ROP v. Ngara-Irrai, 6 ROP Intrm. 159 (1997)

REPUBLIC OF PALAU
Plaintiff,

v.

NGARA-IRRAI, PACIFICA DEVELOPMENT CORPORATION and ROMAN TMETUCHL,
Defendants and Appellants.

AIRAI STATE GOVERNMENT and AIRAI STATE PUBLIC LANDS AUTHORITY,
Intervenors and Appellees.

CIVIL APPEAL NO. 2-96
Civil Action No. 337-91

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: April 29, 1997

Counsel for Appellants: Johnson Toribiong

Counsel for Appellees: John K. Rechucher

BEFORE: Chief Justice Arthur Ngiraklsong, Associate Justice Larry W. Miller, Associate Justice R. Barrie Michelsen

MICHELSEN, Justice:

The parties to this appeal [1] dispute a portion of land located ⊥160 in Airai State named *Yelch* and the improvements thereon.[2] The Appellants are Ngara-Irrai (the Traditional Council of Chiefs of Ordomel Hamlet, Airai State), Pacifica Development Corporation (hereinafter "PDC"), a corporation organized under the laws of the Republic of Palau, and Roman Tmetuchl.

A brief description of the past and present government of Airai State will be helpful in understanding the background of this dispute. During much of the Trusteeship period, the area now known as Airai State was called Airai Municipality, chartered by the High Commissioner on February 18, 1963. January 1, 1981 was the effective date of the Palau National Constitution, and the first post-constitutional government of Airai was inaugurated four days later on January

[1] As noted *infra*, the trial court entered partial summary judgment against the Republic of Palau, which has not filed an appeal. All other individuals and entities listed in the caption remain parties to this appeal.

[2] Such land has been divided into two separate lots: "Lot BL-161" and "Lot BL-170."

5, 1981. Mr. Tmetuchl became the governor and held that position throughout the 1980's. At the same time, Mr. Tmetuchl was the chairman of Airai Municipal Public Lands Authority ("AMPLA") and in that capacity he accepted on behalf of AMPLA public lands conveyed by the Trust Territory Government. Moreover, Mr. Tmetuchl was Acting Chief Ngiraked or Ngiraked, [3] at times pertinent here, which meant he was the head of the Traditional Council of Chiefs (the Ngara-Irrai) in that state. [4] Finally, ⊥161 according to the counterclaim filed by PDC and Mr. Tmetuchl, PDC is "under the control and management" of Mr. Tmetuchl, and the trial court found Mr. Tmetuchl to be the owner of PDC.

The decision of this Court in *Teriong v. State of Airai*, 1 ROP Intrm. 664 (1989), ultimately resulted in the enactment of a new Airai State Constitution and installation of a new state government thereunder. *Teriong* held that because the Airai State Constitution was not voted upon by the people of Airai, and because no key public officials of Airai were elected by the general electorate, the Airai State government did not meet Palau's constitutional requirement that state governments must be based upon, *inter alia*, democratic principles.

On April 5, 1990, Charles Obichang became the first governor of the new constitutional government of Airai. At the time of his inauguration, *Yelch* and the improvements at issue were used as the Airai Elementary School. [5] According to testimony at the trial below, on August 21,

---

[3] "Ngiraked" is the title given to the paramount chief of Tmeleu Clan.

[4] While we understand that there apparently is an ongoing dispute regarding whether Mr. Tmetuchl or another individual holds the title "Ngiraked," *see Ngara-Irrai v. Airai State Gov't*, No. 170-90 (Tr. Div. 1994), *appeal pending*, the trial court here was entitled -- indeed, obligated -- to rely on uncontested averments made by Ngara-Irrai in its pleadings and the uncontradicted testimony of Mr. Tmetuchl at trial regarding Mr. Tmetuchl's status as Ngiraked. Ngara-Irrai, in its Answer and Counterclaim filed June 17, 1993, referred to Mr. Tmetuchl as "Defendant Chief Ngiraked Roman Tmetuchl," page 1, and stated that:

> Defendant Roman Tmetuchl in his capacity as Acting Chief Ngiraked and in his capacity as the Governor of Airai State obtained the express permission from the Airai State Public Lands Authority, the Airai State Government and Defendant Ngara-Irrai Council of Chiefs to construct the new Airai Elementary School Building complex on the land in question which he did with his own funds . . .

Moreover, Mr. Tmetuchl testified during trial that he had been Ngiraked "[a]bout five or six years when Matlab died. Before that I was . . . acting Ngiraked for . . . more than ten years." When asked whether he was Ngiraked at the time the elementary school was constructed, Mr. Tmetuchl replied, "I think I was Ngiraked, but I am not really sure." We infer from this testimony and the pleadings of Ngara-Irrai that Mr. Tmetuchl was either Ngiraked or acting Ngiraked when the school was constructed.

