Sugiyama v. Tikei Clan, 9 ROP 73 (2002)

SIMANE SUGIYAMA and
MOKOKIL REBES,
Appellants,

v.

TIKEI CLAN,
Appellee.

CIVIL APPEAL NO. 00-11
Civil Action No. 525-90

Supreme Court, Appellate Division
Republic of Palau

Argued: January 24, 2002
Decided: March 28, 2002

[1] **Appeal and Error:** Clear Error; Standard of Review

The trial court's findings of fact are reviewed under the clearly erroneous standard, which means that if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the appellate court is left with a definite and firm conviction that a mistake has been made.

[2] **Appeal and Error:** Standard of Review

A trial court's conclusions of law are reviewed *de novo*.

[3] **Statutes of Limitation**

Actions for the recovery of land must be commenced within twenty years after the cause of action accrues.

[4] **Statutes of Limitation**

A cause of action for recovery of land based on an agreement to distribute the land accrued once party had ability to distribute.

[5] **Land Commission/LCHO/Land Court:** Appeals

A determination of ownership issued by the LCHO did not automatically create a property right, because such determination was subject to appeal to the Trial Division, where it was subject to *de novo* review.

[6] **Civil Procedure:** Relief from Judgment; **Judgment:** Relief from Judgment

Where nothing occurs to give rise to or shed light on any aspect of movant's due process claim during the three and one half year period between issuance of the trial court's order and movant's Rule 60(b) motion, the motion fails to meet the requirement that it be made within a reasonable time.

[7] **Civil Procedure:** Presumptions; **Property:** Tochi Daicho

The Peleliu Tochi Daicho listings are not accorded the same presumption of correctness as such listings for some other states in Palau.

[8] **Appeal and Error:** Denial of Summary Judgment; **Civil Procedure:** Summary Judgment

Most courts hold that denial of a motion for summary judgment is not reviewable after a full trial on the merits, whether summary judgment is denied on a legal or factual basis.

[9] **Return of Public Lands:** Alien Property Custodian

Title to all land expropriated by the Japanese Government vested with the Trust Territory ⊥74 Government's Alien Property Custodian.

Counsel for Sugiyama: Johnson Toribiong

Counsel for Rebes: Salvador Remoket

Counsel for Appellee: Oldiais Ngirakelau

BEFORE: R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

MICHELSEN, Justice:

This appeal is from a judgment determining the ownership of property in Peleliu known as Bkul Omruchel [hereinafter, "the property"], whose boundaries are delineated on Cadastral Worksheet No. 296 R 169. After a *de novo* trial, the Trial Division awarded the property to Tikei Clan.

Simane Sugiyama and Mokokil Rebes separately appeal. For the reasons stated below, we affirm.

Sugiyama v. Tikei Clan, 9 ROP 73 (2002)

BACKGROUND

There is a core of undisputed historical and procedural facts. Before World War II, the Peleliu Tochi Daicho listed the property as the individual land of Oikull. Expropriated by the Japanese military in 1938, title to the property thereafter passed to the Trust Territory as the successor government after the war. In 1955, Oikull, as Chief Olikong of Tikei Clan, filed a claim to the property on behalf of Tikei Clan. His written application explained that he was the Chief of the Clan, that the property formerly was Clan land, and that he was making the claim on its behalf. The Palau District Land Office recommended that the property remain government land. Oikull subsequently filed a notice of appeal, but by agreement of the parties, the appeal was later dismissed, and in 1962 the Trust Territory Government quitclaimed the property to the Clan. There matters stood until the land registration program reached that part of Peleliu and claimants for the property timely filed claims. The original claimants included the parties to this appeal, as well as Techur Ngiraidis. Mr. Ngiraidis died during the pendency of this action, and his successors-in-interest now support the Clan's claim.

In 1990, the Land Claims Hearing Office awarded ownership of this parcel to Appellant Sugiyama, although the LCHO opinion did not discuss – indeed gave no indication of any awareness of – the 1962 quitclaim deed. In any event, the decision was appealed to the Trial Division of this Court, which remanded the matter to the LCHO in 1991 for further proceedings because of what it felt were irreconcilable discrepancies between the size of the parcel as it was listed in the Tochi Daicho and in the Cadastral Worksheet for the property used by the LCHO. In 1992, the trial court amended its remand order because it had neglected the technicality of ordering the LCHO to vacate its 1990 award of the property to Appellant Sugiyama.[1]

After considerable pre-trial delay, the case returned to the Trial Division for trial *de novo* in 1999. At that trial, the central issue for Appellant Sugiyama was what ⊥75 significance, if any, should be given the 1962 quitclaim deed, and what weight should be afforded the Peleliu Tochi Daicho, which listed the property as individual land owned by Oikull. She argued that Oikull, as individual owner, orally transferred the land to her father, Dlutaoch, in the 1950s. She asserted that she was the proper successor in interest to Dlutaoch.

