Ongklungel v. Uchau, 7 ROP Intrm. 192 (1999)

OKADA ONGKLUNGEL,
Appellant,

v.

KANGICHI UCHAU,
Appellee.

CIVIL APPEAL NO. 48-97
Civil Action No. 386-96

Supreme Court, Appellate Division
Republic of Palau

Argued: February 15, 1999
Decided: April 19, 1999

Counsel for Appellant: J. Roman Bedor
Counsel for Appellee: David Kirschenheiter, Micronesian Legal Services Corporation

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

PER CURIAM:

This appeal is from an ejectment suit in which Appellee sued to evict Appellant, his cousin, from lot 5-553, located in Kloulklubed Village in Peleliu. This lot was originally leased by Peleliu State to Ngiraked Andres. Appellant and Appellee, who are first cousins, both married daughters of Mr. Andres. Both parties built houses on the land and lived there peaceably from the 1970s until 1993, when Appellant Ongklungel sent a letter to Appellee Uchau, instructing him to move off the land. Uchau, believing that he was the only person entitled to live on the land, refused to move. In 1996, Ongklungel began building a new ⊥193 house that encroached upon the area occupied by Uchau's house. Uchau then brought this suit requesting that the court order Ongklungel to vacate the leased premises. The parties agree that Mr. Andres was the original holder of the lease, but they each argue that the lease was subsequently transferred to them.

When the Peleliu Municipal Government leased a lot to an individual, the individual was given a Certification of Lease ("Certification"). There is also a map located in the government offices which designates the owners of the various leases. Peleliu State was unable to locate a Certification with either Ongklungel's or Uchau's name as owner of the lease and both parties testified that they lost their copies of the Certifications. Uchau, however, was able to obtain a copy of a Certification he provided to the Farmers Home Administration ("FHA") in 1977 in support of a loan. Ongklungel, although unable to produce a Certification in his name, supported his claim by demonstrating that the map at the government offices contained his name on the lot

in question. The Trial Division considered both parties' evidence and found that Appellee's evidence carried more weight. This Court affirms.

Ongklungel argues that the Trial Division erred in admitting the Certification offered by Uchau. Ongklungel first argues that the Certification should not have been admitted into evidence since it was not the original. Uchau testified that since he was unable to locate his copy of the Certification, he requested a copy from the FHA and introduced this copy into evidence. Except in limited circumstances, a party seeking to introduce proof of a writing must produce the original writing or a photocopy. ROP R. Evid. 1002, 1003. Here, Uchau produced a duplicate of the Certification, which is considered the same as an original under Rule 1003.

Ongklungel also argues that it appears from the exhibit as if the signature of the Magistrate was cut from another document and photocopied onto the Certification. Under ROP Rule of Evidence 1003, "[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Ongklungel's allegation of tampering goes to the authenticity of the Certification. ROP Rule of Evidence 901(8) provides that a document is properly authenticated if it "(A) is in such condition as to create no suspicion concerning its authenticity; (B) was in a place where it, if authentic, would likely be; and (C) has been in existence twenty (20) years or more at the time is offered." The Trial Court found that the Certification met each of the necessary requirements of authentication under Rule 901(8). A review of the exhibit and the record does not reveal that the Trial Division abused its discretion in admitting the Certification. *Federal Deposit Ins. Corp. v. Rodenberg* , 571 F. Supp. 455, 458 (D.C. Md. 1983)(decision whether document is an accurate duplicate and can be admitted into evidence is within trial court's discretion).

Ongklungel also argues that there was no evidence that the copy from the FHA was a copy of the original lease kept by the Peleliu Municipal Government. However, Uchau testified that he received a copy of the Certification from the Peleliu government clerk in 1977 and that the copy held by the FHA was a copy of the Certification that he received in 1977. Further, the current ⊥194 governor of Peleliu, Jackson Ngiraingas, testified that he compared the signature of the Magistrate on the copy of the Certification to signatures on other Certifications that the Magistrate had signed and testified that he "had no doubt that it was a genuine document signed by the former magistrate."

Although Ongklungel rebutted this testimony, [1] the burden of establishing the inadmissibility of a copy rests with the party against whom it is offered. *United States v. Germany*, 762 F.2d 929, 938 (11th Cir. 1985), *cert. denied*, 106 S.Ct. 811 (1986). Given the conflict in testimony, which required the court to assess the credibility of the various witnesses, the Trial Division did not abuse its discretion in admitting the Certification.

Ongklungel's second argument on appeal is that the Trial Division erred in failing to find

[1] Ongklungel offered the testimony of Hinao Soalablai, who was the clerk to the Magistrate when Uchau received his Certification. Mr. Soalablai testified he never prepared a Certification for Uchau.

that the Peleliu Municipal Government leased the land to him. Ongklungel testified that he was issued a Certification in 1966 but that his copy of the Certification was lost in a typhoon. Ongklungel produced two significant pieces of evidence to support his claim: The fact that his name appears on the map that hangs in the government offices; and the testimony of Hinao Soalablai, the former clerk, who testified that Ongklungel was issued a Certification in 1966.

Ongklungel argues that the Trial Division had to accept the testimony of Mr. Soalablai as true since is was not "dispute [sic], rebutted, contradicted, challenged or impeached." Ongklungel's argument is without merit. Although Ongklungel is correct that a finder of fact may not arbitrarily disregard testimony, the finder of fact is not bound to accept even uncontradicted testimony. *Elewel v. Oiterong* , 6 ROP Intrm. 229, 232 (1997). Further, Mr. Soalablai's testimony that he recalled preparing a Certification for Ongklungel in 1966 was impeached. Mr. Soalablai admitted on cross-examination that he and Ongklungel help each other politically. Further, Uchau's testimony contradicted portions of Mr. Soalablai's testimony. Uchau testified that Mr. Soalablai gave him a copy of the Certification that he alleges he received in 1977. Mr. Soalablai testified that he was never aware of any Certification being issued to Uchau.

The parties presented sharply conflicting testimony regarding who was issued a Certification. Where there are two permissible views of the evidence, the fact finder's choice cannot be clearly erroneous. *Kotaro v. ROP*, 7 ROP Intrm. 57, 61 (1998). Even if this Court is convinced that it would weigh the evidence differently, it may not reverse. Only where the Court is "left with a definite and firm conviction that a mistake has been committed" may the Court reverse a factual determination by the Trial Division. *Lulk Clan v. Estate of Tubeito* , 7 ROP Intrm. 17, 19 (1998) (citations omitted). Appellant's assignment of error does not rise to this level, and thus, the Trial Division's decision must be affirmed.

Ongklungel's final argument is that since he had a leasehold interest in the land, he was deprived of due process of law when the government transferred the lease to Uchau without notice to Ongklungel. Ongklungel's argument, however, is premised on the theory ⊥195 that he held a valid lease to the lot in question which was then taken away when the government subsequently leased the lot to Uchau. The Trial Division, however, did not find that Ongklungel ever had a valid lease to the lot. Rather, the Trial Division credited Uchau's testimony which established that the government transferred the lease from Mr. Andres to Uchau and that Ongklungel never held a lease to lot 5 -553. This finding is a factual determination by the Trial Division, subject to the "clearly erroneous" standard. Since Uchau testified that the lease was transferred directly from Mr. Andres to him, the Trial Division's finding on this point is not clearly erroneous and Ongklungel's due process argument must fail.

For the foregoing reasons, the decision of the Trial Division is AFFIRMED.