

Techemding Clan v. Mariur, et al., 3 ROP Intrm. 116 (1992)

**TECHEMDING CLAN,
Appellant,**

v.

**KEBEKOL Y. MARIUR, et al.,
Appellees.**

CIVIL APPEAL NO. 24-90
Civil Action No. 466-90

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: February 20, 1992

Counsel for Appellant Blesam Lekesel: *Pro se*

Counsel for Appellee: Mariano Carlos

Before: Arthur Ngiraklsong, Associate Justice; Robert A. Hefner, Associate Justice; Alex R. Munson, Associate Justice

BACKGROUND

This action is a dispute over ownership of land in Koror known as Derbei. The key facts are that in 1983, appellant brought an action against appellees in the trial division alleging that it was the true owner of Derbei. The trial court determined that the land was within a registration area and transferred the matter to the Palau Land Commission for adjudication pursuant to 67 TTC, *et seq.* No decision was ever rendered and no Determination of Ownership was issued.

In 1990, appellant filed an action in the trial division to eject appellees. It also sought a temporary restraining order to **¶116A** prevent appellees from constructing a building on Derbei. The order was denied on the grounds that it appeared to the court that appellees had a superior claim to the land and appellant was therefore unlikely to prevail at trial.

Appellees subsequently filed a motion for summary judgment which was met with appellant's cross-motion for summary judgment. Each party asserted that there were no genuine issues of disputed material fact as to their respective ownership. Appellees also asserted that they were entitled to judgment as a matter of law on the grounds that appellant failed to assert any claim it had between 1960 and 1983 and that any claim was therefore barred by the statute of limitations. Appellant did not dispute the fact that it failed to assert a claim for twenty-three years: it argued that it was unnecessary for it to do so because it had always maintained that Derbei was its land and therefore did not need to assert a claim until it received notice in 1983

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that the land had been determined to belong to appellees.

The trial court found that genuine issues of material facts existed regarding the underlying claims to ownership which precluded summary judgment on those grounds. It also found, however, that there was no dispute over the fact that appellant failed to assert its claim of ownership within the statute of limitations and granted summary judgment in favor of appellees. In addition, the court found that appellant's admission that it did nothing for twenty-three years meant that the suit was frivolous and brought in bad faith. Accordingly, it ordered that appellant ¶117 pay appellees' reasonable attorney's fees pursuant to 14 PNC sec. 702.

ISSUES ON APPEAL

Appellant asserts that the trial court erred because: 1) it was without jurisdiction to hear the summary judgment motions: after holding a hearing on the temporary restraining order the court was required to transfer the entire matter to the LCHO for decision; 2) there were genuine issues of material fact precluding summary judgment; and 3) appellants' action was not groundless, frivolous or brought in bad faith.

ANALYSIS

A. Jurisdiction of Trial Division

Appellant's jurisdictional argument is that 35 PNC sec. 922 vests jurisdiction in the LCHO to adjudicate claims regarding the ownership of lands within a designated registration area. The reason it sought a temporary restraining order in the trial division was that it believed that the LCHO was without authority to grant a temporary restraining order. Once the trial division heard the motion for the temporary restraining order it was compelled to transfer the entire case to the LCHO for adjudication of the underlying claim of ownership.

Basic legal research would have revealed to appellant that its ¶118 jurisdictional argument has already been addressed and rejected by this court in *ROP v. Tmetuchl, et al. v. Koror State Government, et al.*, 1 ROP 214 (Tr. Div. June 1985). In that case, intervenors argued that land within the purview of 67 TTC sec. 105, the statute upon which 35 PNC sec. 922 is based, is outside the trial court's jurisdiction. *Id.* at 215. The trial court rejected intervenor's claim holding that the provisions of 67 TTC sec. 105 are perfunctory and not mandatory. *Id.* at 215-16 citing *Ngiruchelbad v. Trust Territory*, 2 TTR 631, (1961). Pursuant to *Ngiruchelbad*, the trial division herein was not deprived of jurisdiction by 35 PNC sec. 922.

B. Summary Judgment

Appellant alleges that the trial court should not have ordered summary judgment in appellees' favor because genuine issues of material fact exist regarding the assertion of ownership by the parties. It then sets forth the facts it alleges are in dispute. This argument goes nowhere however, because it misses the point. The trial court stated in the first paragraph of its order that there were disputed issues of material fact regarding the underlying claims to

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ownership. Its decision was not based upon these disputed issues: it was based upon the defense of statute of limitations.

Appellant's argument regarding the statute of limitations reiterates why the trial court was compelled to enter summary judgment in favor of appellees. Appellant claims that it had no ¶119 notice of the hearing before the Land Commission and filed a lawsuit in 1983 (Civil Action No. 36-83) only after it learned that ownership had been issued to Secharmidal. In the same paragraph, however, it claims that the reason it did not assert its claim to the lands was "because they knew and maintained that the lands in question was [sic.] their lands." (Appellants' Brief p. 8, *citing*, TR 30: 21-27)

Appellant offers no support for the proposition that a party need not assert its claim if it takes the position that it has a claim. That is because there is no support for such an argument. This admission established beyond dispute that appellant failed to assert its claim within the statute of limitations.

Statutes of limitation perform an important social function. As the United States Supreme Court stated in *Bowen v. New York*:

"statutory limitation periods are 'designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared; the theory is that even if one has a just claim, it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.'" 106 S.Ct. 2022, 2030-31, f.n. 13 (1986), *citing*, *American Pipe & Construction Co. v. Utah*, 94 S.Ct. 756, 766 (1974)

Statutes of limitation are "founded upon the general experience of mankind that claims which are valid are not usually allowed to remain neglected if the right to sue thereon exist." 51 Am Jur 2d LIMITATION OF ACTIONS, sec. 17. They reflect a sound public policy that promotes the peace and welfare of society and compel the settlement of claims within a reasonable period after their origin. ¶120 *Id.*, sec. 18.

This Court can not accept the proposition that appellant believed that Derbei was Clan land yet did nothing for twenty three years to assert its ownership. To permit appellant to sleep on its rights for twenty three years and then prosecute its claim to the land would be unjust. The trial court committed no error in holding that appellant's claim is forever barred by the statute of limitations.

C. Frivolity

Pursuant to 14 PNC sec. 703, as amended in 1983, the court “shall” award reasonable attorney’s fees to the prevailing defendant when in its discretion it finds that a complaint was groundless, frivolous and brought in bad faith. We find that there was no abuse of discretion by the trial court in awarding attorney’s fees to appellees.

We also find that appellant’s appeal is groundless, frivolous and brought in bad faith. Despite having been put on notice by the trial court that its position regarding the statute of limitations was without merit, appellant did not offer a single new argument on this issue on appeal: appellant stuck steadfastly to its position that it was not required to assert its claim of ownership because it believed Derbei belonged to the Clan. Accordingly, we exercise our inherent powers to award reasonable attorney’s fees and costs on appeal to appellee.

Appellee is to submit an affidavit of attorney’s fees and **1121** costs to the Court within ten days of the issuance of this opinion. Appellant will then have ten days to file a written objection as to the reasonableness of the attorney’s fees and costs. Thereafter, on the basis of the materials submitted and without hearing, the presiding judge of this panel, Associate Justice Arthur Ngiraklsong, will issue an order setting forth the attorney’s fees and costs to be paid and the time for payment.