

*Ueki v. Alik*, 5 ROP Intrm. 74 (1995)

**MINAMI UEKI,  
Appellant,**

v.

**NGIRAIKELAU ALIK,  
Appellee.**

CIVIL APPEAL NO. 13-94  
Civil Action No. 779-88A

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: March 22, 1995

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice.

**¶75**

BEATTIE, Justice:

Minami Ueki (Ueki) appeals from a trial division judgment holding that he did not take title to a portion of land he purchased because his grantor did not own the entire parcel, but rather only a portion of the parcel. Although there was a deed of record purporting to convey the entire parcel to Ueki's grantor, the trial court found that the deed was ineffective because it was not delivered. The court further found that Ueki did not qualify as a bona fide purchaser. We affirm in part and reverse in part.

### I. FACTS

This case involves a dispute over land in the State of Koror described as Tochi Daicho Lot Numbers 989, 990 and 991. These lots comprise part of the land traditionally known as Mariar.

The parties agree that the subject property was owned by appellee, Ngiraikelau Alik (Alik) and his brother, Tebengel Alik in the beginning of August, 1973, and that they both lived on the property, each in his own house. On August 10, 1973, Alik and others executed an instrument entitled "Deed of Transfer", which stated that the signatories thereto "having full title and ownership to the lands described herein, do hereby transfer and quitclaim unto Tebengel Alik the exclusive right and ownership of [the subject property]." The Deed of Transfer was recorded

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in the records of the Clerk of Courts on the same day. Notwithstanding the Deed of Transfer, Alik and Tebengel both continued to live on the subject property just as they had before Alik executed the deed.

In August of 1987, Tebengel executed an instrument entitled "Warranty Deed" which purported to convey the subject property (excluding a small portion which he had sold in 1977) to Ueki. This Warranty Deed was recorded in the records of the Clerk of Courts on August 4, 1987. On the same day, Tebengel signed a document entitled "Receipt of Payment in Consideration for Warranty Deed Re: Tochi Daicho Lots Nos. 989, 990 and 991" in which he acknowledged receipt of \$10,000 as full payment for the subject property.

A year later, Alik and Tebengel<sup>1</sup> filed the complaint in this case, alleging that the Warranty Deed to Ueki was void because, among other things, Alik did not execute it. Alik claims that his 1973 Deed of Transfer to Tebengel was ineffective because **176** he did not intend to convey his interest in the property. He further claims that since the 1973 Deed of Transfer did not convey his interest, he was still part owner of the land and Tebengel could not convey it to Ueki without Alik joining in the conveyance. Ueki claims that the 1973 Deed of Transfer was valid and, even if not, he was a bona fide purchaser for value and took title free from any interest of Alik.

## II. DELIVERY OF THE DEED

The trial court held that the 1973 Deed of Transfer executed by Alik to Tebengel was ineffective as a conveyance because the deed was not delivered.<sup>2</sup> "There is no question but that a deed, to be operative as a transfer of realty, must be delivered." 23 Am. Jur. 2d Deeds § 120. However, "delivery" of a deed in a legal sense is different than a mere transfer of physical possession or custody of the deed. Id. Generally, delivery of a deed imports that the grantor has transferred the deed to the grantee, or to a third person for the grantee's use, or otherwise placed the deed within the control of the grantee, with the intent that it presently become operative as a conveyance of title. Id.

The burden of proof rests on the party disputing delivery of the deed to establish lack of delivery. *Hacket v. Hacket*, 429 P. 2d 753 (Okla. 1967). The controlling factor is the intention of the grantor to make delivery. This is to be inferred from the circumstances preceding, attending and following the execution of the deed. 23 Am. Jur. 2d Deeds § 120.

Alik testified that he only signed the Deed of Transfer in order to assist Tebengel in a title dispute he was involved in at the time the Deed of Transfer was executed. The dispute ended in litigation (the "1974 Litigation").<sup>3</sup>

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<sup>1</sup> Tebengel later died and, no motion for substitution having been filed, was ordered removed as a party.

<sup>2</sup> The court then held that since the Deed of Transfer was not delivered, the Warranty Deed only conveyed Tebengel's one-half interest in the property to Ueki.

<sup>3</sup> Clearly, Alik cannot be heard to say that the Deed of Transfer was not delivered because its purpose was only to mislead the court and parties to the 1974 Litigation into believing a

¶77 The trial court found Alik's testimony to be credible. It also found it significant that Alik continued to live on the property after the execution of the Deed of Transfer to his brother, Tebengel. The trial court found that, apart from the mere fact that Alik executed the Deed of Transfer, there were no other circumstances indicative of his intention to transfer his interest in the property to Tebengel. In making that finding, the trial court overlooked the significance of the recording of the Deed of Transfer.

