

Tmetuchl v. Ngerketiit Lineage, 7 ROP Intrm. 91 (1998)
**MLIB TMETUHL, PACIFICA DEVELOPMENT CORPORATION,
and ROMAN TMETUHL,
Appellants,**

v.

**NGERKETIIT LINEAGE, Rep. By Francisco Armaluuk,
Appellee.**

CIVIL APPEAL NOS. 38-95 and 52-97
Civil Action Nos. 48-91, 49-91, and 202-91

Supreme Court, Appellate Division
Republic of Palau

Argued: May 22, 1998
Decided: August 13, 1998

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: Douglas F. Cushnie

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
and R. BARRIE MICHELSEN, Associate Justice.

BEATTIE, Justice:

These consolidated appeals concern a dispute over the ownership of land in Ngermid Hamlet, Koror, known as Cadastral Lot No. 14 B 03.¹ The Trial Court entered judgment holding that appellee Ngerketiit Lineage (Ngerketiit) owned the property.² Appellants moved to vacate that order under Rule 60(b) of the ROP Rules of Civil Procedure, and the motion was denied by the trial court. Appellants appeal both the judgment declaring Ngerketiit the owner of the property and the denial of the Rule 60(b) motion. We reverse the trial court's judgment declaring Ngerketiit to be the owner of the property. The appeal of the denial of the Rule 60(b) motion is therefore moot.

BACKGROUND

Forty years ago, the Palau District Land Title Officer held hearings concerning the

¹ The land is part of Tochi Daicho Lot No. 218. The Trial Court's judgment also concerned Cadastral Lot No. 14 B 02. In this appeal, appellants do not claim that the Trial Court erred with respect to Lot 14 B 02, so the Trial Court's judgment concerning that lot is unaffected by our decision today.

² Partial summary judgment was entered on December 8, 1992. Final judgment was entered on October 26, 1995.

Tmetuchl v. Ngerketiit Lineage, 7 ROP Intrm. 91 (1998)

ownership of several parcels of land, including the subject property, and issued Determination of Ownership and Release No. 162. That determination of ownership, dated July 8, 1958, concluded that Ngerketiit was the owner of what is now lot 14 B 03, as well as other land not here at issue. On October 6, 1987, the Palau District Land Commission issued Determination of Ownership No. 1869, in which it determined that Roman Tmetuchl was the owner of lot 14 B 03.

In 1991, appellant Pacifica Development Corporation commenced work on the construction of a house for Mlib Tmetuchl on the land. Shortly thereafter, Ngerketiit commenced this litigation to stop the construction and quiet title to lot no. 14 B 03. In their answer to the amended complaint, Mlib Tmetuchl and Pacifica Development asserted, among other things, that “Mlib Tmetuchl entered the subject property with 192 permission of his father, Roman Tmetuchl, the owner of the property in question in fee simple absolute by virtue of the Determination of Ownership No. 1869 . . . which was never appealed . . . and therefore, is now final and conclusive as against the world.”³ The trial court held that Determination of Ownership No. 162 in favor of Ngerketiit was “valid, superior and preclusive of” the subsequent Land Commission determination of ownership and therefore held that Ngerketiit was the owner of the property.

DISCUSSION

On appeal, appellants assert numerous arguments in support of their contention that Roman Tmetuchl is the owner of the property.⁴ The first argument we will address is appellants’ contention that the 1987 Land Commission determination of ownership prevails over the earlier determination of the Land Title Officer. Because we agree with appellants on this argument, we need not address their remaining arguments.

The recent decisions in *Secharmidal v. Techemding Clan*, 6 ROP Intrm. 245 (1997), and *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38 (1998), make clear that the Land Commission did not lack jurisdiction to redetermine ownership of the lot 14 B 03 even after the Land Title Officer issued a determination of ownership in 1958. Moreover, where there are two inconsistent determinations of ownership, the later one is given conclusive effect in a third action under the rule of *res judicata*.⁵ *Id.* Thus, in the present case, the 1987 Land Commission

³ At oral argument Ngerketiit suggested that appellants’ argument concerning the conclusiveness of Determination of Ownership No. 1869 was not raised in the court below. Our review shows that it was raised in the answer to the amended complaint as well as in the brief in opposition to the motion for partial summary judgment. It was also raised in appellants’ brief on appeal.

