

*Republic of Palau v. Pacific Development Corp.*, 1 ROP Intrm. 383 (1987)

**REPUBLIC OF PALAU,  
Plaintiff,**

**v.**

**PACIFIC DEVELOPMENT CORP.,  
ROMAN TMETUHL, SURANGEL  
WHIPPS, M & F CO., PALAU EAST  
COAST FARMERS COOPERATIVE,  
YUKIO SHMULL, AND JOHN DOES  
1 THROUGH 10,  
Defendants,**

**and**

**KOROR STATE GOVERNMENT and  
KOROR STATE PUBLIC LANDS  
AUTHORITY,  
Intervenors,**

**v.**

**REPUBLIC OF PALAU, PACIFICA  
DEVELOPMENT CORP., ROMAN  
TMETUHL, SURANGEL WHIPPS,  
M & F COMPANY, PALAU EAST  
COAST FARMERS CORP., AND  
JOHN DOES 1 THROUGH 10,  
Defendants.**

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: April 16, 1987

Counsel for Plaintiffs/Appellees: Eric Basse

Counsel for Defendants: Johnson Toribiong

Counsel for Intervenors/Appellees: Traylor Mercer & Donald C. Williams, Carlsmith, Wichman,  
Case, Mukai

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;  
EDWARD C. KING,<sup>1</sup> Associate Justice.

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<sup>1</sup> Edward C. King, an Associate Justice of the Republic of Palau Supreme Court, is also  
Chief Justice of the Federated States of Micronesia Supreme Court.

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¶384 This appeal has grown out of an action originally brought by the Republic of Palau to quiet title to Parcel PK-19, land known as the central market area in Koror State. The case evolved to the point that ownership and administration of all public lands in Koror State was affected by the trial court's ruling in the case. The principal issue before us is whether the trial court acted properly in expanding the scope of the case beyond the original issues posed by the parties. We affirm the results of the trial court's decision concerning the central market area. However, we conclude that the other areas of land ruled upon were not properly before the trial court. To that extent the trial court's decision is reversed.

## I. BACKGROUND

### Factual

Throughout the 1950's the land now known as the central market area in Koror was owned by the government of the Trust Territory of the Pacific Islands. On September 14, 1960, the TTPI executed an agreement granting the Palau district legislature, the Olbiil Era Kelulau (OEK) the right to use the property for public purposes.<sup>2</sup>

¶385 Subsequent to the 1960 use right conveyance, a number of events profoundly altering ownership of public lands in Palau occurred. Most significant was the establishment of constitutional self-government in the Republic of Palau. Principally because of the movement toward self-government it became apparent during the 1970's that most if not all public lands throughout the Trust Territory should be held not by the Trust Territory government but by the new constitutional governments.

Thus Secretarial Order No. 2969 was promulgated by the United States Secretary of the Interior, effective December 20, 1974, to authorize transfer of public lands from the TTPI to public land authorities created within each district. In Palau, Public Law No. 5-8-10 was enacted in 1975 to authorize establishment of the Palau Public Lands Authority to accept such lands on behalf of Palau.

In July of 1979, the TTPI made its first major conveyance of public lands to the PPLA. In December of 1982, the TTPI transferred by quitclaim deed to the PPLA the central market area as well as practically all other public lands in Koror.

For reasons not clear on the record before us, the PPLA did not retain these public lands on behalf of the people of Palau. Instead, during May 1980 the PPLA reconveyed all public lands then held by it in Koror to the Koror State Public Lands Authority.<sup>3</sup> On February 17, 1983,

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<sup>2</sup> The trial court found, and no party disputes, that from 1960 through 1982, the central market area was used for "combined public, semi-public and private commercial" purposes. Slip. op. Civ. No. 23-84 at 4 (June 27, 1985). There is apparently also general agreement that any former OEK rights pursuant to the 1960 use agreement at some point devolved upon the executive branch of the Republic of Palau or the Palau Public Lands Authority, as the case may be.

<sup>3</sup> The Koror Municipality Public Lands Authority was established in 1979 pursuant to

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¶386 acting pursuant to a June, 1982 agreement between the Republic of Palau and the State of Koror calling for the conveyance of public lands in Koror to the KSPLA, the Republic of Palau and the PPLA deeded by the quitclaim deed to the KSPLA all public lands in Koror still owned by the Republic of Palau. The Koror central market area was included in this conveyance.

In June, 1981, considerably before the conveyances mentioned above took place, and at a time when the TTPI still held title to the central market area, the KSPLA and defendant Roman Tmetuchl entered into a land exchange agreement whereby Koror obtained from Tmetuchl certain lands represented as being of customary and historical importance to Koror, known as Idid and Otaor, in exchange for conveyance of the central market area to Tmetuchl. The KSPLA executed a warranty deed in favor of Tmetuchl in August 1981, covering the central market area.

