

Dilubech Clan v. Ngeremlengui State Pub. Lands Auth., 9 ROP 162 (2002)

**DILUBECH CLAN,
Appellant,**

v.

**NGEREMLENGUI STATE PUBLIC
LANDS AUTHORITY,
Appellee.**

CIVIL APPEAL NO. 00-36
Civil Action No. 500-93

Supreme Court, Appellate Division
Republic of Palau

Argued: July 12, 2002
Decided: July 24, 2002

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

All findings of fact, whether based on oral or documentary evidence, are reviewed for clear error.

[2] **Appeal and Error:** Clear Error

Under the clear error standard, the lower court will be reversed only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.

[3] **Appeal and Error:** Clear Error

Where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous.

Counsel for Appellant: David Kirschenheiter

Counsel for Appellee: J. Roman Bedor, T.C.

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN,
Associate Justice, presiding.

MILLER, Justice:

Dilubech Clan v. Ngeremlengui State Pub. Lands Auth., 9 ROP 162 (2002)

This appeal arises from a longstanding dispute over parts of an island known as Tab, which has historically belonged to Dilubech Clan (“the Clan” or “Appellant”) of Ngermetengel Hamlet in Ngeremlengui State. Initially, summary judgment was granted in favor of the State, but in 2000, the Appellate Division vacated the trial court’s judgment and remanded for a trial. *Dilubech Clan v. Ngeremlengui State Gov’t*, 8 ROP Intrm. 106 (2000). After a trial, the trial court found that the land at issue was the result of the government’s landfill project. For the reasons set forth below, the judgment of the trial court is affirmed.

BACKGROUND

An in-depth account of the underlying facts can be found in *Dilubech Clan v. Ngeremlengui State Gov’t*, *supra*. Briefly, in the 1930s, the Japanese built a causeway that ran through the middle of Tab. The section of Tab north of the causeway was assigned Tochi Daicho Lot No. 510; the portion below was assigned Tochi Daicho Lot No. 511. In 1977, the area was surveyed again. Cadastral Plat 001 K 00 shows that T.D. Lot No. 510 was reassigned as Lot 001 K 002 and T.D. Lot 511 was reassigned as Lot 001 K 15. In 1993, the Land Claims Hearing Office issued to the Clan certificates of title to both lots.

In 1985, the State hired a company called Nishimatsu to build roads for the State. The Clan contends that it negotiated an oral ¶163 agreement with the Governor of Ngeremlengui whereby the Clan, in exchange for allowing Nishimatsu to clear and level parts of Tab to store its equipment, would be entitled to retain any improvements Nishimatsu made on Tab. Then, in the early 1990s, the State began building an Old Age Center on the land at issue.

In 1993, the Clan brought this action, arguing that the Old Age Center is located on Clan land and seeking to eject the State therefrom and quiet title thereto. The Clan argued that the 1977 surveyors left out a portion of land to the west of Lot 001 K 15 and that that land was always solid land.

The State moved for summary judgment, contending that the Old Age Center is situated on formerly submerged land that Nishimatsu elevated through backfilling, making it the property of the State. The Clan, in response, asserted that there were genuine issues of material fact as to whether the Center is located within Lots 001 K 02 and 15, to which the Clan held certificates of title, or on adjacent land. Furthermore, the Clan contended, even if the Center were outside Lots 001 K 02 and 15, there remained genuine issues of material fact as to whether the site where it was located was backfilled land belonging to the State, was pre-existing, unsurveyed land belonging to the Clan based on its historical ownership of Tab island, or was naturally accreted land belonging to the Clan as owner of the adjacent parcels.

The trial court entered summary judgment in favor of the State. The Clan appealed and the Appellate Division held, among other things, that there was a genuine issue of material fact as to the location of the Old Age Center. The Appellate Division further held that:

[b]ecause the certificates of title did not preclude the Clan as a matter of law from establishing its ownership of land outside Lots 001 K 02 and 15, and because the

Dilubech Clan v. Ngeremlengui State Pub. Lands Auth., 9 ROP 162 (2002) aerial map created a genuine issue of material fact as to whether the Center was built on unsurveyed land beyond Lots 001 K 02 and 15, we reverse the entry of summary judgment on this issue.

