Iyar v. Masami, 9 ROP 255 (Tr. Div. 2001)

OBODEI S. IYAR,
Plaintiff,

v.

DWIGHT MASAMI and
GEORGE SUGIYAMA,
Defendants.

CIVIL ACTION NO. 98-127

Supreme Court, Trial Division
Republic of Palau

Decided: September 26, 2001

[1] **Damages:** Improvement to Real Property

A person who, in the mistaken belief that he or a third person on whose account he acts is the owner, has caused improvements to be made upon the land of another, is not thereby entitled to restitution from the owner for the value of such improvements.

[2] **Damages:** Improvements to Real Property; **Equity:** Restitution

If an improver's mistake was reasonable, the owner is entitled to obtain judgment in an equitable proceeding or in an action of trespass or other action for the mesne profits only on condition that he makes restitution to the extent that the land has been increased in value by such improvements, or for the value of the labor and materials employed in making such improvements, whichever is least.

[3] **Damages:** Improvements to Real Property

If the owner of land remains silent although realizing that another is improving the land in ⊥256 the erroneous belief that it is his own, normally it is held that the owner is estopped either to deny title or, more usually, to deny the improver the right to recover for the value added.

[4] **Damages:** Improvements to Real Property

The occupier of the land of another, in order to have the equitable doctrine apply, must have acted in good faith in making the improvements and must be ignorant of any adverse claim to the title.

[5] **Damages:** Improvements to Real Property

Reliance on mistaken legal or similar expert advice cannot supplant a party's actual knowledge

of a concrete adverse claim.

[6] **Damages:** Trespass

The usual measure of damages for a trespass to real property is the decrease in the fair market value of the property.

[7] **Damages:** Improvements to Real Property; **Property:** Ejectment

When the defendant in ejectment has made improvements on the property, damages for the detention of the property are measured by the rental value at the time defendnat took possession, not the enhanced value.

LARRY W. MILLER, Associate Justice:

This Court's Decision and Order of November 7, 2000, having determined that plaintiff Obodei Iyar was entitled to possession of the land in dispute in this case, left open the question "whether [defendant] Dwight [Masami] is entitled to any compensation for the building that is located on the land."[1] The Court withheld judgment on that question both to "nail down" the facts regarding the construction of the building and to get further guidance concerning the applicable law. The trial and closing arguments held earlier this year have, at least to a large extent, accomplished both of these goals. This opinion constitutes the Court's findings of fact and conclusions of law.

As to the facts, there appears little question that construction of the building began sometime in the summer of 1987. This is evident both from the building permit, which was applied for by and granted to Dwight's father, Masami Siksei, in June 1987, and from a letter from Obodei to Masami in August 1987, discussed below, that asked him to "discontinue any development on the land." Work on the building was suspended briefly following the death of Masami in June 1988, and it was finally completed at the beginning of 1990, the first lease having been entered into between Dwight and Larry Johnsrud in February of that year.

[1, 2] The law applicable to this situation has also been clarified, both parties having directed the Court's attention to portions of the Restatement of Restitution that they believe controlling.[2] Obodei relies on Section 42(1):

> Except to the extent that the ⊥257 rule is changed by statute, a person who, in the mistaken belief that he or a third person on whose account he acts is the owner, has caused improvements to be made upon the land of another, is not thereby entitled to restitution from the owner for the value of such improvements; but if his mistake was reasonable, the owner is entitled to obtain judgment in an equitable proceeding or in an action of trespass or other action for the mesne

[1]Because it was not raised in plaintiff's Motion for Partial Summary Judgment, that Decision also left open the question whether Dwight owes any compensation to Obodei for his use of the land.
[2]The Restatement is itself controlling, of course, pursuant to 1 PNC § 303.

> profits only on condition that he makes restitution to the extent that the land has been increased in value by such improvements, or for the value of the labor and materials employed in making such improvements, whichever is least.

Dwight points instead to an exception to that rule set forth in Comment b to Section 42: "The rule stated in this Section is not . . . applicable to one who, having notice of the error and of the work being done, stands by and does not use care to prevent the error from continuing."

[3] Taking Dwight's argument first, the Court believes that the facts adduced at trial do not justify the application of this exception. Both the Restatement and the cases from which this exception was derived make clear, the Court believes, that it applies only where the owner of the land does nothing to disabuse the improver of his mistaken belief:

> If the owner of land remains silent although realizing that another is improving the land in the erroneous belief that it is his own, normally it is held that the owner is estopped either to deny title or, more usually, to deny the improver the right to recover for the value added.

