IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

JAMES MIWATA ELIDCHEDONG,
Appellant,
v.
SAMUEL MAUI and JUSLEE B. MAUI,
Appellees.

Cite as: 2023 Palau 2
Civil Appeal No. 22-006
Appeal from Civil Action No. 19-151

Decided: January 4, 2023

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... Vameline Singeo

BEFORE: JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION[1]

RECHUCHER, Associate Justice:

[¶ 1] Appellant James Miwata Elidchedong ("Miwata") appeals from a judgment denying his claim of ownership to a land known as *Ngermechang*, as well as his collateral attack on the certificate of title to said land issued by the Land Court to Jonathan Maui in 1992. He contends that these certificates were procured through fraud, and that the Trial Division erred by denying his claim of ownership because of Jonathan Maui's failure to perform his contractual obligation.

[1]. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

[¶ 2] For the reasons set forth below, we **AFFIRM**.

BACKGROUND

[¶ 3] This matter concerns Cadastral Lot No. 005 E 008, (TD Lot 94), called *Ngermechang*, located in Chol County in Ngaraard State. In 1992, the Land Court determined *Ngermechang* was owned by Maui Madracheluib ("Maui") and was acquired by his son Jonathan Maui ("Jonathan"). Certificates of title to *Ngermechang*, as well as another land called *Ilebei*[2] (Cadastral Lot No. 005 E 001, T.D. part 400), were issued to Jonathan by the Land Court in 1992. None of the parties appealed that determination.

[¶ 4] Jonathan passed away in 2015, and his estate was probated in 2021. While several properties in Jonathan's estate were settled based on Palauan custom, *Ngermechang* and *Ilebei* were left unsettled. In 2021, Jonathan's estate was further probated regarding these two (2) lots.

[¶ 5] Miwata appeals the decision and judgment of the trial court entered on February 21, 2022, denying his collateral attack on the certificates of title to *Ngermechang* and *Ilebei*. These lots are listed in the Japanese Tochi Daicho of Ngaraard in the name of Maui Madracheluib as owner. Maui is the father of Jonathan. Therefore, in 1992, the Land Court determined the lots were owned by Maui and his son, Jonathan, inherited them as the rightful heir of Maui under Palau custom. Elidchedong and his son, Miwata, attended the hearing but did not appeal that determination. Consequently, Land Court issued certificates of title to *Ngermechang* and *Ilebei* listing Jonathan as owner of both lands. These certificates are the subject of this appeal.

[¶ 6] Jonathan died intestate on February 25, 2015. At the time of his death, he was married with children. His estate was probated in 2021 regarding the lands in question. During Jonathan's estate proceedings, Miwata filed a claim for ownership of *Ngermechang* and *Ilebei* on behalf of the children of Elidchedong. In doing so, he collaterally attacked the

[2] "*Omedoil*" is another name for *Ngermechang*. While both *Ngermechang* and *Ilebei* are mentioned in trial court's 1992 certificate of title, this appeal only concerns the land *Ngermechang.*

certificates issued in 1992 land hearing, contending the certificates are invalid because Jonathan failed to perform his contractual obligations.

STANDARD OF REVIEW

[¶ 7] The Appellate Division reviews Land Court proceedings in three separate standards of review: conclusions of law, findings of fact, and matters of discretion. Conclusions of law are reviewed *de novo*, factual findings are reviewed for clear error, and exercises of discretion are reviewed for abuse of discretion. *Salvador v. Renguul*, 2016 Palau 14 ¶ 7.

[¶ 8] The Land Court's factual determinations will be set aside for clear error "only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. When the Land Court is faced with several plausible interpretations of evidence, the Land Court's choice between them will be affirmed even if this Court would have decided differently. *Ngerdelolk Village v. Ngerchol Village and Elsau Clan*, 2 TTR 398 (1963); *Elsau Clan v. Peleliu State Public Lands Auth.*, 2019 Palau 73; *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015) (internal quotations omitted).

[¶ 9] A discretionary decision "will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable, or because it stemmed from an improper motive." *Sugiyama v. Yano*, 22 ROP 93, 95 (2015).

ISSUES PRESENTED

[¶ 10] Miwata raises two issues, namely: (a) whether the trial court erred or abused its discretion in denying his claim for ownership of the subject lands because of decedent's failure to perform his contractual obligations; and (b) whether trial court erred in denying his claim because the certificates of title were procured as a product of fraud.

