

Emaudiong v. Arbedul, 5 ROP Intrm. 31 (1994)
BOISEK EMAUDIONG,
Appellant,

v.

ESPANGEL ESEBEI ARBEDUL,
Appellee.

CIVIL APPEAL NO. 2-94
Civil Action No. 559-89

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: December 16, 1994

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Counsel for Appellant: J. Uduch Sengebau

Counsel for Appellee: Yosiharu Ueda

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

MILLER, Justice:

This appeal arises out of an action brought by the Espangel Esebei Arbedul, chief of the Omrekongel Clan, to terminate the use rights of Boisek Emaudiong and eject him from a parcel of land on which he has maintained a house for many years. Although the Espangel initially brought this action when the property at issue belonged to the Clan, he claimed that the property was subsequently transferred to him individually by a quitclaim deed signed by the strong senior members of the Clan and by issuance of a certificate of title by the Land Claims Hearing Office ("LCHO"). On summary judgment, the trial court upheld the Espangel's claim that the land was his individual property. On appeal, Emaudiong challenges this ruling, arguing that he had produced sufficient evidence to withstand the motion for summary judgment. We agree and reverse.

Background

The trial court found that about ten to fifteen years ago the Espangel gave Emaudiong a use right to build a house on a parcel of land in Meyuns known as Nguruchoi. Emaudiong built a house and has lived in it ever since. In 1988 a dispute arose concerning the true bearer of the title Espangel. At a trial on the matter Emaudiong allied himself with and testified on behalf of the party in opposition to Esebei Arbedul's claim to the title. It was determined in that case that Arbedul was and still is the Espangel. *Arbedul v. Diaz*, Civil Action No. 98-88 (March 16,

Emaudiong v. Arbedul, 5 ROP Intrm. 31 (1994) 1989), *aff'd*, 2 ROP Intrm. 304 (1991). Three months after the trial court's decision, the Espangel instituted the present ejectment against Emaudiong on behalf of Omrekongel Clan.

In 1992, during the pendency of the action, the Espangel presented the LCHO with a quitclaim deed dated May 13, 1987, and signed by four members of the Clan, purporting to transfer the property upon which Emaudiong's house is situated from the Clan to the Espangel in fee simple. On the strength of this quitclaim deed **133** the LCHO issued a new certificate of title in the Espangel's name.¹

The Espangel thereafter moved for summary judgment, asserting, among other things, that title to the property on which Emaudiong resided had been transferred to the Espangel individually with the approval of the strong senior members of the Omrekongel Clan. In support of the motion, the Espangel submitted the aforementioned quitclaim deed, the new LCHO certificate of title, the trial court's decision in *Arbedul v. Diaz*, which contains findings of fact regarding certain strong members of the Omrekongel Clan, and an affidavit, signed by the Espangel and three of the four other signatories of the quitclaim deed, stating that they are the strongest senior members of the Clan and the sole members with authority to transfer land ownership.

In response, Emaudiong argued that title to the land he occupies was never properly transferred to the Espangel because the transfer did not have the approval of all of the strong members of the Clan, and therefore that his use right could not be terminated except with good cause. Emaudiong supported this claim by way of a personal affidavit naming six individuals whom he claimed were strong senior members of the Clan who did not consent to the transfer of title of the property in question. He also averred in his affidavit that he himself was a strong member of the Clan and that one of the signatories of the quitclaim deed was not a strong member of the Clan. Emaudiong also presented an affidavit by Santos Ikluk, averring that Emaudiong is a member of the Clan and that the transfer of the property in dispute was made without the unanimous consent of the strong senior members of the Clan.

The trial court granted partial summary judgment in the Espangel's favor, finding that the four senior ourrot and the Espangel had executed the quitclaim deed transferring the contested property from the Clan to the Espangel and concluding that Emaudiong "failed to produce any probative evidence in opposition to plaintiff's motion for summary judgment with respect to the validity of the certificate of title."²

134 Discussion

¹ The record contains a copy of a memorandum to the file by Jonathan Koshiba, Senior Land Claims Hearing Officer for the LCHO, stating that the new certificate had been issued in light of the quitclaim deed and "[p]ursuant to the provisions of 35 PNC 1116."

