IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

TECHEBOET LINEAGE, represented by Bilung Gloria M. Salii, and ROMAN TMETUCHL FAMILY TRUST,
Appellants,
v.
GANDHI BAULES,
Appellee.

Cite as: 2019 Palau 21
Civil Appeal No. 18-018
Appeal from LC/N 09-0189

Decided: July 11, 2019

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Counsel for Appellant Roman Tmetuchl Family Trust....	Vameline Singeo
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BEFORE: JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

OPINION[1]

BENNARDO, Justice:

INTRODUCTION

[¶ 1] The Land Court issued determinations of ownership in favor of Appellee Gandhi Baules for lots BL350 and BL351 on BLS Worksheet No. 2005 N 001. These lots are located in Ngeruluobel Village in Airai. Appellants Techeboet Lineage and the Roman Tmetuchl Family Trust raise

[1] Although Appellant Techeboet Lineage requested oral argument, the Court determines pursuant to ROP R. App. P. 34(a) that oral argument is not necessary to resolve this appeal.

two objections to the Land Court's decision. First, both appellants dispute finding of fact #15, which concerns a purported settlement agreement between Baules and Techeboet Lineage. Second, the Family Trust disputes the Land Court's determination regarding the validity of an apparently oral conveyance of land that likely occurred no later than 1950. We will discuss each of these issues in turn.

I. Finding of Fact #15

[¶ 2] The Land Court's finding of fact #15 says:

> The Settlement Agreement, dated June 19, 2017, executed between Techeboet Lineage, represented by Bilung Gloria Salii, and Gandhi Baules regarding ownership of the land where the two story building (site of High Speed Auto Shop) is located is invalid, null and void. Gandhi was inebriated when Bilung approached him to sign the above mentioned Agreement. During the hearing Gandhi acknowledged that he did sign the Agreement but that he was inebriated when he did, and that he would not convey any part of these lots without proper compensation. Further, Techeboet Lineage does not own these lots and cannot execute[] agreements to affect their ownership or boundary. One cannot execute agreements to affect properties one does not own.

Land Court Opinion 7. The Land Court's opinion does not otherwise analyze the legal effect of Baules' inebriation on the purported settlement agreement.

[¶ 3] The difficulty that we face in reviewing this so-called finding of fact is that it contains both a finding of fact and a conclusion of law. The Land Court found that Baules was inebriated at the time he signed the settlement agreement. That's a finding of fact. But the Land Court also determined that Baules' inebriation invalidated the settlement agreement. That's a legal conclusion.

[¶ 4] The Land Court provides no analysis to support its determination that Baules' inebriation invalidated the settlement agreement. Thus, we do not know what legal test it applied to reach that conclusion. On appeal, all three parties cite the Restatement (Second) of Contracts § 16 as the proper test to determine whether a party's inebriation invalidates a contract. We cannot tell

from the Land Court's opinion whether it applied the Restatement test, some other test, or no test at all.

[¶ 5] According to the Restatement test, additional facts may become relevant. For example, did Salii know that Baules was inebriated when he signed the agreement? And was Baules inebriated to such a degree that it would hinder his capacity to contract? Those are facts that could bear on the legal analysis, and the Land Court is better positioned than the Appellate Division to find those facts in the first instance. Thus, it would be folly for us to undertake the legal analysis on the record presently before us.

[¶ 6] In addition to the determination regarding Baules' inebriation, the Land Court stated at the end of finding of fact #15 that Techeboet Lineage could not be a party to a settlement agreement regarding lots BL350 and BL351 because it does not own the lots. Land Court Opinion 7. Again, the Land Court labeled this determination as a factual finding, but it is truly a legal conclusion. In his appellate brief, Baules makes a related argument in support of the Land Court's determination. *See* Baules Response Br. to Techeboet Lineage 19 ("Bilung Gloria Salii [on behalf of Techeboet Lineage] knew that she did not own the property that she was attempting to convey to Appellee Baules 'in exchange' for his return conveyance."). Essentially, Baules argues that the settlement agreement is invalid for lack of consideration because Techeboet Lineage was later found not to own any of the land. *Id.* at 17, 19. The Land Court also relied on similar reasoning in finding of fact #14, which states that a separate settlement agreement involving Techeboet Lineage and the Family Trust was invalid because Techeboet Lineage owns no part of lots BL350 or BL351 and "[o]ne cannot convey what one does not own." Land Court Opinion 7, 10.

[¶ 7] This line of reasoning overlooks the core purpose of settlement agreements. The consideration for a settlement agreement is that each party agrees to forgo its claim. In June 2017, at the time of the purported settlement between Techeboet Lineage and Baules, active litigation was ongoing to determine the owner of lots BL350 and BL351. Both Baules and Techeboet Lineage possessed pending claims to the land. Under the terms of the June 2017 settlement agreement, Baules would take one section of the land, Techeboet Lineage would take another section, and they both would forgo

their claims to the rest of the land. Such an agreement does not fail for lack of consideration because under the agreement both parties gave and received something of value.

