

Adelbai v. Masang, 9 ROP 35 (2001)
**DIRAIRACHEL SALII ADELBAI,
DIRRAKLEI TELLAMES TROLII,
HIROMI RDIALI, and
TASIA NAPOLEON,
Appellants,**

v.

**SAM YOYO MASANG and
GABRIELLA NGIRMANG,
Appellees.**

CIVIL APPEAL NO. 99-14
Civil Action Nos. 235-90 & 241-90

Supreme Court, Appellate Division
Republic of Palau

Argued: November 2, 2001
Decided: December 5, 2001

[1] **Descent and Distribution:** Applicable Law

A court applies the inheritance law in effect at the time of the intestate's death.

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

In order to assert a right to a transfer of title to specific public land, a party must file a claim by the deadline.

[3] **Contracts:** Enforceability

A court can enforce a contract only if the obligations of the parties are set forth with sufficient definiteness that it can be performed.

[4] **Contracts:** Enforceability

Although a party may manifest an intention to offer performance, the offer cannot be said to **L36** form an enforceable contract unless the terms of the contract are reasonably certain.

[5] **Contracts:** Offer and Acceptance

If one of the terms of a proposed bargain are left open or uncertain, that may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance.

[6] **Contracts:** Enforceability

An agreement to “discuss” is too uncertain to be judicially enforceable.

Counsel for Adelbai: Carlos H. Salii

Counsel for Trolii: Johnson Toribiong

Counsel for Rdiall: Pro Se

Counsel for Napoleon: Raynold B. Oilouch

Counsel for Masang: John K. Rechucher

Counsel for Ngirmang: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem.

MICHELSEN, Justice:

This opinion addresses the appeals of Dirairachel Salii Adelbai, Dirraklei Tellames Trolii, Hiromi Rdiall, and Tasia Napoleon in this consolidated case. The appeals of Gabriella Ngirmang and Sam Masang raise separate issues, which we will consider in a subsequent opinion. The litigants assert conflicting claims to land called Ngerias, located in Koror, which was at one time owned by Salii Ngiraikelau (“Salii”). Ngerias was taken by the Japanese government during the Mandate period and thereafter considered public land. Salii lived well into the American era, and died in 1967. Ngerias was classified as public land during Salii’s lifetime, the title having passed to the successor Trust Territory Government after World War II. As the Trusteeship ended, the land was ultimately transferred to the Koror State Public Lands Authority (“KSPLA”). Masang Marcil (“Masang”), Ngirmang, and Hanako Ngeltengat filed claims pursuant to 35 PNC § 1304 for the return of the land. The trial on these claims was divided into three stages. During the second phase of the trial, Adelbai, Trolii, Rdiall, Ngirmang and Napoleon moved to intervene as the “proper heirs” of Salii. The Trial Division granted the motions to intervene of Napoleon and Ngirmang and denied the rest, although the court ultimately ruled against the claims of Napoleon. We affirm those parts of the trial court’s decision denying the motions to intervene and denying Napoleon’s claim to Ngerias.

I. Proceedings in the Trial Division

The Appellants’ motion to intervene must be considered in the context of the relevant statute, § 1304, and the protracted history of this litigation. In 1986, the Second Olbiil Era Kelulau enacted the legislation, now codified at § 1304, which sets the conditions for claiming land pursuant to Article XIII, Section 10 of the Palau Constitution, which has been referred to as the Return of Public Lands Clause. Under § 1304(b), a claimant seeking the return of public

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land must prove: (1) that the claimant is a citizen of Palau; (2) that the claimed land is considered public land and “that the land became part of the public land or became claimed as part of the public land, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration”; (3) that the claimant is the original owner or the proper heir to the land in question; and (4) that the claim was filed before January 1, 1989. 35 PNC § 1304(b).

In this case, the timely filed claims for Ngerias were those of Ngeltengat, on behalf of Eteet Clan, Masang, whose mother was a niece of Salii, and Ngirmang, who also claimed Ngerias as an heir of Salii. In 1990, the Land Claims Hearing Office (“LCHO”) denied these claims, and Masang and Ngeltengat filed appeals with the Trial Division. *See Masang v. KSPLA*, Civil Action Nos. 235-90 & 241-90. In January of 1991, Masang passed away and Masang’s son, Sam Yoyo Masang (“Sam”), filed a motion for substitution to take the place of his father in the litigation. Associate Justice O’Brien granted the motion. After a number of procedural problems that delayed the case but need not detain us here, the case was reassigned to Associate Justice Miller, who ordered a new trial. Before that trial began, Sam and Ngeltengat suggested that the Trial Division should first determine whether the land qualified as land that should be returned pursuant to Article XIII, and § 1304(b)(1). Accordingly, the first part of the trial was devoted to this issue, reserving for further proceedings the question whether either claimant should succeed to Salii’s interest in Ngerias in the event the court held that the land qualified for return.

