IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

CLEOPHAS ROBERT, *Appellant,* **v.** **ERICA ROBERT, RENAY ROBERT, RUTH NARUO, BLAS ROBERT, JAMAICA ROBERT, O'BRIEN CLEOFAS, CLEORY CLEOPHAS, and KEVIN NGIRNGEMEIUSCH,** *Appellees.*
TAEKO N. ROBERT *aka* TAEKO NGIRNGMEUSCH, ELIZABETH ROBERT *aka* ELIZABETH N. HOLLINS, DEBORAH ROBERT *aka* DEBORAH N. WONG, and ADELINA ROBERT *aka* ADELINA N. RUPP, *Appellants,* **v.** **ERICA ROBERT, RENAY ROBERT, RUTH NARUO, BLAS ROBERT, JAMAICA ROBERT, O'BRIEN CLEOFAS, CLEORY CLEOPHAS, and KEVIN NGIRNGEMEIUSCH,** *Appellees.*

Cite as: 2021 Palau 34
Civil Appeal No. 21-002
Civil Appeal No. 21-004
Consolidated Appeals from Civil Action No. 19-034

Argued: September 24, 2021
Decided: November 15, 2021
On Rehearing: December 16, 2021[1]

Counsel for Appellant Cleophas Robert	Johnson Toribiong
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[1] This opinion supersedes the previously issued opinion, which is withdrawn.

BEFORE: GREGORY DOLIN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

OPINION

DOLIN, Associate Justice:

[¶ 1] In these consolidated appeals, Cleophas Robert and his siblings challenge the Trial Division's recognition and construction of Certificates of Title to a parcel of land in Ngaraard State known as *Tund*.[2] We **AFFIRM IN PART** and **VACATE IN PART**.

BACKGROUND

I.

[¶ 2] All parties to the present appeal are descendants of Ngirngemeusch Tengadik. In 1988, Ngirngemeusch filed a claim pursuant to 35 PNC § 1304(b) for the return of *Tund*, which he alleged was taken without compensation by the Japanese Government before World War II. As with many other petitions, Ngirngemeusch's claim languished for nearly two decades before being finally adjudicated by the Land Court. In 1994, while his claim was still pending, Ngirngemeusch died. The matter did not come to a hearing for another eight years. By that point, Ngirngemeusch's son, Cleophas (the Appellant in Appeal No. 21-002) stepped forward to continue prosecuting the claim. However, when Cleophas submitted his written closing argument to the Land Court, he characterized the claim not as being on behalf of the "Estate of Ngirngemeusch," but rather as being on behalf of the "Children of Ngirngemeusch." It is not clear from the record why or how Cleophas ended up as a spokesman for all of Ngirngemeusch's children. There appear to be no documents in the Land Court file granting him a power of attorney or otherwise appointing him as a representative of that group. Nevertheless, none of

[2] According to the Certificates of Title, *Tund* appears to consist of Cadastral Lots No. 007 E 10 and 007 E 11. For ease of reference, in this opinion we will use the land's traditional name.

Ngirngemeusch's descendants ever objected to Cleophas's efforts, and, indeed, they only have an interest in the land as a direct result of his efforts.

[¶ 3] It is also unclear why the claim's characterization changed nearly two decades after it was filed. Perhaps, Cleophas, acting *pro se*, did not appreciate the legal significance of or the difference between the two terms and simply assumed that the Ngirngemeusch's children are the only plausible legatees of Ngirngemeusch's estate. Be that as it may, in 2006, the Land Court finally adjudicated the competing claims for *Tund* and awarded the land to the "Children of Ngirngemeusch." Consistent with our prior decision in *Children of Dirrabang v. Children of Ngirailild*, which requires the Land Court to "identify the owners by name and not by descriptive category" whenever it determines that ownership is vested communally in certain groups, 10 ROP 150, 153 (2003), the Land Court required Cleophas to submit a list of all of Ngirngemeusch's children. Cleophas submitted a list showing fourteen individuals as the "Children of Ngirngemeusch": Cleophas, Taeko N. Robert, Elizabeth Robert, Deborah Robert, Adelina Robert, Erica Robert, Renay Robert, Blas Robert, Jamaica Robert, O'Brien Robert, Cleory Robert, Naruo Ngirngemeusch, Kenneth Ngirngemeusch, and Kliu Yuri. Taeko, Elizabeth, Deborah, and Adelina (Appellants in Appeal No. 21-004) are, like Cleophas, Ngirngemeusch's biological children. Erica and Naruo (deceased) are also Ngirngemeusch's biological children. Renay, Blas, Jamaica, and Kenneth (deceased) are Ngirngemeusch's grandchildren who allegedly became his adopted children. And O'Brien and Cleory are Ngirngemeusch's grandchildren and apparently did not become his adopted children.[3] Finally, Kliu is the son of Ngirngemeusch's wife from a prior relationship with another man. He was later adopted by Ngirngemeusch.

