, but a stipulation's effect "will be restricted to the intent manifested by the parties in the agreement." 73 Am. Jur. 2d Stipulations § 6 (2001). Unfortunately, the intent of the parties is unclear because the clause defining the circumstances that trigger

the stipulation is incomplete. It states that “if [Osarch] wins her claim that said Defendants . . . shall bury the body of Renguul Obeketang shall promptly exhume the body of Renguul Obeketang . . .” These clauses are nonsense and simply do not explain on which claim Osarch had to prevail in order for Camacho and the other Defendants to be liable for the burial or exhumation and the \$10,000.00. As written, the stipulation is unenforceable.

The rest of the record provides little insight into the intent of the parties. During the proceedings below, each party proffered an interpretation of the stipulation. It is telling that, on appeal, each party relies on the other’s earlier interpretation. During her testimony, Osarch stated that she understood the stipulation to mean if Camacho and the other Defendants are shown to be “not from Imei then they will give [Osarch] \$10,000.00 and dig [up] Renguul.” In her closing argument to the court, Camacho recited the stipulation as being triggered “if Plaintiff wins her case after trial on [the] merits.” In its final judgment, the Trial Division, in spite of the lack of operative language in the stipulation, required Camacho and the other defendants to abide by the stipulation, exhume the body, and pay \$10,000.00 to Osarch.

[9] Because we cannot determine the content of the stipulation and the version recited by the Trial Division is unenforceable and void, we must reverse the decision of the trial court. The Trial Division, on remand, should therefore determine the appropriate remedy without regard to the stipulation.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the Trial Division’s determination regarding Camacho’s ulechell status. We **REVERSE** its conclusion regarding Osarch’s sole authority to determine who may be buried at Imei Clan’s odesongel and its enforcement of the stipulation. This matter is **REMANDED** for proceedings consistent with this Opinion.