[5] The improvements included a concrete building, a kitchen, a Head Start building, a gymnasium, and a baseball field.

Although the trial court does not indicate the authority under which the property and improvements were used as Airai Elementary School, presumably such authority was the

1991, a representative of Ngara-Irrai informed the principal of the Airai Elementary School that Ngara-Irrai was the owner of the land on which the school was built, that "substitute arrangements for elementary school facilities must be made," and that the elementary school would be "off limits" commencing four days thereafter. Ngara-Irrai wanted the land available to make way for a golf course development.

The original plaintiff in the proceeding below was the Republic of Palau; however, during the course of this litigation it became clear that the proper plaintiffs were Airai State and Airai ⊥162 State Public Land Authority ("ASPLA")[6] (together, "Appellees"). Airai State intervened as plaintiff in the proceeding below, claiming ownership of the land and improvements at issue. Thereafter, ASPLA intervened as plaintiff, setting forth the same claim. Ngara-Irrai filed an answer and counterclaim asserting that (1) the property at issue was owned by Ngara-Irrai, and (2) to the extent that ASPLA owned the improvements thereon, the Airai government owed PDC, Ngara-Irrai, and Mr. Tmetuchl (collectively, "Appellants") $997,232.29 for construction of such improvements.

The trial court entered partial summary judgment against the Republic of Palau, asserting that it has no ownership interest in the property and improvements at issue. After conclusion of the trial below, the trial court found that the land at issue and improvements thereon constitute public land and that ASPLA holds title thereto. The trial court also found that Appellants were not entitled to compensation for the improvements. Appellants appeal this decision.

A. Standing of ASPLA to Maintain Action Below.

A preliminary issue raised by Appellants concerns the standing of ASPLA to maintain the action below. Appellants argue that no evidence was provided to ensure that a majority of a properly-constituted ASPLA board of trustees approved of intervention by ASPLA in the proceedings below. Appellants fail, however, to cite any authority for the proposition that a plaintiff's compliance with internal decision-making procedures is a requisite element of a plaintiff's case, or that the defendants in an action may raise this issue.

We hold that ASPLA need not prove that a majority of a properly-constituted ASPLA board of trustees approved of the litigation as a condition of intervention. The procedures required to ensure that a majority of the ASPLA board of trustees agrees upon action to be taken by ASPLA are to protect the beneficiaries of ASPLA. Therefore defendants in an action are not in a position to contest the action taken by a corporate board on the basis that safeguards for the beneficiaries (in this case, the ⊥163 beneficiaries of ASPLA) were not taken.[7]

---

decision in the 1979 Land Commission Adjudication, see section B *infra*.

[6] As noted by the trial court, the ASPLA, the successor to the Airai Municipal Land Authority, was created by Airai State Public Law No. A-1-03-90 on August 16, 1990.

[7] Appellants also argue that the ASPLA board of trustees did not meet to decide the issue of whether to intervene in the action or vote in connection therewith. Appellants suggest that the decision to intervene possibly was made only by Charles Obichang, who was the governor of Airai when Airai State intervened in this action. The trial court, however, made no finding in connection therewith.

B. Public Land/Village Land Distinction.

Appellants argue that the Trial Division should have held that the land at issue is village land owned by Mr. Tmetuchl as the current Ngiraked for the benefit of Ngara-Irrai. Appellees argue that the land is Airai State public land with its title held by ASPLA. As previously noted, *Yelch* consists of Lot BL-161 and Lot BL-170. We agree with the Trial Division that both Lot BL-161 and Lot BL-170 are public land, title to which is held by ASPLA.

Lot BL-161 was the subject of a 1979 Land Commission Adjudication [8] in which it was determined that numerous lots, including Lot BL-161, were "chutem buai," or government land. The Land Commission also found at the time of the adjudication that the land at issue -- including Lot BL-161 -- was being transferred from the Trust Territory Government to the ASPLA; that the Trust Territory Government provided evidence of ownership of the land, and no one objected to the Trust Territory Government acting as owner prior to the 1979 adjudication; and that portions of the land at issue were the subject of a civil action in which it was held that such lands were government land.[9]

From this 1979 Land Commission adjudication it can be concluded that because Ngara-Irrai failed to intervene therein to claim the land at issue, Ngara-Irrai did not consider itself owner of Lot BL-161 -- one of the lots at issue in the 1979 adjudication -- and that, accordingly, such land does not belong to Ngara-Irrai and instead is public land.