Reporters' Notes to § 42, at 31 (citing cases); *see also* Section 40, Comment d ("A landowner who has knowledge that another, in the mistaken belief of ownership, is making improvements upon the land is liable to the other for the value of improvements made after the landowner has had a reasonable opportunity to notify the other of his mistake *and fails to do so*.") (emphasis added); Annotation, *Compensation for Improvements Made or Placed on Premises of Another by Mistake*, 57 A.L.R.2d 263, 273-74 n.20 (1958) (citing cases).

Here, however, Obodei did not remain silent. It is undisputed that shortly after work on the building began, he sent a letter to Masami, which is worth setting out in full:

> Dear Mr. Siksei:
>
> I am honored to have this opportunity to write to you on a land matter of which you are working on it now. I would think someday would cause a problem between us.
>
> This matter concerns the parcel of land in Diberdii in which you have gotten a lease agreement from Koror State Government. But I would like to inform you that the land is under the claim now because it ⊥258 is owned by my father but Japanese leased it and promised to pay a monthly rental but did not pay a penny. As you know that our Constitution it is clear that land taken without payment or taken by force are to be return to the owner. For this particular land there is no complication due to all the records are in the Courts and Land Management.
>
> Please discontinue any development on the land until sometime in September or October of this year which was set for the hearing on this land and others. Sir, we know each other and I don't want to stop you from what you are doing on the land

with the Court Order.

Please consider my request that would not be your liability in the future.

Thank you for your time and consideration.

Sincerely your,

Obodei S. Iyar

Given this letter, it would be inappropriate to characterize Obodei as one who, in the words of Justice Story, "stands by and suffers the work to proceed without giving any notice of his own claim." *Stewart v. Wheatley*, 182 Md. 455, 35 A.2d 104, 108 (1943).

Dwight argues that Obodei could have done more, citing his failure to follow through on his implied threat to seek a court order to stop construction. The Court does not believe that the law requires such a step,[3] and is not sure that there is any more Obodei could have done in any event. In order to bring an action for either ejectment or trespass, Obodei would have had to show "a present right to possession," 25 Am. Jur. 2d *Ejectment* § 6 (1996); *see* 75 Am. Jur. 2d *Trespass* § 36 (1991) ("the essence of an action of trespass to real property is the injury to the right of possession"), something he did not have at the time. All that he could do was to notify Masami of his claim and then set out to prove it through the statutory scheme for the return of public lands, which he did vigorously. *See* Ruling and Order, *Iyar v. Palau Land Claims Hearing Office*, Civil Action 1073-88 (June 15, 1989) (directing the LCHO "to proceed at all deliberate speed in adjudicating Plaintiff's claim").

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[4] The rule cited by Obodei also has an exception, but the Court believes that that exception is also not applicable here. Section 42 of the Restatement, quoted earlier, sets forth the general rule that someone who mistakenly believes he owns or has a right to build on land that really belongs to another person is *not* entitled to restitution, but may be entitled to an offset against the owner's claim for damages against him "if his mistake was reasonable." But most of the common law and equitable cases that the Restatement is meant to summarize and the cases decided under the "betterment" statutes that many states have adopted, *see* Section 42, Comment c, at 169, hold that actual notice of an adverse claim defeats even a claim for an offset:

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[3]In *Fouser v. Paige*, 101 Idaho 294, 612 P.2d 137, 141 (1980), the Court denied the improver's claim to compensation even without notification from the owner because the improver already had knowledge of the owner's interest:

> Appellant lastly asserts that because the respondent knew of his building operation in October and did nothing to stop such construction, that respondent should not be allowed to retain the benefits of such construction without compensating the appellant. However, communication from the respondent would not have put appellant in a different position, as he already had notice of the respondent's position.

A fortiori , the Court believes, compensation should not be required where as here, the owner *did* communicate with the improver.

> [T]he occupier of the land of another, in order to have the equitable doctrine apply, must have acted in good faith in making the improvements and *must be ignorant of any adverse claim on the title*. This requirement is not satisfied in situations in which the occupier of the land has actual knowledge of an adverse claim to the title or in which he had knowledge of facts which, as a reasonable man, would require him to investigate and discover such an adverse claim.

