

Udui v. WCTC, 9 ROP 304 (Tr. Div. 2002)
KALEB UDUI, JR.,
Plaintiff,

v.

WESTERN CAROLINE TRADING CO.
and EUSEBIO RECHUCHER,
Defendants.

CIVIL ACTION NO. 01-268

Supreme Court, Trial Division
Republic of Palau

Decided: September 23, 2002

[1] **Civil Procedure:** Res Judicata; **Judgments:** Finality; **Property:** Bona Fide Purchaser

A judgment in an action that determines interests in real or personal property has preclusive effect upon a person who succeeds to the interest of a party to the same extent as upon the party himself, even if the successor is a bona fide purchaser.

[2] **Property:** Bona Fide Purchaser

The bona fide purchaser doctrine does not serve to give a good faith purchaser more than his seller had in the first place.

LARRY W. MILLER, Associate Justice:

This matter is before the Court on plaintiff Kaleb Udui, Jr.'s motion for summary judgment requiring defendant Western Caroline Trading Co. ("WCTC") to pay dividends on 247 shares of WCTC stock to him rather than defendant Eusebio Rechucher. For the reasons stated herein, the motion is granted.

The history of the 247 shares is **1305** undisputed. They were originally the property of Kaleb Udui, Sr. As part of the divorce settlement between him and plaintiff's mother, it was ordered by a CNMI court that he should retain the legal interest in the shares,¹ but that she should have "sole beneficial interest in [them], and further shall be entitled to any dividends, interest or income accruing therefrom" Order Re: Division of Property, Child Custody and Support, *Udui v. Udui*, Civil Action No. 85-465 (January 26, 1987), at 6. This beneficial interest in the shares was subsequently transferred from plaintiff's mother to plaintiff through a bill of sale dated January 14, 1991. As for the legal interest, after plaintiff's father died, his shares in

¹The order recites that Kaleb Udui, Sr., was the owner of 494 shares. The apparent intent of the order was to effect an equal split of the financial value of the shares, while leaving legal ownership in Udui presumably to preserve WCTC's status as a corporation wholly owned by Palauan citizens.

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WCTC,² including the legal interest in the shares in question, passed under his will to Geggie Udui. The final decree in the estate proceeding, however, specifically noted that “the beneficial interest of 247 of [the shares] . . . belong[s] to Kaleb Udui, Jr. pursuant to the January 26, 1987 Order . . . and to Elizabeth Udui’s subsequent transfer to Kaleb Udui, Jr. of her such beneficial interest therein.” Final Judgment and Decree of Distribution, *In re Estate of Udui*, Civil Action No. 580-89 (December 6, 1995), at 2. On September 3, 1996, Geggie sold “all interest and claims to” 247 shares of WCTC to Roman Tmetuchl for a total consideration of \$50,000.00. A little more than a month later, on October 25, 1996, Tmetuchl then sold “all interest and claims to” 528 shares³ to Rechucher for \$139,025.00.

Based on these facts, it is plaintiff’s straightforward claim that as the recognized owner of the beneficial interest in the 247 shares at issue, he is entitled to receive the dividends accruing to those shares without interference from Rechucher. Rechucher’s sole response, as set forth in his answer and in his opposition to plaintiff’s motion, is to assert that he is a “bona fide purchaser for value” of the shares. For at least two reasons, however, the Court finds that the question whether Rechucher was a bona fide purchaser for value is immaterial, and that plaintiff is entitled to the relief he seeks.⁴

[1] The first reason is the doctrine of res judicata, which appears to preclude Rechucher’s entitlement to receive dividends **L306** irrespective of whether he was a bona fide purchaser or not. The Court’s initial reaction to plaintiff’s argument in this regard was to say that res judicata was inapplicable since Rechucher was never a party to any litigation concerning the shares at issue. That reaction was wrong, however, because Section 43 of the Restatement (Second) of Judgments, provides:

A judgment in an action that determines interests in real or personal property:

- (1) With respect to the property involved in the action:
 - (a) Conclusively determines the claims of the parties to the action regarding their interests; and
 - (b) Has preclusive effects upon a person who succeeds to the interest of a

²The decree refers to plaintiff’s father having 528 shares in total, rather than 494 as stated by the CNMI court.