[¶ 4] After Cleophas submitted a list of fourteen names, the Land Court scheduled a hearing to determine whether that list is a complete and correct catalogue of Ngirngemeusch's offspring. It is undisputed that at the time that the Land Court scheduled a hearing to determine who qualifies as the "Children of Ngirngemeusch," Taeko, Elizabeth, Deborah, and Adelina were living outside of the Republic, and had been for quite some time. As a result, none

[3] The parties appear to dispute which of the individuals who are not Ngirngemeusch's biological children were adopted by him. This dispute has no effect on our resolution of the case.

of these individuals ever received a personal notice of the hearing. However, notice was served on Cleophas as a representative of the group and delivered to Siegfried Nakamura who served as an "attorney for Ngirngemeusch Tengadik represented by Cleophas Robert."

[¶ 5] The Land Court proceeded to a hearing, where no one raised any objections to the list of names submitted by Cleophas. Accordingly, the Land Court issued a Determination of Ownership naming all fourteen individuals on Cleophas's list as owners of *Tund* in fee simple. *See* Determination of Ownership 03-996 and 03-997 (Land Ct., Sept. 19, 2006). About a year later, pursuant to that Determination, the Land Court issued Certificates of Title again listing the same fourteen individuals as owners in fee simple. *See* LC 463-07; LC 464-07 (Land Ct., June 20, 2007).[4]

II.

[¶ 6] On January 23, 2019, Cleophas signed an agreement with the Republic of Palau to lease part of *Tund* to the Republic for a term of 25 years in exchange for a one-time payment of $2,032,080.00. After receiving the money, Cleophas refused to share the proceeds equally with the other thirteen individuals who are listed as co-owners of *Tund*. Instead, he offered some of them smaller amounts. These offers were rejected, and Erica, Renay, Blas, Jamaica, Ruth Naruo (daughter of Naruo), O'Brien, Cleory, and Kevin (son of Kenneth)—Appellees in both appeals—filed suit against Cleophas. Although the suit contained numerous causes of action, the only ones that the Trial Division has resolved so far, and the only ones before us, are requests for a "Declaratory Relief as to Land Ownership Shares in *Tund*" and "Declaratory Relief as to Shares in the Rent for the Land *Tund*." On November 27, 2019, the Trial Division granted partial summary judgment to Appellees concluding that each individual listed on the Certificates of Title is "a fee simple owner."

[¶ 7] Shortly after the Trial Division's decision, Cleophas's siblings Taeko, Elizabeth, Deborah, and Adelina ("Intervenors") filed a motion to intervene in the Trial Division. In their motion, Intervenors argued that the Certificates of

[4] The names of the fourteen individuals appear in the appendix to the Certificates of Title rather than on the front page itself. However, the front page explicitly references the appendix and states that "names are shown on the appendix."

Title are void *ab initio* for at least two reasons. First, Intervenors argued that the Land Court's determination that *Tund* belongs to the "Children of Ngirngemeusch" rather than the "Estate of Ngirngemeusch" was tantamount to the Land Court awarding the property to non-claimants. Second, Intervenors argued that because the Land Court failed to provide personal notice of the hearing meant to determine the membership in the "Children of Ngirngemeusch," such a hearing violated their due process rights. Because the hearing adversely affected Intervenors (by allegedly including in the Certificates of Title the names of individuals who are not biological children of Ngirngemeusch, thus diluting Intervenors' own shares in the land), they argue that the outcome of that hearing should be set aside.