It is undisputed that Alik's Deed of Transfer to Tebengel was recorded with the Clerk of Courts on or about the date it was executed. The general rule is that the recording of an executed deed raises a presumption of delivery which is entitled to great and controlling weight and which can only be overcome by clear and convincing evidence. *Controlled Receivables, Inc. v. Harman*, 413 P. 2d 807, 809 (Utah 1966); 23 Am. Jur. 2d Deeds §§ 165 and 172. The trial court erred in not considering the strong presumption of delivery which arose due to the recording of the Deed of Transfer.<sup>4</sup> The presumption is reputable, but only by clear and convincing evidence. We leave it to the trial court to determine whether sufficient evidence exists to rebut the presumption in this case.

### III. BONA FIDE PURCHASER

Ueki argues that, even if the Deed of Transfer was not delivered and was therefore ineffective to extinguish Alik's interest in the property, Ueki was a bona fide purchaser of the property and took title free from any claim or interest of Alik. To establish his status as a bona fide purchaser, Ueki had the burden of proving he acquired his interest in good faith, for value, and without notice of Alik's interest in the property, if any. *Estate of Olkeriil v. Ulechong*, Civ. App. No. 25-91 (Nov. 30, 1993). The trial court found that Ueki had at least constructive notice of Alik's claim to the property and therefore was not a bona fide purchaser.<sup>5</sup>

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transfer occurred when in fact none was intended. It is not clear how the Deed of Transfer could have assisted Tebengel in the dispute if it were not intended to transfer Alik's interest in the property to Tebengel.

<sup>4</sup> Alik argues that the presumption obtains only when the grantor's signature is acknowledged. Even if it could be said that the Deed of Transfer was not acknowledged, the argument is without merit where, as here, the grantor admits that he signed the deed.

<sup>5</sup> If the trial court determines on remand that Alik had no interest in the property, the bona fide purchaser issue becomes moot. We address it here in case the trial court determines that the evidence is sufficient to rebut the presumption of delivery of the Deed of Transfer and that Alik's interest in the property was never transferred to Tebengel.

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¶178 The trial court found that Ueki had notice of Alik's claim for two reasons: (1) Alik was in possession of the property, having continued to reside on it with Tebengel, each in his own house, from the date of the Deed of Transfer until the purchase by Ueki fourteen years later; and (2) the language of the judgment entered in the 1974 Litigation put him on notice that Alik may have a claim to the land in spite of the Deed of Transfer.<sup>6</sup>

"The general rule is that actual possession of real estate is constructive notice of the rights of the possessor and of all facts connected therewith" which a reasonable inquiry, made of the possessor, would disclose. 77 Am. Jur. 2d Vendor and Purchaser § 688. Although some jurisdictions hold that continued possession for a reasonable period of time by a grantor does not impart constructive notice of his rights<sup>7</sup>, compare id. § 681 with id. § 682, we see little reason for making a distinction for purposes of constructive notice between possession by a stranger to the record title and possession by the grantor after execution of his deed. This is particularly true in Palau, where land can ¶179 be occupied under a variety of claims, both customary and otherwise.

There is no question that, had Ueki made inquiry of Alik, he would have been advised of Alik's claim that the Deed of Transfer did not extinguish his interest in the property.<sup>8</sup> Accordingly, we affirm the trial court's decision that Ueki was not a bona fide purchaser.

#### IV. CONCLUSION

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<sup>6</sup> The court in the 1974 Litigation entered judgment in favor of Tebengel and found that, although the 1974 Litigation settled the claims to the property as far as the parties to the litigation were concerned, Alik was not a party and that:

It is important to note that if [Alik's half brother] or [Alik] claim a portion of the property as theirs, that they resolve in writing with . . . Tebengel . . . their rights or commence their own litigation. . . . The Court can only assume that the plaintiff and defendant have made arrangements with [Alik]...and, if so, in order to avoid additional litigation, this should be set forth in writing and filed with the Clerk of Courts.

Ueki concedes that he had actual knowledge of the judgment, including the foregoing language. In view of our holding that Ueki had constructive notice of the claim of Alik due to Alik's actual possession of the property, we need not address the significance, if any, of the judgment in the 1974 Litigation.

<sup>7</sup> As the trial court noted, even under the rationale of those jurisdictions, Alik's possession of the property for fourteen years after the Deed of Transfer is long enough to trigger a duty of inquiry.

<sup>8</sup> Ueki argues that the judgment entered in the 1974 Litigation (see n. 6, supra.) allowed him to assume that, since nothing was recorded with the Clerk of Courts regarding Alik's interest, Alik had no claim to the property. However, nothing in that judgment abrogated the general duty to make inquiry of Alik as a person in actual possession of the property. Moreover, Alik was not a party to the 1974 Litigation.

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We reverse the trial court's decision that the Deed of Transfer was ineffective due to lack of delivery and remand with instructions that the trial court reconsider its decision in light of the strong presumption of delivery due to the recordation of the deed. In the event that the trial court concludes that the evidence is sufficient to rebut the presumption of delivery so that Alik's interest was not extinguished, we affirm the trial court's decision that Ueki was not a bona fide purchaser.