Welsh v. Welsh, 254 Md. 681, 255 A.2d 368, 372 (1969) (emphasis added); *accord Lawrence v. Lawrence*, 231 Ark. 324, 329 S.W.2d 416, 420 (1959) ("[i]mprovements made with the knowledge that another is claiming an interest in the property can hardly be characterized as improvements made under a *bona fide* belief of ownership"); *E. Motor Inns v. Ricci*, 565 A.2d 1265, 1272 (R.I. 1989) ("When a party makes improvements . . . with full knowledge that title is vested in another, *or subject to dispute*, the improver will not be entitled to restitution . . . .") (emphasis added); *M.M.&G., Inc. v. Jackson*, 612 A.2d 186, 192 & n.10 (D.C. 1992) (following *Welsh* and citing additional cases).

[5] Indeed, the majority of cases hold that even "reliance on mistaken legal or similar expert advice cannot supplant a party's actual knowledge of a concrete adverse claim." *M.M.&G.*, 612 A.2d at 193; *accord Fouser v. Paige*, 101 Idaho 294, 612 P.2d 137, 141 (1980) (reliance on realtor and lending agent did not "change the fact that appellants had actual notice of the respondents' interest"); *Morris v. Ulbright*, 591 S.W.2d 245, 247-48 (Mo. Ct. App. 1979) ("[W]hen one knows the facts and mistakes the law by thinking his title good when it is later held not to be, he cannot recover because his actions were taken with full knowledge of the facts.").

Here, the facts are that neither Dwight nor his father did anything in response to Obodei's letter other than to forward it to Koror State. They did not consult an attorney concerning the viability of Obodei's claim, much less did they rely on any advice. Nor have they suggested any other basis to discount his chance of success.[4] From all that appears, Masami and then Dwight simply went ahead on the chance that Obodei would not succeed. On these facts, the Court sees no unfairness in applying the "harsh" common law rule that "a person who intermeddles with the property of another assumes the risk as to his right to do so." *See* Restatement of Restitution, § 42, cmt. a.[5]

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[4]As Obodei points out, Masami was a delegate to the Constitutional Convention and was well aware of Article XIII, § 10, which provided for the return to the original owners of public lands that were taken "through force, coercion, fraud, or without just compensation or adequate consideration." A minimum of research would have revealed to him (or his attorney) that Obodei's father had claimed the land and that the Trust Territory had conceded that "the land was taken by the former government without payment of adequate consideration." *Ngiratulemau v. Trust Territory*, 1 TTR 530, 533 (1958). Thus, this is not a case where it could have been contended that there were "reasonable and strong grounds to believe that [Obodei's] claim [was] destitute of any just or legal foundation." *See* 41 Am. Jur. 2d *Improvements* § 15 (1995), at 303.

[5]The parties have continued to debate the question whether Masami had a written lease to the property – which Obodei denies, but for which the most compelling evidence is his own letter referring to its existence and its terms. (*See* Defendant's Ex. L) The Court sees no need to resolve this question now, but

The only question remaining is whether and to what extent Obodei is entitled to compensation from Dwight and from George Sugiyama, the current occupant of the building against whom a default judgment has been entered. Obodei has identified two categories of damages to which he claims to be entitled: rents received by Dwight for the use of the building over the past several years, and the cost of removing the building from the land. For somewhat similar reasons, the Court rejects the first in large part, and the second entirely.

Taking the latter claim first, the Court notes that although both sides have submitted competing factual estimates of the cost of removal, neither has offered any legal guidance on this issue. Two considerations lead the Court to reject this claim. First, as the Court has already noted, the building was constructed long before Obodei had a right to possession of the land.[6] The fact that Obodei eventually succeeded in his claim did not – retroactively – convert Dwight into a trespasser. While the Court has little difficulty in saying, as it has above, that Dwight (and his father) assumed the risk that they would lose the building if the land was returned, it is quite another thing – and in the Court's view unjustifiable – to penalize them for actions that were lawful at the time.[7]

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[6] Second, and even assuming that Obodei's claim in this regard was otherwise viable, the Court believes that the proof he has presented is not sufficient to justify it. The usual measure of damages for a trespass to real property "is the decrease in the fair market value of the property." 75 Am. Jur. 2d *Trespass* § 128 (1991). Here, however, there has been no showing that the value of the land has been diminished by the construction of the building. Even accepting Obodei's contention that he has a development plan that will make more money than the building now produces, it is doubtful that the land with the building there is less valuable than it was when Masami first took an interest in it, *i.e.*, when, according to the testimony, all that was there were the burned-out remains of the Boom Boom Room.

