Taro v. Sungino, 11 ROP 112 (2004)
DAVID TARO,
Appellant,

v.

KAZUKI SUNGINO,
Appellee.

CIVIL APPEAL NO. 01-021
LC/E 00-47

Supreme Court, Appellate Division
Republic of Palau

Argued: December 18, 2003
Decided: April 2, 2004
⊥113
Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: Imelda Nakamura

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable FRANCISCO KEPTOT, Associate Judge, presiding.

MICHELSEN, Justice:

BACKGROUND

Taro Matsuda filed this appeal challenging the determination of ownership of the Land Court concerning the land traditionally known as Echol or Delulatebechel in Ngaraard State (hereinafter referred to as "contested property" or simply "property"). The contested property is reflected in the Tochi Daicho as lot number 1863, belonging individually to Seroech. Seroech is related to Elewel, who is the father of Taro Matsuda ("Matsuda"), Appellant's father. Seroech is also the grandfather of Kinsang, Appellee's predecessor in interest.

Seroech died in the 1970s without a will. An eldecheduch was held, but it did not dispose of the contested property. In September 1974, Kinsang sold the property to Yoshiharu Sungino ("Yoshiharu") for $3,000. Yoshiharu is the father of Appellee Kazuki Sungino ("Sungino"). At the time of the sale, Matsuda was in possession of the land. Yoshiharu filed a quiet title action against Matsuda in the Trust Territory High Court, Trial Division.

The case was scheduled for trial on December 18, 1975. It is uncontested that both parties received proper notice of the trial date. Matsuda and his counsel appeared on the

appointed trial date, but Yoshiharu and his counsel did not, and the Court ordered Sungino's complaint dismissed for failure to prosecute. The order was silent as to whether the dismissal was with or without prejudice. Yoshiharu did not appeal the dismissal.

When the issue of title to the property came before the Land Court as part of the Land Registration Program, both Matsuda and Sungino claimed ownership of the property. After hearing, the Land Court found that the property passed from Seroech to Kinsang, and that Kinsang had authority to transfer title to Yoshiharu. Matsuda appealed the decision of the Land Court. After the demise of Matsuda, his son, David Taro ("Taro"), was substituted as the appellant.

STANDARD OF REVIEW

Land Court findings of fact are reviewed under a clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). The Land Court's legal conclusions are reviewable *de novo*. *Skebong v. EQPB*, 8 ROP Intrm. 80, 82 (1999); *Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9 (1999).
⊥114

ANALYSIS

A. *Res judicata*

Taro asserts that the doctrine of *res judicata* bars claimant Sungino from maintaining a claim to the contested property by virtue of the High Court's 1975 dismissal order. The dismissal order did not state whether the action was dismissed with prejudice. Dismissals are currently governed by ROP R. Civ. P. 41(b). [1] Pursuant to Rule 41(b), unless the trial court otherwise specifies, an involuntary dismissal ordinarily operates as an adjudication on the merits and bars prosecution of a subsequent action. *Chira v. Lockheed Aircraft Corp.* , 520 F. Supp. 1390 (S.D.N.Y. 1981).[2]

At the time of the 1975 quiet title action, the Trust Territory High Court had no rule comparable to this Court's Rule 41(b). Therefore, we must refer to the then applicable common law provisions. *See* 1 TTC § 103 ("The rules of the common law, as expressed in the restatements of the law . . . 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 Trust Territory in cases to which they apply . . . .").

As a matter of common law, it is well settled that, subject to some limitations in

---

[1]Rule 41(b) now provides, in pertinent part, as follows: "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits."

[2]Because Rule 41(b) is derived from the analogous provision in the Federal Rules of Civil Procedure, it is appropriate to consider United States case law in construing the rule. *The Senate v. Nakamura* , 8 ROP Intrm. 190, 192 (2000); *Gotina v. ROP*, 8 ROP Intrm. 65 (1999).

> some jurisdictions, a judgment dismissing an action for lack of prosecution does not bar another action on the same cause nor otherwise operate as *res judicata*, for instance, by way of collateral estoppel. The rule applies, irrespective of whether the former action was brought in equity, at law, or in admiralty. It is also immaterial whether the dismissal is entered upon the court's own motion or upon the motion of an opposite party, and whether it is entered with or without notice.

E. H. Schopler, Annotation, *Dismissal as Res Judicata* , 54 A.L.R.2d 473, § 2 (1957). Because the common law rule governed the dismissal of actions in 1975, and the dismissal did not on its face purport to be on the merits, the judgment by default dismissing the complaint did not bar a second action for the same cause in the instant case.