In 1996, at the end of the first phase of the trial, the court concluded that Ngerias should be classified as land eligible to be returned, and thus entered partial judgment against KSPLA.¹ After this decision was made, Napoleon sought to intervene, contending that Masang and other relatives of Salii, including Napoleon, agreed that Masang would represent those relatives during the filing of a claim for Ngerias. She argued that Masang’s filing of an individual claim and Sam’s continuation of that individual claim were a breach of that agreement. Alternatively, Napoleon contended that she was a potential heir of Salii irrespective of any purported contract between her and Masang. In July of 1996, the trial court granted this motion to intervene.

Ngirmang also moved to intervene, contending that although she had filed a claim for Ngerias before the § 1304(b)(2) deadline expired, she had neither notice nor knowledge of the LCHO’s rejection of her claim until shortly before she filed her intervention motion. Her motion was granted because Ngirmang originally filed her claim within the § 1304(b)(2) deadline and sufficiently demonstrated a lack of notice regarding the LCHO’s adverse determination of that claim.

The second phase of the trial addressed whether the Tochi Daicho listing in favor of Salii was mistaken, but if the Tochi Daicho listing was correct, who was the proper heir to Salii’s interest in Ngerias. In a 1998 decision, the Trial Division determined that the Tochi Daicho listing was not erroneous and thus Salii, not Eteet Clan, had owned the land. Additionally, the

¹Although KSPLA appealed this decision, it later withdrew the appeal and so is no longer a party to this litigation.

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court concluded that both Ngirmang and Masang were the proper heirs of Salii. Nonetheless, the court explained that further proceedings were necessary to determine the validity of L38 Sam's claim that he was the sole successor to Masang's interest in the land. Thus, the court reserved as an issue to be decided in the third phase of the trial Napoleon's contention that an enforceable agreement existed between Masang and some of Salii's relatives to represent their interest in obtaining Ngerias.

[1] Shortly before this third phase of the trial was to begin, Adelbai and Trolii filed separate motions to intervene, both claiming to be adoptive daughters of Salii entitled to inherit his interest in Ngerias pursuant to Palau District Code § 801(c), the inheritance statute in effect at the time of Salii's death. Section 801(c) then provided that if a person dies intestate, land held in fee simple "shall . . . be inherited by the owner's oldest living male child of sound mind, natural or adopted, or if male heirs are lacking the oldest living female child of sound mind, natural or adopted." PDC § 801(c) (1971).² After trial, Rdiall also filed a motion to intervene, similarly purporting under § 801(c) to be an heir to Salii's interest in Ngerias because he is Salii's adopted son.

The court issued its third and final order on April 29, 1999. In this decision, the court first denied the motions to intervene of Adelbai, Trolii, and Rdiall. The court explained that because none of the proposed interveners' claims were filed before the cut off date for return-of-public-land claims, they could not intervene during the trial of the timely-filed claims. For the same reason, the court rejected Napoleon's claim to Ngerias as an heir to Salii's interest in the land, irrespective of any alleged contract with Masang. Regarding Napoleon's alternative argument that Masang agreed to file a claim for Ngerias on behalf of several of Salii's relatives, the court doubted the factual basis of the alleged agreement. Regardless, the court concluded that even if it were to accept Napoleon's contention that Masang agreed to "discuss" the ownership of Ngerias with the relatives if his individual claim proved a success, that promise to "discuss" the land was "little more than an agreement to agree and is not a proper subject of judicial enforcement." The Trial Division, therefore, rejected Napoleon's claim that Masang entered into a contract with the relatives to obtain control of the land for all of them. Adelbai, Trolii, Rdiall, and Napoleon subsequently filed appeals.

II. Analysis

A. The Appeals of Rdiall, Adelbai, and Trolii

Preliminarily, we note that although Rdiall filed a notice of appeal, he did not file an appellate brief. We therefore consider Rdiall's appeal abandoned and dismiss it pursuant to ROP R. App. Pro. 31(c).

Appellants Adelbai and Trolii argue that the Trial Division erred in denying their intervention motions based on their failure to file a claim for public land before the January 1, 1989 deadline. Adelbai primarily contends that once the Trial Division determined that Ngerias

²As the Trial Division correctly noted, a court applies the inheritance law in effect at the time of the intestate's death. *Mokoll v. Ibutirang*, 8 ROP Intrm. 114 (2000).

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should be returned to its original owner, the property “ceased to be public lands.” At that point, Adelbai contends, Ngerias should no longer have been considered a return of public lands case, but, rather, a probate and inheritance case. Trolii, moreover, argues that § 1304(b)(2) merely requires that a single claim for public land be filed within the statutory deadline because **L39** that claimant is acting as a representative for all of the potential claimants to the land.