³The Court has no idea whether Geggie sold the remainder of her shares to Tmetuchl through some other transaction or whether it is simply a coincidence that the number of shares sold by Tmetuchl to defendant is the same as the total awarded to Geggie in the final decree. *See* n.2 *supra*.

⁴There may be a third reason, which is that the bona fide purchaser doctrine does not even apply to purchases of personal property, like the shares of stock at issue in this case. That is plaintiff’s assertion, and it may be true, but the Court has been unable to find a definitive answer to this question. Article 8 of the Uniform Commercial Code contains a bona fide purchaser provision applicable to buyers of securities. *See* 15A Am. Jur. 2d *Commercial Code* § 95 *et seq.* (2000). The UCC has not yet been adopted as part of Palauan law so this provision is of no assistance to Rechucher. The problem is that the UCC is such a pervasive part of American law that it is difficult to find a discussion of what the common law was before the UCC was adopted.

party to the same extent as upon the party himself.

Comment f to this Section makes clear that this rule applies to “succession by purchase . . . , gift, devise, and involuntary transfers,” and that it applies “to remote successors as well as to immediate ones.” *See* 47 Am. Jur. 2d *Judgments* § 663 (1995) (“There is privity within the meaning of the doctrine of res judicata where there is an identity of interest and privity in estate, so that a judgment is binding as to a subsequent grantee, transferee, lienor or lessor of property.”) (footnotes omitted).⁵ By its terms, therefore, Rechucher as the successor to Geggie Udui’s, and ultimately Kaleb Udui, Sr.’s, interest in the shares at issue is bound by the judgments in the estate case (to which Geggie was a party) and the divorce case (to which Kaleb Udui, Sr. was a party) even though he was not a party to either. And this is so whether he was a bona fide purchaser or not. Section 43 makes no mention of bona fide purchasers. That this omission was purposeful and not inadvertent is clear in light of the fact that Section 44, which deals with the effect of a judgment concerning property that is transferred while the action is pending, makes notice of the action (or lack of same) pertinent in certain circumstances.

[2] A second reason for rejecting Rechucher’s argument is that, even where applicable, the bona fide purchaser doctrine does not serve to give a good faith purchaser more than his seller had in the first place. *See* 77 Am. Jur. 2d *Vendor and Purchaser* § 427 (1997) (“The protection accorded a person as a bona fide purchaser of real estate does not apply to a person who acquires no semblance of title. *If the vendor has no title, the purchaser acquires none.*”) (footnotes omitted; emphasis added). As the Appellate Division said in *Aguon v. Aguon*, 5 ROP Intrm. 122, 126 (1995), “a purchaser cannot buy what a seller does not own; the good faith of a purchaser . . . cannot create a title where none exists.” In this case, Roman Tmetuchl owned – and could sell to Rechucher – only what he had purchased from Geggie, and Geggie owned only what she had received from Kaleb Udui, Sr. under his will, and Udui owned only what was left after the order in the divorce case, *i.e.*, the legal title to the shares without the beneficial interest therein. In short, therefore, since Tmetuchl never acquired the right to receive dividends on these shares, he could not sell that right to Rechucher, and Rechucher, bona fide purchaser or not,⁶ is not entitled to them.

⁵As Comment b explains, a judgment with respect to a piece of property, and the preclusive effect of that judgment on a party to the judgment

is a delimitation of the party’s property interest. That delimitation accompanies transfer of the interest to another and results in the successor’s having no greater rights in this respect than the party to the judgment. The same delimitation accompanies the interest in a subsequent transfer from the first successor to a subsequent one, and so on.

⁶The Court makes no finding as to whether Rechucher would qualify as a bona fide purchaser except to observe that determination of that issue would probably benefit from further factual development. There is an obvious tension between Rechucher’s assertion that there was no record in the files of WCTC concerning plaintiff’s interest in the shares, and plaintiff’s averment that he received the dividends from those shares from 1991 through 1999. Moreover, the court file for the estate of plaintiff’s father reveals that WCTC filed a claim against the estate and that its counsel – who had at one point proposed the sale of the shares to satisfy that claim – was fully aware of plaintiff’s interest in the 247 shares at issue. As to both of these points, it bears noting that Rechucher is the President of WCTC and thus was peculiarly well-situated to become aware of these matters.

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For all of these reasons, plaintiff's motion for summary judgment is granted. Plaintiff should submit a proposed judgment within the next seven days. So Ordered.