⊥164 The High Court decision in *Esuroi Clan v. Trust Territory of the Pacific Islands*, Civil Action No. 6-74 (Tr. Div. 1975), *aff'd*, 7 TTR 538 (App. Div. 1977), further supports this conclusion in connection with Lot BL-161 and also that Lot BL-170, like Lot BL-161, is public land. *Esuroi Clan* involved claims by that plaintiff against defendants Trust Territory Government and Airai Municipality in connection with particular lands which included, among other lands, Lots BL-161 and BL-170. Mr. Tmetuchl was counsel for Airai Municipality in that litigation.

The *Esuroi Clan* court determined that Esuroi Clan did not own the land at issue. Although the Court did not reach the question of whether the Trust Territory Government or Airai Municipality owned the parcel, it indicated that:

> As between the defendants Trust Territory Government and Airai Municipality, there is no dispute as both defendants rely upon Public Law 5-8-10, which was recently enacted by the Palau District Legislature to resolve the ultimate disposition of the return of public lands now held by the Trust Territory Government. This District Act is pursuant to the provisions of Secretarial Order

---

[8] It is unfortunate that such adjudication lacks an identifying number or citation. This adjudication involved numerous plots, including Lot BL-161; however, ownership of Lot BL-170 was not adjudicated in that proceeding.

[9] We note that the case number of such civil case is absent from the adjudication report. Land Commission Adjudication Finding of Fact #4, which refers to this civil action, merely states "Civil Action No. _____."

No. 2969, dated December 26, 1974.

Id. at 2.[10]

Later the *Esuroi Clan* Court stated in an order dated July 24, 1975:

> Defendants [Trust Territory Government and Airai Municipality] requested that the Court not make any determination as to the ownership of land as between [them]. Both parties desired to leave this issue in abeyance to perhaps be resolved by the return of public lands as decreed in Secretarial Order No. 2969 . . .

⊥165

Id. at 2-3.

As noted above, Mr. Tmetuchl, presently claiming ownership of Lots BL-161 and BL-170 on behalf of Ngara-Irrai as its chief Ngiraked, was counsel for Airai Municipality for the *Esuroi Clan* case. Moreover, when the Trust Territory Government conveyed public land to AMPLA, Mr. Tmetuchl accepted such lands as Chairman of AMPLA. In addition, exhibits introduced at trial included copies of various lease agreements executed by Mr. Tmetuchl as Governor of Airai State and related lease confirmations and certifications, all relating to land in Airai.[11] Ngara-Irrai's inaction during this earlier litigation cannot be ascribed to lack of knowledge when so many of the acts of the then-government, adverse to its current claims of ownership, were performed by the current Ngiraked, Mr. Tmetuchl.

Finally, Ngara-Irrai failed to claim the land at issue pursuant to Article XIII § 10 of the ROP Constitution.[12] Ngara-Irrai argues that it did not need to file a claim pursuant to Article XIII

---

[10] Public Law 5-8-10, codified at 35 PNC § 201 et seq., created the Palau Public Lands Authority and authorized the creation of state public land authorities.

Secretarial Order No. 2969 provided for, among other things: (a) authorizing and empowering each district legislature to create a legal entity to hold title to public lands within each respective district, and (b) the conveyance of public lands to such legal entities. *See id.*, § 1.

[11] The exhibits to such leases do not provide sufficient information to confirm whether the leased lands are within Lot BL-161 or Lot BL-170. If such a confirmation could be made, then these leases -- executed on behalf of Airai State by Mr. Tmetuchl as Governor thereof -- would provide further evidence that the land at issue is public land controlled by a government entity rather than village land controlled by Ngara-Irrai.

[12] ROP Constitution, Article XIII, § 10 states:

> The national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.

§ 10 of the ROP Constitution because it always owned such land, and that the land was never owned by the government. Accordingly, Ngara-Irrai argues it did not need to request that the land be returned by the government pursuant to Article XIII. This assertion loses it force, however, in light of Mr. Tmetuchl's role as counsel for Airai Municipality in *Esuroi Clan* and his acceptance of public lands on behalf of AMPLA as its Chairman. In light of ⊥166 such actions of Mr. Tmetuchl, as well as (i) the holding in the 1979 Land Commission Adjudication that Lot BL-161 is "chutem buai" or government land, and (ii) the claims set forth in the actively-litigated *Esuroi Clan* case, Ngara-Irrai is hard-pressed to argue that title to the land was heretofore undisputed.

In summary, such actions -- and lack thereof -- on the part of Mr. Tmetuchl and Ngara-Irrai are inconsistent with the assertions set forth by them in this case, and are fairly to be considered in determining the merits of their arguments.