We disagree with both characterizations of the Trial Division proceedings. A claim for the return of public land requires the filing of a timely claim by an eligible recipient, *i.e.*, the original landowner or a proper heir or heirs. *See* § 1304(b). Although the interveners may allege that they are the proper heirs of Salii, they cannot meet one of the requirements of eligibility: a timely-filed claim. *See* § 1304(b)(2). As previously noted, § 1304(b) also requires that the land claimed qualifies as land to be returned. When the Trial Division determined in the first trial phase that Ngerias qualified as public land within the purview of § 1304(b)(1), the property did not then become “private land” subject to inheritance laws. Instead, the case remained a return of public lands case brought under § 1304, and the court properly then focused on whether any of the claimants who timely filed claims were the “proper heirs” of Salii. § 1304(b)(2).

[2] Furthermore, Trolii’s argument that one timely-filed claim saves all other late claimants is contrary to the language of the statute. Section 1304(b)(2) provides that “[a]ll claims for public lands by citizens of the Republic of Palau must have been filed on or before January 1, 1989.” The legislature’s use of the words “all claims” indicates that in order to assert a right to a transfer of title to specific public land, a party must file a claim by the stated deadline. Here, the proposed interveners never filed a claim for Ngerias before the deadline expired, even though the government held the title to Ngerias, Salii had passed away, and three other claimants to the land (including two purported heirs of Salii) had filed timely claims. *See Ngirumerang v. Tellames*, 8 ROP Intrm. 230, 231 (2000) (A court “can, and must, choose among the claimants who appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound.”); *see also, e.g., Tarkong v. Mesebeluu*, 7 ROP Intrm. 85, 87-88 (1998) (claim for inheritance of land would be barred because lineage failed to assert it either before or during LCHO proceedings regarding that land). Nor have they argued that due to a lack of notice, they were prohibited from filing claims before the statutory deadline. *See, e.g., Carlos v. Ngarchelong State Pub. Lands Auth.*, 8 ROP Intrm. 270 (2001) (considering – yet ultimately rejecting – argument that litigant should be excused for failure to file timely claim pursuant to § 1304 because he lacked personal knowledge that the land was considered public). Therefore, the Trial Division properly denied their intervention motions.

B. Napoleon’s Appeal

In her appeal, Napoleon primarily challenges the Trial Division’s conclusion that Masang and other relatives of Salii, specifically Napoleon, Urrimch, and Chomlei, did not enter into an enforceable contract obligating Masang to represent them during the proceedings. The Trial Division determined that even if it accepted Napoleon’s version of the meeting during which the agreement allegedly took place, Masang, Napoleon, Urrimch, and Chomlei merely agreed that if Masang succeeded in his public land claim, he would then “discuss” Ngerias with them. Napoleon disputes the court’s determination that the character of Masang’s alleged promise to

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“discuss” Ngerias was too indefinite for the court to enforce. We believe, however, that the Trial Division correctly held that Masang’s promise to “discuss” is too uncertain to be the subject of judicial enforcement. **L40**

[3-5] A court can enforce a contract “only if the obligations of the parties are set forth with sufficient definiteness that it can be performed.” *Southland Corp. v. Potter*, 760 P.2d 320, 322 (Utah Ct. App. 1988); *see also Massengill v. Guardian Mgmt. Co.*, 19 F.3d 196, 202 (5th Cir. 1994) (contract not enforceable if essential terms not resolved). Although a party may manifest an intention to offer performance, the offer cannot be said to form an enforceable contract “unless the terms of the contract are reasonably certain.” Restatement (Second) of Contracts § 33 (1981). Furthermore, if “one or more terms of a proposed bargain are left open or uncertain,” that “may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance.” *Id.*

[6] Taking Napoleon at her word, Masang merely offered to “discuss” Ngerias with her, Urrimch, and Chomlei in the event that he succeeded in having the land returned to the heirs of Salii. This agreement to “discuss” is too uncertain to be judicially enforced because the promise leaves open the question whether the land is to be distributed among or shared between Masang, Napoleon, Urrimch, and Chomlei. “Courts refuse to enforce agreements that contain indefinite promises or terms they deem essential precisely because judicial clarification of the uncertainty entails great danger of creating intentions and expectations that the parties themselves never entertained.” *Neeley v. Bankers Trust Co.*, 757 F.2d 621, 628 (5th Cir. 1985); *see also Estate of Schoffman v. Cent. States Diversified, Inc.*, 69 F.3d 215, 220 (8th Cir. 1995) (contract not formed when offeror explained that there was “much more to be discussed and agreed” and offeree conditioned “acceptance upon future negotiations”). Thus, because Masang’s alleged obligation is effectively undefinable, the agreement does not meet the requirements of a valid contract.

Alternatively, Napoleon argues that the Trial Division erred in dismissing her individual claim to Ngerias as an heir of Salii, irrespective of any contract entered into with Masang to obtain the land. Like Adelbai and Trolii, however, Napoleon failed to file an individual claim for Ngerias before the cutoff date for filing a claim for the return of public land. Thus, the Trial Division did not err in denying her claim to the land with respect to both her contractual and inheritance theories of entitlement.

III. Conclusion

For the foregoing reasons, we affirm that part of the trial court’s decision regarding Adelbai, Trolii and Napoleon and dismiss the appeal of Rdiall.