In January and February, 1983, Tmetuchl served notice upon the various parties then occupying the central market area that he asserted “all rights of ownership” for that land. It is this notice, especially the notice to the Republic of Palau’s agriculture division which operates the Palau central produce market in the area, that stirred the concern of the Republic of Palau and led to this lawsuit.

#### B. Procedural

After all of this information became known to the various parties, the Republic of Palau filed an amended complaint abandoning its original claim of outright ownership of the central market area but insisting that it retained the right to use the central market property for public purposes pursuant to the 1960 use agreement. The Republic asserted itself to be the trustee of the land “pursuant to a trust ¶387 created by the Trust Territory of the Pacific Islands” for the benefit of the people of Palau. The Republic of Palau sought a declaration from the trial court that as trustee the Republic is entitled to the use and possession of the central market.

After several days of hearings and full briefing of the issues, the trial court issued a written opinion. The court held that the central market area and all other public lands in Koror were intended pursuant to Secretarial Order No. 2969 “to become a part of the National Treasury of Assets to be held in trust by the National Government for the use and benefit of the people of Palau . . . and [to] . . . be used by the National Government in the several ways enumerated in Section 3 of Secretarial Order No. 2969 as a self-help adjunct means of financing, in part, the National Government operations.” Slip op. at 9.

The court found that the conveyance by the Palau Public Lands Authority of all public lands in Koror, including buildings occupied by the National Government, was a violation of the PPLA’s statutory mandate and its trust obligations and that the deeds conveying those lands were therefore null and void.

The trial court held that the TTPI’s December 1982 quitclaim of its remaining interest in

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Koror Municipal Ordinance No. 12-79. Under constitutional government Koror became a state instead of a municipality and the authority is now known as the Koror State Public Lands Authority.

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the central market area to PPLA merged the Republic of Palau's pre-existing right to use the property for public purposes with the remaining fee interest in the property. This merger the court said, of the fee with the use right, ended any restrictions placed upon Palau by the 1960 use agreement.

Alternatively, the court added,

If we adopt the trust theory advanced by Plaintiff, we find the trust extinguished by the transfer, as ROP then stood in the dual position of trustee and ¶388 beneficiary, the legal title passing from TTPI merging into the equitable interest previously obtained from TTPI and so extinguishing it.

Slip op. at 19.

However, the court refused to grant the equitable relief sought by the Republic of Palau against the defendants. This refusal to uphold Palau's use right claims in the central market area was based upon a finding that plaintiff had demonstrated "little interest in the central market property other than the Telephone Exchange property" and "Defendants have expended substantial sums in improving" the parcel. *Id.* at 20. Therefore the court concluded that "equity dictates the parties be left in status quo in respect of the central market area." Except that "there should be excluded and vested in PPLA or its designee, that portion . . . currently occupied by the Telephone Exchange Building." *Id.* at 20.

The court then ordered that the central market area be surveyed within 90 days so as to set aside the Telephone Exchange Building area for retention by the Republic of Palau. Within 90 days thereafter, PPLA was to convey the remaining portion of the central market area to defendants Tmetuchl or Pacifica Development Corporation. *Id.* at 24.

Had the judgment and order of the court been limited to the matters described above, this appeal would likely have been a rather tidy affair.

However, the trail of transactions involving the central market area led to consideration of the deeds conveying all public lands in Koror from the Republic of Palau to Koror State. The trial court reviewed those conveyances and, quite understandably, was concerned. Indeed, the court concluded that for the national government ¶389 indiscriminately to convey all of its land holdings in Koror, even lands and buildings crucial to the functions of the national government, was violative of the statutory obligations of the PPLA and the trust responsibilities of the Republic of Palau. The trial court therefore felt compelled to grant sweeping equitable relief intended to undo those actions.

Accordingly the trial court declared the June 17, 1982, agreement between PPLA and KMPLA, and the May 14, 1980, and February 17, 1983, quitclaim deeds from PPLA to KMPLA all to be null and void. Thus title to all public lands ostensibly conveyed to Koror State by those documents was held to remain in the Republic of Palau. The trial court further ordered that the

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PPLA be reconstituted and reconvey to KSPLA all such public lands which PPLA “determines to be surplus to the needs of the National Government of the ROP and which in the opinion of PPLA may be best administered on the local level by Local State Government.” Specific consideration was ordered to be given to the Telephone Exchange Building site as well as lands previously designated for the national government including the Palau Judiciary, Congress buildings, and other areas. Finally, KSPLA was ordered to transmit to the general fund of the Republic of Palau any moneys realized by KSPLA from the use and occupancy of the public lands, after deducting “the depreciated value of all improvements made to such subject lands” and receiving credit for 75% of those revenues on lands to be reconveyed to KSPLA.