[¶ 8] On May 12, 2020, the Trial Division granted Intervenors' motion to intervene and proceeded to trial on Intervenors' claims. On January 27, 2021, the Trial Division dismissed Intervenors' claim for declaratory judgment that only they (together with Cleophas, Erica, and Kliu) are Ngirngemeusch's rightful heirs and therefore the only owners of *Tund*. The Trial Division reaffirmed its determination that all individuals listed on the Certificates of Title to *Tund* are entitled to a 1/14th share of the rental proceeds and ordered the funds disbursed.[5]

[¶ 9] There is, however, an inconsistency between the Trial Division's summary-judgment decisions and its judgment. The discrepancy stems from the fact that Naruo Ngirngemeusch and Kenneth Ngirngemeusch (two of the individuals listed on the Certificates of Title) are no longer alive. The rights of these deceased individuals are asserted by Appellees Ruth Nauro and Kevin Ngirngemeusch, who are not listed on the Certificates of Title but claim proceeds only as descendants of Naruo and Kenneth, respectively. In its summary-judgment decision, the Trial Division held that the "Certificate of Title lists fourteen individuals and each one is a fee simple owner." It went on to explain that, because "two of the fourteen named individuals have died," the court could not "determine who presently possesses an interest in the land and to what extent." However, in its judgment, the Trial Division declared that "*Plaintiffs* each have an equal 1/14th ownership share in the land *Tund*" and

[5] On February 26, 2021, we stayed that order pending appeal. On March 3, 2021, we clarified the scope of that stay.

that "*Plaintiffs* are each entitled to a 1/14th share of the lease proceeds." Thus, the two documents are arguably in conflict with one another.

[¶ 10] Both Cleophas and Intervenors appealed the Trial Division's adverse determinations, and, on October 13, 2021, the Trial Division certified its determinations as final judgments under Rule 54(b).[6]

STANDARD OF REVIEW

[¶ 11] "We review the Trial Division's legal conclusions, including on matters of customary law, de novo and its factual determinations for clear error." *Obichang v. Etpison*, 2021 Palau 26 ¶ 6. "On clear error review, a trial court's factual findings '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.'" *Ngikleb v. Sadao*, 2021 Palau 5 ¶ 7 (quoting *Ngotel v. Iyungel Clan*, 2018 Palau 21 ¶ 7).

DISCUSSION

[¶ 12] We begin with a basic and familiar premise that a certificate of title is "conclusive upon all persons so long as notice was given as provided in section 1309, and [is] prima facie evidence of ownership . . . ." 35 PNC § 1314(b). An issued certificate of title may, however, be collaterally attacked upon a showing that the Land Court failed to follow required procedures, such as giving statutorily required notice of its hearings. *See, e.g.*, *Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276, 280-81 (2010). The party who attempts to collaterally attack a certificate of title must show, by clear and convincing evidence, that the Land Court's determination suffered from a lack of due process, thus rendering the certificate invalid. *Ucherremasech v. Wong*, 5 ROP Intrm. 142, 146-47 (1995). Consequently, Cleophas and Intervenors

[6] Neither Cleophas nor Intervenors secured a Rule 54(b) certification from the Trial Division prior to undertaking the appeal. On September 29, 2021, we issued an Order to Show Cause directing Appellants in both appeals to either secure such a certification or face an order of dismissal. On October 13, 2021, the Trial Division certified the matter for appeal. We follow the view of various United States Courts of Appeal and hold that a "Rule 54(b) certification is valid even though made after the filing of the notice of appeal in this court." *Sutter v. Groen*, 687 F.2d 197, 199 (7th Cir. 1982); *see also Lewis v. B.F. Goodrich Co.*, 850 F.2d 641, 644-46 (10th Cir. 1988) (*en banc*). Accordingly, we proceed to the merits in both appeals. The Order to Show Cause is, by its own terms, discharged.

can prevail if the Certificates of Title to *Tund* are interpreted to vest ownership in named individuals not in equal shares, but pursuant to Palauan custom that preferences earlier generations to later ones, or, alternatively, if the Certificates of Title were issued through a procedure that failed to comply with statutory and due process requirements.