² Following the grant of partial summary judgment, the case proceeded to trial on the theory that the Espangel was the sole owner of the property. After trial, the trial court concluded that once title to the property was transferred to the Espangel, he had the right to terminate Emaudiong's use right without cause. Because Emaudiong does not challenge this aspect of the decision, we do not consider it here.

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An issue or claim may be resolved through a motion for summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." ROP Civ. Proc. Rule 56(c). Once the moving party has met its initial burden in showing that no genuine issue of material fact exists, an adverse party may not defeat the motion through "the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule must set forth specific facts showing that there is a genuine issue for trial." ROP Civ. Proc. Rule 56(e).

In this case, Emaudiong submitted two affidavits calling into question the validity of the quitclaim deed transferring the property to the Espangel. Emaudiong's own affidavit names six individuals who are alleged to be strong senior members of the Omrekongel Clan who did not consent to the transfer of title to the Espangel.³ The affidavit of Santos Ikluk also states that title was transferred to the Espangel without the unanimous consent of the strong members of the Clan. If these statements are indeed true, then the transfer of title to the Espangel would appear to be invalid. See *Children of Ngeskesuk v. Esebei Espangel*, 1 ROP Intrm. 682 (1989); see also *Beans v. Mesechebal*, 8 TTR 107 (1980).⁴

L35 The affidavits submitted by Emaudiong therefore sufficiently establish that there is a genuine issue of material fact regarding the validity of the title transfer. In concluding nevertheless that Emaudiong "failed to produce any probative evidence . . . with respect to the validity of the certificate of title," the trial court appeared to believe that Emaudiong was foreclosed from attacking the validity of the quitclaim deed because he had failed to challenge the LCHO's issuance of a certificate of title to the Espangel in 1992. However, the LCHO issued the new certificate not pursuant to 35 PNC § 1114 as the trial court appeared to believe, see Decision and Order at 5-6, but pursuant to 35 PNC § 1116. See n.1 supra. Since, as we understand from the record, the LCHO issued the certificate of title to the Espangel without a hearing and without a determination of ownership that could have been appealed,⁵ his challenge to the validity of the quitclaim deed in this action is not barred by its issuance. Compare 35 PNC § 1114 (stating that a certificate of title issued after an LCHO hearing and determination "shall be

³ Although the Espangel submitted the decision of the court in *Arbedul v. Diaz* in support of his motion for summary judgment, that decision is not binding on Emaudiong, who was not a party, and is not dispositive of the facts at issue in this case in any event. It is true that in *Diaz* the court concluded that the same four women who signed the quitclaim deed in the present case are all strong ourrot of the Omrekongel Clan. However, the court did not consider nor conclude that these four women are the only strong members of the Clan.

⁴ We do not understand the trial court to have concluded that the Espangel and the four ourrot who signed the deed had the authority to transfer the land even if there existed other strong senior members who did not consent.

⁵ At oral argument, the Espangel's counsel suggested that there had been a prior hearing. That suggestion appears contrary to the LCHO internal memo submitted as part of the Espangel's summary judgment motion. See n.1 supra. However, if such a hearing did, in fact, occur, the Espangel is free to produce evidence of it on remand.

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conclusive on all persons who have had notice of the proceedings.").⁶

The Espangel suggests that Emaudiong is barred from contesting the trial court's ruling on summary judgment because he filed an appeal of the trial court's final judgment after trial. But that judgment incorporated and depended upon the determinations made on summary judgment. Far from acting improperly by waiting until final judgment to appeal the grant of partial summary judgment, this was Emaudiong's only choice since, in the ordinary course, appeals of interlocutory matters must await final judgment. Likewise, the fact that Emaudiong did not order a transcript of the trial proceedings does not bar him from contesting the trial court's ruling on summary judgment since that ruling can be fully addressed on appeal without reference to the trial transcript. 136

The trial court's grant of partial summary judgment is REVERSED. This case is REMANDED to the trial court for proceedings not inconsistent with this opinion.

⁶ The Espangel argues that Emaudiong waived his right to challenge the validity of the quitclaim deed by conceding at oral argument on the summary judgment motion that he was not challenging the certificate of title. Although isolating particular responses to certain questions may give this impression, the only fair reading of the entire oral argument transcript is that Emaudiong was contesting the validity of the quitclaim deed and, by logical extension, the certificate of title that was issued pursuant to it. The trial court did not consider Emaudiong's argument a waiver on that point, nor do we.