Appellant Rebes contended that Oikull orally transferred a portion of the property to Appellant Rebes' predecessor-in-interest, his uncle Ngircholaol, in recognition of work Ngircholaol had done in Angaur, apparently in the 1930s, on behalf of Tikei Clan. Appellant Rebes therefore sought a determination that he owned that portion.

Tikei Clan argued that the 1962 quitclaim deed, particularly in light of the past actions of Oikull and Dlutaoch, resolved the question of ownership, and that all of the property remained Clan land. The trial court agreed. Consistent with two Trial Division cases examining other Trust Territory quitclaim deeds in Peleliu during that period (subsequently affirmed on appeal; *see Etpison v. Sugiyama*, 8 ROP Intrm. 208 (2000); *Basiou v. Ngeskesuk Clan*, 8 ROP Intrm. 209 (2000)), the trial court held that the 1962 Trust Territory quitclaim deed "prevailed over the

[1]Although the order did not specify the subsection of Rule 60, such an amendment is authorized by ROP R. Civ. Pro. 60(a).

claims of prior individual owners of the land and their successors." The court rejected Appellant Sugiyama's claim that Oikull had owned the property and conveyed it to her predecessor Dlutaoch, finding that such a theory was:

> inconsistent with the documented actions of both Oikull and Dlutaoch. It was Oikull, at about the same time he was assertedly giving the land to Dlutaoch, who claimed the land on behalf of Tikei Clan. He never asserted a claim for Bkul Omruchel as his individual property. Likewise, Tikei has shown that Dlutaoch also never claimed Bkul Omruchel, but did file a homestead application for an entirely different piece of land named Ngebad.
>
> The significance of this inconsistency is twofold. First, it casts doubt on the factual accuracy of Sugiyama's claim. If Oikull was the individual owner of the land and wished to give it away to Dlutaoch and his daughter, why did he claim it on behalf of the Clan? And if Dlutaoch had been promised this land for his daughter, why did he claim a different piece and ignore Bkul Omruchel entirely?

With respect to the claim of Rebes, the trial court held that even assuming that there had been an oral agreement between Oikull and Ngircholaol to transfer the property, Appellant Rebes' instant claim was barred by the statute of limitations. This appeal followed.

DISCUSSION

[1, 2] The trial court's findings of fact are reviewed under the clearly erroneous standard. *Lulk Clan v. Estate of Tubeito* , 7 ROP Intrm. 17, 19 (1998). This standard means that "if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside ⊥76 unless [the appellate court] is left with a definite and firm conviction that a mistake has been committed." *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994). A lower court's conclusions of law are reviewed *de novo*. *See Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

I. Appellant Rebes

[3, 4] Appellant Rebes contends that the trial court erred by denying his claim on the ground that it was barred by the statute of limitations. In reaching this conclusion, the trial court noted that 14 PNC § 402 provides that actions for the recovery of land must be commenced within 20 years after the cause of action accrues, and that Appellant Rebes only brought his claim in 1989, more than forty years after the Clan's first documented assertion of ownership. On appeal, Appellant Rebes avers that his claim only accrued in 1989, when the area was marked for registration by the LCHO, and thus does not fall outside the 20-year statutory period for the filing of claims for land ownership. Specifically, his argument here is that it was only when Tikei Clan filed its claim to the land in 1989 did he realize that the Clan intended to renege on Oikull's agreement with his late uncle. However, Rebes never presented this argument to the trial court, despite having been expressly directed to "show that there is a sound basis for

excusing his having failed to complain for more than twenty years about Tikei's failure to carry out that agreement." Instead, Rebes' evidence at trial reiterated his earlier position that Oikull had said that if he (Oikull) was successful in obtaining the property, he would distribute the portion to Ngircholaol. If that is what happened, it would have become apparent at some point during the twenty years after 1962 that Oikull was not distributing any land. Hence, the statute of limitations ran before 1989, and the trial court's decision was not error.

II. Appellant Sugiyama

All of Sugiyama's arguments are notably flawed by the repeated failure to apply well-known principles of law. She first argues that a variety of procedural errors occurred in 1991 and 1992 when the Trial Division remanded the matter to the LCHO, and that she was thereby deprived of procedural due process. We are not convinced that any procedural errors occurred. However, the remedy for such errors, if any, would be a trial *de novo*, and a trial *de novo* was held in 1999. No further relief would have been necessary or appropriate.