[¶ 13] Cleophas and Intervenors make arguments along both of these avenues. Their contentions ultimately reduce to a claim that, for one reason or another, a number of individuals listed in the Certificates of Title to *Tund* have no—or at least a greatly reduced—claim to the land and any lease proceeds. Underlying the various arguments made by Cleophas and Intervenors is an assertion that some of the fourteen individuals listed in the Certificates of Title are not Ngirngemeusch's biological children, but rather his grandchildren. We address these various contentions in turn.

I.

[¶ 14] Cleophas first argues that the appendices do not form part of the Certificates of Title and that, before determining the shares in *Tund*, the Trial Division should determine which individuals are in fact children and which are more distant relatives of Ngirngemeusch. At oral argument, when it was pointed out that the Certificates of Title explicitly state that the "names are shown on the appendix," Cleophas abandoned that argument and instead pressed his alternative theory that, even if everyone who is listed on the Certificates of Title is an owner of *Tund*, the rights of each owner are circumscribed by Palauan customary law. Cleophas further argues that customary law gives larger shares to children than grandchildren and only permits grandchildren to split their parents' share. In support of his argument, Cleophas relies on our decisions in *Shih Bin-Fang v. Mobel*, 2020 Palau 7, and *Children of Ngeskesuk v. Espangel*, 1 ROP Intrm. 682 (1989).

[¶ 15] Although both cases relied on by Cleophas did hold that the land at issue was held jointly by various family members subject to Palauan custom, Cleophas misconstrues the breadth of those decisions. Neither case held that whenever Palauan land is owned by more than one individual, the default governing regime is customary law. Rather, *Children of Ngeskesuk* and *Shih Bin-Fang* were decided on their own set of unique facts. In the former case, the land at issue was returned by the Trust Territory Government to those who

owned the land previously but sold it to the Japanese authorities when it administered Palau. *Children of Ngeskesuk*, 1 ROP at 684. Because the land was voluntarily transferred to the Japanese administration, the previous owners were not entitled to file a "return of public lands" claim. Nevertheless, the United States authorities agreed to restore the land to prior owners and "the High Commissioner signed the Land Settlement Agreement and Indenture," to accomplish the same, on the condition "that the land rights must be subject to the customary land laws that existed at the time of taking to the extent that such customary laws still existed." *Id.* It is the presence of this bargained-for condition that caused us to hold that the owners of land at issue in *Children of Ngeskesuk* held it pursuant to Palauan customary law, rather than as joint tenants. *Id.* at 689-92. Because no similar condition governed the return of *Tund* to Ngirngemeusch, *Children of Ngeskesuk* offers Cleophas no help.

[¶ 16] *Shih Bin-Fang* is similarly unhelpful. In that case, we were constrained by a prior determination that the land in question was "family-owned land" with one of the family members serving as a trustee with an obligation to "administer the land pursuant to Palauan custom." *Riumd v. Tanaka*, 1 ROP Intrm. 597, 606 (1989). The reason for that earlier determination was the factual finding of the trial court that the land was never individually owned and that, instead, the person who claimed individual ownership was merely a "trustee and administrator of [the land] for himself and his brothers and a sister." *Id.* at 600. This was a factual conclusion, not a legal one. Nothing in *Riumd* (or *Shih Bin-Fang* itself) suggests that any time land in Palau has more than one co-owner, the relationship between co-owners is governed by customary law.

[¶ 17] To the contrary, the Palau National Code expressly provides that "[l]and now held in fee simple . . . may be transferred, devised, sold or otherwise disposed of at such time and in such manner as the owner alone may desire, *regardless of established local customs* which may control the disposition or inheritance of land through matrilineal lineages or clans." 39 PNC § 403 (emphasis added). Ownership in fee simple is an absolute ownership with the right to use or divest as one may desire. In contrast, Palauan custom limits the ability of families or clans who hold the land pursuant to it to divest themselves without "a unanimous consent of at least the senior members of the family, lineage or clan." *Children of Ngeskesuk*, 1 ROP

at 687-88. To put it another way, title under customary law and title in fee simple are alternative, but fundamentally different, forms of ownership interest. We therefore hold that when land is held in unqualified fee simple, such tenure is not governed by Palauan customary law, but is instead governed by Palauan statutory and common law. Accordingly, we reject Cleophas's argument that ownership, shares, and profits from *Tund* are governed by Palauan customary law.

II.

