

*Salii v. Sugiyama*, 4 ROP Intrm. 89 (1993)  
**GLORIA G. SALII and, FRANK MALSOL,**  
**Appellants,**

v.

**JOHN SUGIYAMA,**  
**on behalf of the children of Sugiyama,**  
**Appellee.**

CIVIL APPEAL NO. 14-92  
Civil Action No. 248-91

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: December 17, 1993

Counsel for Appellants: Carlos H. Salii

Counsel for Appellee: William L. Ridpath

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; and LARRY W. MILLER, Associate Justice.

BEATTIE, Justice:

In this appeal we are called upon, for the first time, to apply the common law of the United States relating to trusts in resolving a land dispute concerning land held by a trustee. The case involves two parcels of land within Tochi Daicho lot number 887 in Koror State. The Land Claims Hearing Office (LCHO) determined that Appellant Gloria G. Salii and her siblings (“Salii”) were the owners of lot number K-212, and Appellant Frank Malsol was the owner of lot number K-213. The trial division (O’Brien, J.) reversed the LCHO and held that Appellee and his siblings owned the property. Salii and Malsol then filed this appeal.

#### BACKGROUND

Prior to 1960, Maria Gibbons, who was Salii’s mother, had been leasing the subject property from the Trust Territory government, which held it as Alien Property **190** Custodian. With the permission of Gibbons, Malsol occupied a portion of the property. For the purposes of this case, the chain of title to the subject property begins with a Determination of Ownership issued in 1960 by the District Land Title Officer. The Land Title Officer heard evidence that indicated that Appellee’s father bought the land for his minor children and put the land in the name of his wife, Rosang Sugiyama. <sup>1</sup> The Land Title Officer issued a Determination of

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<sup>1</sup> Appellee Sugiyama testified that at one point about thirty years ago he asked his mother

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Ownership listing the owner as Rosang Sugiyama, as trustee for the ten named Sugiyama children.

Shortly after the 1960 Determination of Ownership, Rosang Sugiyama informed Gibbons and Malsol that she had been determined the owner of the property and offered to sell to Gibbons and Malsol the parcels they had been using. Accordingly, Gibbons purchased the parcel known as lot K-212 and Malsol purchased the parcel known as K-213 for \$2.00 per tsubo. The purchase price was paid in installments, and Rosang Sugiyama's oldest son came to the property regularly to collect the installments until Gibbons and Malsol had each paid in full for their respective parcels.

Gibbons maintained a garden on her parcel until 1971, when she died. After her death her children, including Salii, continued to maintain a garden on the property. Malsol built a house on his parcel, where he lived continuously and remained at the time of the LCHO hearings. Rosang Sugiyama died in 1978. Gibbons and her children, as well as Malsol, used and occupied their parcels continuously as a garden and residence respectively with nobody contesting their right to do so until 1989, when the LCHO proceedings were commenced. The LCHO determined that Salii and her siblings owned the parcel that Gibbons had purchased and Malsol owned the parcel that he had purchased. On appeal, the trial division reversed, holding that the sales by Rosang Sugiyama were void because the beneficiaries of the trust did not consent to the sale.

**191** VALIDITY OF THE SALES

The trial division found that Gibbons and Malsol had constructive notice of the contents of the 1960 Determination of Ownership.<sup>2</sup> In holding that Rosang could not sell the property without the consent of her children, the trust beneficiaries, the trial division relied on the customary law that clan, lineage or family owned land cannot be transferred without the consent of the senior members of the clan, lineage or family. However, the subject property was not clan owned, lineage owned, or even owned by a family within a lineage. As we understand the findings of the Land Title Officer, an oral trust was established for the Sugiyama children when Mr. Sugiyama purchased the land at issue for his children and gave legal title to his wife as trustee for the children.<sup>3</sup> Hence, it was land beneficially owned by *some* members of the Sugiyama family, with legal title in the hands of a trustee having no beneficial interest in the property. Therefore, cases holding that the head of a clan, lineage or family cannot transfer property owned by the clan, lineage or family without the consent of their senior members are of little help in deciding this case. Rather, the ownership was more closely akin to that of a trustee under an express trust created under United States common law pertaining to trusts, where the

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what Malsol was doing living on the land, and his mother told him he was a relative and had permission to live there.

<sup>2</sup> It is unclear whether the trial court found that the basis of constructive notice was due to a finding that the Determination was duly recorded, or that since Appellants had actual knowledge that the Determination existed, they were on inquiry notice of its contents.

<sup>3</sup> It is not our function here to examine the findings and conclusions of the Land Title Officer, nor the resultant 1960 Determination of Ownership.

trustee has no beneficial interest in the trust property but holds mere legal title.