[5] Sugiyama argues that the real harm of these earlier proceedings was that they "took away Appellant Sugiyama's title" to the property. This is patently not true. The LCHO decision to issue a determination of ownership in her favor was an interlocutory one, subject to appeal to the Trial Division, where the decision could be subject to *de novo* review. *Otiwii v. Iyebukel Hamlet*, 3 ROP Intrm. 159, 169 (1992) (construing 35 PNC § 1113 in light of 14 PNC § 604(b)). As the process was obviously not complete when the trial court entered the order now questioned on appeal, the intermediate step of an LCHO decision in her favor did not vest Sugiyama with title to the property. *Ngiratreked v. Ngerchau Lineage*, 7 ROP Intrm. 119, 120 (1998). Thus, the objected-to orders did not deprive her of a property interest, and her due process claims are without merit.

[6] Furthermore, because the remand order, and the subsequent trial *de novo*, did not violate Sugiyama's due process rights, her motion to vacate the order setting aside the LCHO's determination of ownership was ⊥77 properly denied. We also note that her motion to set aside the trial court's Rule 60 order was untimely, having been filed more than three and a half years after the trial court entered the challenged order. On the facts of this case, where nothing occurred during this intervening period to give rise to or shed new light on any aspect of this due process claim, the motion failed to comply with Rule 60(b)'s requirement that a motion under that subsection be made "within a reasonable time."

[7] Appellant Sugiyama also asserts that the trial court gave insufficient weight to the Peleliu Tochi Daicho in determining the owner of the property. This argument, however, amounts to little more than an invitation to the Court to reweigh the evidence presented to the trial court. Such reweighing would only be appropriate if we found that the court's factual findings were clearly erroneous. But we do not. The Peleliu Tochi Daicho listings are not accorded the same presumption of correctness as such listings for some other states in Palau. *See In re Estate of Kloulubak*, 1 ROP Intrm. 701, 703 (1989). Where, as here, the record contains solid evidence in support of the Clan's versions of events, from which the trial court drew logical inferences leading to its judgment, we fail to see how it can be argued that the result was clearly erroneous.

See Tmol v. Ngirchoimei, 5 ROP Intrm. 264, 265 (1996).

[8] Appellant Sugiyama further alleges that the trial court erred by denying a summary judgment motion she filed in 1998. Accepting for the moment the unlikely proposition that the denial of summary judgment is appealable, [2] the record reflects that the only Rule 56 motion Appellant Sugiyama filed was one for partial summary judgment against Appellant Rebes. Indeed, in making that motion she joined in Tikei Clan's own partial summary judgment motion against Appellant Rebes. *See* Motion for Partial Summary Judgment Against Appellant Mokokil Rebes, April 1, 1998; Decision and Order of August 12, 1998, at 1. Thus to the extent that Appellant Sugiyama is claiming error in the denial of summary judgment in her favor vis a vis Tikei Clan, her claim obviously cannot succeed.

Appellant Sugiyama's arguments concerning any alleged errors granting appellant Rebes a trial *de novo* are mooted by our denial of Rebes' appeal.

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[9] Finally, we take note of the more fundamental defect in Appellant Sugiyama's argument. She asserts that the chain of title for the property starts with Tikei Clan, then to Oikull, then to Dlutaoch, then to her. However, during the 1950s, when Oikull is alleged to have orally transferred the property to Dlutaoch, he was *not* the owner. Title to the property had already vested with the Trust Territory Government's Alien Property Custodian, as had occurred with all land expropriated by the Japanese Government. *See Catholic Mission v. Trust Territory* , 2 TTR 251 (Tr. Div. 1961) (discussing and citing to the vesting orders). The proper chain of title, therefore, is Tikei Clan, Oikull (if one accepts the Peleliu Tochi Daicho listings as correct), the Japanese Government, the Trust Territory Government, and then back to Tikei Clan – which means that Appellant Sugiyama is outside the chain of title.

CONCLUSION

For the foregoing reasons, the Trial Court's judgment is hereby affirmed.

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[2] Most courts hold that denial of a motion for summary judgment is not reviewable after a full trial on the merits, whether summary judgment is denied on a legal or factual basis. The primary question on summary judgment is whether there exists a genuine issue of material fact. Once the case proceeds to trial, the question of whether a party has met its burden as to the elements of a claim must be answered by reference to the evidence and the record as a whole rather than by looking to the pretrial submissions alone. In other words, the [court's] judgment on the verdict after a full trial on the merits supersedes the earlier summary judgment proceedings.

James W. Moore, et al., Moore's Federal Practice § 56.41(3)(d) (3d ed. 1998).