Appellant directs this Court to Restatement (Second) of Judgments § 20 (1982), which provides the current exceptions to the general rule of bar. Section 20 states, in pertinent part:

> (1) A personal judgment for the defendant, although valid and final, does not bar another action by the plaintiff on the same claim:
>
> ⊥115
>
> (a) When the judgment is one of dismissal for lack of jurisdiction, for improper venue, or for nonjoinder or misjoinder of parties; or
>
> (b) When the plaintiff agrees to or elects a nonsuit (or voluntary dismissal) without prejudice or the court directs that the plaintiff be nonsuited (or that the action be otherwise dismissed) without prejudice; or
>
> (c) When by statute or rule of court the judgment does not operate as a bar to another action on the same claim, or does not so operate unless the court specifies, and no such specification is made.

Appellant contends that because none of these exceptions apply, the High Court dismissal should bar the instant action, but the 1982 Restatement does not apply to a 1975 proceeding. The applicable Restatement, the Restatement of Judgments § 49 (1956) states:

> Where a valid and final personal judgment not on the merits is rendered in favor of the defendant, the plaintiff is not thereby precluded from thereafter maintaining an action on the original cause of action and the judgment is conclusive only as to what is actually decided.

Comment a to § 49 details the circumstances under which a final judgment is not on the merits:

> A judgment for the defendant is not on the merits where it is based merely on rules of procedure rather than on rules of substantive law. If the judgment determines that the plaintiff has no cause of action, it is on the merits; but if it determines only that the plaintiff is not entitled to recover in the particular action, it is not on the merits. If the defendant, whether on demurrer, motion, verdict, or

> otherwise, obtains judgment in his favor on a ground not involving the substance of the plaintiff's cause of action, the cause of action is not extinguished thereby.

When dismissing the1975 action for failure to prosecute, the High Court did not reach the substance of Yoshiharu's quiet title cause of action. Rather, the trial court *sua sponte* dismissed the case on procedural grounds. Because the dismissal did not involve the substantive legal issues implicated in the quiet title suit, the judgment rendered did not bar a subsequent suit under the then applicable law.

This is not a case where a current rule should be applied retroactively, because doing so would attach new legal consequences to events completed before its enactment. *Landgraf v. USI Film Prods.* , 114 S. Ct. 1483 (1994). Based on the common law, as it was expressed in the Restatement at the time of the 1975 action, Yoshiharu and his counsel could have assumed that the dismissal was not on the merits and did not operate as *res judicata* to a later suit. To apply Rule 41(b) or the comparable guidelines contained in the Restatement (Second) of Judgments retroactively here would work an injustice by ⊥116 increasing a party's liability for past conduct. We therefore hold that neither Rule 41(b) nor the Restatement (Second) of Judgments applies, either directly or by analogy, to the case at bar. *See Volkswagenwerk Aktiengesellschaft v. Church*, 413 F.2d 1126 (9th Cir. 1969) (concluding that where the application of a new rule would not be feasible or would work an injustice, that new rule should not be applied).

Because the 1975 dismissal order was not on the merits, the Land Court did not err in denying *res judicata* effect to the 1975 proceeding.

B. Sufficiency of the Evidence

Appellant next contends that the Land Court failed to properly consider and compare the evidence when determining whether Seroech was the true owner of the contested property. 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*, 7 ROP Intrm. at 90. 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 witness' veracity. *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994).

The evidence presented at the Land Court hearing reveals that the property is listed in the Tochi Daicho as individual property belonging to Seroech. The identification of landowners listed in the Tochi Daicho is presumed to be correct, and the burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong. *Olngebang Lineage v. ROP* , 8 ROP Intrm. 197, 198 (2000). At the hearing, Taro Matsuda testified that his father owned the land and that the land was given to Seroech to hold in trust until such time as Taro became old enough to take possession. However, Sungino presented testimony that Seroech individually owned the contested property. Testimony was also given that the land was conferred to Tirou as children's money. Based on the evidence presented, the Land Court did not err in crediting assertions of ownership corroborated by Tochi Daicho listings over assertions of

ownership uncorroborated by any extrinsic evidence. *Ngetchab Lineage v. Klewei*, 8 ROP Intrm. 116, 118 (2000).

CONCLUSION

For the foregoing reasons, we affirm the determination of the Land Court.