

Aribuk v. Rebluud, 11 ROP 224 (2004)

**PATRICK ARIBUK,
Appellant,**

v.

**SALVADOR REBLUUD,
Appellee.**

CIVIL APPEAL NO. 03-041
LC/F 01-947

Supreme Court, Appellate Division
Republic of Palau

Argued: August 2, 2004

Decided: September 17, 2004

Counsel for Appellant: J. Roman Bedor, T.C.

Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge,
presiding.

SALII, Justice:

Appellant Patrick Aribuk (“Patrick”) filed this appeal challenging the determination of ownership of the Land Court. For the reasons set forth below, we affirm the decision of the Land Court.

BACKGROUND

This matter involves a determination of ownership of Tochi Daicho Lot No. 1122 in the state of Ngarchelong, now surveyed as Lot No. 15-1131H on Worksheet No. 2002 F 008 (“contested property” or “property”). The property originally belonged individually to Aribuk, Patrick’s father. Aribuk died sometime in the 1990s and an cheldechuduch was held. Patrick did not attend the cheldechuduch and had no personal knowledge as to what transpired. Isidoro Tutii, who presently holds the traditional title of Madraibelau of the Ibelau Clan, testified on Patrick’s behalf. Although he did not attend Aribuk’s cheldechuduch, Isidoro declared that he was later informed that the contested **1225** property was given to Aribuk’s children. Patrick’s brother Kloulubak also testified at the hearing. Kloulubak testified that his father informed him that the contested property would be passed down to his children. Kloulubak further stated that

Aribuk v. Rebluud, 11 ROP 224 (2004)

he was present during his father's cheldechuch and was informed by his relatives that Aribuk owned some land in Ngarchelong.

Appellee Salvador Rebluud ("Rebluud") was represented at the Land Court hearing by his son, Riosang Salvador ("Riosang"). Riosang testified that Aribuk lived with Rebluud and had a line of credit at Rebluud's convenience store. Riosang stated that Aribuk offered to sell the contested property to Rebluud in 1950 or 1951. Rebluud purchased the property for \$300 along with the cancellation of a \$30 debt at the convenience store. Hilbert Mochesar ("Mochesar") testified on behalf of Riosang. Mochesar stated that he and Riosang gathered firewood on the contested property, knowing that it belonged to Rebluud.

After hearing the evidence presented, the Land Court determined that the contested property was not disposed of during the cheldechuch. Instead, the Land Court deemed credible the testimony regarding the conveyance of the property to Rebluud.

On appeal, Patrick Aribuk raises two issues. First, he asserts that the Land Court erred in finding that there was no discussion at the cheldechuch as to how the contested property should be disposed. Second, Patrick asserts that even if the property did not pass to the children of Aribuk during the cheldechuch, the conveyance of the property to Rebluud lacked consideration and was therefore not effective.

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). Under the clear error standard, if the Land Court's findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000).

ANALYSIS

Initially, Patrick Aribuk argues that the Land Court was clearly erroneous in finding that the contested property was not discussed at the cheldechuch. Patrick points to the testimony of Isidoro Tutii, an excerpt of which follows:

Q: But you were, you say you had to be informed of the . . .

A: Yes.

Q: . . . those decisions made at the cheldechuch?

A: Yes.

Q: So when you were informed of the results of the cheldechuch, was there any, when they came to inform you of the discussion, did they tell you what

decisions were settled at the cheldechuduch?

1226

A: They told me that Ongsull was given out as the property of the children of Aribuk. That was what I learned.

A review of the Land Court's Adjudication and Determination reveals that the Land Court did indeed take into account Isidoro's testimony. As the Land Court stated, "Isidoro Tutii testified that he was informed (spadel) of what transpired during the cheldechuduch especially with respect to the [contested property]." However, the Land Court found discrepancies in Isidoro's testimony and decided instead to credit the testimony of Riosang and his witnesses. When reviewing findings for clear error, the appellate court usually defers to the lower court's findings regarding the credibility of witnesses. *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999). Based on the evidence presented at the Land Court hearing, it cannot be said that a reasonable trier of fact could not have reached the same conclusion. As a result, Patrick has failed to carry his burden of showing that the Land Court was clearly erroneous in finding that the contested property was not discussed at the cheldechuduch but was transferred by Aribuk to Rebluud during his lifetime.

Patrick next contends that there is no evidence that Aribuk ever received a payment of \$300 in exchange for the contested property and that therefore there was a lack of consideration for the property. In trying to show that Aribuk did not receive payment, Patrick points to the following testimony provided by Riosang:

But he had a debt at the store for three hundred dollars, oh no, thirty dollars. So he said, before you give me the money, please first take some of the money to pay off my debt and give me the remaining later on. So my father told him, I can not give all that money to you in cash because you live at the foot of the road at Oketol land if the boys learned about it and came there, they would steal all of your money. So he said, leave them at the house until I need some.

From this testimony Patrick concludes that Aribuk did not receive the money. However, in this instance, absence of proof is not proof of absence. The proffered testimony reveals only that Aribuk requested that Rebluud keep the money in a safe place; it does not establish that Aribuk never received payment. Riosang later testified that, "Aribuk lived at the foot of the road of Oketol, depending on my father for his residence until he started charging for items at my father's store all the way until he sold the land, paid of his debts, and used the remainder of the money." Such testimony indicates that Aribuk received full consideration in exchange for the conveyance. Indeed, nothing in the evidence presented before the Land Court suggests that in the forty-year time span between the sale of the contested property and Aribuk's demise, Aribuk ever claimed that Rebluud failed to compensate him for the property. Accordingly, Patrick's argument finds no basis in the record.

Additionally, Patrick's argument fails as a matter of law. Neither party disputes that Aribuk received partial consideration in the form of cancellation of his debt at the convenience store. Rather, Patrick is essentially arguing that the conveyance of the property should be

Aribuk v. Rebluud, 11 ROP 224 (2004)

rescinded because of a 1227 partial failure of consideration. See Arthur L. Corbin, *Corbin on Contracts* § 659 *et seq.* (1982). The right of rescission is waived by the retention of benefits of partial performance or acceptance of consideration or partial payment. *Am. Mannex Corp. v. Huffstutler*, 329 F.2d 449, 455 (5th Cir. 1964); see also 17A Am. Jur. 2d *Contracts* §§ 560-63 (2004). A breach which goes to only part of the consideration, is incidental and subordinate to the main purpose of the contract, may be compensated in damages, and does not warrant a rescission of the contract. 92 C.J.S. *Vendor and Purchaser* § 264 at 334 (2000). In the present case, Aribuk's acceptance of the partial payment waived any right of rescission that he may have had, and his remedy would have been to sue for the amount of the omitted payment. Thus, even if a trier of fact could have concluded based on the evidence provided that Rebluud failed to pay the remaining \$300, this would not have resulted in Patrick prevailing in his claim for title to the property because it would not have authorized a rescission of the underlying conveyance.

CONCLUSION

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