Miner v. Delngelii, 4 ROP Intrm.163 (1994)

DANIEL MINER,
Plaintiff/Appellant,

v.

FLORENCIO DELNGELII,
Defendant/Appellee,

HIDEO EWATEL, et al.,
Intervenors/Appellees

CIVIL APPEAL NO. 19-87
Civil Action No. 40-85

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: March 8, 1994

Counsel for Appellant: Johnson Toribiong

Counsel for Appellees: J. Roman Bedor, T.C.

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice

PER CURIAM:

The parties to this appeal dispute the ownership of "Mimai," a parcel of land located in Melekeok State. It is undisputed that prior to August 1977 Mimai was owned by Hideo Eungel, Lukas Ewatel, Mario Ului, Kabino Ewatel, and Uriik Delengelii, who are siblings, as tenants in common. In August 1977 Kabino approached Hindenburg Ngirasechedui and offered to sell him Mimai for $2,000. Kabino told Hindenburg that he needed money to buy a boat and he thought Hindenburg might be interested in purchasing Mimai because it bordered Prekong, a parcel of land owned by Hindenburg and Hindenburg's brothers, Daniel Miner and Santos Ngirasechedui. Hindenburg discussed the proposal with his ⊥164 brothers, who agreed with Hindenburg that purchasing Mimai was a good idea.

On the morning of August 26, 1977 Santos and Kabino visited each of Kabino's siblings to obtain their signatures on a document entitled "Oterullel a Chutem," or "Land Sale." The document states that Kabino and his four siblings agree to sell Mimai to Santos and his siblings for $2,000. Santos and Kabino first approached Hideo, who read the document and refused to sign it, saying that the land needed to stay in the family.

Later that same morning Santos and Kabino secured the signatures of Lukas, Mario (who signed with an "x"), and Uriik (who signed in Japanese characters). Each of these signatories later testified that they could not read Palauan and that the document was not read to them. The sale of Mimai was not discussed. Rather, they were told that Kabino wanted to borrow money from Santos to buy a boat, and that their signatures would serve as security for this loan. Lukas, Mario and Uriik all testified that they never discussed selling Mimai with Santos and that their encounter with Santos and Kabino on August 26 was very brief, lasting only a few minutes, or only as long as it took Santos and Kabino to obtain their signatures. Santos and Kabino recorded the document on the same day that Lukas, Mario, and Uriik signed it.

In February 1985 Florencio Delngelii, Uriik's son, built a house on Mimai. One month later Miner filed the present lawsuit seeking Florencio's ejectment from the land. Hideo, Uriik, Lukas, and Mario ("intervenors") intervened, claiming that the deed of ⊥165 transfer was procured by fraud. Miner moved for summary judgment, relying on the "Land Sale" document and his own affidavit claiming ownership through the controverted document. No affidavits were filed in opposition. The trial court denied Miner's motion.

After trial, the court found, inter alia, that Santos and Kabino "never revealed that the document they requested be signed was for the transfer of land but represented only that the signatures of Uriik, Mario, and Lukas were required so that Kabino, their brother, could get money from Santos" and Miner. The trial court further found that Uriik, Mario, and Lukas were excused from inquiring about the contents of the document because they relied on the claim that their signatures were needed so that Kabino could borrow money from Santos to buy a boat. Based on these findings, the trial court declared the "Land Sale" document a nullity and dismissed Miner's ejectment suit.

Miner appeals. We affirm.

DISCUSSION

Miner first argues that the trial court should have granted him summary judgment because the intervenors failed to respond to his motion for summary judgment. The rule in those jurisdictions considering the issue, however, is that a denial of a summary judgment cannot be reviewed on appeal following a trial on the merits. See 15 A.L.R.3rd 899, 922-25 (1967). Courts reason that "the refusal to review an order denying a summary judgment can in no sense prejudice the substantive rights of the party making the motion since he still has the right to establish the merits of ⊥166 his case upon the trial of the cause." *All-States Leasing Co. v. Pacific Empire Land* , 571 P.2d 192, 195 (Or. App. 1977) quoting *Bell v. Harmon* , 284 S.W.2d 812, 814 (Ky. 1955).

We are persuaded by this reasoning and hereby hold that where the only question presented is whether the non-moving party adequately responded to a motion for summary judgment, denial of the motion is not reviewable on appeal after a trial on the merits has been completed. To hold otherwise "could lead to the absurd result that one who has sustained his position after a full trial and a more complete presentation of the evidence might nevertheless be

reversed on appeal because he had failed to prove his case fully at the time of the hearing on the motion for summary judgment." *Manuel v. Fort Collins Newspapers, Inc.* , 631 P.2d 1114, 1117 (Colo. 1981).

Miner also appeals the trial court's decision following trial. He first claims that the "Land Sale" document effectively transferred the intervenors' interest in Mimai. He argues that it was the intervenors' responsibility to read the document before signing it or to have it read to them if they could not read. But as Miner candidly recognizes, if a party to a transaction misrepresents the contents of a document, then the deceived party is excused from his normal obligation of reading the document or asking that it be read to him. See 37 Am. Jur. 2d Fraud and Deceit § 268 (1968) (Where the execution of an instrument is obtained by fraud, "the instrument is not binding on the party executing it even though he did not read it or request that it be read to ⊥167 him."); see also 23 Am. Jur. 2d Deeds § 195 (1983) ("[W]here the grantor's signature to a deed is procured by fraudulently concealing the character of the instrument as a deed or inducing him to believe he is signing something other that a deed, the instrument is regarded as a forgery and is for that reason absolutely void.").

The trial court found that Lukas, Mario, and Uriik were illiterate in written Palauan and that none of them either read the "Land Sale" document or requested that it be read to them. The trial court further found that Kabino and Santos misrepresented the contents of the document, telling Lukas, Mario, and Uriik that their signatures were needed for Kabino to secure a loan when in fact the document transferred ownership of Mimai.

The well settled standard we apply in assessing the trial court's factual determinations based on the credibility of witnesses is "clearly erroneous." See 14 PNC § 604(b). To find a factual determination clearly erroneous, we must be left with a definite and firm conviction that a mistake has been made. *Sengebau v. Balang* , 1 ROP Intrm. 695, 697 (1989). As there is substantial evidence in the record to support the trial court's findings, they must be affirmed. See generally 37 Am. Jur. 2d Fraud and Deceit § 487 (1968) (Appellate court will not reverse a trial court's finding of fraud unless such finding is "plainly wrong.").

The fact that the intervenors failed to read the "Land Sale" document or ask that it be read to them is, in this instance, ⊥168 irrelevant. Because they were deceived as to the document's contents, it is considered void and not binding on them. The "Land Sale" document did not transfer the intervenors' interest in Mimai to Miner and his brothers.

Miner argues alternatively that equity requires the intervenors to reimburse him if they are to keep the land. But given their uniform testimony, the most that can be said is that the intervenors agreed to act as sureties for Kabino's loan. There is no evidence or indication that Miner has attempted to collect the $2,000 from Kabino, who is primarily responsible for the debt. We agree with the trial court that Miner must in the first instance pursue whatever remedy he may have against Kabino.[1]

[1] Because Kabino was not made a party to this lawsuit, it is not possible to decide at this time whether the "Land Sale" document transferred his one-fifth interest in Mimai.

The trial court's judgment is AFFIRMED.