DISCUSSION

[¶ 11] The Japanese Tochi Daicho of Ngaraard lists Maui as the owner of *Ngermechang* and *Ilebei*. A Tochi Daicho listing is presumed to be accurate. *See Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 135 (2000) (holding

that Tochi Daicho listings of property owners are "presumed to be accurate and the party who disputes the listing must rebut the presumption by clear and convincing evidence in order to prevail."). Miwata's father, Elidchedong, was a claimant to the same lands. He attended the 1992 hearing but testified in support of Maui's claim. He failed to rebut the Tochi Daicho presumption, so Maui was determined owner of the lands. *Children of Ingais v. Etumai Lineage*, 20 ROP 149 (2013). Jonathan is the son of Maui. He acquired ownership to the same lands as rightful heir of Maui under Palau custom. *See Sked v. Ramarui*, 14 ROP 149, 150 (2007); *Delbirt v. Ruluked*, 13 ROP 10, 12 (2005); *Ruluked v. Skilang*, 6 ROP Intrm. 170, 172 (1997). Thus, when the time for appeal passed with no appeal, the Land Court issued certificates of title to *Ngermechang* and *Ilebei* to Jonathan.

I. A Certificate of Title is Evidence of Land Ownership

[¶ 12] A certificate of title is *prima facie* evidence of land ownership. 35 PNC § 1314(b) provides that a certificate of title is conclusive upon all persons who had notice of the hearing as provided in § 1309, and shall be *prima facie* evidence of ownership. This law is firmly established and has been consistently followed by Palau courts. Here, it is undisputed that Elidchedong was a claimant to the lands in dispute; he attended the hearing wherein the Land Court determined Jonathan owned the lands; he did not appeal that determination; and certificates of title were issued listing Jonathan as the owner of said lands.

[¶ 13] However, the law discussed above is not without limitations. Palau courts have allowed collateral attacks on certificates of title in certain situations, namely "where the certificate of title was . . . issued without a hearing or determination of ownership that could have been appealed." *Uchel v. Deluus*, 8 ROP Intrm. 120, 121 (2000); *Emaudiong v. Arbedul*, 5 ROP Intrm. 31, 35 (1994); *Obak v. Bandarii*, 7 ROP Intrm. 254 (Tr. Div. 1998). Other situations where certificates of title may be subject to collateral attack are where they are procured in violation of procedural due process; or where they are procured through fraud, *Wong v. Obichang*, 16 ROP 209 (2009); or where clerical errors need to be corrected. *Children of Ngiratiou v. Descendants of Ngiratiou*, 20 ROP 264 (2013).

[¶ 14] Unappealed determinations of ownership are generally valid against the world. *See Bilamang v. Oit*, 4 ROP Intrm. 23, 28 (1993). A party that chooses not to appeal loses the opportunity to come back in another lawsuit to raise arguments that should have been pressed in the original case. Under these facts, the only collateral attack open to the party who chose not to appeal is that the original proceedings deprived them of due process by holding a hearing not in compliance with statutory or constitutional procedural requirements. *Ngatpang State v. Amboi*, 7 ROP Intrm 12, 16 (1998). To do that, she or he must show, by clear and convincing evidence, that the Land Court proceedings that led to the issuance of a certificate of title violated her or his right to due process. *Ucherremasech v. Wong*, 5 ROP Intrm. 142, 147 (1995). Crucially, this challenge must be brought during the statutory appeal period. *See* RPPL 2-24, § 13; *cf.* 35 P.N.C. § 1313; *Ngiraingas v. Ridep*, 2016 Palau 30 ¶ 21, n.10.

[¶ 15] Miwata's father, Elidchedong, chose not to appeal the 1992 determination in favour of Jonathan's claim. He waited for nineteen (19) years and came back in a different lawsuit to raise an argument that should have been pursued in the original case. Thus, the only collateral attack opens to him is that the Land Court hearing did not comply with statutory or constitutional procedural requirements. *Ngatpang State v. Amboi*, 7 ROP Intrm 12, 16 (1998). Miwata has the burden of proving non-compliance by clear and convincing evidence. *Ucherremasch v. Wong*, 5 ROP Intrm. 142, 147 (1995).

[¶ 16] Miwata has not developed any argument establishing the 1992 land hearing itself was procedurally deficient or tainted by fraud; as such, he has necessarily failed to meet his burden. *Rengiil v. Urebau Clan*, 21 ROP 11 (2013); *Tebelak v. Rdialul*, 13 ROP 150, 154 n.4 (2006).