We start by examining whether Rosang had the authority to sell the trust property; that is, could she sell the property without committing a breach of the trust? Following the statutory guideposts set forth in 1 PNC § 303, we look to the common law of the United States as set forth in the Restatement of Trusts. It states that a trustee can sell property if a power of sale is specifically granted by the trust terms or if such sale is necessary or appropriate to enable the trustee to carry out the purposes of the trust, unless such sale is specifically prohibited. Restatement of Trusts 2d, § 190 (1959). The 1960 Determination of Ownership, which stated that Rosang held the property as trustee, did not specify any of the terms of the trust, nor its 192 purpose. Thus, it was not possible to determine the extent of her authority to sell the property by examining the Determination of Ownership. The trial division, however, held that Rosang had no authority to sell the property and that Appellants could have ascertained the extent of Rosang's authority if they had examined the Determination of Ownership. It was clearly erroneous to find that Appellants could have ascertained the extent of Rosang's authority by examining the 1960 Determination. However, reasonable minds could differ on the question of whether, based on the testimony before the Land Title Officer, the purpose of the trust was to preserve the land for the Sugiyama children, and that a sale would therefore not be necessary or appropriate to carry out the purpose of the trust. Accordingly, for the purposes of our analysis we proceed under the assumption that the sale constituted a breach of the trust.

Where a trustee sells property in breach of trust, a person who takes the property for value and without notice of the breach of trust holds the property free of the trust, if he does not knowingly take part in an illegal transaction. *Id.* § 284. In the instant case, Appellee does not contend that there was any illegality in the sale transaction, nor does he dispute that value was given for the property. Thus, the status of Gibbons and Malsol as bona fide purchasers of the subject property depends on whether they had notice of the breach of trust.

The Restatement provides that:

A person has notice of a breach of trust if

- (a) he knows or should know of the breach of trust, or
- (b) by statute or otherwise he is subjected to the same liabilities as though he knew or should have known of the breach of trust, even though in fact he did not know and had no reason to know of the breach of trust.

*Id.* § 297. Subparagraph (b) refers to cases where the trust agreement is recorded so as to give third parties constructive notice of its terms. *See Id.* cmt. b. Since the trust in this case was oral, subparagraph (b) does not apply. The pivotal issue, then, is whether Gibbons and Malsol knew or should have known of the breach of trust.

It cannot be seriously contended that Gibbons and Malsol had actual knowledge of the

terms of the trust. Indeed, there is no indication in the record that Mr. Sugiyama gave **193** any instructions to Rosang concerning the administration of the trust. <sup>4</sup> If a transferee knows a trust exists but does not know its terms, the extent of the inquiry which he should make depends upon the circumstances. *Id.* cmt. i. The transferee will be charged with the knowledge a reasonable inquiry would have provided him. He should at least ask the transferor for the terms of the trust. *Id.* In this case, it is clear that such an inquiry would not have given the purchasers notice of any breach of trust. It was the transferor herself who volunteered the information that she had been awarded the property and then offered to sell it. This indicates either that she thought the trust allowed her to sell or that she was concealing any lack of authority to sell. Even if the purchasers made an expansive inquiry, they would not have learned of any breach of trust. Inquiries to the children would not have given the purchasers notice of any breach of trust. At the time of the sale only two of the children lived in Palau, one of whom was later acting as though the sale were valid by collecting the purchase price installments for the seller. There is no evidence that any of the children had any knowledge of the existence of the trust, let alone its terms. Even if Gibbons and Malsol had obtained a transcript of the proceedings before the Land Title Officer, they could not have determined whether it was a breach of trust to sell the property.<sup>5</sup>

Plainly, if the sales here were in breach of trust, Gibbons and Malsol had no knowledge, either actual or constructive, of the breach. Because they were bona fide purchasers for value without notice of any breach, they took the subject property free of the trust, and the interest of the trust beneficiaries was cut off by the trustee's transfer of the property. In view of our holding, we need not consider the other contentions of Appellants.

**194** Accordingly we REVERSE and remand the case to the trial division with instructions to enter judgment affirming the determination of ownership made by the LCHO.

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<sup>4</sup> Appellee points out in his brief that the trust was created when the children were minors and contends, as the trial division held, that the consent of all children was required to sell the property. However, it is often due to the very fact that children are young that property is placed in the hands of a trustee rather than given directly to the children. It seems unlikely that, having placed property in the hands of a trustee because his children were too young to manage their property, the trustor would then require the trustee to obtain the children's consent before dealing with the property. Also, obtaining the consent of any infant children is highly problematic.

<sup>5</sup> We do not suggest, however, that in this case a reasonably diligent inquiry required the purchasers to obtain a transcript of the proceedings before the Land Title Officer.