Bilamang v. Oit, 4 ROP Intrm. 23 (1993)
PEDRO BILAMANG,
Appellant,

v.

NGIRUTANG OIT, on behalf of Irikl Clan,
Appellee.

CIVIL APPEAL NO. 15-91
Civil Action No. 274-90

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: November 16, 1993

Attorneys for Appellant: Carlos H. Salii

Attorney for Appellee: J. Roman Bedor

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; JANET H. WEEKS, Part-Time Associate Justice

PER CURIAM:

This appeal arises out of a complaint filed by Ngirutang Oit to evict Pedro Bilamang from property known as "Irikl". Bilamang counterclaimed, asking the trial court to remove Oit as trustee and to designate Bilamang and his siblings as the owners of Irikl. The trial court dismissed Oit's complaint as well as Bilimang's counterclaim. The court refused to appoint a new trustee, concluding that Bilamang failed to introduce any evidence that Oit fraudulently attempted to convert Irikl's title to his own name. The court also concluded that Bilamang was barred from claiming title to Irikl due to his failure to appeal a 1982 Palau District Land Commission determination that Irikl Clan owned the property. Bilamang appeals both rulings. We affirm.

⊥24 BACKGROUND

Irikl is a 65,470 square meter parcel of land located in Ngerusar Hamlet, Airai State. Etumeleu, Bilamang's father, lived on the property and claimed it as his own. Etumeleu died in 1948. Following Etumeleu's death, Ngiraitpang, Etumeleu's younger brother, became trustee of Irikl. In 1978, the strong and senior members of the Irikl Clan, including Bilamang's eldest sister, Elsau, chose Oit to be Irikl's trustee for Irikl Clan's benefit. Bilamang and his younger sister Martina, who were not at the meeting, allege Oit was chosen to be the trustee for Etumeleu's children's benefit.

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In 1978 a land registration team determined that Irikl was owned by Irikl Clan with Oit as trustee. This finding was provisionally approved by the Palau District Land Commission in 1979, and finalized in the Commission's August 2, 1982 Determination of Ownership. Bilamang did not file a claim with the Commission, nor did he appeal the Commission's decision. In 1982 Bilamang's relationship with Oit began to sour. Bilamang accused Oit of attempting to gain title to Irikl. Oit, in turn, thought Bilamang sought fee simple title to Irikl. Their differences eventually led to this lawsuit.

DISCUSSION

Bilamang first argues that the trial court erred in failing to name a new trustee. He contends that the record shows that Oit attempted to convert his trusteeship of Irikl into fee simple ownership and that such an act amounts to fraud sufficient ⊥25 to void the trusteeship. Although Bilamang consistently avers that the trial court "abused its discretion" in not accepting his testimony on the alleged fraud, 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).

The trial court's finding that Bilamang failed to introduce any competent evidence of Oit's alleged fraudulent attempt to convert Irikl to his own property is not clearly erroneous. The only evidence Bilamang advanced in support of his fraud theory was a hearsay statement that he had heard that Oit had started transferring ownership, and his sister Martina's statement that "something odd had transpired about this land." Fraud cannot be founded on "suspicion, innuendo, or conjecture." 37 Am. Jur. 2d *Fraud and Deceit* § 468 (1968). Since the testimony regarding Oit's alleged fraud rose no higher than suspicion or surmise, the trial court's finding that Bilamang failed to introduce any evidence of fraud is not clearly erroneous.

Bilamang also points to Oit's "self-dealing" as a separate reason for removing Oit as trustee. The "self-dealing" Oit is accused of is building his house on a portion of Irikl. First, no one, including Bilamang and his siblings, objected to Oit's building the house. Further, nothing in the record suggests that Oit's improvements to the land, which included a new clan ⊥26 house, were seen as self-dealing by the clan, or were contrary to the clan's best interests. Bilamang's "self-dealing" argument is without merit.

As Bilamang presented the trial court with no legally cognizable reason to remove Oit as trustee, its refusal to do so should be affirmed.

Next, Bilamang contests the trial court's conclusion that his counterclaim attempts to relitigate the Commission's ownership determination. Bilamang insists that he counterclaimed simply to oust Oit as trustee. Bilamang's pleading, testimony, and brief before this Court belie this position. Bilamang frequently asserts that Irikl is his land as a result of the bequest at Etumeleu's eldecheduch. Obviously, Bilamang seeks more than Oit's removal. He also seeks

title to Irikl.

The trial court concluded that Bilamang waived his right to contest the Commission's ownership determination by failing to timely appeal that decision. At oral argument Bilamang argued that he should not be barred from appealing the decision because at the time the Commission rendered its decision he was in Yap. However, Bilamang testified that he had returned from Yap in late 1981, at least six months before the Commission entered its final ownership determination.

Bilamang further orally argued that he did not participate in the Commission's ownership determination process because he had always assumed Oit was representing Bilamang's interests before the Commission. This assertion is also belied by ⊥27 the record. Bilamang testified that he went to the Land Commission Office in 1981 to get a permit to build his house on Irikl; he stated that at that time he already knew that Irikl was considered Irikl Clan's property. Thus, there is no merit to Bilamang's claim that he should be allowed to appeal the Commission's determination now because Oit defrauded the Commission without Bilamang's knowledge. If Bilamang knew in 1981 that Irikl was considered Irikl Clan's property, then it was incumbent upon him to notify the Commission at that time that he considered Irikl to be his property. Moreover, Bilamang's testimony that his dispute with Oit began in 1982 belies any assertion that he believed that Oit was protecting his interest in Irikl either before the Land Commission or on any appeal that might be brought from its determination.

Finally, Bilamang argues that he was not required to appeal the Commission's decision because the appointment of Oit as trustee was not necessarily inimical to the interests of Bilamang and his siblings; in other words, he was not an "aggrieved party" to the Commission's decision because he and his siblings had no objection to Oit's appointment as trustee. This argument ignores the premise of the trial court's conclusion: The reason Bilamang was required to appeal the Commission's decision to preserve his rights was not because the Commission appointed Oit trustee, but because the Commission designated Irikl Clan as the owner of Irikl. This decision is contrary to and in conflict with Bilamang's position that he and his siblings own Irikl. However artfully ⊥28 Bilamang casts the issue, he cannot escape the conclusion that he is contesting the Commission's ownership determination.

As the trial court correctly noted, the time for appealing the Commission's ownership determination has long since passed. *See* 35 PNC (former) § 933(a) ("A determination of ownership by the Commission shall be subject to appeal by any party aggrieved thereby to the Trial Division of the Supreme Court at any time within 120 days from the date of said determination."). Thus, Bilamang is barred from relitigating Irikl's ownership. *See Kloteraol v. Ulengchong*, 2 ROP Intrm. 145 (1990) (Commission's decision is given preclusive effect unless a timely appeal is filed).

We AFFIRM the trial court's dismissal of Bilamang's counterclaim.