Koror State objects vigorously to these latter aspects of the trial court’s ruling. Most of the briefing and oral argument of the parties, and attention of this Court, have been directed to the objections raised by Koror concerning those portions of the trial court’s **¶390** judgment and order which affect lands other than those mentioned on the pleadings and trial memoranda of the parties.

## II. LEGAL ANALYSIS

This appeal therefore raises two basic issues. First, we are required to determine ownership of, and rights to use, the central market area itself. Second, we must consider whether the trial court had authority to rule on lands not originally placed at issue by the parties.

### A. The Central Market Area

Despite Republic of Palau’s arguments to the contrary, we find that the trial court clearly was correct in holding that the right to use the central market area has become joined with the fee simple title to the property. We concur with the analysis of Koror as to how this happened. Specifically, the OEK in 1960 received a potentially endless right to possess the central market area for public purposes. This constituted fee simple ownership, subject only to the condition that if the land was not used for public purposes it could revert to the TTPI.<sup>4</sup> Thus, Palau had a fee simple estate which was defeasible, subject as it was to TTPI’s possibility of reverter.<sup>5</sup> When the TTPI quitclaimed its interest to Palau in 1982, the use requirement and the possibility of reverter simply dissolved, and the Republic of Palau became the fee simple absolute owner of the central market area land.<sup>6</sup>

**¶391** However, we cannot accept the trial court’s conclusion that the February 1983 deed failed to convey fee simple title to the central market area. In finding that the 1983 deed violated trust and statutory obligations, the trial court directed its attention toward conveyances of lands other than the central market area. The record and opinion reveal that the trial court did not consider the conveyance of the central market area itself to be violative of trust obligations. Indeed, the court concluded that the equities lie with defendants Tmetuchl and Pacifica Development

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<sup>4</sup> An “estate in fee simple” is one “which has a duration” that is “potentially infinite.” 1 Restatement of the Law of Property § 16(a)(i); see also *Id.* § 14.

<sup>5</sup> Restatement of the Law of Property §§ 15, 154(3).

<sup>6</sup> Restatement of Law of Property § 58.

*Republic of Palau v. Pacific Development Corp.*, 1 ROP Intrm. 383 (1987) Corporation. Based upon findings that the defendants accepted and improved the area in good faith and that the Republic of Palau exhibited no substantial interest in the central market area, the trial court declared the defendants to be owners of the central market area.

We accept, as supported by the record, the trial court's findings that equitable consideration do not militate against the defendant's ownership of the central market area. Indeed, we see nothing in the record to support a conclusion that conveyance of the central market area itself was violative of statutory or fiduciary obligations of the Republic of Palau or the PPLA.

The court's view, then, was that transfer of the central market area was rendered invalid because it was carried out in conjunction with an attempted conveyance of other public lands. The trial court cited no legal authority for the proposition that an otherwise proper and effective conveyance is rendered void because joined with conveyances which are improper, and we find no such authority.

There may be circumstances where elements of a transaction are so intertwined that the invalidity of one part may render the entire **1392** transaction invalid. *See e.g., Gibbons v. Salii*, slip op. 25 n.10 (App. 1986). However, invalidity of the whole results only when ineffectiveness of the tainted parts thwarts or prevents the purpose of the original transaction. *See, e.g., City of Santa Fe v. First Nat. Bank in Raton*, 65 P.2d 857, 863 (N.M. 1937).

The trial court made no finding that the conveyances of the various parcels were so interconnected that invalidity of the other transfers would render transfer of the central market area meaningless. The record suggests that the central market area conveyance bore little relationship to the other transfers attempted in the February 1983 quitclaim deed. The other lands apparently were to be held by the KSPLA to generate revenues and to serve the public. In contrast, the central market area conveyance was intended to vest fee simple title in Roman Tmetuchl in fulfillment of KSPLA's obligations under the June 1981 land exchange agreement and the August 1981 warranty deed. This purpose was not thwarted, indeed was unaffected, by the validity or invalidity of the other conveyances attempted in the same deed.

We therefore conclude that the February 16, 1983, quitclaim deed was effective as to the central market area and conveyed an unrestricted fee simple interest in that land to KSPLA.

