

In re Estate of Delemel, 1 ROP Intrm. 653A (1989)
**IN THE MATTER OF THE
ESTATE OF NGIRATEMARIKEL DELEMEL,
Deceased**

CIVIL APPEAL NO. 8-89
Civil Action No. 160-86/177-86

Supreme Court, Appellate Division
Republic of Palau

Order granting stay of execution
Decided: August 18, 1989

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: John K. Rechucher, Esq.

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

PER CURIAM.

The motion of Respondent/Appellant Mary Ann Delemel for stay pending appeal, denied by the Trial Division of the Supreme Court on July 12, 1989, is hereby granted, and the Clerk of the Courts is hereby ordered not to release those certain funds awarded by Judgment entered on June 8, 1989, in trust to Josepha Tellei.

Upon the maturation of the time deposit certificate of investment ordered to be procured by the trial court with these funds, the Clerk of Courts is ordered forthwith to reinvest those funds in a new time deposit certificate at the highest rate available for the shortest term offered, unless by the **1653B** time such maturation of the original deposit certificate occurs, this Court has issued a subsequent order.

The Clerk of Courts is likewise hereby ordered not to release those Palauan monies called "Debresbechel" and "Ungereuall" until further orders from this Court; likewise, title and possession of land called "Ngeding" in Ngerbodol, Koror, the land in Ikelau, Koror, and the taro patch in Peleliu called "Armaluuk", shall remain in status quo pending further orders from this Court.

The trial court denied Appellant's Motion for Stay of Execution Pending Appeal on the grounds that the Notice of Appeal raised no substantial questions of law, and that an appellate court "will not review findings of fact made by a trial court unless such findings be based on a singular lack of credible evidence...and there exists no reasonable evidence in support of such a judgment." Decision Re Motion For Stay of Execution, Civil Action No. 160-86, Civil Action No. 177-86 (Consolidated), (citations omitted). We reverse the trial court on this review because

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we believe substantial questions of law do exist, and this is a case of first impression in Palau.

First, the trial court did not consider the possibility that appellant was “adopted by estoppel.” The doctrine of adoption by estoppel, or “virtual adoption,” has not been raised by appellant directly, but rather by implication. This is the first time the court will consider the (equitable) **L653C** doctrine of adoption by estoppel, which has been accepted in some form by 26 states in the U.S. *Calista Corp. v. Mann*, 564 P.2d 53, 60 (Ala. 1977).

Particularly in matters pertaining to descent and distribution, courts are instructed to interpret the law with “what is most consonant with equity.” 23 Am. Jur. 2d Descent and Distribution § 12 (1983).

In Palau, where tradition and a legal system modeled on that of the U.S. interface, the doctrine of adoption by estoppel may sometimes help to prevent harsh or contradictory results. *Calista Corp. v. Mann, id.* at 60-61 (Ala. 1977). See also *In re Lamfrom’s Estate*, 368 P.2d 318 (Ariz. 1962), and 1 Am. Jur. 2d, Adoption § 8 (Supp. March 1989).

A second reason we reverse the trial court and grant appellant’s motion for a stay is in order to exercise this appellate Court’s inherent power “to maintain the status quo pending review . . . to preserve the subject matter of the appeal.” 4 Am. Jur. 2d, Appeal and Error § 366 (1983).

If the judgment of the trial court were enforced, there would be a strong possibility that the subject of the appeal, in this case land and Palauan money, (as well as other funds), may be sold, thus nullifying the appellate court’s ability to enforce a decree if it were rendered in favor of the appellant.

Land is unique, and so is Palauan money. Especially in these circumstances the appellate court has the obligation of preserving the subject matter of the appeal, *Daly v. Wolfard* **L653D** *Bros.*, 262 P.2d 917, 918 (Or. 1953), given the injunction that matters of descent and inheritance should be considered in the light of equity. 23 Am. Jur. 2d, Descent and Distribution § 12 (1983).

Although the funds in trust to Josepha Tellei, also the subject of this request for a stay, are not “unique,” there is the danger that they will be dissipated prior to the decision in the appeal. Although that danger alone might not be enough to justify a stay, in this case those funds are part of the same controversy as the land and the Palauan money in question. Considerations of judicial economy merit that the stay apply to those funds as well.

The motion for stay is GRANTED on review by the Appellate Division.