

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

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| <p>WILLY WALLY, <i>Appellant,</i> v. PALAU NATIONAL COMMUNICATIONS CORPORATION, <i>Appellee.</i></p> |
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Cite as: 2023 Palau 24
Civil Appeal No. 23-004
Appeal from Civil Action No. 21-219

Decided: November 17, 2023

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| Counsel for Appellant | Yukiwo P. Dengokl |
| Counsel for Appellee | Kevin N. Kirk |

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding
FRED M. ISAACS, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] Through this appeal, Appellant Willy Wally asks us to reverse the Trial Division’s Order Granting Summary Judgment to the Palau National Communications Corporation (“PNCC”), which found that PNCC had a valid easement over Wally’s land.

[¶ 2] Because we find that PNCC was not entitled to judgment as a matter of law, we **VACATE** and **REMAND**.

BACKGROUND

[¶ 3] Cadastral Lot No. 064 B 13 is a parcel from the land known as *Lemel* located in Ngerchemai Hamlet, Koror State. In 1988, Willy Wally filed a claim under a theory of return of public lands for *Lemel*, Cadastral Lot No. 064 B 02. On April 4, 2001, the Land Court issued a Determination of Ownership finding that Wally and his aunt, Valentina Sukrad, were the owners of *Lemel*. This Court affirmed the Determination in *Republic of Palau v. Wally*, 10 ROP 85 (2003). In 2015, *Lemel* was split into parcels and Wally was awarded a Certificate of Title to Cadastral Lot No. 064 B 13, the parcel at issue in this case.

[¶ 4] In 1996, PNCC installed two communications pedestals, part of PNCC’s network infrastructure, on Cadastral Lot No. 064 B 13. The parcel was at the time public land managed by the Koror State Public Lands Authority (“KSPLA”). The pedestals occupy about two square feet of land and reportedly connect several customers to the PNCC internet network, including Wally himself and the north side buildings of an elementary school. To install the pedestals, PNCC obtained a purported easement agreement from Philip and Pastora Kloulubak, leaseholders of *Lemel*. PNCC provided a copy of the easement for one pedestal but was unable to locate the easement obtained for the other pedestal.

[¶ 5] On December 23, 2021, Willy Wally filed Civil Action No. 21-219 seeking to eject PNCC from his land, arguing that any easement granted to PNCC on the land terminated once he obtained title to the land. The Trial Division granted PNCC’s Motion for Summary Judgment on December 22, 2022, finding that according to 35 PNC § 1314 (c), PNCC has an easement on Cadastral Lot No. 064 B 13.

STANDARD OF REVIEW

[¶ 6] Summary judgment is only proper when the pleadings, affidavits, and other papers show no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. ROP R. Civ. P. 56(c). When considering a motion for summary judgment, the court must consider all evidence and inferences in the light most favorable to the nonmoving party. *ROP v. Reklai*, 11 ROP 18, 21 (2003). The Appellate Division reviews appeals from summary

judgment de novo. *Id.* In doing so, our review is plenary, considering both whether there is no genuine issue of material fact and whether the substantive law was correctly applied. *Mesubed v. ROP*, 10 ROP 62, 64 (2003) (citing *Akiwo v. ROP*, 6 ROP Intrm. 105, 106 (1997)).

DISCUSSION

[¶ 7] The trial court held that PNCC has an easement for Cadastral Lot No. 064 B 13 as a matter of law and that the parties both “contend[ed] that there are no disputes of material fact, including the assertion that [PNCC] may have received an easement from the previous lessee of the land in question.” Order Grant. Def’s Mot. for Summ. J. and Den. Pl’s Mot. for Partial Summ. J., *Wally v. PNCC*, Civil Action No. 21-219, at 3 (Tr. Div. Dec. 22, 2022). The trial court also noted that Wally offered “no authority on why this particular easement should not also pass with the land despite the firm directive under existing law” *Id.* Wally maintains that the trial court erred in granting summary judgment because Philip and Pastora Kloulubak, as leaseholders, had no authority to grant an easement over the land.¹

[¶ 8] For the reasons set forth below, we reject the trial court’s holding that PNCC was entitled to judgment as a matter of law. Our difficulty with the trial court’s conclusion on this point begins with its determination that an easement exists in this case. An easement by definition is a type of servitude which creates “[a]n interest in land owned by another person . . . for a specific limited purpose.” *Estate of Asanuma v. Blailles*, 13 ROP 84, 87 (2006) (quoting *Black’s Law Dictionary* 548 (8th ed. 2004)). It creates “a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.” Restatement (Third) of Property (Servitudes) § 1.2 (2000). Generally, “[a] servitude is created if (1) the *owner* of the property to be burdened enters into a contract or makes a conveyance intended to create a servitude . . . or (2) if the requirements for creation of a servitude by estoppel, implication, necessity, or prescription . . .

