Aguon v. Aguon, 5 ROP Intrm. 122 (1995)

LAURA SIBONG AGUON, REGINA SIBONG AGUON, GABRIEL B. AGUON, MARK AGUON, ROSALIA AGUON DIAZ, MARIA AGUON PANGELINAN, and MARGARITA AGUON SANCHEZ,
Appellants/Cross-Appellees,

v.

FRANCISCO T. AGUON and TOBIAS AGUON,
Appellees/Cross-Appellants,

and

IGNACIO ANASTACIO,
Appellee/Cross-Appellant.

CIVIL APPEAL NO. 14-93
Civil Action No. 456-92

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: June 26, 1995
⊥123
Counsel for Appellants: Mariano W. Carlos

Counsel for Appellees: William L. Ridpath

Counsel for Anastacio: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice.

HOFFMAN, Justice:

This is an appeal from a judgment which, in effect, sets aside a previous judgment concerning the ownership of Ngerchur Island in Ngerchelong State. We affirm in part, reverse in part, and remand to the trial court for modification of the judgment.

BACKGROUND

Ngerchur Island lies off the northern tip of Babeldaob. Sometime between 1880 and 1898, Captain David O'Keefe purchased Ngerchur from the people of Ngebei in exchange for some rifles, pistols, blankets, and lamps and gave the island to Ramon Aguon, Sr. as compensation for two years of service to O'Keefe in accompanying him on a voyage from Palau

to Guam and back. Ramon, Sr. lived peacefully on the island with his wife and their three sons until his death. Following Ramon, Sr.'s death the nine Tochi Daicho lots comprising the island were eventually listed as individual properties of the three sons, Carlos (lots 1462 and 1463), Vicente (lots 1458, 1459, and 1460), and Ramon, Jr. (lots 1455, 1456, 1457, and 1461).

Everyone living on the island fled during World War II. Only Carlos, the father of Francisco Aguon, one of the defendants, returned after the war. On May 25, 1990, Francisco leased part of the island, including the Tochi Daicho lots previously registered to Carlos and Ramon, Jr., to King's Fantasy Investment Company of Taiwan. On or about June 11, 1990, Francisco's attorney caused notice to be given, by postings written only in Palauan and by radio broadcasts read only in Palauan, that if any person objected to the power of Francisco to lease the island of Ngerchur to King's Fantasy Investment Company, a claim should be registered at the law office of Francisco's attorney before June 30, 1990. Although the attorney knew that the island was registered in the Tochi Daicho to ⊥124 three brothers, and that those three brothers each had children, he did not send them notice because he did not know their addresses. The attorney also asked Francisco's son, Tobias Aguon, if he knew their addresses but was told by him that he did not. After that, the attorney made no further inquiries. The attorney did not ask Francisco for the addresses, nor was general notice published in any newspaper.

Because the Ngerchelong State Public Land Authority (NSPLA) had responded to the preliminary radio announcement, it was the only party served with the complaint in a purported quiet title action (the first action) brought by Francisco. There was no other notice given of the lawsuit.

At the trial of the first action, NSPLA claimed Ngerchur Island as state public land. The court disagreed and found that NSPLA did not rebut the Tochi Daicho listings of private ownership in the Aguon brothers, and any claim NSPLA might have to the land was barred by equity and the 20-year statute of limitations in 14 PNC § 402(a)(2). This judgment was affirmed on appeal. *Ngerchelong State Public Land Authority v. Aguon* , 3 ROP Intrm. 110 (1992). Although the Appellate Division recognized that the Tochi Daicho listings were for the three brothers, its decision describes Francisco as "the sole surviving heir of the three brothers. . . . Id. at 110. The trial court similarly found that "Ramon Aguon (Sr.) passed the land to his three sons, Vicente Aguon, Carlos Aguon, and Ramon Aguon (Jr.); and that Plaintiff [Francisco Aguon] is their true and proper successor-in-interest of Ngerchur Island. . . ." *Aguon v. Ngerchelong State Public Land Authority*, Civil Action No. 419-90, Memorandum of Decision at 6 (Jan. 18, 1991).

While the first action was pending, Francisco canceled the lease to King's Fantasy Investment Company and later leased the island to Ignacio Anastacio. Relying on the court judgment stating that Francisco owned the island, Anastacio paid half a million dollars for a 75-year lease.

