Kerradel v. Ngaraard State Pub. Lands Auth., 9 ROP 185 (2002)

SESARIO KERRADEL,
Appellant,

v.

NGARAARD STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 01-61
LC/E 01-405

Supreme Court, Appellate Division
Republic of Palau

Argued: August 23, 2002
Decided: August 29, 2002

[1] **Property:** Quiet Title; **Return of Public Lands:** Statute of Limitations

Claims for the return of public lands, which are required to have been filed no later than 1989, are distinguishable from a quiet title claim asserting that a private claimant has superior title to a piece of property than the governmental entity claiming ownership of it, which is not subject to the same limitations period.

[2] **Return of Public Lands:** Statute of Limitations; **Statute of Limitations**

Where claimant asserts that land never became public land, the claim is not barred by the statute of limitations for return of public lands claims.

Counsel for Appellant: David Kirschenheiter

Counsel for Appellee: No Appearance[1]

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Land Court, the Honorable FRANCISCO J. KEPTOT, Associate Judge, presiding.

MILLER, Justice:

[1, 2] Appellant Sesario Kerradel appeals from a determination of ownership awarding Cadastral Lot No. 011 E 12 in Ngaraard State, which the Land Court identified as Tochi Daicho

[1]No attorney appeared or filed a brief for Appellee.

Lot No. 505, to Appellee Ngaraard State Public Lands Authority. This case turns on an issue addressed by the Court in *Carlos v. Ngarchelong State Public Lands Authority*, 8 ROP Intrm. 270 (2001). In *Carlos*, we distinguished between a claim for the return of public lands, which is governed by the provisions of 35 PNC § 1304 and which must have been filed no later than 1989, and a quiet title claim asserting that a private claimant has superior title to a piece of property than the governmental entity claiming ownership of it, which is not subject to the same limitations period. "Citizens had a right to contest government claims of title to property before the enactment of the Constitution, and that right continues after the expiration of the period for filing Article XIII claims." *Carlos*, 8 ROP Intrm. at 272 (footnotes omitted). In this case, the Land Court dismissed Appellant's claim on the ground that it was seeking the return of public lands and was therefore untimely filed. Appellant, however, was entitled to, and did, claim the land on the theory that it never became public land in the first place. While the Land Court was correct in determining that Appellant should be barred from filing an untimely claim for the return of public lands, Appellant is nevertheless entitled to proceed on his claim ⊥186 of superior title.[2] Consequently, we remand this matter to the Land Court for further proceedings consistent with this opinion.

[2]Appellant filed claims for both TD Lot 505, which is listed as government land, and Lot 506, which is not. We do not, of course, take any position on the merits of Appellant's claim or its chances for success, though we note that, to the extent that he claims the land as Lot 505, he must confront an "adverse Tochi Daicho listing, and the availability of affirmative defenses not available to the government in Article XIII claims." *Carlos*, 8 ROP Intrm. at 272 n.8. If instead Appellant seeks to claim that Cadastral Lot No. 011 E 12 is not coextensive with Lot 505, as the Land Court found, but rather is all or part of Lot 506, he must also confront the fact that he previously obtained a determination in his favor as to land identified as Lot 506.