¹ Wally also argues that the easement was lawfully extinguished by the action of the Constitution, and that 35 PNC § 1314(c) did not apply to this case because the easement did not exist as of the effective date of the statute. Because of the decision we reach in this opinion, we need not address the merits of these assertions.

[or] for creation of a servitude for public benefit . . . are met.” Restatement, *supra*, § 2.1 (emphasis added).

[¶ 9] Our review of the law of easements reveals that, while any person with a possessory right in land may create an easement, an easement may not create a right that the grantor did not possess. *See* 25 Am. Jur. 2d *Easements and Licenses* § 12; Restatement, *supra*, § 4.3 cmt. e, at 526 (“The duration of a servitude is normally limited to the duration of the estate of the creator of the servitude because the creator cannot burden a greater estate than he or she has.”); Jon W. Bruce et al., *The Law of Easements & Licenses in Land* § 2:9 (2023) (“[O]ne cannot acquire an easement of greater duration than the interest that the servient owner holds in the burdened estate.”). In other words, one cannot convey to a third party an easement of greater duration than the interest held by the conveyor. *Id.* Thus, while an owner of land in fee simple may grant a permanent easement, a tenant for a term of years can only grant an easement that will continue for the period of the lease.

[¶ 10] With these principles in mind, there is no question that PNCC may have received an easement from the Kloulubaks. Nevertheless, several questions remain as to the nature and extent of that easement.

[¶ 11] The trial court held that the easement passed with the land as a matter of statutory law. Under the Palau National Code,

Any easements or other rights appurtenant to the land in question which are over unregistered land shall remain so appurtenant even if not mentioned in the certificate, and shall pass with the land until cut off or extinguished in some lawful manner independent of the determination covered by the certificate. For the purposes of this chapter, the term “registered” when referring to land, means recorded in the permanent register referred to in section 1316.

35 PNC § 1314(c). In other words, easements appurtenant pass with the land until they are lawfully extinguished, regardless of whether the encumbrance is mentioned in the certificate of title.

[¶ 12] Easements appurtenant are distinguished from easements in gross. “Appurtenant” means that the rights or obligations of a servitude are tied to ownership or occupancy of a particular unit or parcel of land, while “in gross” means that the benefit or burden of a servitude is not tied to a particular land. Restatement, *supra*, § 1.5. “Only appurtenant benefits and burdens run with [the] land.” *Id.* To put it another way, an easement appurtenant is “created to benefit the owner of a dominant estate, and must in fact help the owner with respect to physical use of the land.” Bruce et al., *supra*, § 2:3. On the other hand, “[a]n easement in gross is a mere personal interest in or right to use another’s land, without being exercised in connection with the occupancy of the land.” 28A C.J.S. *Easements* § 18. Accordingly, an easement in gross has a servient estate but no dominant estate, where an easement appurtenant generally requires both a servient and a dominant estate. *Id.* “Despite the preference for easements appurtenant, easements in gross are commonly used to meet the needs of modern industrial society. Utility easements, for instance, are typically held in gross.” Bruce et al., *supra*, § 2:3.

[¶ 13] Philip and Pastora Kloulubak, as tenants for a term of years, could not grant an easement exceeding their own interest in the land. In addition, the factual record points towards the conclusion that any easement created would amount to an easement in gross. First, there is only one burdened land, Cadastral Lot No. 064 B 13, and no second parcel benefiting from the easement. Second, by placing pedestals on the land, PNCC obtained a personal right in Wally’s land that is not inherently tied to this specific property. PNCC admitted that the pedestals could be moved, although at great cost. Because these facts indicate the creation, if anything, of an easement in gross, we decline to find that 35 PNC § 1314(c) would necessarily apply.

[¶ 14] Nevertheless, our holding on this narrow point does not mean that there is no easement, nor that some form of servitude may not exist in another form. As the Restatement aptly points out, the creation of a servitude by estoppel, implication, necessity, prescription, or for the public benefit, have different requirements that may very well have been met in this case. *See* Restatement, *supra*, § 2.10-§ 2.16. Accordingly, we remand for further proceedings so that the trial court may determine whether an easement or other form of servitude was created. In doing so, we note that trial courts have wide flexibility in designing remedies to enforce easements and may do so as

necessitated by and in the public interest. *See Estate of Asanuma*, 13 ROP at 87-88.

CONCLUSION

[¶ 15] We **VACATE** and **REMAND** the Trial Division's judgment for further proceedings consistent with the above.