8 ROP Intrm. at 110-11.¹

On remand, the Clan presented witnesses who testified that they owned or worked at a sawmill that was situated on the land at issue or that they could stand at the Old Power Plant (which is across the road from the Old Age Center) and see the sawmill. Its argument was primarily that the land where the Old Age Center was built was solid land that had always been there and was not a result of government landfill. The Clan also presented video footage that was allegedly taken during the initial Nishimatsu road project and shows a tree clearing and the remains of an old sawmill. The State presented witnesses who had worked for Nishimatsu on roads and who testified that they had personally participated in filling the land at issue. Numerous maps were entered into evidence, including aerial maps, the 1977 survey maps, maps that projected the building of the Old Age Center, and a court-ordered survey from 1993 of the area.

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After reviewing all of the evidence, the trial court concluded that: “the so-called unsurveyed area was the result of the government landfill project after the monumentation proceedings in 1977, and is not the result of Japanese bauxite mining in the 1930s, or the activities of generations of the Palauan crab, *cheremrou*, which can also create accretion at the shoreline.”

DISCUSSION

[1, 2] All findings of fact, whether based on oral or documentary evidence, are reviewed for clear error. *Rechelulk v. Tmilchol*, 6 ROP Intrm. 1, 2-3 (1996). Under the clear error standard, the lower court will be reversed “only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.” *Ngerusebek Lineage v. Irikl Clan*, 8 ROP Intrm. 183 (2000).

The Clan proffers two arguments. We address first its argument that the case should be remanded to the Trial Division “because the weighing of the evidence was tainted by an erroneous assumption that the Appellant [was] claiming that the land in question resulted from accretion.” Although the Clan does contend that the size of Tab was increased by accretion,² it

¹The Appellate Division affirmed the trial court’s holding that the alleged oral agreement between the Clan and the Governor was unenforceable. *Id.* at 111-12.

²Without suggesting that these comparisons are determinative, we note that, consistent with its claim that Tab had grown by accretion, the Clan in fact received more land through its 1993 certificates of title than was listed in its name in the Tochi Daicho. Using a conversion factor of one tsubo to 3.306 square meters, Tochi Daicho Lot No. 510, listed as 243 tsubo, had an area of 803.36 square meters, and Tochi Daicho Lot No. 511, listed as 315 tsubo, had an area of 1041.39 square meters. Lot 510 became Cadastral Lot No. 001 K 02, which has 1,119 square meters, 315.64 square meters more than was listed in the Tochi Daicho for that lot, and Lot 511 became Cadastral Lot No. 001 K 15, which has 1,661 square meters, 619.61 square meters more than the Tochi Daicho listing.

Dilubech Clan v. Ngeremlengui State Pub. Lands Auth., 9 ROP 162 (2002) says that the land where the Old Age Center was built was part of Tab all along and was not a result of accretion.

Whether or not the trial court misconstrued the basis of the Clan's claim, it is clear that the trial court understood that the issue in this case was whether the land where the Old Age Center stands was part of Tab as of 1977 or was created subsequently by landfill. The trial court found that the land was created by landfill and was not preexisting, a finding that defeats the Clan's claim – whatever its basis – that the land was solid land that had not been surveyed.

The Clan's other argument is to attack this finding. It argues that the trial court erred by basing its decision "significantly on a single map that was based on insufficient information." The Clan contends that the 1977 survey map, on which the trial court relied, and which shows Lot 001 K 15 as abutting water, left out a significant portion of land. It claims that the monumentation was done incorrectly and that the survey ultimately yielded an inaccurate map, which failed to show a portion of land that was left unsurveyed. The trial court looked at the various maps admitted into evidence and found that the evidence presented by the Clan was insufficiently reliable to show that any error was made during the 1977 survey.³ ¶165 That finding was not clearly erroneous. See *Olgebang Lineage v. ROP*, 8 ROP Intrm. 197, 199 (2000) (where two conflicting maps were in evidence at trial, both supported by testimony, the trial court did not err in choosing one over the other as correct).

CONCLUSION

[3] When this case first came before us on appeal from a grant of summary judgment, the presence of conflicting evidence in the record called for reversal of the judgment below so that a trial could be held. Now that the trial has been held, the presence of conflicting evidence is neither surprising nor a likely basis for reversal. To the contrary, where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous. *Ngetchab Lineage v. Klewei*, 8 ROP Intrm. 116, 117 (2000). While the maps continue to be confusing, the trial court's interpretation of the evidence is a reasonable one and was not due to some misunderstanding of the Clan's argument. The judgment of the trial court is accordingly affirmed.

³At oral argument Appellant raised another issue concerning the dates of the 1977 survey map and the monumentation. Appellant conceded, however, that it never raised that argument in court below. We therefore will not consider it here. See *Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9 (1999).