IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

DEBKAR LINEAGE and GLORIA GIBBONS SALII,
Appellants,
v.
FLORENCIO GIBBONS, SANDRA PIERANTOZZI and FRANSISCO GIBBONS,
Appellees.

FLORENCIO GIBBONS,
Appellant,
v.
SANDRA PIERANTOZZI and FRANSISCO GIBBONS,
Appellees.

Cite as: 2017 Palau 23
Civil Appeal No. 15-020
Appeal from LC/B 08-835

Decided: June 15, 2017

Counsel for Debkar Lineage.....Ebil Y. Matsutaro
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Counsel for Francisco Gibbons .....Raynold B. Oilouch

BEFORE: JOHN K. RECHUCHER, Associate Justice
DENNIS K. YAMASE, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Land Court, the Honorable C. Quay Polloi, Senior Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal arises from the Land Court's award of a collection of worksheet lots in Airai State commonly referred to as *Oltebadelkaeb*[1] to Florencio Gibbons, Francisco Gibbons, and Sandra Pierantozzi. Appellant Debkar Clan[2] disputes the Land Court's finding that it failed to prove that it has owned *Oltebadelkaeb* since time immemorial. Appellant/Appellee Florencio Gibbons argues that the Land Court erred by awarding portions of *Oltebadelkaeb* to Francisco Gibbons and Sandra Pierantozzi, and that the Land Court should have awarded all of *Oltebadelkaeb* to him. Appellant Bilung Gloria Gibbons Salii joins Francisco Gibbon's arguments that the Land Court erred in awarding a portion of *Oltebadelkaeb* to Sandra Pierantozzi and argues that the Land Court also erred by not awarding her the property she had received under the 1997 stipulated judgment approved by the court in *In re: Estate of Charlie Gibbons*, Civ. Action No. 12-89. For the reasons that follow, we **AFFIRM IN PART**, **REVERSE IN PART**, **VACATE IN PART** and **REMAND** to the Land Court with instructions to effectuate the holdings of this Opinion.

BACKGROUND

[¶ 2] The Land Court found that William Gibbons came to own *Oltebadelkaeb* at some point during the German era, although it acknowledged there was uncertainty as to how William Gibbons came to own the land. Appellant Debkar Clan claims that William Gibbons and his

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[1] *Oltebadelkaeb* consists of seven worksheet lots: 023 N 01, 023 N 02A, 023 N 02B, 023 N 03A, 023 N 03B, 023 N 04, 023 N 05. The Land Court awarded one lot to Francisco Gibbons ("023 N 01"), two lots to Sandra Pierantozzi (023 N 03B and 023 N 02B), and the remaining four lots to Florencio Gibbons (023 N 02A, 023 N 03A, 023 N04, and 023 N 05).

[2] The case caption in the Land Court and on Appellant's notice of appeal identifies this Appellant as "Debkar Lineage," but Appellant states in its opening brief that "[a]lthough the caption for this case refers to 'Debkar Lineage,' Debkar Clan is the correct reference to use with regards to its claims." We will refer to this Appellant as Debkar Clan.

descendants were given permission by Debkar Clan to use the land, but never acquired ownership. All other parties derive their ownership claims from William Gibbons. The Land Court discusses William Gibbons's family tree along with the transactions involving his descendants that various parties claim are relevant to determining ownership of *Oltebadelkaeb*. We will only recount those relationships and transactions that are relevant to this appeal.

[¶ 3] William Gibbons's oldest son, Charlie Gibbons, exercised exclusive authority over *Oltebadelkaeb* from William's death in 1941 until his own death in 1988, and the Land Court found that Charlie Gibbons was the exclusive owner of the land. Charlie Gibbons's estate was probated by his adopted son, Appellant/Appellee Florencio Gibbons, in 1989. Various individuals filed claims in Charlie Gibbons's estate, including Appellee Francisco Gibbons (the son of William Gibbons's second son) and Appellant Bilung Gloria Gibbons Salii (the daughter of William Gibbons's adopted daughter). After extensive litigation which is not relevant to this appeal, these three claimants agreed to a Stipulation, Judgment, and Decree of Distribution which, among other things, divided *Oltebadelkaeb* among them. *In re: Estate of Charlie Gibbons*, Civ. No. 12-89 (Tr. Div. Feb. 21, 1997) at 2 (hereinafter the "Estate Stipulation" entered in the "Gibbons Estate Case"). This estate judgment was presented to the Land Court, which issued certificates of title to Florencio Gibbons, Francisco Gibbons, and Bilung Gloria Gibbons Salii (collectively the "Gibbons Estate Heirs") for their respective lots in 1997.

