Rechucher v. Ngiraked, 10 ROP 20 (2002)

EUSEBIO RECHUCHER, IDID CLAN, and HEIRS OF ADACHI,
Appellants,

v.

KATEY OCHOB NGIRAKED,
Appellee.

CIVIL APPEAL NO. 01-08
LC/B 99-149

Supreme Court, Appellate Division
Republic of Palau

Argued: September 27, 2002
Decided: November 20, 2002
⊥21
Counsel for Rechucher: Oldiais Ngiraikelau and Antonio Cortes

Counsel for Idid Clan: Carlos H. Salii

Counsel for Heirs of Adachi: Raynold B. Oilouch

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Land Court, the Honorable DANIEL N. CADRA, Senior Judge, presiding.

MILLER, Justice:

This is an appeal from the Land Court's determination of ownership concerning a parcel of land shown as Tract No. 40421 on Trust Territory, Division of Land Management Drawing No. 4002/68 (hereinafter, the "disputed property"). After holding a hearing, the Land Court determined that Appellant Eusebio Rechucher owned a portion of the disputed property called the "northwest strip," and Appellee Katey Ngiraked owned the rest.

BACKGROUND

Based on testimony and evidence presented at the hearing, the Land Court made the following findings: Ngiraked was listed as the owner of Tochi Daicho Lot Nos. 256 and 396, part of a property known as "Isngull." Ngiraked disposed of Isngull by stating his intent that it go to Katey while he was still alive. Lot Nos. 256 and 396 covered all of the disputed property, except for the northwest strip. The northwest strip had been owned by Okelang Clan, but was

taken by the Japanese government and never returned. The land comprising Lot Nos. 256 and 396, however, was never taken by the Japanese government or acquired by the Trust Territory government ("TT").

In July 1969, the TT attempted to convey the disputed property by deed to Joseph Tellei. Tellei, in turn, purported to sell portions of the property to Rechucher in 1969 and 1975. Rechucher first entered the property and commenced construction activities in April 1986. Shortly thereafter, Rechebei Ngiraului confronted Rechucher and interfered with construction, claiming that the disputed property belonged to another lineage. At Rechucher's behest, the Trial Division enjoined Ngiraului from physically interfering with construction. The Court did not quiet title to the property, however, and advised Rechucher that he would proceed with construction at his own risk in light of potential contrary claims of ownership. In June 1988, Rechucher purchased the remainder of the property from Tellei.

Rechucher claimed ownership of the disputed property through the deeds from Tellei, and also asserted that other claimants ⊥22 were barred from contesting his ownership because they failed timely to object while he spent more than $3 million constructing improvements. Three other claimants–Idid Clan, the heirs of Adachi, and Katey Ngiraked–all claimed through Ngiraked; they disagreed, however, as to who among them was Ngiraked's successor. The remaining claimants before the Land Court–namely, Ngiraului, Haruo Ultirakl, and Okelang Clan–are not parties to this appeal.

As to Rechucher's claim, the Land Court noted that Tellei could not have acquired title from the TT unless the TT had itself acquired title. Under the September 1954 "vesting order," title belonging to the Japanese government or its nationals became vested in the TT, but title to private property owned by Palauans did not. The Land Court determinated that because the weight of the credible evidence showed that only the northwest strip of the disputed property was taken by the Japanese or acquired by the TT, only the northwest strip was passed from the TT to Tellei, and from Tellei to Rechucher. The Land Court also found that the other claimants were not barred by the statute of limitations, laches, or adverse possession.

As among the other claimants, the Land Court concluded that Katey's claim to the remainder of the disputed property was superior to others claiming through Ngiraked. The Land Court noted that, according to the weight of the evidence, Ngiraked had disposed of Isngull by stating his intent that it go to Katey while he was still alive. The Land Court believed this transfer was effective under Palauan custom and the law as it then existed, and deemed it unnecessary to consider who were the proper heirs to Ngiraked after his death. Accordingly, the Land Court awarded the northwest strip to Rechucher, and the remainder of the disputed property to Katey.

DISCUSSION

Findings of the Land Court are reviewed under the clearly erroneous standard. If the factual findings made by the Land Court are "supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, those findings will not be set aside unless this court is left with a definite conviction that a mistake has been committed." *Tesei v. Belechal*, 7 ROP Intrm. 89, 90 (1998). The appellate court will not substitute its own judgment of the credibility of witnesses based on its reading of a cold record for the trial court's assessment of the witnesses' veracity. *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994).