⁴ Roman Tmetuchl is the only appellant who asserts ownership of the subject property. Mliib Tmetuchl and Pacifica Development Corporation are parties because of their construction activities on the land which they claim were authorized by Roman Tmetuchl, who they claim is the owner.

⁵ The beneficiary of a determination of ownership, of course, may preserve the benefit thereof by presenting the determination at any subsequent proceedings concerning the same land. Assuming due notice was given in the earlier proceeding, the earlier determination would be conclusive under principles of *res judicata*. This *res judicata* principle was incorporated into the

Tmetuchl v. Ngerketiit Lineage, 7 ROP Intrm. 91 (1998)

determination of ownership must prevail over the 1958 Land Title Officer determination.

In support of its contention that the trial court was correct in holding that the Land Title Officer's determination should prevail over the Land Commission determination in this case, Ngerketiit makes two arguments on appeal. First, it contends that the issue of Roman Tmetuchl's rights under Determination of Ownership No. 1869 was not presented to the trial court. That is plainly not the case. It is true that the Land Commission 193 Determination of Ownership No. 1869 was not introduced into evidence at trial, but by the time of trial the trial court had already issued its partial summary judgment, ruling that the Land Commission determination did not prevail over the earlier determination of the Land Title Officer. In the summary judgment proceedings, however, Land Commission Determination of Ownership No. 1869 was submitted by appellants in opposition to Ngerketiit's motion--the question whether it should prevail over the Land Title Officer's determination was the sole issue in the summary judgment proceedings.

Second, Ngerketiit argues that it successfully appealed Land Commission Determination of Ownership No. 1869 and that the Trial Division reversed the Land Commission and held that lot 14 B 03 was owned by Ngerketiit. Ngerketiit claims that the reversal of the Land Commission determination was affirmed by *Kloteraol v. Ulengchong*, 2 ROP Intrm. 145 (1990). This argument is based on Ngerketiit's contention that it appealed all of the 1987 Land Commission determinations of ownership which conflicted with the Land Title Officer's Determination No. 162. Ngerketiit made the same argument in another case, and we rejected it, concluding that "when appealing the 1987 Land Commission decision, [Ngerketiit] pressed its appeal only against Huan Ulengchong, and the lots awarded to him." *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 40 (1998).

Because Determination of Ownership 1869 in favor of Roman Tmetuchl was not appealed and reversed, it prevails over the earlier Land Title Officer determination in favor of Ngerketiit. Thus, the Trial Court erred in holding that the Land Title Officer's determination prevailed. Although appellants did not file a cross motion for summary judgment, an appellate court may order summary judgment for an appellant, even where the appellant made no motion in the trial court. *Becheserrak v. ROP*, 5 ROP Intrm. 63, 67 (1995). Inasmuch as there are no issues left for trial regarding the battle for supremacy between Determination No. 162 and Determination No. 1869, we believe it is appropriate to order that summary judgment be entered declaring that Roman Tmetuchl is the owner of lot 14 B 03.

CONCLUSION

The Trial Court's judgment is reversed insofar as it declared Ngerketiit Lineage to be the statute which governed Land Commission proceedings. See 35 PNC § 930(b). After holding Formal Hearing No. 38, the Land Commission issued numerous determinations of ownership, including Determination No. 1869. As discussed later herein, Ngerketiit successfully appealed some of these 1987 Land Commission determinations on the grounds that the 1958 Land Title Officer determination was conclusive on the issue of ownership. However, it did not appeal Determination No. 1869.

Tmetuchl v. Ngerketiit Lineage, 7 ROP Intrm. 91 (1998)

owner of lot 14 B 03. This action is remanded to the Trial Court with instructions that it modify its judgment to declare that Roman Tmetuchl is the owner of lot number 14 B 03.