[¶ 4] In 2002, Appellee Sandra Pierantozzi asked the Land Court to vacate the certificates of title which had been issued to the Gibbons Estate Heirs and filed her claim to a portion of *Oltebadelkaeb*, specifically lots 023 N 03B and 023 N 02B. Ms. Pierantozzi's claim was based on a Security Agreement with the late Blacheos Kemaitelong who in turn had acquired the same lot from Charlie Gibbons. The Land Court found that Mr. Kemaitelong had been given a portion of *Oltebadelkaeb* by Charlie Gibbons in 1976 as payment for survey services he provided to Mr. Gibbons. In 1986, Mr. Kemaitelong borrowed $1,500 from Ms. Pierantozzi and entered into a Security Agreement providing that legal title would automatically transfer to Ms. Pierantozzi in the event of a default.

[¶ 5] Ms. Pierantozzi registered the Security Agreement with the Clerk of Courts the day it was signed. The Land Court credited Ms. Pierantozzi's testimony that Blacheos Kemaitelong defaulted on the $1,500 loan. However, Ms. Pierantozzi testified that she and Mr. Kemaitelong did not execute any additional legal documents regarding this purported land transfer, nor did she keep any written records of the default. When Mr. Kemaitelong died in 1993, Ms. Pierantozzi did not make any claim for the $1,500 debt or for lots 023 N 03B and 023 N 02B in his probate proceedings. Ms. Pierantozzi took no action to assert her ownership over lots 023 N 03B and 023 N 02B until she asked the Land Court to vacate the certificates of title in 2002, roughly 16 years after Mr. Kemaitelong had defaulted on the loan.

[¶ 6] In 2004, the Land Court canceled the certificates of title it had issued to the Gibbons Estate Heirs, holding that they had been issued in error because at least one of the individuals who had filed a claim to *Oltebadelkaeb* prior to 1997 was not claiming through Charlie Gibbons and was not a party to the Gibbons Estate Case. The Gibbons Estate Heirs each filed new claims to *Oltebadelkaeb* between 2003 and 2005. Francisco Gibbons and Gloria Salii claimed those portions of land which they had been awarded by the Estate Stipulation. Florencio Gibbons claimed the entirety of *Oltebadelkaeb*. Appellant Debkar Clan filed its claim to the entirety of *Oltebadelkaeb* in 2005, after the certificates of title had been canceled.

STANDARD OF REVIEW

[¶ 7] "We review the Land Court's conclusions of law de novo and its findings of fact for clear error." *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38, 40 (2015). Under clear error review, "[t]he factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Id.* (quoting *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009)). Interpretation of a contract is a conclusion of law, which we review de novo. *Uchelkumer Clan v. Sowei Clan*, 15 ROP 11, 13 (2008).

DISCUSSION

I. Debkar Clan's Claim

[¶ 8] Debkar Clan claims to have owned *Oltebadelkaeb* from time immemorial, having received it as spoils of war before the Spanish times. The Clan acknowledges that Charlie Gibbons was using the land since at least the 1950s, but argue that neither he nor his father William acquired title to *Oltebadelkaeb* and that Charlie was using the land only with Debkar Clan approval. The Land Court rejected Debkar Clan's claim because it had submitted little evidence to show that Debkar Clan had either authorized or objected to the Gibbons family's presence and use of *Oltebadelkaeb* prior to 2005, at which point the Gibbons family had made exclusive use of the land for "several decades, arguably a century." The Land Court also noted that Debkar Clan filed its claim only recently on March 18, 2005, but that it had filed much earlier claims to other lands near and even adjacent to *Oltebadelkaeb*. Furthermore, the holder of the chiefly title Obak-ra-Debkar had also filed personal claims to adjacent lands which included "sketches indicating the name of Charlie Gibbons in the area now corresponding to *Oltebadelkaeb*" along with his claim. Debkar Clan argues on appeal that the Land Court erred by failing to credit the testimony of its witnesses and by concluding that William Gibbons acquired *Oltebadelkaeb* during German times, without clear evidence as to how William Gibbons acquired ownership.

