Ngiradilubch v. Nabeyama, 3 ROP Intrm. 101 (1992)
ABRAHAM NGIRADILUBCH,
Appellant,

v.

HIROMI NABEYAMA,
Appellee.

CIVIL APPEAL NO. 30-90
Civil Action No. 514-89

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: February 20, 1992

Counsel for Appellant: Clara Kalscheur

Counsel for Appellee: Johnson Toribiong

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice; and ROBERT A. HEFNER, Associate Justice

PER CURIUM:

This appeal is a dispute over land in Ngatpang known as Becheserrak and identified as Tochi Daicho Lot No. 264. *Ngiradilubch v. Timulch* , 1 ROP 625 (1989) held that Rubeang Ngiradilubch was the owner of Becheserrak. Rubeang, however, died intestate on May 26, 1988 before the decision was issued.

Both Abraham Ngiradilubch and Hiromi Nabeyama claimed to be Rubeang's heir entitled to Becheserrak. Abraham claimed all of Becheserrak as his individual land and Hiromi claimed all of Becheserrak except a portion upon which a house is located as his individual property. Both parties agreed that Rengulbai Besokl, the Chief of Aimeliik, had given Becheserrak to Ngirkungiil Rekemesik, the Chief of Ngatpang, so that Rekemesik would have a place to stay ⊥102 that was closer to Koror so he would not have to pole his raft so far in order to attend conferences called by the Ibedul. Rubeang in turn obtained the land from Rekemesik through his toil.

On July 14, 1989, the Land Claims Hearing Office (LCHO) held a hearing pursuant to 39 PNC sec. 1116 to determine as between Abraham and Hiromi who was Rubeang's rightful heir to Becheserrak. The LCHO issued its determination on July 28, 1989 holding that Hiromi owns the land individually, except for the house site.

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Abraham appealed the LCHO decision to the trial division arguing six grounds of error. These grounds can be summarized for purposes of this appeal as the LCHO erred by failing to hold that Abraham was the adopted son of Rubeang and therefore his rightful heir, and by holding that the house site was to be given to the Eteit Clan.

On November 1, 1990, the trial court issued its decision. The court did not address appellant's claims that he was in fact Rubeang's adopted son because it found that Rubeang was not a bona fide purchaser for value. The court defined bona fide purchaser as "'[a] purchaser in good faith for valuable consideration and without notice'" (Trial Court Decision, p. 2, citing, Black's Law Dictionary, 4th Ed.), and concluded:

> "The manner in which Rubeang Ngiradilubech obtained title to the land at issue, which is tantamount to a grant of right by a sovereign, does not involve any notion of notice. Indeed, it is probably safe to say that such a concept does not now and did not then exist in Palauan customary land law. Therefore, it is not possible that 39 PNC § 102(c) could apply. Instead, 39 PNC § 102(d) must apply, and such application supports the LCHO decision to award title to Becheserrak to Appellee."

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The court then affirmed the LCHO decision on the ground that it is legally correct.

ANALYSIS

The holding of the trial court is, in effect, that any transferee who obtained his land from a chief or other sovereign cannot be considered a bona fide purchaser because the concept of notice did not, and probably does not, exist in Palau. Consequently, no person could ever be the heir to such land by virtue of 39 PNC sec. 102(c).

The type of notice required to defeat a claim that one is a bona fide purchaser is very broad:

> "Notice of a prior interest which will be effective to charge a subsequent purchaser with knowledge of its existence may be either direct information of the prior right, or may consist of information or facts from which actual knowledge may be inferred; the notice need not be actual, but may be constructive or implied." 77 Am Jur 2d VENDOR AND PURCHASER, sec. 647.

Several cases establish that the concept of notice in the context of bona fide purchasers does in fact exist in Palau. *See, Ngirakelau v. Trust Territory* , 1 TTR 543 (1958); *Asanuma v. Pius*, 1 TTR 458, 460 (1958) (plaintiff was a bona fide purchaser because he bought land in good faith, for value paid, and without notice or oral agreements establishing possible defect in title); *Armaluuk v. Orrukem* , 4 TTR 474, 477 (1969) (party who bought land in good faith, for value and without notice of plaintiff's alleged interest in land held to be bona fide purchaser).

Ngirakelau was a dispute over land known located in Koror. The former Ibedul of Koror,

Ngiraked, owned the land as his individual ⊥104 property. A Japanese national, Yamauchi, leased at least a portion of the land as a tenant. In 1940 Yamauchi purchased the land from Ngiraked and it was eventually registered showing Yamauchi as owner. He remained in possession of the land until after World War II when he was evacuated to Japan. Pursuant to Vesting Order dated September 27, 1951, the Alien Property Custodian of the Trust Territory became vested with title because the property was formerly owned by a Japanese National.

The appellants asserted ownership on the grounds that the lands were owned by the Idid Clan as Ngiraked was holding title only for the benefit of the Clan, and that the land was transferred to another by the Clan in 1952. The Court rejected appellants claims and held that Yamauchi had been a bona fide purchaser of the land because:

> "It is undisputed that a valuable consideration was paid by the tenant [Yamauchi], and after that after closing the deal, he made valuable improvements on the land. There is no evidence that he had any notice or knowledge that the land was in fact the property of his landlord's clan."

The Court reasoned that as between the Clan and Yamauchi, the Clan was in the best position to have done something to protect its interest in the land. The Clan could have done so by "notification to the Land Office, or to the tenants, disclosing its interest." *Id.* at 547. *Ngirkelau* establishes that there is a concept of notice of defective title in Palau. That notice can be by recording or oral notice.

There are other examples of notice of defective title that ⊥105 could, under the right circumstances apply in Palau. For example, it is custom in Palau that a chief's title land belongs to him only as long as he remains chief, and then it reverts to the Clan or Lineage. *Dudiu v. Ngiraikelau*, 1 TTR 504 (1958); *Kisaol v. Gibbons* , 1 TTR 597 (1956). If a chief who was no longer chief attempted to sell title land in fee simple, the purchaser could possibly be held to have notice that the title was defective because the chief had no authority to sell and the reversionary interest of the Clan or Lineage. It is also widely known that it is Palauan custom that the consent of the strong senior members of Lineage land is necessary to alienate lineage land. *Gibbons v. Bismark* , 1 TTR 372 (1958). If a potential purchaser of Lineage land was informed that a strong senior member was withholding her consent, the purchaser might have notice of defective title preventing her from having status as a bona fide purchaser. Finally, one need only peruse the Trust Territory Reports and the Interim Reporter to see the legion of cases addressing the Palauan custom of granting use rights to land. Such use rights often terminate with the death of the grantee and revert to the Clan which granted them. A potential purchaser would possibly have notice of a prior interest in land if he were to investigate that land and discover that another was living or planting crops on the land he was purchasing.

The decision of the trial court is erroneous as a matter of law in that the concept of notice of defective title has existed, and does exist, in Palau. Rubeang obtained the land in good faith, for valuable consideration and without notice of any defect in ⊥106 title and he therefore was a bona fide purchaser. The decision of the trial court is, therefore REVERSED and REMANDED for determination in accordance with this opinion.