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notes that if there had been such a lease, it "most likely" would have had contained the following clause:

> The Lessee understands that there are known claims against the Government's title to the Premises and that upon an unfavorable adjudication of such claim against the Government, this Lease Agreement shall terminate as of the date judgment is rendered against the Government. Lessee further hereby agrees that the Government shall not be held liable for any damages to or loss of the improvements constructed on the Premises due to such termination.

See Defendant Masami's Response in Opposition to Summary Judgment (October 3, 2000), at 7; Attachment A to Affidavit of Clara Kalscheur (October 3, 2000).

[6]This, the Court believes, was in 1995, when the final appeal was decided in his favor and he was given his certificate of title. *See Diberdii Lineage v. Iyar*, 5 ROP Intrm. 61 (1995).

[7]The Court has confined itself to common-law principles in deciding this case, without considering the impact of the Constitution. But just as it was skeptical that the Framers intended that successful claimants should have to pay for the buildings constructed on their land, *see Meriang Clan v. ROP* , 7 ROP Intrm. 33, 35-36 (1998) (concurring opinion), so it is doubtful that they intended that prior users of the land would have to pay for their removal.

[7] Similar considerations guide the Court with respect to Obodei's claim for past rentals. First, again taking into account that the building was completed and in use before Obodei had succeeded on his claim, the Court believes that his right to recover the rental value of the land begins, if at all, from the time when he had a right to immediate possession of the land. *See* n.6 *supra*. But there is still a substantial question whether Obodei is entitled to recover any damages even for this time period. The only claim Obodei has made is for the rent for the building collected by Dwight, first from Larry Johnsrud and later from George Sugiyama, during that time. The rule, however, is that "[w]hen the defendant in ejectment has made improvements on the property, damages for the detention of the property are measured by the rental value at the time defendant took possession, not the enhanced value." 25 Am. Jur. 2d *Ejectment* § 55 (1996). No evidence was presented here concerning the "rental value of the land in its raw state." *Madrid v. Spears*, 250 F.2d 51, 55 (10th Cir. 1957) (upholding denial of recovery in the absence of such proof).[8]

Notwithstanding the foregoing, the Court believes that Obodei is entitled to receive the rental payments due since the issuance of the Court's Decision and Order on November 7, 2000. As the Court sees it, and as it believes was reflected in the Order of March 9, 2001, directing that future payments be paid into an escrow account, that Decision, in declaring Obodei's right to possession of the land, effectively transferred the building and the right to receive future rental payments from Dwight to Obodei. The Court will therefore enter judgment against Dwight and George Sugiyama in the amount of $35,000, reflecting the rental payments made or that should have been made[9] between December 1, ⊥262 2000 and September 1, 2001.[10]

An appropriate judgment is entered herewith.

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[8]*Accord Morris*, 591 S.W.2d at 248 (reversing judgment in favor of owner where "[t]here was no evidence . . . as to the rental value of the property without improvements to support that judgment"); *Beaver v. Davis*, 550 P.2d 428, 432 (Or. 1976) (reversing judgment in favor of owner where there was "no evidence of the reasonable rental value of plaintiff's property, unimproved by defendant"); *Uhlhorn v. Keltner*, 723 S.W.2d 131, 136 (Tenn. Ct. App. 1986) (reversing judgment in favor of owner for lack of "a sufficient judicial determination of th[e] fair rental value prior to the improvements being made.").

[9]Because the Court is unaware which payments have or have not been made, it has not allocated the amounts due from each of them. In the first instance, however, the Court believes that payments that have been received by Dwight should be paid over by him and that the remainder should come from George. If payment is not forthcoming along these lines, the Court will give further consideration to Obodei's suggestion that both defendants should be held jointly and severally liable.

[10]The Court notes that, by its terms, the lease agreement between Dwight and George expired in June. Notwithstanding, the Court believes that George remains liable as a holdover tenant for the subsequent months covered by the judgment and for as long as he continues to occupy the building after the date of the judgment.