[¶ 9] Debkar Clan's arguments on appeal are primarily attacks on the Land Court's factual determinations, which are reviewed only for clear error. Because of this, "an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous." *Ngiraked v. Koror State Pub. Lands Auth.*, 2016 Palau 1 ¶ 8 (quoting *Koror State Pub. Land Auth. v. Giraked*, 20 ROP 248, 250 (2013)). Such borderline frivolous challenges "provid[e] no meaningful opportunity to develop the law," and we have indicated that "an appellate court should not hesitate to conserve its resources by disposing of [these] appeal[s] in a summary fashion." *Ngarameketii/Rubekul Kldeu* v. *Koror State Pub. Lands Auth.*, 2016 Palau 19 ¶ 22. Having reviewed the record, we hold that the Land Court did not

clearly err by failing to credit the testimony of Debkar Clan's witnesses, and also did not err in rejecting Debkar Clan's argument that this testimony shows that the Clan's 1976 claim for *Ngerchemel* should be understood to include *Oltebadelkaeb*.

[¶ 10] Debkar Clan also fails to successfully challenge the Land Court's legal conclusion that "ownership determinations . . . can turn on other evidence without resolving what actually happened about a hundred years ago." As we have previously held, "an uninterrupted chain of title is unnecessary to prove ownership of property, so long as the ownership is supported by other adequate evidence," such as extended uninterrupted use and possession of the property. *Koror State Public Lands Authority v. Ngirngebedangel*, 20 ROP 210, 214 (2013). "[A] court may infer a valid transfer of land to a claimant when that claimant has occupied the land without objection for a significant period of time." *See Obak v. Joseph*, 11 ROP 124, 128 (2004). Additionally, Debkar Clan's failure to present any evidence that it challenged William or Charlie Gibbons's use of the land may be circumstantial evidence that Debkar Clan does not and did not in fact own the land in question. *Tucherur v. Rudimch*, 21 ROP 84, 87 (2014). Having reviewed the record, we hold that the Land Court's determination that William Gibbons acquired ownership of *Oltebadelkaeb* during German times was not unreasonable.

II. The Gibbons Estate Heirs' Claims

[¶ 11] In February 1997, Florencio Gibbons, Francisco Gibbons and Gloria Salii entered into the Estate Stipulation in the Gibbons Estate Case, dividing various properties between them, including *Oltebadelkaeb*. After the Land Court requested the Gibbons Estate Heirs to return their certificates of titles so they could be revoked, Francisco Gibbons and Gloria Salii filed claims to those lots which they had been awarded by the Estate Stipulation. Florencio Gibbons filed a claim to all seven lots and argued that the Estate Stipulation should be disregarded. The Land Court held that the Estate Stipulation "divided nothing" and proceeded to vest legal ownership and title in Florencio Gibbons, Francisco Gibbons, and Sandra Pierantozzi "for factual reasons independent of and predating" the Estate Stipulation. Gloria Salii and Francisco Gibbons both allege that the Land Court erred by disregarding

the Estate Stipulation, which they argue is *res judicata* and binding on Florencio Gibbons.

[¶ 12] The Land Court reasoned that "until ownership of a particular land is registered through an *in rem* proceeding . . . a decedent's unadjudicated claim of interest to land cannot be converted to one of ownership through a stipulated judgment in an estate proceeding and then vested in an heir. Consequently, the [Estate Stipulation] . . . is not binding upon other claimants to *Oltebadelkaeb* who were not parties to the estate proceeding." The Land Court is correct that an estate case judgment "only address[es] the inheritance of [decedent's] interest in the disputed lands, without determining whether [decedent] had any interest at all." *Saka v. Rubasch*, 11 ROP 137, 140 n.2 (2004). The Estate Stipulation has no preclusive effect on claims which are not derived from Charlie Gibbons ownership of *Oltebadelkaeb* at the time of his death.

[¶ 13] However, the Land Court took this reasoning too far when it held that the Estate Stipulation "divided nothing" because "[l]egal ownership and title to *Oltebadelkaeb* has never been adjudicated and registered in the name of Charlie Gibbons." To the contrary, "the Land Court is required to accept prior determinations of ownership [made by the Trial Division in estate cases] under 35 PNC § 1310(b) and Rule 18 of the Land Court Rules and Regulations."[3] *Baules v. Toribiong*, 2016 Palau 5 ¶¶ at 21-22. Giving preclusive effect to estate judgments is also consistent with Palau's interest in ensuring that "estates are . . . distributed conclusively and efficiently, in a single court and within a set time period." *Id.* at 16. We therefore hold that the Land Court erred by not giving the Estate Stipulation preclusive effect, and therefore **REVERSE** the Land Court's award of lots 023 N 03A and 023 N 05 to Florencio Gibbons.

[¶ 14] Having held that the Estate Stipulation is preclusive, we need not and do not address Florencio Gibbon's arguments regarding the legal effect of Charlie Gibbon's attempt to orally bequeath lot 023 N 01 to Francisco

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[3] 35 PNC § 1310(b) and Rule 18 both provide that "the Land Court shall not hear claims or disputes . . . between parties or their successors or assigns where such claim or dispute was finally determined . . . by a court of competent jurisdiction."

