

Bandarii v. Obak, 7 ROP Intrm. 56 (1998)
ISIMANG BANDARII and ROMAN TMETUCHL,
Appellants,

v.

THOMAS OBAK,
Appellee.

CIVIL APPEAL NO. 29-97
Civil Action Nos. 303-95 and 323-95

Supreme Court, Appellate Division
Republic of Palau

Argued: March 6, 1998
Decided: May 1, 1998

Counsel for Appellant Isimang Bandarii: Carlos H. Salii, Esq.

Counsel for Appellant Roman Tmetuchl: Johnson Toribiong, Esq.

Counsel for Appellee: John K. Rechucher, Esq.

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

BEATTIE, Justice:

This is an appeal from a Trial Division decision which reversed a Land Claims Hearing Office (LCHO) determination that appellant Bandarii owned Ngerbelas Island, located in Kayangel State and known as Tochi Daicho lot 452. The Trial Division held that appellee Thomas Obak was the owner. We affirm.

The property is registered in the Tochi Daicho as the individual property of Obak. Obak was the father of appellee Thomas Obak. The LCHO found that Obak had mortgaged the land to a Japanese citizen during the Japanese administration of Palau. The LCHO further found that appellant Bandarii's father paid off the mortgage and thereby became owner of the property, which he later gave to Bandarii. Accordingly, it awarded the property to Bandarii.

In reversing the LCHO, the Trial Division relied upon two factors in rejecting Bandarii's claim. First, it found that the key evidence in support of the Bandarii claim--a tape recording of Bandarii's father's "self serving declarations as to how he was the owner"--was not convincing in view of the fact that there was no written documentation of the mortgage pay-off transaction. Second, no evidence was presented which showed that, under Mandate law, the act of paying off another person's mortgage divested the original owner of title to the mortgaged property and

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vested title in the person who paid off the mortgage.

Appellant Roman Tmetuchl's claim was based upon a deed to Tmetuchl allegedly signed by Rdechor Ruluked and Ebil Ikelau. Rdechor and Ebil both denied that they signed the deed. Even if they had, the LCHO and the Trial Division both held that Tmetuchl did not show that Rdechor and Ebil could convey title inasmuch as Obak was the Tochi Daicho registered owner. The LCHO and the Trial Division rejected the contention that when Obak died, his clan took back the land and named Rdechor as trustee for the clan.

Thomas Obak claims that, after his father died and an eldecheduch was held, he was told by Obak's parents that he had inherited the property. The Trial Division found that his testimony was credible based upon the conduct of the parties. In 1961, **¶57** Thomas planted coconut trees on the property with no objections from anyone. Later, he dug wells on the property. When Kayangel State wanted to bring visitors to Ngerbelas, it asked Thomas for permission. In 1979, Roman Tmetuchl offered to purchase the property from Thomas. Finally, in 1982, Thomas mortgaged the property in connection with a loan from the Ollei-Kayangel Credit Union.

The Trial Division has wide discretion when it reviews LCHO findings and it may, among other things, adopt the findings in whole or part and make its own new findings, as long as there is evidence in the record to support them. We then review the Trial Divisions findings using the clearly erroneous standard. *Arbedul v. Mokoll*, 4 ROP Intrm. 189 (1994).

On the record presented, we cannot say that the Trial Division was clearly erroneous in finding that Bandarii's father did not become owner of the property or that the deed allegedly signed by Rdechor and Ebil did not convey title to Tmetuchl. Moreover, as discussed above, there is ample evidence in the record to support the Trial Division's finding that Thomas inherited the property from his father, Obak. Accordingly, the decision of the Trial Division is AFFIRMED.