Finally, Ngara-Irrai itself, in its Answer and Counterclaim filed June 17, 1993, stated that "Defendant Roman Tmetuchl in his capacity as Acting Chief Ngiraked . . . obtained the express permission from the Airai State Public Lands Authority [and] the Airai State Government . . . to construct the new Airai Elementary School." If it was, as Ngara-Irrai now asserts, heretofore undisputed that *Yelch* was not state land, there would have been no reason for Acting Chief Ngiraked Tmetuchl to obtain the "express approval" of the state to construct the school. At a minimum Ngara-Irrai was obligated to have pressed its claims of ownership earlier.

In accordance with the foregoing, a reasonable trier of fact could have concluded, as the trial court so concluded, that ASPLA held title to the subject land.[13]

C. Payment by ASPLA to PDC for Construction of Improvements.

1. Estoppel Theory.

Ngara-Irrai argues that ASPLA should not be entitled to relief since ASPLA failed to seek to prevent construction of the improvements. We agree with the trial court that the doctrine of estoppel does not bar recovery by Appellees:

> [A] person who, in the mistaken belief that he . . . is the owner, has caused improvements to be made upon the land of another, is not thereby entitled to restitution from the owner for the value of such improvements . . .

⊥167
Restatement of Restitution, § 42(1).

The sole exception to the general rule set forth in Restatement of Restitution § 42(1) applies only if the person who made the improvements had made a "reasonable" mistake in

---

[13] Appellants mentioned in passing that in owning the land at issue, Ngara-Irrai also owned the improvements thereon. Because we do not agree that Ngara-Irrai owns such land, we do not address this argument.

believing that he owned the land upon which such improvements were erected. [14] For the reasons set forth in section B *supra*, we conclude that any such mistake on the part of Ngara-Irrai would not have been "reasonable."

The trial court found that neither PDC nor Ngara-Irrai could have held a good faith belief that Ngara-Irrai owned *Yelch*. The trial court based this conclusion on (i) the conflict of interest inherent in the golf course development plan and (ii) the fact that at least part of the land at issue was treated as public land in *Esuroi Clan v. Trust Territory of the Pacific Islands* , Civ. No. 6-74 (Tr. Div. 1975), *aff'd*, 7 TTR 538 (App. Div. 1977). The trial court also reasonably noted:

> It was the same people who were undertaking the construction and who sought to undertake the golf course development that were the public officials of Airai in a position to protest or prevent that same construction. [Ngara-Irrai] cannot now contend that they detrimentally or reasonably relied on the lack of any such protest.

Republic of Palau v. Ngara-Irrai, No. 337-91, slip op. at 10 (Tr. Div. 1994).

This finding of fact was not clearly erroneous, and it was not error for the trial court to deny recovery to PDC pursuant to an estoppel theory.

2. Unjust Enrichment Theory.

The trial court noted that the 19-page written closing argument submitted by Appellants (defendants below) failed to refer to any legal authority in connection with the theory of unjust enrichment as it would apply to this case. The trial court therefore concluded that defendants had no authority to support the ⊥168 unjust enrichment claim.

On appeal, Appellants again have failed to set forth legal authority in connection with the theory of unjust enrichment. It appears, however, that Appellants believe that the exception to the general rule barring restitution in connection with improvements built on the land of another, *see* Restatement of Restitution, § 42(1), applies and, accordingly, that Appellants are entitled to relief. As noted *supra*, the exception to the general rule barring restitution under such circumstances is not applicable since any belief of Ngara-Irrai that it owned *Yelch* could not be characterized as "reasonable."

3. Contract Theory.

Appellants set forth, but failed to develop, the argument that they were entitled to compensation for building the improvements pursuant to a contract theory. We assume that this argument is based on the open account claim pressed by Appellants in their counterclaim.

---

[14] Even when this exception applies, however, the mistaken party is only entitled to "restitution to the extent that the land has been increased in value by such improvements, or for the value of the labor and materials employed in making such improvements, whichever is least." Restatement of Restitution, § 42(1).

"[A]n account is proved by proving the correctness of each item contained in the account." *Western Sales Trading Co. v. Asanuma Enters.*, 5 ROP Intrm. 27 (1994). Accordingly, Appellants were obligated to set forth evidence proving each item in the statement of account upon which they based this claim. Since Appellants failed to provide such evidence to the trial court, the trial court was not in a position to rule in Appellants' favor, and we are obliged to uphold the trial court's holding on the counterclaim.

CONCLUSION

In light of the foregoing, this Court hereby AFFIRMS the judgment of the trial court in this case.