Gibbons, nor do we address Gloria Salii's arguments as to the effectiveness of the 1986 Division of Property agreement that she and Charlie Gibbons executed prior to his death.

III. Sandra Pierantozzi's Claim

[¶ 15] Appellee Sandra Pierantozzi claims that lots 023 N 03B and 023 N 02B were transferred to her in 1986 by Blacheos Kemaitelong through the operation of a Security Agreement, which provided that if Blacheos defaulted on the loan, title and ownership of these lots would automatically transfer to her. The Land Court held that the Security Agreement between Ms. Pierantozzi and Mr. Kemaitelong was covered by the broad definition of "mortgage" in 39 PNC § 604(g): "a contract in which real property is made the security for . . . the payment of a debt." *See also Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 319 (2001) (enumerating elements to be considered when determining whether a document purporting to transfer title to land is, in fact, a mortgage). The Land Court also held that Ms. Pierantozzi had not complied with various requirements of the Mortgage Act of 1981, including 39 PNC § 642, which requires the lender to give written notice of default at least 30 days before it pursues its remedies. We hold that the Security Agreement is a mortgage, is subject to the requirements of the Mortgage Act, and that any oral notice of default given to Mr. Kemaitelong was ineffective because it did not comply with 39 PNC § 642.

[¶ 16] Despite the lack of compliance with the Mortgage Act, the Land Court held that Ms. Pierantozzi had gained title to lots 023 N 03B and 023 N 02B through paragraph 4 of their Security Agreement, which provided that in the event of default:

> legal title and ownership of [Mr. Kemaitelong's portion of *Oltebadelkaeb*] shall upon and at the moment of that occurrence, automatically transfer to the Lender. In such event, this Agreement shall be treated as a Deed of Transfer of Title to said lot from Borrower to Lender. No other legal document would be necessary to be executed in order to formalize and legalize the transfer of title to said lot from Borrower to Lender.

[¶ 17] The Gibbons Estate Heirs argue that the Land Court should have held that this provision is unenforceable under 39 PNC § 624, which provides that:

> Any agreement made or entered into by a mortgagor at the time of or in connection with the making or renewing of any loan secured by a mortgage or other instrument creating a lien on property, whereby the mortgagor agrees to waive the rights or privileges conferred upon him by this chapter, shall be void and of no effect.

[¶ 18] Anti-waiver provisions like 39 PNC § 624 are included in Mortgage Laws to protect mortgagors, "[s]ince necessity often drives debtors to make ruinous concessions when a loan is needed . . . ." *Salter v. Ulrich*, 138 P.2d 7, 9 (Cal. 1943) (interpreting California's anti-waiver provision). Judicial foreclosure proceedings include protections such as (1) requiring that the property be sold at a judicially supervised sale to get the best possible price; (2) requiring that any proceeds from the sale in excess of the cost of the sale plus the amount of the debt be deposited with the court for the use of the mortgagor; and (3) providing that the borrower has a right of redemption, whereby he has a right to redeem his property from the purchaser for several months after the sale. 39 PNC §§ 665, 667, 671. Paragraph 4 purports to eliminate these protections by allowing the mortgagee to take title to the property without the need for judicial foreclosure. If provisions such as this one were legally effective then we would expect savvy mortgagees to include provisions bypassing judicial foreclosure in their standard form lending contracts, which would eliminate many of the rights and privileges conferred upon the mortgagor by the Mortgage Act. We therefore agree that paragraph 4 is void under 39 PNC § 624 and that the only way Ms. Pierantozzi could take title under the Security Agreement was through judicial foreclosure proceedings. *See, e.g., Ngirchehol v. Kotaro, et al.*, 14 ROP 173, 176-77 (2007) (affirming Trial Division's holding that a "conditional deed" which purported to provide non-foreclosure remedies allowing the lender to take title to land is actually a mortgage and that to enforce the deed, the lender "would have to comply with the Mortgage Act and go through default and foreclosure proceedings"). Accordingly, we **REVERSE** the Land Court's holding that Mr. Kemaitelong's interest in these lots transferred to Ms. Pierantozzi in 1986 by way of a loan default.