A. Rechucher's Claim.

We begin with Rechucher's challenge to the Land Court's finding that the TT did not own most of the property that it transferred to Tellei.[1] Rechucher first ⊥23 disagrees with the Land Court's finding that the TT deed to Tellei is a merely a "quitclaim" that did not guarantee good title. Instead, Rechucher argues that the deed is a warranty deed. We believe that the nature of the deed is largely immaterial. The language of a deed governs the rights and obligations vis a vis grantor and grantee (i.e., the TT and Tellei), not between the grantee and a third party such as Ngiraked. *See* Black's Law Dictionary 364 (6th ed. 1990) (covenants of title); *see also id.* at 1251 and 1589 (comparing quitclaim deeds with warranty deeds). Therefore, whether the deed was a quitclaim or something more, the TT could not have conveyed to Tellei an interest greater than the TT itself possessed. *See Aguon v. Aguon*, 5 ROP Intrm. 122, 126 (1995) ("[A] purchaser cannot buy what a seller does not own; the good faith of a purchaser . . . cannot create a title where none exists").

We agree with Rechucher, however, that the Land Court may have misread certain language in the deed. According to the deed and related memoranda, the TT was conveying the disputed property to Tellei in exchange for Tellei's relinquishment of rights to certain other land. The TT believed that it had mistakenly taken this other land from Tellei and given some of it to a third party. Accordingly, the deed was intended to settle Tellei's claim by compensating Tellei for what the TT had wrongly awarded to another. In the course of reciting this scenario, the deed stated that "the Trust Territory had no lawful right to succeed to the ownership thereof," a reference to the land that the TT had initially taken from Tellei. The Land Court apparently read that language to mean that the TT believed it had no right to succeed to the ownership of the land it was *conveying* to Tellei.

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[1]In his opening brief, Rechucher questioned the jurisdiction of the Land Court, suggesting that the Land Court was purporting to resolve claims for public land, but was not authorized to do so in light of its factual finding that most of the disputed property had never been publicly owned. At oral argument, however, Rechucher's counsel appeared to concede that the Land Court did have jurisdiction, and we agree. Because none of the claimants asserted that the disputed property was public land at the time of the Land Court hearing, and because the Land Court expressly found that only the northwest strip of the disputed property had ever been public land, we do not regard the Land Court's decision as an award of ownership of public land under 35 PNC § 1304(b). Instead, we believe that the Land Court acted under its jurisdiction to proceed "on a systematic basis to hold hearings and make determinations with respect to the ownership of all land within the Republic" under 35 PNC § 1304(a).

Nevertheless, we conclude that any error in this regard does not warrant reversal, because the Land Court's conclusion that the TT did not own the land at the time of the purported conveyance to Tellei was based not on its reading of the deed, but upon other evidence.[2] In particular, the Land Court found Katey's testimony–that Japanese nationals paid rent to Ngiraked from 1934 to1944 but did not assume ownership or control of the land–to be "specific, detailed and based on first hand knowledge," and therefore worthy of credence. Her testimony supports the conclusion that the disputed property had not been taken from Ngiraked by the Japanese, and hence did not become public land under the vesting order of 1951. Further, the Land Court credited the testimony of Ilong Isaol that the property remained vacant during the TT era. Therefore, the Land Court did not clearly err in finding that the TT did not own the disputed property at the time of its purported conveyance to Tellei.[3]

⊥24 Rechucher also asserts that the Land Court misconstrued Palau's recording statute, 39 PNC § 402, which reads:

> No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease or use right for a term not exceeding one year, shall be valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded.

Rechucher would have us interpret the recording statute to mean that Katey's interest is not valid as against his, because he was a "subsequent purchaser" who first recorded his interest and had been a bona fide purchaser. *See Teblak v. Santos*, 7 ROP Intrm. 1, 2 (1998) (providing that "the [recording] statute requires that, in order for a transferee of real property to prevail over an earlier transferee of the same property, he must . . . be a bona fide purchaser," that is, he must "show acquisition of real property interest in good faith, for value, and without notice of prior transfer").

