

Sers v. Edward, 6 ROP Intrm. 355 (1997)
NATSKO SERS and FERNANDO ANTONIO,
Plaintiffs,

v.

UCHERBUUCH SANTOS EDWARD,
Defendant.

CIVIL ACTION NO. 107-97

Supreme Court, Trial Division
Republic of Palau

Decision and order

Decided: August 13, 1997

Counsel for Plaintiffs: Clara Kalscheur

Counsel for Defendant: Oldiais Ngiraikelau

JEFFREY L. BEATTIE, Associate Justice:

Plaintiffs filed this action because they dispute the manner in which their clan's chief distributed money the clan received from the Angaur Mining Trust Fund (AMTF). After considering the trial testimony, exhibits received, and arguments of counsel, the Court makes the following findings of fact and conclusions of law pursuant to Rule 52.

DISCUSSION AND ANALYSIS

Plaintiffs are members of the Ngerbuuch Clan of Angaur. Defendant is the male title bearer of the clan, bearing the chiefly title Ucherbuuch. The defendant received the sum of \$81,239.28 in February of 1997 as the final AMTF payment for the members of the clan he represents. Plaintiffs were unhappy with the amount of money tendered to them as their share, so they sued their chief. Incidentally, the \$81,239.28 itself was not received until after litigation with other clan members. *See Tellei, et al., v. Santos, et al.*, Civ. No. 102-95. In that litigation, however, the plaintiffs and defendant in this case were united against other clan members.

In their complaint, the plaintiffs allege that the money should be divided equally among the six clan members who prevailed **1356** in the *Tellei* lawsuit. Plaintiff Natsko Sers testified that, shortly after Santos received the AMTF money, a meeting of the six senior strong members of the clan was held to discuss the distribution of the money. Sers said she wanted the money to be divided equally among the six and that nobody objected. She argues that there was therefore an agreement that the money would be divided equally.

The evidence is very clear, however, that there was never an agreement to divide the

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money equally. Sers' own son, Brian Sers Nicholas, testified that the meeting ended in a heated argument which disrupted the meeting and everyone went their separate ways. Paulina Ngirailild (aka Paulina Lomisang), the female title bearer of the clan ¹, also testified that no agreement was made to divide the money equally. These were the two most credible trial witnesses.²

That would normally end the case, but plaintiffs were allowed to amend their complaint in the midst of trial to assert a claim that, under custom, they were entitled to more money than the sum that was tendered to them and that the Court should decide how the remaining money should be divided. The Court will first discuss in more detail what was done with the money, and then address what custom requires.

As stated earlier, a meeting was held not long after Santos received the \$81,239.28 in February of 1997. There are six senior strong members of the clan. They are Santos Edward, Bastora Edward, Paulina Ngirailild (aka Paulina Lomisang), Natsko Sers, Kaszu Marcus Antonio, and Fernando Antonio (aka Bernard Antonio). All of these senior strong members except Fernando were present at the meeting. Bastora asked Santos to bring the check to the **1357** meeting so they could see it. He refused, and that seems to have set a tone of rigid refusal to compromise for the meeting. Sers wanted to divide the money equally among the six senior strong members. Santos wanted to make a small distribution and save the balance to fund the building of a clan house in Angaur so the clan would not have to borrow the homes of non-members for its customs. Paulina and Bastora were in favor of building the clan house. Sers said that she lives in Saipan, so she doesn't need a clan house and that she just wanted her money. Santos said that he's the chief, so a clan house will be built. This is the argument that broke up the meeting, with Brian saying that Santos should get a lawyer and they would see him in court.³

There were no further meetings or attempts at reaching any agreement. Instead, Santos carried out his plan of distribution and, after paying certain alleged expenses of the litigation that produced the money, issued small amounts to clan members (but not limited to the six senior strong members) and kept the rest to fund the building of the clan house. Specifically, he gave \$3,000 each to himself, Paulina and Bastora. He tendered \$2,500 to Sers and \$2,200 to Fernando Antonio, but they refused the money. Marcus received \$2,200. Additionally, about \$11,900 was

¹ The trial testimony was confusing regarding who held the female title Dirrebuuch. Indeed, Paulina herself would not say that she held it. What happened is that Bastora Edward, her older sister, was supposed to receive the title and a feast was prepared. But Bastora, who lives on Guam, never showed up for the feast and, consequently, Paulina took her place. Paulina, after recounting this, said that it would be taboo for her to take the title because Bastora is older. This is one example of why Paulina stood out like a rose among weeds at the trial. She seemed to be much more concerned with the family relationships at stake than the money. Long ago, however, this Court held that Paulina bears the Dirrebuuch title, and this Court is bound by that finding. *See Sers, et al. v. Kmedrang, et al.*, Civ No. 17-86 (April 17, 1992) (Sutton, J.).

² Plaintiff Fernando Antonio did not appear for trial.

³ Brian is an attorney practicing in Saipan. He testified that he attended the meeting in his role as an attorney. He was one of the counsel involved on behalf of the six senior strong members in the *Tellei* case.

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distributed among fourteen weaker clan members, in amounts ranging from \$200 to \$1,000. Plaintiffs then filed the instant case and the Court, with Santos' consent, issued a preliminary injunction preventing further distributions pending trial.