Upon KSPLA's receipt of the fee simple interest, then, the warranty deed previously executed by KSPLA operated to convey KSPLA's fee simple interest to Roman Tmetuchl.<sup>7</sup>

Thus, although our reasoning differs, we affirm the trial court's result, and agree that

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<sup>7</sup> We conclude that the after acquired title doctrine, generally accepted under the common law, applies to warranty deed conveyances in Palau. The "after-acquired title" doctrine holds that "if A, having a defective title, conveys to B with covenants of warranty and thereafter A acquires the outstanding interests, such interests pass to B without the necessity of further instruments, and B's augmented title leaps back to the date of A's deed." 8A G. Thompson, *Thompson on Real Property*, § 4343 (1963); see also Anno., 25 A.L.R. 83 (1923).

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defendant Roman Tmetuchl is the fee simple owner of the central market area.

¶393 There was no appeal by Tmetuchl or PDC from the trial court's holding concerning the Telephone Building Exchange. The trial court's holding that the Republic of Palau has title to the exchange therefore remains intact.

B. Other Public Lands Throughout Koror

After carefully reviewing the record in this case, we are persuaded that the parcels of land other than the central market area covered by the deeds running from the PPLA to the KSPLA were not properly before the court and were not subject to the court's ruling in this case.

The executive and legislative branches are the active branches of government. The executive branch is authorized to initiate investigations and enforcement activities, and the legislative branch is empowered to enact sweeping legislation affecting large numbers of people. These branches have the power, indeed the mission, to intervene in the workings of society, to ferret out and prevent wrongdoing, to recognize issues and decree solutions, and generally to affect the legal interests of the citizenry at large.

The judicial branch, on the other hand, has a role which is essentially passive.<sup>8</sup> Courts are authorized to determine only those disputes which are placed before them by parties within their jurisdiction. Even then, the court may rule only upon those legal issues which must be decided in order to resolve the dispute. As a ¶394 general proposition, a court may not require parties to place their legal interests before it nor to bring to the court issues which the court believes exist and should be resolved.

Rule 15(b) of this court's rules of civil procedure reflect these fundamental principles, inherent in the very nature of courts. The essence of the rule is in the first sentence: "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." This rule implies preservation and affirmation of the basic rule that courts may decide only those issues presented "by express or implied consent of the parties."

There are limits then upon the power of a court to rule upon the legal interests of parties over whom the court has jurisdiction. Yet the power of the trial court to decide is not nearly so narrow as Koror State here contends. We reject Koror's insistence that, because all parties assumed the validity of the February 1983 deed, it was error for the court to make its own decision as to the validity of the deed.

Ownership of the central market area was placed before the trial court for decision.

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<sup>8</sup> "Whoever attentively considers the different departments of power must perceive that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be last in capacity to annoy or injure them . . . . The judiciary . . . can take no active resolution whatever." A. Hamilton, the Federalist No. 78.

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Within the meaning of Palau Civ. Rule 15(b), this placed at issue any legal issue bearing upon ownership of the central market area. Courts have an affirmative obligation to avoid making **¶395** erroneous rulings and may not be bound by underlying legal premises upon which even all parties rely. A court may, indeed must, independently consider every legal issue bearing upon the dispute before it.

Plainly, in order to determine the rights of the parties in the central market area, it was proper and necessary for the trial court to determine whether the February 1983 deed effectively conveyed title to the land. Thus, although we disagree with the trial court's conclusion as to the validity of PPLA's attempted transfer of the central market area to KSPLA, we hold that by placing ownership of the central market area before the court, the parties gave their "express or implied" consent to a determination by the court as to the validity of the February 1983 deed.

If it were true, as the trial court seemed to believe, that the validity of the February 1983 transfer of the central market area would be decided by determining whether the other conveyances attempted in that and the May 1980 deed were valid, then consideration of those other conveyances would have been proper.<sup>9</sup> However, as explained supra, we have concluded that the central market area was not so closely linked to the other conveyances as to make the validity of all such conveyances interdependent. Therefore the validity of those other conveyances was not placed in issue by the parties and it was neither necessary nor proper for the court to rule on those conveyances.

**¶396** We do not minimize the issues recognized by the trial court concerning those other land conveyances. Now that the questions have been articulated, it is to be hoped that the Republic of Palau and the KSPLA will take steps to assure that any trust obligations which Palau may have concerning that land are carried out. If the parties do not resolve these questions it is quite possible that the same issues may be properly presented to the court in future litigation.

At that time however, there should be no question as to what is at issue and all parties will have a full opportunity to present their positions.

### III. CONCLUSION

The judgment of the trial court as to the ownership of the central market area, including the Telephone Building Exchange, is affirmed for the reasons set out in this opinion. The judgment of the trial court declaring the deeds to be null and void is vacated and set aside as is the remainder of the court's order insofar as it pertains to matters other than ownership of the central market area land. The case is remanded to the trial court for issuance of an order in accord with this opinion.

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<sup>9</sup> We do not here decide whether the trial court would then have had authority to grant relief, sought by no party with respect to those other conveyances.