Several of the heirs of Vicente and Ramon, Jr., then filed the action below (the second action) to set aside the findings made in the judgment from the first action declaring that Francisco was the sole heir, and to revoke the lease to Anastacio for the lots that had belonged to Vicente and Ramon, Jr. They also sought damages for the alleged harm resulting from the earlier

testimony given by Francisco and Tobias Aguon in the trial of the first action.

⊥125 After the trial of the second action, the trial court held that because the heirs of Vicente and Ramon, Jr. had no notice of the first action, the finding that Francisco was the sole heir would neither bar nor otherwise affect their claims in the second action. The trial court also held that their claims were not precluded by either the equitable doctrine of laches nor the 20 year limitation for land claims in 14 PNC § 402(a)(2) because of the family relationship between the Plaintiffs and Francisco. With the caveat that some heirs still had not been given notice of the present action, the trial court concluded that Vicente's land passed to his heirs and that Ramon, Jr.'s land passed to his heirs, except that Mark Aguon, then a citizen of the Commonwealth of the Northern Mariana Islands, was constitutionally ineligible to acquire Palauan land. Although certain heirs of Vicente and Ramon, Jr. were found to be the rightful owners of the other parts of the island, the trial court upheld the lease for the entire island on the basis that Anastacio was a bona fide purchaser of the leasehold.

The Plaintiffs, heirs of Vicente and Ramon, Jr., appeal the finding that the lease of their land was valid, the determination that Mark Aguon could not own land in Palau, and the denial of damages against Francisco and Tobias Aguon. The Defendants, Francisco and Tobias Aguon, appeal the court's finding that the other heirs were owners of the land. Ignacio Anastacio joined the appeal to defend his lease.

DISCUSSION
PLAINTIFFS' APPEAL

(1)

The Plaintiffs raise three issues on appeal. The first and most important of these is the claim that the trial court erred when it, in effect, set aside the judgment in the first action, but refused to set aside the Intervenor's lease based on that judgment. Instead, the trial court ruled that the lease between the Defendant Francisco Aguon and the Intervenor Ignacio Anastacio is free of any claims of the Plaintiffs.

The trial court determined that Plaintiffs were in fact the owners of seven lots located on Ngerchur Island and listed in the Tochi Daicho and that the first action had not divested them of their titles. None of the parties are challenging the finding that ⊥126 the judgment in the first action does not bind the Plaintiffs. The first action was in the nature of a "quasi in rem" proceeding in which the court undertakes to determine only the rights of those named as parties in contrast to a true in rem proceeding in which the judgment may be binding on persons not specifically named as parties. Restatement (Second), Judgments § 6, comment a at 73 (1982). Since the Plaintiffs were not named as parties to the first action the judgment in that action cannot be binding on them. Instead, the judgment in the first action, by its terms, binds only the parties to that action, Francisco Aguon and Ngerchelong State Public Land Authority.

Despite finding that the Plaintiffs still possessed title, the trial court held that Anastacio had purchased his leasehold interest as a bona fide purchaser for value, without notice of the

Plaintiffs' interest in the property, and therefore acquired the leasehold interest free of any claims by the Plaintiffs. Assuming that Anastacio otherwise meets the requirements for a bona fide purchaser for value, *see Ueki v. Alik*, 5 ROP Intrm. 74, 77 (1995); *Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 43, 48 (1993), an assumption contested by the Plaintiffs but unimportant to our analysis, the issue remains of what interest in the Plaintiffs' lands did Anastacio acquire by his leasehold.

The starting point for our analysis must be the basic principle that a landlord cannot create any greater interest in the lessee than is possessed by the landlord. *Mendiola v. Cruz*, 4 T.T.R. 499, 504 (1969); 49 Am. Jur.2d *Landlord and Tenant* § 12 at 56 (1970). The judgment in the first action was not binding on the Plaintiffs and did nothing to extinguish their interests in the land. See *Restatement* (Second), *Judgments* §§ 6 & 34 (1982); *Hunt v. Dawson County, Montana*, 623 F.2d 621, 622 (9th Cir. 1980). As a result, Francisco acquired nothing by the judgment and had nothing but his own interest to convey to Anastacio.