[¶ 19] On Appeal, Ms. Pierantozzi does not contest the Land Court's finding that the Security Agreement is a mortgage, or argue that paragraph 4 should not be void under 39 PNC § 624.[4] The only argument she presents as to why the Security Agreement was effective to pass title is an assertion that even if the mortgage is null and void, the intent of the parties should be taken into consideration. This argument is wholly without merit. The intent of the parties is relevant in determining the legal effect of ambiguous contract provisions, but it does not give any additional legal effect to contractual provisions which are declared void and unenforceable by statute, or which otherwise violate public policy. *See Kerradel v. Micronesian Indus. Corp.*, 1 ROP Intrm. 118, 120-21 (Tr. Div. 1984) (holding that agreement of an employee to accept wages and benefits below those mandated by statute "contravenes public policy and is therefore unenforceable per se").

[¶ 20] Like the substantial majority of American jurisdictions, Palau has adopted the "lien theory of mortgages," under which both legal title and equitable title remain with the mortgagor, and do not pass to the mortgagee without a court order or a subsequent contract between the parties. *See* 39 PNC § 602 (b) (characterizing the Mortgage Act of 1981 as a "lien theory mortgage act"); Restatement (Third) of Property: Mortgages § 4.1, cmt a, b (explaining the lien theory of mortgages and the significance of the Restatement's adoption of that theory). Ms. Pierantozzi admits that she and Mr. Kemaitelong executed no additional writings and participated in no legal proceedings other than filing her claim with the Land Court in 2002. Indeed, she admits that she did not give written notice of default to Mr. Kemaitelong or even send any written correspondence indicating that he had failed to perform on his obligation. Therefore, we hold that Ms. Pierantozzi's security interest in the lots in question was never converted into a claim of legal title or ownership and **VACATE** the Land Court's award of lots 023 N 03B and 023 N 02B to Ms. Pierantozzi.

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[4] We note that we have not considered Ms. Pierantozzi's general assertions that the Gibbons Estate Heirs cannot challenge the validity of paragraph 4 of the Security Agreement because they were not parties to the agreement, since these assertions are made without any citations to legal authority. *Suzuky v. Gulibert*, 20 ROP 19, 23 (2012) ("Unsupported legal arguments need not be considered by the Court on appeal.").

[¶ 21] Ms. Pierantozzi also argues that if we hold that the Security Agreement was ineffective to transfer title then there is no reason for the Gibbons Estate Heirs to be awarded these lots, because the deed from Charlie Gibbons to Blacheos Kemaitelong is not contested in this appeal, so it was not part of Charlie Gibbons's estate and could not have been distributed to his heirs. Since Mr. Kemaitelong and his heirs are not claimants, Ms. Pierantozzi argues that "the most equitable thing to do" if we determine that Mr. Kemaitelong should have been awarded title is to award the land to her, since she did not get back the $1,500 loan she made to Mr. Kemaitelong. We disagree. The Mortgage Act provides specific mechanisms through which lenders can enforce security interests, which require the mortgagee to go through default and foreclosure proceedings. Allowing mortgagees to effectively circumvent these procedures through strategic use of Land Court proceedings would undermine the policy choices embodied in the Act. Thus, while Ms. Pierantozzi may retain the ability to enforce her security interest through appropriate judicial proceedings, we see no legal or equitable basis for summarily upgrading that interest into outright ownership at the expense of other claimants.

[¶ 22] Having corrected the Land Court's legal error, we **REMAND** this matter to the Land Court for an initial determination of which claimants should be awarded ownership of lots 023 N 03B and 023 N 02B. The Land Court must choose among the claimants who appear before it, and must award these lots "based on sound reasoning under the circumstances" and based on the evidence before it. *Koror State Pub. Lands Auth. v. Idong Lineage*, 17 ROP 82, 87-88 (2010). The Land Court may, but is not required to, hear any additional evidence or legal arguments from the parties which it believes would be helpful in making this determination.

CONCLUSION

[¶ 23] For the foregoing reasons, the decision of the Land Court is **AFFIRMED IN PART**, **REVERSED IN PART**, and **VACATED IN PART**. The Land Court was precluded from re-deciding inheritance issues which had been resolved by the Estate Stipulation entered by the Trial Division, and further erred by awarding title to lots 023 N 03B and 023 N 02B to Sandra Pierantozzi instead of the Gibbons Estate Heirs. Accordingly, this case is

REMANDED to the Land Court to award ownership for lots 023 N 03B and 023 N 02B consistent with the guidance in this opinion and divide those portions of *Oltebadelkaeb* which are awarded to the Gibbons Estate Heirs as it was divided by the Stipulation, Judgment, and Decree of Distribution which resolved *In re: Estate of Charlie Gibbons*, Civ. No. 12-89.

SO ORDERED, this 15th day of June, 2017.