Rechucher relies on *Santos* for the proposition that the recording statute's protection is not limited to subsequent purchasers from the same grantor who made the unrecorded conveyance. *See id.* at 3. In *Santos*, however, we also noted that the purpose of the recording statute is "to protect subsequent purchasers from secret liens and previous unrecorded conveyances by providing that such purchasers without notice of prior conveyances can rely upon recorded documents *within the record owner's chain of title*." *Id.* (emphasis added). Our reference to "the record owner's chain of title" was not inadvertent. Generally, "the recording laws protect only those as 'subsequent purchasers' who deraign their title from the grantor in the unrecorded conveyance." 66 Am. Jur. 2d *Records and Recording Laws* § 143. Thus, while the

[2]We cannot agree with Rechucher that the Land Court improperly shifted the burden of proof in finding that most of the disputed property had never been public land: the Land Court decided each claim according to the weight of the evidence, and we find no error.

[3]Rechucher asserts on appeal that a document entitled "REGISTRATION RA UTEM," which was introduced by Idid Clan at the Land Court hearing, amounts to an admission by Katey that the disputed property had become public land at the time of the TT's purported conveyance to Tellei. As discussed in greater detail *infra*, we do not believe the Land Court clearly erred in failing to give this document controlling weight.

phrase "subsequent purchaser" includes "every subsequent purchaser from one who appears from the records to be the owner of . . . the title and interest that the grantor had when he or she made the unrecorded deed," it does not include "a purchaser from an apparent stranger to the grantor of the unrecorded deed." *Id.*

On the facts before us, while Rechucher would qualify as a "subsequent purchaser" with regard to any unrecorded prior conveyances by the TT or Tellei, he was not a "subsequent purchaser" vis a vis the transfer from Ngiraked to Katey and thus is not entitled to the special protection afforded by the recording statute. Accordingly, he cannot escape the conclusion that the deed from Tellei conveyed nothing to him (except with respect to the northwest strip). This conclusion is consistent with both our prior caselaw, *see Aguon,* 5 ROP Intrm. at 126 (holding that the bona fide nature of a purchase cannot create title where none exists), and the decisions of other courts, *see* 66 Am. Jur. 2d *Records and Recording Laws* § 100 (citing cases for the proposition that a proprietor of land is not required to search records to determine whether some stranger has, without right, assumed to convey it); 77 ⊥25 Am. Jur. 2d *Vendor and Purchaser* § 427 ("The protection accorded a person as a bona fide purchaser of real estate does not apply to a person who acquires no semblance of title. If the vendor has no title, the purchaser acquires none.").

Rechucher also argues that the Land Court failed to rule in accordance with Art. XV, Section 3(b) of the Constitution, which provides that "[a]ll rights, interests, obligations, judgments, and liabilities arising under existing law shall remain in force and effect and shall be recognized, exercised, and enforced accordingly, subject to the provisions of this Constitution." The crux of his argument seems to be that Section 3(b) preserved any interest he had in the land before enactment of the Constitution. Even if that were so, Section 3(b) does not help him, as the Land Court did not premise its decision on a finding that the Constitution had somehow extinguished his interest in the land. Rather, the Land Court found that he never took any interest in the disputed property to begin with.

Finally, Rechucher presents several related theories as to why the adverse claimants are barred for failing to challenge the deeds from Tellei to Rechucher. As to laches, the Land Court did not clearly err in finding that Rechucher proceeded with construction activities despite his knowledge of other claims to the property. *See* 27A Am. Jur. 2d *Equity* § 190 (1996) (noting that laches may not apply in actions involving real property if defendant, knowing of complainant's claim, nevertheless pursues course that will cause financial detriment to him should claim ultimately succeed). As to adverse possession and the statute of limitations, we agree with the Land Court that since Rechucher did not enter the land until 1986, he could not show open possession for the requisite twenty years for adverse possession, *see Rebluud v. Fumio*, 5 ROP Intrm. 55, 56 (1995), or for the twenty-year statute of limitations, *see* 14 PNC § 402.

Before turning to the contentions of the other Appellants, we pause to discuss the *amicus curiae* brief submitted by the Republic of Palau. The brief argues that the Land Court should have upheld the validity of the TT deed to Tellei, and hence awarded the disputed property to Rechucher. Katey Ngiraked has moved to strike the brief, principally on grounds that it is neither impartial nor helpful to the Court. We regard the brief's helpfulness as something of a

moot point, hinging as it does on the merit of the very arguments Ngiraked is asking us to disregard. As to impartiality, we note that an *amicus curiae* need not be disinterested in the outcome of the case. Indeed, our Rules of Appellate Procedure contemplate that *amici* who participate with leave of the Court[4] shall have an "interest" in the appeal. ROP R. App. Pro. 29; *see also* 4 Am. Jur. 2d *Amicus Curiae* § 6 (1995) (noting trend in appellate courts to accept *amici* with partisan interests). And in any case, we see no reason to second guess the government's assertion that it was seeking to act on behalf of the public interest. The motion to strike is denied.

