

Delbochel Lineage v. Kloulechad, 3 ROP Intrm. 145 (1992)

DELBOCHEL LINEAGE,
Appellant,

v.

TOSHI-AKI KLOULECHAD, et al.,
Appellees.

CIVIL APPEAL NO. 6-90
Civil Action No. 337-89

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: May 25, 1992

Counsel for Appellant: John K. Rechucher

Counsel for Appellee: J. Roman Bedor

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; and ROBERT A. HEFNER, Associate Justice¹

PER CURIAM:

BACKGROUND

This appeal is a dispute over land known as Metuker or Ngesil (the land) which is located in Kayangel. The land is listed in the Tochi Daicho as Lot No. 3 and as owned by Delbochel Lineage with Mad, the Chief of the Lineage as trustee. In 1940, Mad sold the land to Kloulchad who lived there until his death in 1977. His children have used and occupied the land since that time and continue such to the present.

In early 1987, appellant filed a claim with the Land Claims Hearing Office (LCHO) asserting that the land belonged to Delbochel **L146** Lineage. Appellant agreed that Mad had sold the land to Kloulchad, but argued that the sale transaction was void because Kloulchad failed to pay 100 Yen that remained due and owing for the land. Neither appellant nor appellee were present when the original sale took place.

The LCHO held that in the 33 years from the original sale until Kloulchad's death, and in the 11 additional years until 1988 when Mad died, no demand for payment was made by Mad. Consequently, the land was adjudicated as owned by appellees.

¹ This matter was heard by all three members of the Panel, but this Opinion is signed by a majority of two Justices due to the death of Chief Justice Nakamura on April 25, 1992.

Delbochel Lineage v. Kloulechad, 3 ROP Intrm. 145 (1992)

Appellant appealed to the trial division on the grounds that: 1) the sale transaction was void because all members of the Lineage did not consent to alienation of the land; and 2) if a contract to purchase was made, no title transferred because full payment was not made.

On December 6, 1989, the trial court affirmed the LCHO determination. It held that prior to the claim before the LCHO, no claim had ever been asserted for the remainder of the purchase price allegedly due, and that even if it were true that money was due, appellant's claim is barred by laches. As for appellant's claim that full consent for the sale was not given by the Lineage, the court stated that the issue was not raised before the LCHO. Finally, the court also dismissed as meritless appellant's argument that Shiro Bedul, appellees' representative, did not have standing to represent appellees before the LCHO.

Appellant's Notice of Appeal to this Court asserts that the trial court's decision was in error because it held that: 1) the ¶147 sale was valid despite the fact that there was not full consent from all Lineage members; and 2) appellant's claim was barred by laches.

ANALYSIS

Appellant argues that appellees could not obtain title by adverse possession and therefore the trial court's decision that appellant's claims were barred by laches is erroneous. This argument goes nowhere however because it is based upon an apparent misinterpretation of the trial court's decision. Appellees did not assert a claim of adverse possession and neither the LCHO nor the trial court held that appellees obtained the land by adverse possession. The LCHO held that after the sale, which the parties agreed occurred, no demand for payment was ever made and appellant failed to prove failure of consideration. The trial court affirmed this finding and held that as a matter of law any claim based upon failure of consideration was barred by laches.

"Laches is defined as 'sleeping upon one's right' to the extent of permitting such action to mislead another to his detriment. *Rengiil v. Ngirchokebai*, 1 ROP Intrm. 197, 203 (Tr. Div. March 1985). It is corollary to 'stale demand'." *Id, citing, Baulolk v. Taidrikl*, 4 TTR 152 (1968). Mad, and appellant herein, slept on their right to assert a claim based upon failure of consideration for almost fifty years. It was not until eleven years after the death of Kloulchad, a principal in the sale transaction, ¶148 that appellant stepped forward to make its claim. Appellants' failure to assert its claim when appellees' principal was still living and able to provide first hand knowledge of the transaction was to appellees' detriment: it prevented them from filing a claim to quiet title based upon the testimony of Kloulchad.

This reasoning applies equally to appellant's claim that the sale was invalid because proper consent from Lineage members was not obtained. If we were to ignore arguments that this issue was waived by failing to properly raise it below, it would not change the ultimate result of the trial court's decision. Any claim appellant may have had based upon lack of consent is also barred by laches.

Delbochel Lineage v. Kloulechad, 3 ROP Intrm. 145 (1992)

Finally, appellant's argument regarding Shiro Bedul's lack of standing to represent appellees is specious. It is undisputed in the record that Shiro Bedul is the brother of Kloulchad and the uncle of appellees, Kloulchad's children. The trial court's decision to affirm the LCHO's finding of standing was correct as a matter of law.

The decision of the trial court is AFFIRMED.