II. A Contractual Obligation is Not a Proper Ground for Collateral Attack

[¶ 17] In the estate proceedings held in 202l, Miwata testified to facts that occurred in the 1992 land hearing, to support his argument based on Jonathan's alleged failure to perform his contractual obligation. He testified to the effect that a day before the hearing, Jonathan went to Elidchedong's house and paid him $50.00 and told him: ". . . please do not come to the land

hearing I will represent you to settle these lands." Miwata testified that Jonathan stated that he was going to "return these lands." Miwata believes this conversation formed a valid and enforceable agreement, and now seeks to invalidate the certificates because of Jonathan's failure to perform his contractual obligation–returning the lands to Elidchedong.

[¶ 18] Two preliminary considerations make this argument ineffectual. First, Miwata failed to raise and argue this issue at the trial level. The court's record shows that the court never discussed the issue nor made any determination regarding its effect on validity of certificates of title. Being as such, it is deemed waived. *Rechucher v. ROP*, 12 ROP 51, 54 (2005) (finding that this Court has consistently held that arguments raised for the first time on appeal are waived.). Second, a failure to perform a contractual obligation is not a proper ground for attacking the validity of certificates of title, although it may be the subject of a different suit. A final determination of ownership may only be collaterally attacked on the grounds that statutory or constitutional procedural requirements were not complied with, or that the determination was a product of fraud. *See Tebelak v. Rdialul*, 13 ROP 150, 154 n.4 (2006); *Obichang*, 16 ROP at 212-14; *see also, e.g.*, *In re Estate of Tellames*, 22 ROP 218, 223-24 (Tr. Div. 2015).

[¶ 19] Nonetheless, Miwata's argument is misplaced. The aforementioned conversation does not meet the basic requirements to form a valid and enforceable agreement. A valid agreement must contain (1) an offer; (2) an acceptance; and, (3) consideration. As this Court explained in *Chun v. Liang*, 14 ROP 121 (2007): "As a basic principle, the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange, and a consideration." Elidchedong merely inquired if Jonathan was going to return the lands; Jonathan's positive response does not create a valid and enforceable agreement. Accordingly, there is no contractual obligation to be performed.

III. Fraud as Grounds for Collateral Attack

[¶ 20] Fraud has a very specific and narrow meaning under the law. First, the victim must prove that the defendant intentionally misrepresented or concealed a material fact to the victim. *Beches v. Sumor*, 17 ROP 266, 273 (2010); *Obichang*, 16 ROP at 213. Second, the victim must prove that the

defendant intended that the victim would rely upon the false statement of material fact or omission. *Beches*, 17 ROP 266 at 273. Third, the victim must show that he or she reasonably relied on the misrepresentation. A victim may not rely on a false statement if he or she knew the statement was false or if its falsity was obvious to the victim. *Id.* Finally, the victim must show that, as a result of his or her reliance on the misrepresentation or omission, the victim was actually damaged and suffered a harm. *Tebelak v*, 13 ROP at 154 n.4; *Obichang*, 16 ROP at 212-14.

[¶ 21] The facts here run counter to Miwata's testimony. For example: Miwata testified that Jonathan paid $50.00 to Elidchedong and told him not to be present at the hearing, but Elidchedong went and attended the hearing; Jonathan stated that he would represent Elidchedong and settle the claims, but Elidchedong testified in support of the claim of Maui's children; Elidchedong had no written documents backing up his claim. Even upon learning that Jonathan was claiming the lands for himself, Elidchedong remained silent and did not take any action to assert his claim, correct Jonathan's testimony, or protect his interest in *Ngermechang* and *Ilebei*. Therefore, the trial court found Miwata "…has completely failed to prove that the statutory or constitutional procedural requirements were not met and therefore, his collateral attack of the certificate of title must fail. His allegation of fraud is meritless as no evidence was presented to corroborate this claim." *In re estate of Jonathan Maui*, Civil Action No. 19-151, at 3 (Tr. Div. Feb. 21, 2022).

[¶ 22] The trial court did not find Miwata's testimony credible or sufficient to establish fraud. It is not our duty to determine credibility of evidence, that is the responsibility of the trial court. *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004). Nor is it the job of this Court to reweigh the evidence, which is essentially, what Miwata urges this Court to do. *See Dokdok v. Rechelluul*, 14 ROP 116, 119 (2007) (noting that under the clear error standard "the Appellate Division will not reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence"). Therefore, we find no clear error in the trial court's determination.

CONCLUSION

[¶ 23] For the reasons set forth above, we **AFFIRM** the Trial Division judgment.