[¶ 8] We therefore vacate the Land Court's determination that the June 19, 2017, settlement agreement was invalid. We remand the question of the settlement agreement's validity to the Land Court. On remand, the Land Court should identify the legal test that it is applying to determine whether a party's inebriation invalidates a contract and then communicate its analysis of how that legal test applies to Baules' execution of the settlement agreement.[2]

II. The 1950 Oral Conveyance

[¶ 9] The Land Court found that lots BL350 and BL351 corresponded to lots that were individually owned by Ibedul Ngoriakl in the 1940s. Land Court Opinion 13. It further found that Ngoriakl transferred the land to Gandhi Baules' father in exchange for building materials, and that this transfer likely occurred no later than 1950. *Id.* at 5, 13.

[¶ 10] The Family Trust argues that the transfer from Ngoriakl to Baules' father was not valid because it was not recorded or otherwise supported by a writing. Family Trust Br. 16–17. Thus, according to the Family Trust, the land remained in Ngoriakl's family until it was transferred to Roman Tmetuchl in 1990.

[¶ 11] The Family Trust's argument fails for the reason identified by the Land Court. *See* Land Court Opinion 14–15. Namely, Palau's statute of frauds was not effective until 1977, *see Andreas v. Masami*, 5 ROP Intrm. 205, 206 (1996), and oral transfers of land were valid before that time. *See, e.g.*, *Otobed v. Ongrung*, 8 ROP Intrm. 26, 28–29 (1999); *Llecholech v. Blau*, 6 T.T.R. 525, 529 (Tr. Div. 1974) ("There is no statute of frauds requiring a writing for a transfer of land in the Trust Territory. An oral transfer is

[2] Given this disposition, we need not assess Baules' argument that the Family Trust lacks standing to challenge finding of fact #15 on appeal. Baules argues that the Family Trust neither signed the agreement nor was conferred any interest by the agreement, and thus the Family Trust has no basis to challenge the Land Court's determination that the agreement was invalid. Baules Response Br. to Family Trust 16–17. In this appeal, the Family Trust's arguments regarding the validity of the settlement agreement are literally word-for-word identical to Techeboet Lineage's arguments.

effective and there need be no recordation of an oral transfer."). Thus, land could effectively be transferred in 1950 without a writing. We affirm the Land Court's opinion as to this determination.

CONCLUSION

[¶ 12] The Court **VACATES** and **REMANDS** the Land Court's determination regarding lots BL350 and BL351. On remand, the Land Court shall determine ownership in a manner that is consistent with this opinion.

BENNARDO, J., concurring:

[¶ 13] In support of their arguments, the parties cite to 1 PNC § 303 for their reliance on the Restatement (Second) of Contracts. That section is frequently cited in attorneys' briefs and in this Court's opinions, and I do not fault the parties for relying on it. However, I write separately to say that, speaking for myself, I grow increasingly skeptical regarding the propriety of 1 PNC § 303. This section states that, in areas not governed by Palauan written or customary law:

> The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Republic in applicable cases . . . .

1 PNC § 303. Through this statutory provision, the Olbiil Era Kelulau binds the Palauan judiciary to whatever proclamations are uttered by the American Law Institute and the courts of the United States. I am not convinced that the OEK has this authority.

[¶ 14] I have great respect for the American Law Institute and the courts of the United States. However, neither are part of the Palauan government. And, because the American Law Institute is largely an assembly of law professors, the Restatements of Law may be amended without any action by any governmental body. Nothing prevents the American Law Institute from rewriting the Restatements to say that breathing is a tort and blinking rescinds

a contract. Under section 303, such would immediately become the law in Palau.

[¶ 15] Certainly, the OEK has the power to enact a particular portion of a Restatement, a whole Restatement, or even every Restatement as Palauan law. But, to do so, the OEK must specify the actual language that it is enacting. Once the specified language is written into Palauan statutory law, then the language can only be amended through appropriate Palauan governmental action. But that is not what section 303 does. Section 303 vaguely gestures in Restatement's direction and says that Palauan law is whatever the American Law Institute says that it is at any particular time. That gives the American Law Institute the power to create and destroy Palauan law without any Palauan governmental action.

[¶ 16] Section 303 violates the separation of powers by impermissibly raiding the Palauan judiciary of one of its core functions: to form the common law of Palau. *See* Palau Const. Art. X, § 1 ("The judicial power of Palau shall be vested in a unified judiciary . . . ."). As a court in another jurisdiction once put it, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Section 303 removes that inherent authority from the Palauan judiciary and instead bestows it upon the American Law Institute. In other words, the statute is a legislative attempt to remove an inherent power from another government branch and to delegate it instead to a body that does not operate within Palau's constitutional government.

[¶ 17] Statutory law can be produced and amended by the legislature. Common law should be produced and amended by the judiciary, not by some external non-governmental body. Viewed through this lens, section 303 oversteps the bounds of the legislature's authority.