Does Anastacio's claim to be a bona fide purchaser for value of a leasehold interest from Francisco provide Anastacio with any greater interest in the Plaintiffs' lands? The short answer is that a purchaser cannot buy what a seller does not own; the good faith of a purchaser, or in this case a lessee, cannot create a title where none exists. *See Sprang v. Petersen Lumber, Inc.*, 798 P.2d 395, 401 (Ariz. App. 1990); *Cleary Petroleum Corp. v. Harrison*, 621 P.2d 528, 531 (Okla. 1980); *Noble v. Kahn*, 240 P.2d 757, 759 (Okla. 1952); 77 Am. Jur.2d *Vendor and Purchaser* § 634 (1975). Therefore, Anastacio, while acting in innocence and in ⊥127 good faith reliance on the judgment, could not and did not acquire any interest in the Plaintiffs' lands through his lease with Francisco. The trial court erred in holding that Anastacio's leasehold interest is free of any claims of the Plaintiffs and we reverse the judgment to that extent.

(2)

The Plaintiffs also contend that the trial court erred when it denied their fraud claim against the Defendants. The trial court found that no evidence had been presented establishing that the Defendants had made any statements relied upon by the Plaintiffs to their damage. A necessary element of a claim for fraud is reliance on the fraudulent misrepresentation. Restatement (Second), *Torts* § 537 (1977). While the Plaintiffs may have had a claim for slander of title, see id. §§ 623A & 624, this was neither pleaded nor proved. The trial court's finding of insufficient evidence to establish the Plaintiffs' reliance upon any statements by the Defendants is not clearly erroneous and therefore is affirmed.

(3)

The Plaintiffs' last claim of error is that the trial court incorrectly excluded Mark Aguon from ownership of Ramon, Jr.'s lots because Mark was a citizen of the Commonwealth of the Northern Mariana Islands when Ramon, Jr. died. The Constitution of Palau limits acquisition (but not ownership) of land to Palauan citizens. Palau Const., art. XIII, § 8. Palauan citizenship is based on blood (jus sanguinis) rather than birth on Palauan soil (jus soli). See Palau Const. Conv. Comm. Rep. No. 21 at 3 (Mar. 1, 1979); Restatement (Third), *Foreign Relations Law of*

the United States § 211, comment c (1986). The Constitution provides that a person born of parents, one or both of whom are citizens of Palau, "is a citizen of Palau by birth, and shall remain a citizen of Palau so long as the person is not or does not become a citizen of any other nation." Palau Const. art. III, § 2.

This section would seem dispositive if it were not for the modification immediately following which provides that a "citizen of Palau who is a citizen of another nation shall, within three (3) years after his eighteenth (18) birthday, . . . renounce his citizenship of the other nation and register his intent to remain a citizen of Palau. If he fails to comply with this requirement, he shall be deprived of Palauan citizenship." Palau Const. art. III, § 3. See also Palau Const. Conv. Comm. Rep. No. 21, at 8 ⊥128 ("Section 3 is intended to modify sections 1 and 2, to provide that Belauan citizens who are also citizens of some other nation, are required to register their intent to remain citizens of Belau and to renounce their citizenship of any other nation within three years of becoming age 18 . . . .).

Mark Aguon was born in Saipan in 1967 to a mother who was a "full blooded Palauan" and a Palauan citizen. In 1971 Mark was adopted by his grandfather, Ramon, Jr., who was listed in the Tochi Daicho as the owner of the lots. In 1986, at the time of his adoptive father's death, he was 18 years old.

Although Palau generally prohibits dual citizenship, there is an exception for those under age 21, who will lose their citizenship at age 21 if they are then a citizen of another country. At age 18 Mark Aguon had not lost his Palauan citizenship. As a dual national he was eligible to acquire land and the trial court erred in excluding him from the judgment. The fact that Mark Aguon has now been divested of his Palauan citizenship by his failure to renounce his American citizenship and register his intent to remain a citizen of Palau does not divest him of his ownership of land in Palau; the Constitution prohibits the acquisition of land by non-Palauans, not its ownership. We therefore reverse the trial court judgment to that extent and remand to correct the judgment.