[¶ 18] Cleophas and Intervenors next argue that the Land Court erred when it awarded *Tund* to the "Children of Ngirngemeusch" rather than the "Estate of Ngirngemeusch." According to Appellants, once Ngirngemeusch died, his claim passed to his estate and not necessarily to his children. Appellants argue that had the estate been awarded the ownership of the land, the Trial Division (rather than the Land Court) should have determined who stood to inherit from the decedent under either 25 PNC § 301 or 35 PNC § 1317.[7] Thus, the argument continues, individuals who are Ngirngemeusch's biological children would have received a share in *Tund*, but those who are not would have been excluded.

[¶ 19] There is some logic to Appellants' arguments, and we are unclear as to why the claim that was originally made in the name of Ngirngemeusch as an individual was ultimately transmogrified into a claim in the name of Ngirngemeusch's children. Nevertheless, we are constrained to reject the argument.

A.

[¶ 20] When it comes to Cleophas, he is estopped from making the argument because he is the one who prosecuted the claim on behalf of the children of Ngirngemeusch. Having prevailed on "that position, he may not thereafter, simply because his interests have changed, assume a contrary

[7] Although we decline to entertain this argument for procedural reasons, *see infra* ¶¶ 20-25, we note that we have previously rejected the argument "that the Land Court does not have jurisdiction to make determinations of descent under the intestacy statute." *Anastacio v. Yoshida*, 10 ROP 88, 91 (2003). In that case, we held that "[a]s for lands for which no certificate has been issued, the Land Court remains empowered to make determinations of intestate succession as part of its authority to issue the original certificates of title." *Id.*

position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Etpison v. Obichang*, 2020 Palau 8 ¶ 34 (Dolin, J., concurring) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)). In this case, Appellees acquiesced in the position taken by Cleophas. They relied on his representations to the Land Court that they will share in the ownership of *Tund*. Had Cleophas taken a contrary position before the Land Court, Appellees could have presented a separate claim to the Land Court. But having, at that time, represented to the Appellees that he speaks for them, Cleophas cannot now be permitted to change his tune and take a contrary position that would benefit him to the detriment of other parties to this litigation.

B.

[¶ 21] Intervenors are also bound by the Land Court's determination unless they are able to show that that in reaching its conclusions, the Land Court violated their due process rights. *See In re Idelui*, 17 ROP 300, 305 (2010). It is to this argument that we now turn.

[¶ 22] Intervenors argue (and the Trial Division found) that they never received notice of the Land Court's hearing that was supposed to determine the membership in the class of "Children of Ngirngemeusch." We have no reason to question the Trial Division's factual determination that no personal notice was given to Intervenors. However, this lack of personal notice does not establish that Intervenors' due process rights were violated.

[¶ 23] We have previously resolved an analogous claim in *Nakamura v. Isechal*, 10 ROP 134 (2003). The appellant in that case claimed that "the land registration team should have served notice of the impending determination-of-ownership hearing on any known children of . . . the [deceased] person listed as the owner of land in the Tochi Daicho." *Id.* at 137. We rejected the argument, holding that personal notice must only be served on an "interested party," which we in turn defined as "a person, family, lineage, or clan who has actually filed a claim." *Id.* at 137-38. It is undisputed that no Intervenor ever filed a separate claim for *Tund*. Instead, they are relying on the claim that Cleophas pursued on behalf of "Children of Ngirngemeusch." But, if so, then the notice requirements have been complied with because the Land Court records indicate that notice was served on Cleophas as representative of the

family. Intervenors cannot have it both ways. They cannot rely on Cleophas's claim in order to assert their rights to *Tund*, while simultaneously denying that Cleophas was their representative and, as such, authorized to receive service of process.

[¶ 24] This case is a good illustration as to why the requirement of personal notice is limited to those "who ha[ve] actually filed a claim" before the Land Court. *Id.* at 138. Intervenors admit that by the time ownership of *Tund* was adjudicated, they had lived outside the Republic for quite some time (perhaps decades). It is self-evident that it would an impossible task for the Land Court to conduct a worldwide search in order to attempt to notify individuals who may be related to the original owner of property. To be sure, mere absence from the Republic in no way diminishes one's right to continue to own property or to due process. The question, however, is what process is due. *See Gilbert v. Homar*, 520 U.S. 924, 930 (1997) ("Due process is flexible and calls for such procedural protections as the particular situation demands.") (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). We are of opinion that due process does not require the Land Court to conduct a worldwide search for individuals who may have an interest in the land and is instead satisfied by either serving notice on such individuals' representatives in the Republic[8] or complying with the public notice requirements set forth in 35 PNC § 1309(b).

