Isimang v. Arbedul, 11 ROP 66 (2004)

UODELCHAD ISEBONG ISIMANG, GEORGE KEBEKOL, MASAHARU MAIDESIL, and OBAK JAMES,
Appellants,

v.

ESPANGEL ESEBAI ARBEDUL,
Appellee.

CIVIL APPEAL NOS. 02-045 & 02-050
Civil Action No. 178-97

Supreme Court, Appellate Division
Republic of Palau

Argued: October 6, 2003
Decided: February 10, 2004
⊥67
⊥68
Counsel for Isimang: Johnson Toribiong

Counsel for Kebekol, Maidesil, and James: J. Roman Bedor, T.C.

Counsel for Appellee: Douglas Parkinson

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

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MILLER, Justice:

BACKGROUND

In 1987, members of Omrekongel Clan and Appellee, Espangel Esebei Arbedul, were signatories to fifteen deeds that Appellee contends conveyed ownership interest in Clan lands to him. Appellee subsequently sold one of the parcels to WCTC and entered into lease agreements with Johnny Reklai Co. ("JRCO") as to nine others. JRCO later assigned certain of its leases to Ketund Corporation ("Ketund"). Appellee retained the money from the sale and the leases.

In 1997, Uodelchad Isebong Isimang, at the time of appeal the only surviving signatory other than Appellee,[1] and four others (collectively, "Appellants") brought suit against Appellee,

[1]Plaintiff Rose Kebekol, who was also allegedly a signatory to the deeds, died after the filing of the complaint and before the summary judgment ruling.

WCTC, and JRCO. The complaint alleged four causes of action. The first cause stated that the quitclaim deeds were "null and void as they were procured by forgery, fraud, and deceit, self-dealing and in violation of Palauan customary law." The second cause asserted that the conveyance to WCTC was "void as it [was] in violation of customary law." The third cause of action alleged that the "lease agreement in favor of [JRCO was] null and void." Finally, the fourth cause of action alleged that Appellee breached his fiduciary duty to the Clan. Appellants requested, *inter alia*, that the court annul the deeds and order Appellee to pay over to the Clan all income resulting from his handling of the properties. Ketund moved to intervene and its motion was granted.

The defendants and the intervenor brought motions for summary judgment. In opposition, Appellants argued that the deeds were represented to them as a trusteeship agreement and that they had no idea that they had signed deeds purporting to transfer title until 1996 when they learned about the true nature of the deeds during separate litigation. Shortly before the court ruled on the pending ⊥69 summary judgment motions, Appellants settled with WCTC, JRCO, and Ketund. Thus, Appellee was left as the sole remaining defendant. The Trial Division granted Appellee's motion for summary judgment on the grounds that the causes of action were barred by both the six-year statute of limitations contained within 14 PNC § 405 and by laches.

On appeal, Appellants challenge the trial court's finding that the appropriate statute of limitations was the six-year catch-all rather than the 20-year statute for the recovery of land. Appellants also argue that the Trial Division erred in granting summary judgment on statute of limitations and laches grounds because genuine issues of material fact remain as to when they, and Isimang in particular, had notice of the true nature of the deeds. Appellants request that this Court remand the case for trial on all causes of action pleaded against Appellee. For the reasons stated below, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

STANDARD OF REVIEW

This appeal concerns a number of legal questions, and thus, we review *de novo*. *Skebong v. EQPB*, 8 ROP Intrm. 80, 82 (1999); *Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9, 10 (1999). The first question is what statute of limitations applies to each of the causes of action pleaded by Appellants. The second question is when each cause of action accrued. The last question is whether laches is an available defense where the cause of action pleaded is legal rather than equitable.[2]

DISCUSSION

Which Statutes of Limitations Apply?

[2]Appellants also argue that the decision in *Arbedul v. Emaudiong*, Civil Action No. 559-89 (1997), *aff'd*, 7 ROP Intrm. 108 (1998), should act to preclude any argument of Appellee pertaining to the validity of the deeds and that the trial court committed reversible error by not finding in their favor on that issue. We note that Appellants did not move for summary judgment on this basis but only raised it in opposition to Appellee's motion. Moreover, because the trial court found that the suit was time barred, it had no reason to address the issue below. We leave open on remand the applicability of any preclusion doctrine.

