

Ngiratewid v. Omisong, 8 ROP Intrm. 337 (Tr. Div. 1999)
OLKERIIL NGIRATEWID,
Plaintiff,

v.

SIKYANG OMISONG, JAYLENE OMISONG,
JR-YONG OMISONG, SEKEIUR OMISONG,
and OMISONG M. OMISONG,
Defendants.

CIVIL ACTION NO. 98-109

Supreme Court, Trial Division
Republic of Palau

Decided: September 21, 1999

BEFORE: R. BARRIE MICHELSEN, Associate Justice.

In this case, Plaintiff, an octogenarian, alleged he was a victim of fraud. He had obtained a certificate of title to land known as “Ngerngotong.” In his complaint, Plaintiff alleges he orally agreed to allow Defendant a use right to a portion of Ngerngotong, but Defendant, under the guise of memorializing the deal in writing, had him sign a document that turned out to be a conveyance of the whole property to Defendant’s minor children.

Defendant filed a general denial of the allegations. However, a few months later, Defendant agreed to transfer the property back to Plaintiff. The following exchange took place in open court November 13, 1998.

Mr. Hamilton: I’ll let Oldiais explain the resolution, Judge.

Mr. Ngiraikelau: Yeah, okay. Your Honor, as you know the other defendants are minor, and children. We have basically agreed in our discussions that the – at **1338** least the father of the children, that’s Sikyang Omisong, after talking to the old man, that they are willing to give the land back to the old man. And so it seems to me that in order to do that, since the certificate of title is already in the name of the minor children, so we still need that order if the father is going to execute the deed of transfer. And once the deed of transfer is done, then I’ll move to dismiss the case.

The Court: And who do you suggest as counsel, and what would be the circumstances regarding the payment?

Mr. Ngiraikelau: The payment, uh, when they paid for the land, it was with a piece of Palauan money and five hundred dollars (\$500.00), that that money was returned back to, uh, . . .

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The Court: Yeah, I mean the payment for counsel, for the guardian . . .

Mr. Hamilton: No, we were thinking, Judge, just to appoint my client as the guardian for the children . . .

The Court: Oh, I see.

Mr. Hamilton: . . . and then he can, from my understanding of the law is the children can't transfer land. So in order to effectuate the transfer that the parties have agreed to, to appoint the father as the guardian for the children in this matter. He'll sign the deed, then the case will be dismissed.

The Court: All right. I thought you were suggesting that there was a need to separate that. But what you're asking is that the father be authorized to the transfer?

Mr. Hamilton: Correct, Judge.

The Court: Okay. All right. Now, I get to see the point. If you prepare that order in the way that counsel feels is appropriate, I'll sign that order.

Mr. Ngiraikelau: Okay.

The Court: And then otherwise, it looks like the litigation's been resolved.

Mr. Ngiraikelau: Yes.

Mr. Hamilton: Correct, Judge.

Plaintiff has now returned to court to enforce the agreed resolution. However, Defendant Omisong has changed his mind and no longer is interested in the arrangement as described by counsel. His protestations come too late. Counsel for Omisong stipulated in open court that the Plaintiff could get his land back. "In the absence of egregious circumstances, parties are generally bound by the admissions of their attorney, including oral admissions." *Town of North Bonneville v. Callaway*, 10 F.3d 1505, 1509 (9th Cir. 1993). "Stipulations freely and voluntarily **1339** entered into . . . are binding and enforceable [in both criminal and civil actions]." *United States v. Gualtney*, 790 F.2d 1378, 1386 (9th Cir. 1986). Both counsel stipulated the terms of the dismissal of the case, and both parties are now bound thereby.

The only question remaining is whether this case presents the kind of "egregious circumstances" that would warrant relief from the stipulation. The answer is no. This is not a case where Mr. Hamilton spoke outside the scope of his authority or negligently misrepresented his client's position. Defendant now merely states that "circumstances have changed." That cryptic statement is entirely inadequate. Furthermore, Defendant's tender of \$500 and one piece of Palauan money for 4,813 square meters of land (see deed of transfer attached as Exhibit B of complaint) strongly suggests gross overreaching by Defendant Omisong. Plaintiff, an elderly

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man, is greatly prejudiced by the passage of time, and now another ten months has been lost. The Court will therefore hold Defendant Omisong to his representation that he would transfer the property back to Plaintiff to resolve this litigation.

Because the Defendant is unwilling to carry out the terms as agreed to last November, the following order will be entered to reach the same result:

1. That the Land Court note in its records that the certificate of title issued on June 12, 1997, showing Jaylene O., Jr-Yong O., Sekeiur O., and Omisong M.O. as the fee simple owners of said land, LC 318-97, registered in Book No. 28 at page 122 is hereby declared null and void;
2. That the Clerk of Court note on the aforesaid deed it is null and void per order of the court entered in *Ngiratewid v. Omisong*, C.A. 98-109.
3. That the Land Court be directed to issue a new certificate of title reflecting Plaintiff as the fee simple owner.