Neither party presented the Court with expert testimony regarding the manner in which the money should be distributed under custom. Although Santos claims that, as chief, he can do what he wants with the money, there is no support for that contention in the reported cases.

This Court has held that income from sources such as war claims payments, leases and other sources which are non-customary in nature are not directly governed by custom since income of this sort is foreign to Palauan custom. However, we have held that the Court should look to custom for guidance, and that “[c]ustomary law throughout Palau requires that assets of a clan or lineage obtained in the normal course be distributed fairly.” *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 230 (1996) (quoting *Sengebau v. 1358 Balang*, 1 ROP Intrm. 695, 699 (1989)). The *Remoket* case went on to hold that

Neither this Court nor the Trust Territory High Court has ever suggested that clan assets should, as a matter of law, be equally divided among clan members. To the contrary, we have instead stated that such matters should be determined by consensus among the strong, senior members of the clan. [emphasis supplied] [citation omitted] Contributions of money and services to the clan is one of the factors that enters into the customary determination of how clan assets should be distributed.

Remoket at 230.

There is no evidence of the contributions made to the clan by plaintiff Antonio. There is some, but not much, evidence before the Court regarding the services contributed to the clan by Sers. The Court can draw an inference that the title bearers have contributed more than those who do not hold any title. *Remoket* at 231. But there is no evidence regarding the services of the other clan members. This makes it impossible to compare the relative strength of the parties vis a vis themselves and the non-parties. From what the Court does know of the contributions of at least the six senior strong members, the distribution made by Santos is not at all unreasonable, assuming the clan decides to build a clan house with the rest of the money. But that is of little help in granting the relief the plaintiffs want--a Court determination of how the money which Santos now holds for the clan should be distributed--because (1) Santos' distribution, while “fair” (again, assuming that a clan house is to be built), was not consented to by the senior strong members; and (2) the senior strong members have not agreed to use the balance of the money to build a clan house. The parties here are not only asking the Court to decide who gets how much money--something this Court has done before, with reluctance--but also are asking the Court, in effect, to decide whether they should build a clan house and how much to spend. What's next--a request that the Court decide who should provide the fish for the next custom?

The *Remoket* Court observed that “[T]he courts have recognized that clan matters should be determined by the clan without interference from the courts.” 5 ROP Intrm. at 229. Under custom these clan matters should be decided by a consensus of the senior 1359 strong members

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of the clan. Here, those members have utterly abdicated that responsibility. After holding one short meeting and failing to reach a consensus, the members walked out into the night with cries of “see you in court” ringing in the air. Instead of holding further discussions with a view towards reconciliation and compromise, they spent five days in a courtroom with the meters of two attorneys running.

Turning to the merits of plaintiffs’ claim, the preponderance of the evidence shows that, unless an injunction issues, defendant is likely to distribute the remaining money without complying with customary law; that is, he will spend it on a clan house without having the consent of the senior strong members. Although an injunction will not normally be granted where money damages will adequately compensate the plaintiff for the harm suffered, the Court finds that plaintiffs have no adequate remedy at law. This is due to the remote chance of actually collecting any judgment for money damages without great expense in view of the historical propensity of the parties to litigate at all costs. Also, more than money is involved. Surely, being a member of a clan entails more than a simple sharing of common ancestors. There is some value to be attached to the observance of clan customs regarding clan matters, such as making clan decisions by consensus--a custom which if not followed surely contributes to some loss to clan members to which a price tag cannot be attached.

Therefore, an injunction will issue which (1) orders the defendant to disburse the \$2,500 and \$2,200 which was originally tendered to plaintiffs Sers and Antonio respectively; and (2) enjoins defendant from disbursing any more of the money without the consent of the six senior strong members of the clan.

The Court assumes that the parties will get together now and resume discussions on how to distribute the money, although it is not ordering them to do so. The Court merely orders that no further distributions shall be made without the necessary consensus. Consensus should not be that difficult even with these parties due to the small amounts at stake. The evidence shows that the funds remaining to be distributed amount to \$49,167.35.⁴ From **L360** this fund, Santos must first pay \$2,500 to Sers and \$2,200 to Fernando Antonio--the same payments that Santos originally tendered to them. That leaves \$44,467.35 to distribute, plus any interest that has accrued since trial.

Whether any additional sums that Sers gets will prove to be worth the price paid to obtain them--and whether any success Santos has in funding his clan house is worth the price paid to obtain it-- will ultimately depend upon the value one attaches to harmonious family relations. It is apparent that the family members who testified have differing opinions about the value of those relationships. While many had dollars signs in their eyes when they testified, Paulina had only tears in hers, and the key to achieving a compromise probably lies with her. By the Court’s decision today, it is refusing to let the clan leadership abdicate its responsibilities to the Court. If they fail to reach a consensus on what to do with their money, perhaps the next generation will.

⁴ This was the amount as of the day Santos testified. It is the amount remaining after the disbursements mentioned earlier and after the payment of certain expenses of a controversial nature, including \$3,000 Santos paid himself for “trial work” and an additional \$3,000 he paid himself for preparing drawings for the proposed clan house. Plaintiffs made no claim in their complaint alleging that these expenses were improperly paid.

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CONCLUSION

Payment of \$2,500 and \$2,200 shall be made to Natsko Sers and Fernando Antonio forthwith. The money remaining shall be disbursed only with the consent of the six senior strong members of the clan as identified above. Judgment will enter accordingly.