

In re Estate of Debelbot, 3 ROP Intrm. 364 (Tr. Div. 1990)
**IN THE MATTER OF THE INTESTATE
ESTATE OF THE LATE ALBERT DEBELBOT,
Deceased.**

CIVIL ACTION NOS. 151-85, 258-88 and 701-88 (Consolidated)

Supreme Court, Trial Division
Republic of Palau

Findings of fact and conclusions of law

Decided: July 5, 1990

NGIRAKLSONG, Associate Justice:

These consolidated cases are on the intestate estate of Albert Debelbot. They came to trial on June 11, 1990, with Mr. John Rechucher representing the Balii Lineage and Mr. Moses Uludong representing the estate of Debelbot. Debelbot was a maternal uncle of claimants Taro Ngiraingas and Heinrick Arbedul, who are brothers and purporting to represent the Balii Lineage. They claimed lands with Tochi Daicho Numbers 318, 454, 455, and 808, all located in Ngchesar and listed in the name of Albert Debelbot as individual owner and items 1 to 13 of the awards made under Title I of the Micronesian Claims Act of 1971 for “Debelbot family”. (Balii [Formerly Isngai Clan’s] Lineage’s Exhibit 1).

This Court finds that Taro Ngiraingas and Heinrick Arbedul failed to prove Balii Lineage’s claims against the estate of the late Debelbot by preponderance of evidence. They are also not entitled to what they claimed under the law. Accordingly, the claims asserted by the Balii Lineage for the lands and war claim awards are dismissed against the estate of Debelbot.

1365 Procedural Posture

At the conclusion of the claimants’ case, the estate moved for dismissal. Then claimant in the pleading was the Isngai Clan and even the witnesses for the “claimant” testified that Isngai was not the claimant, but Balii Lineage was. This was astoundingly sloppy lawyering on the part of the claimants’ counsel, who quickly moved for leave to amend claimants’ pleading. How can one not know the identity of his client? The estate opposed the motion, as they would then be required to do additional preparation in the middle of the trial.

The Court granted claimants’ motion for leave to amend, gave the estate time to prepare if it needed more time and awarded costs to the estate to be agreed by the parties. The parties agreed between themselves that Taro Ngiraingas and Heinrick Arbedul, shall pay \$500.00 to the estate as costs for the additional preparation as a result of the claimants’ amended pleading.

The Court has authority to grant motion for leave to amend pleading even after a party’s case has been presented. (*Jones Ridep v. Jackson Ngiraingas*, Civil Case No. 137-88).

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Balii Lineage based its claim on three grounds. First, it was decedent's "desire" that real property in his name as individual owner should be converted to the name of Baliu Lineage after his death. The properties were in fact for the lineage but he registered his name as the owner. The second contention is that the "Eldecheduch" settled everything, including the lands being claimed here, which are now the **L366** property of the Baliu Lineage. Third, claimants asserted that the administrator of the estate, Dorothea Sasao, daughter of the decedent, at the "Eldecheduch" promised to pay her late father's debt if an increase for "Elbechiil" was made. Claimants argued that this was a contract which then settled everything, assets of the estate to go to Baliu Lineage and debts to Dorothea Sasao, daughter of the decedent and administrator of the estate.

"Desire" of Decedent

Taro Ngiraingas testified that he, Heinrick Arbedul, Ngirmekur, younger brother of the decedent, Masao and Tengoll first met with the decedent in 1982 at Nglis, at Idid. In that meeting, decedent told those present that when he passed away, lands in his name as his individual property must be transferred to Baliu Lineage, for they were in fact Baliu Lineage's property and he was just an administrator. Taro testified that the second and third meeting were held in 1983 with the same people in which the decedent gave the same instruction. Taro finally testified that he was called to the MacDonald Hospital in 1984 at the request of the decedent. Taro testified that when he got inside the decedent's hospital room, the decedent had an oxygen mask on; he was very ill. A doctor instructed a nurse to remove the mask so the decedent could talk to Taro. Then the doctor and the nurse left the room, leaving the decedent and Taro alone. Then, according to Taro, the decedent asked first that they both prayed. Then, the decedent told Taro that he asked only Taro to come because if he saw Heinrick and Ngirmekur, that **L367** would upset him. Then in the next breath, decedent supposedly told Taro that he got upset with them, and in anger prepared a cassette tape, deriding them, but now everything was back to normal and he had forgiven them. Taro implied that after this meeting, the decedent passed away.

Taro Ngiraingas and Heinrick Arbedul's testimonies are not credible with regard to the so-called "desire" of the decedent to transfer the land in his name as individual owner to Baliu Lineage.

First, Taro's testimony is internally inconsistent. For example, decedent supposedly said he only wanted to see Taro at the Hospital and not Heinrick and Ngirmekur because if he saw the other two, that would upset him. Then, he supposedly told Taro to tell Heinrick and Ngirmekur that "decedent had forgiven them. Everything is fine now."

Dorothea Sasao's uncontradicted testimony is that her father died in August of 1985. When he became very ill, he was taken to the hospital and there was always someone at the Hospital with him 24 hours a day until he died. No one saw Taro or Heinrick at the Hospital. Taro himself later admitted he did not visit the decedent during his last hospitalization.