We hasten to add, however, that we will not permit an *amicus curiae* to circumvent our ordinary rules of issue-preservation by injecting legal theories which were not raised before the Land Court. *See Sugiyama v. Ngirausui*, 4 ROP Intrm. 177, 179 (1994) (issue preservation); 4 Am. Jur. 2d ⊥26 *Amicus Curiae* § 7 (stating that *amici* ordinarily may not raise new issues on appeal). Therefore, we do not dwell on the government's arguments concerning the preclusive effect of the TT's deed to Tellei or its presumptive validity, except to note that what the government refers to as "the Trust Territory determination of ownership" was not an adjudication made after notice and a hearing and thus is not governed by our decision in *Uchellas v. Etpison*, 5 ROP Intrm. 86 (1995). From all that appears in the record, the "determination" that the land belonged to the Trust Territory was based on an internal investigation of unknown scope. Further, the very fact that the deed to Tellei was meant to remedy the mistaken conveyance acknowledged in the deed, *see* p. 23 *supra*, makes clear that the TT was not infallible and belies the government's contention that the presumption of regularity that we have accorded to formal adjudication should apply in this situation. To the extent that the government's brief expands on arguments made before the Land Court, we have endeavored to address them *supra*.

B. The Claims of Idid Clan and the Heirs of Adachi

We turn to the contentions of Idid Clan and the heirs of Adachi, who challenge the Land Court's finding that Katey succeeded to Ngiraked's interest in the property. The Land Court relied upon Katey's testimony and several affidavits to establish that the disputed property was part of the land known as "Isngull," and that Ngiraked orally promised Isngull to Katey while he was alive. The Land Court also heard expert testimony that Ngiraked could orally dispose of individual property under Palauan custom and before the statute of frauds was enacted, and testimony that there was no *eldecheduch* disposing of Ngiraked's individual property. Based on this evidence, the Land Court's finding was not clearly erroneous.

The Land Court found that Katey was not estopped from claiming the disputed property based on her testimony in *Ultirakl v. Ngiraked*, Civ. Action No. 79-81, to the effect that Isngull covered Tochi Daicho Lot Nos. 244, 245, and 246. Isngull might well have encompassed both parcels of land, so the Land Court did not clearly err in declining to apply estoppel principles. *See* 28 Am. Jur. 2d *Estoppel and Waiver* § 34 (providing that estoppel "precludes a party from assuming a position in a legal proceeding which is inconsistent with one previously asserted where the inconsistency would allow a party to benefit from deliberate manipulation of the

[4]The Republic of Palau is exempt from the requirement that an *amicus* obtain consent of the parties or leave of court before filing a brief. ROP R. App. Pro. 29.

courts").

Likewise, we are not persuaded that the Land Court improperly failed to credit a document entitled "REGISTRATION RA UTEM." The document, executed by Katey in 1960, identifies Lot Nos. 244, 245, and 246 as Isngull, and states that Isngull was bounded on the west by "government land." Katey testified about this form at the hearing, asserting that she described Isngull in that manner pursuant to the instruction of the government registration officials. These officials assured her that she could later register the disputed property as part of Isngull as well, but they never asked her to do so. The Land Court found that the "REGISTRATION RA UTEM" did not preclude a finding that Isngull also covered the land designated as "government" land on the form. Based on all the evidence presented, we cannot say that the Land Court was clearly erroneous in that regard.

Finally, Idid Clan and the heirs of Adachi argue that the Land Court should have considered the issues that they raised ⊥27 concerning who were Ngiraked's proper heirs. We agree with the Land Court that those issues were irrelevant in light of the Land Court's finding that Ngiraked stated his intent that Isngull go to Katey while he was alive. *See In re Udui*, 6 ROP Intrm. 154, 157-58 (1997) (finding that a valid will expressing testator's wishes must prevail over claim of heirs); Black's Law Dictionary 724 (6th ed. 1990) (heir succeeds estate in event of intestacy). Because the Land Court was not clearly erroneous in concluding that Katey succeeded Ngiraked, his heirs (whoever they were) have no claim.

CONCLUSION

For the reasons stated above, we affirm the Land Court's determination of ownership.