[¶ 25] The Land Court records indicate that notice of the hearing was served on Attorney Nakamura who represented Ngirngemeusch's interests. We are not in a position, at this late hour, to second-guess whether Attorney Nakamura truly represented the entirety of Ngirngemeusch's interest or whether his representation was unauthorized by Intervenors. We must take the Land Court records as we find them, and therefore conclude that the notice served on attorney Nakamura was sufficient to comply with the statutory notice requirements. *See* 35 PNC § 1309(b)(3)(A) (permitting notice to be served "in the same manner as a civil summons," which in turn can be served on party represented by counsel by serving the papers "upon the counsel unless service

[8] We need not address whether service on a party's representative outside the Republic is sufficient to satisfy due process requirements.

upon the party is ordered by the court." ROP R. Civ. P. 5(b)).[9] Accordingly, we reject Intervenors' claim that the Land Court's issued the Certificates of Title in violation of their due process rights.

III.

[¶ 26] While we affirm the Trial Division's conclusion that Certificates of Title are binding on all parties and vest fourteen equal shares in each of the parties named on such certificates, we note that the actual judgment is inconsistent with that conclusion. The judgment grants a 1/14th share in *Tund* to each of the *Plaintiffs*, at least two of whom are concededly not listed on Certificates of Title and who have not been determined to be sole lawful heirs of the deceased co-owners. Thus, we are constrained to vacate that portion of the judgment. As the Trial Division correctly noted in its summary-judgment opinion, the distribution of the deceased co-owners' shares will have to await the completion of the probate process for these individuals' estates.

CONCLUSION

[¶ 27] Neither Appellant in Civil Appeal No. 21-002, nor Appellants in Civil Appeal No. 21-004 have shown, much less by clear and convincing evidence, that the Certificates of Title to *Tund* were issued in violation of their due process rights or as a result of the Land Court acting where it did not have jurisdiction. Accordingly, we **AFFIRM** the Trial Division's judgment insofar as it holds that the Certificates of Title are binding on all parties and vest fourteen equal shares in each of the parties named on such certificates.[10] We **VACATE** that portion of the judgment that grants 1/14th equal share in proceeds from the lease of *Tund* to Plaintiffs-Appellees who are not listed on the Certificates of Title, and **REMAND** the matter for further proceedings consistent with this opinion.

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[9] In light of our resolution of this issue we need not address whether the statute of limitation on Intervenors' claim has run.

[10] The stay heretofore entered by the Court remains in effect pending the Trial Division's filing of a judgment consistent with the present opinion. Once such judgment is filed, the stay shall dissolve automatically.

BENNARDO, Associate Justice, concurring in part and concurring in judgment[1]:

[¶ 28] While I agree with the majority's outcome, I write separately to say that I would travel a different path to arrive at an affirmance as to the Intervenors' argument that the Land Court erred in awarding *Tund* to the "Children of Ngirngemeusch" rather than the "Estate of Ngirngemeusch." *See* Majority Opinion, *supra* at ¶¶ 21-25. My approach would be to affirm the Trial Division's finding that the Intervenors were untimely in these arguments pursuant to the six-year statute of limitations provided by 14 PNC § 405. *See* Trial Division Decision at 5 (Jan. 27, 2021). To the extent that the Intervenors claim on appeal that the Trial Division erred by not applying the lengthier twenty-year statute of limitations provided by 14 PNC § 402(a)(2), I would find that argument forfeited for failure to present it to Trial Division below. Because our function is to review decisions rather than make them in the first instance, it is incumbent upon litigants to properly present all arguments to the court properly vested with the responsibility to make decisions in the first instance. The familiar consequence for failure to do so is forfeiture of the argument. *See, e.g.*, *Ochedaruchei Clan v. Oilouch*, 2021 Palau 33 ¶¶ 9-13.

[1] Associate Justice Bennardo joins ¶¶ 1-20 and 26-27 of the majority opinion in full.