Admitted into evidence without the objection of the claimants are the estate's Exhibits A

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and B. These are cassette tapes in which the decedent repeated numerous times through out the tapes his acute distaste for Taro Ngiraingas and Heinrick Arbedul for cheating and lying to and attempting to steal from him. Again and again through out both cassette L368 tapes, decedent stated impassionately that all properties, especially lands he inherited through his mother, father or uncle, Taro and Heinrick and their sisters are to stay out of those properties. “When I die, do not come to my funeral. If my children die, do not come to see them. Likewise, if you die, I will not come to your funeral.”

Estate’s Exhibit A, cassette tape, was prepared in March of 1985. (Uncontradicted testimony of Mrs. Dorothea Sasao). Estate’s Exhibit B, cassette tape, was prepared in May of 1985. Decedent died in August of 1985. (Uncontradicted testimony of Mrs. Dorothea Sasao).

Taro’s dramatic “hospital” bed visit in 1984 is not credible at all. The “desire” of the decedent was clearly demonstrated in the cassette tapes in his own words prepared in 1985, few months before his demise.

The claimants cited 39 PNC § 102(d) as the basis for their claim to the lands. It was the decedent’s “desire” that the land be transferred to the Baliu Lineage’s.

Finding that the decedent’s desire was for Taro and Heinrick to stay out of anything that belonged to him and that the claimants’ testimonies is nothing but fabrication, it is not necessary to even address the law.

But assuming for the sake of argument that indeed the desire of the decedent was as represented by the claimants, 39 PNC 104(d) still does not entitle the claimants to the lands.

It is uncontradicted that Taro and Heinrick were not “actively and primarily responsible for the deceased prior to his L369 death.” Paragraph (d) also has requirements that were not met. *Id.* Further, the claim is by the Baliu Lineage, not Taro and Heinrick, rendering this cited law inapplicable.

Also, the presumption in favor of the accuracy of the Japanese Land Survey listings (Tochi Daicho) was never in danger of being rebutted by the claimants herein. (*Edyaoch v. Timarong*) 7 T.T.R. 54 (Tr. Div. 1974). It is undisputed fact that the land the claimants are claiming are listed as individual property of the decedent.

Claimants did not assert nuncupative will as a basis for their claim because they must have known that they could not have met the requirements of 25 PNC 107.

Did “Eldecheduch” Settle Everything for the Estate?

The “Eldecheduch” settled only the “Elbechiil”. Overwhelming testimonies established that only “Elbechiil” was settled and the land, war claim monies and other properties were not even discussed. At “Eldecheduch”, what is not discussed is not settled. (Testimony of Paulus O. Sked, a witness who was at the “Eldecheduch” and also who testified as an expert witness). The

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land, war claim monies and debts were not discussed, much less settled.

Accordingly, claimants' second contention must fall.

Was there a Contract

This contract theory goes like this. At the "Eldecheduch", Dorothea Sasao, daughter of decedent, was not satisfied with the **₭370** amount of "Elbechiil" being proposed. Thus, she proposed to the "power to be" at the "Eldecheduch" that if they increased the amount of "Elbechiil", she will personally assume her father's debts, claimants testified. As increase in "Elbechiil" was made and a contract was consummated. The Court is still not certain what went into the contract.

Mrs. Sasao is a daughter of the decedent. Testimonies established that according to Palauan custom, her maternal uncles represented her at the "Eldecheduch". Mrs. Sasao may not be the right "party" to this contract.

To apply contract theories to "Eldecheduch" proceedings is to say the least, ridiculous. A contract has specific requirements which claimants failed to establish.

The Court again gives no credibility to the testimony of Heinrick Arbedul as to what Mrs. Sasao supposedly proposed to do at the "Eldecheduch".

War Claim Monies

It was established at the trial that war claim monies was not discussed by the decedent at those so-called "meetings" between the decedent and Taro, Heinrick and others. The war claim awards were not mentioned at the "Eldecheduch" and this Court fails to see how those monies became subject of the contract theory advanced by the claimants.

Taro Ngiraingas and Heinrick Arbedul testified that the Balii Lineage claims items 1 to 13 of the war claim awards. (Claimants' Exhibit 1). Yet, they could not explain how Balii **₭371** came to own 1 water tank, 3 axes and 5 saws, for example. Heinrick first was not sure what he was claiming under the war claim awards, then he finally supported his claim by saying "Whatever is on item 1 to 13" of the awards. That vague and general assertion fails to meet the minimum standard of proof.

CONCLUSION

Taro Ngiraingas and Heinrick Arbedul, representing the Balii Lineage, have failed to prove their claims against the estate of the decedent. The law also is not on their side. Accordingly, their claims are dismissed.

Since the claimants have agreed to pay \$500 for costs and fees to the estate, the Court will not award the costs and attorney's fees to the Estate.

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This decision dismisses claims of Bali Lineage and Taro Ngiraingas and Heinrich Arbedul against the estate. The decision does not bar claims that may be brought against the estate by individual persons such as Jonathan Ngirmekur and Obeketakl Ngiraingas.