DEFENDANTS' APPEAL

(1)

The Defendants raise three issues on appeal. First, they contend that the trial court incorrectly applied Palauan customary law in determining the intestate succession of Vicente's lots. Instead, the Defendants argue that because Vicente lived the last years of his life in Saipan and because he was Chamorro by blood and culture, the court should have looked to the laws of the Northern Marianas. It is incongruous, the Defendants contend, to impose Palauan customary principles upon persons who never embraced these principles and who were domiciled in another jurisdiction. We reject these arguments for three reasons.

First, a Palauan court will usually apply Palauan law in determining the intestate succession of Palauan land. See Restatement (Second), *Conflict of Laws* § 236 (1971). "The state of the situs has an obvious interest in having interests in local land ⊥129 decided upon

intestacy in a manner that complies with its notions of what is reasonable and just." Id. comment a. The trial court correctly applied Palauan law to Vicente's land because that land was Palauan land.

Second, a party who intends to raise an issue concerning the law of a foreign country must generally give advance notice of that intent. ROP Civ. Pro. R. 44.1. As the Defendants did not give notice that they would raise an issue concerning Northern Marianas law, the trial court could properly consider only Palauan law.

Third, a party claiming that foreign law differs from Palauan law generally carries the burden of establishing the content of the foreign law. See Restatement (Second), *Conflict of Laws* § 136, comment f (1971). Here, the Defendants offered no proof as to how Northern Marianas law differed from Palauan law or, more specifically, how Northern Marianas law would award Francisco land belonging to his uncle Vicente. In the absence of any proof of foreign law, the case will normally be decided in accordance with Palauan law. Id. § 136, comment h.

For each of these reasons, we find that the trial court correctly applied Palauan law to determine the intestate succession of the lands owned by Vicente.

(2)

The Defendants' second contention is that the trial court improperly applied the provisions of 39 PNC § 102(d) to the intestate distribution of Ramon, Jr.'s lands following his death. In particular, the Defendants claim that the record is devoid of any evidence of the maternal or paternal lineage of which Ramon, Jr. was a member or of who else was a member of that lineage.

The flaws in the Defendants' contention are twofold. First, even if the Defendants are correct that the Plaintiffs' title to Ramon, Jr.'s lots is flawed, it does not therefore follow that the Defendants acquire title. "One cannot defeat a quiet title bill by showing that the complainant's claim or interest, otherwise sufficient to support the bill, is subject to superior rights in third persons who are not parties to the suit; it is sufficient that the interest asserted by the complainant in possession be superior to that of those who are parties defendants." 65 Am. Jur.2d *Quieting Title* § 45, at 176 (1972). Whatever the ⊥130 deficiencies in the Plaintiffs' title, the Defendants did not establish their rights to the lands previously owned by Ramon, Jr.

Second, while the Defendants are correct in arguing that the trial court is required to comply with the dictates of 39 PNC § 102(d), no greater compliance can be demanded than is permitted by the facts of the case. The evidence presented at trial made clear that Ramon, Jr.'s widow and children were the only group that came even close to satisfying the requirement of being the "immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death." Id. If the Defendants' position of requiring greater proof were to be adopted, no one could inherit Ramon, Jr.'s lots and they forever would be left in a form of legal limbo.

Finally, the Defendants contend that the evidence does not support the trial court's judgment that the heirs of Vicente and Ramon, Jr. had succeeded to the ownership of their lots. In particular, the Defendants argue that the evidence of 40 years continuous, peaceful and open possession and use of the lots by Carlos and his sole heir Francisco should have been accorded greater weight by the trial court.

It is not the realm of an appellate court to reweigh the evidence. *Idechiil v. Uludong* , 5 ROP Intrm. 15, 16 (1994). We apply the "clearly erroneous"standard of review. So long as the trial court's findings are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this court is left with a definite and firm conviction that a mistake has been made. *Rebluud v. Fumio*, 5 ROP Intrm. 55, 57 (1995). The trial court's findings in this case are supported by the record and will not be disturbed on appeal.

CONCLUSION

As to the Plaintiffs' claims, we reverse the trial court's finding that the Intervenor's lease was free of the Plaintiffs' ownership claims. We also reverse the trial court's finding that Mark Aguon was constitutionally ineligible to inherit land and remand for modification of the judgment. We affirm on all other ⊥131 issues raised by the Plaintiffs. As to the Defendants' and the Intervenor's claims, we also affirm as to all issues.