The primary question in this appeal is how to characterize the causes of action–fraud, forgery, breach of fiduciary duty,[3] and violation of customary law–pleaded by Appellants so that the appropriate statute of limitations may be applied. We agree with the parties that there are two potentially applicable statutes of limitations at issue. First, 14 PNC § 402 states: "The following actions shall be commenced only within 20 years after the cause of action accrues: . . . (2) actions for the recovery of land or any interest therein." Because there are no statutes of limitations that cover the causes of action specifically pleaded by Appellants, we must also look to 14 PNC § 405, a catch-all provision that states: "All actions other than those covered in the preceding sections of this chapter shall be commenced within six years after the cause of action accrues."

As we see it, the operative question is ⊥70 whether any of the causes of action pleaded by Appellants are "actions for the recovery of land" within the meaning of § 402. As the parties' arguments make clear, this language is susceptible to at least two interpretations, depending on whether one looks to the form of the action or the end result desired by the plaintiffs.[4] Appellants argue that, because the ultimate goal of each cause of action is to reclaim land, § 402 applies. Appellee argues that, insofar as all of Appellants' claims seek to rescind the deeds and that regaining the land is only a remedy, they are not "*actions* for the recovery of land" and are governed by § 405.

Appellee relies heavily on Annotation, *Action by One Not in Possession of Land to Cancel Deed Upon Ground of Fraud as Within Statute of Limitations Applicable to Actions for Relief Upon Ground of Fraud, or Statute Relating to Actions for Recovery of Real Property*, 118 A.L.R. 199 (1938) [hereinafter "Annotation"]. The Annotation outlines the majority and minority positions on the proper treatment of cases challenging fraudulent deeds and summarizes the rationale behind cases from a number of United States jurisdictions. Although all of the cases involve a fraud-specific statute rather than a catch-all, each of them endeavors to answer the question of what constitutes an action "for the recovery of land." Therefore, the cases are instructive on the issue before us.[5]

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[3]The claim of self-dealing is a kind of a breach of fiduciary duty and thus will not be treated independently. *See* Restatement (Second) of Trusts § 170(a) ("The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary.").

[4]We therefore respectfully disagree with the Chief Justice's assertion that the meaning of the words is clear and the statute is unambiguous. "Use may be made by the courts of aids to the construction of the meaning of words used in a statute, even where, on superficial examination, the meaning of the words seems clear." 73 Am. Jur. 2d *Statutes* § 114 (2001). Indeed, the fact that other courts have disagreed as to the meaning of those words, as shown in the cases we discuss, shows that there is ambiguity. *See id.* ("[A] statute is ambiguous where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning."). Some of those courts agree with the Chief Justice's interpretation; others, and we ultimately, do not. Thus, we do not ask "the wrong question"; we simply arrive at a different answer.

[5]For this reason, we disagree with the Chief Justice's suggestion that there is "no similarity" between the statutes involved in these cases and our statute. As discussed below, 14 PNC § 402 is a re-enactment of a statute originally promulgated by the Trust Territory and employs language identical or similar to the statutes of numerous U.S. jurisdictions. It is thus entirely appropriate to consider how the courts of those

The majority view within the United States is that seeking to rescind or cancel a deed based on fraud is not one for the recovery of land. In coming to this conclusion, courts distinguish between causes of action that require a conveyance be rescinded before the land can be regained and those that do not. In *Hoyt v. Putnam*, 39 Hun. 402 (N.Y. 1886) quoted in Annotation at 203, the court characterized some actions as "founded on title of the plaintiff" and found that they were actions for the recovery of land. However, where a "plaintiff [had] parted with his title, and [could] only recover through a judgment setting aside or reforming his own conveyance, and thereby restoring his ⊥71 title," the action was not one for recovery of land. Traditionally, an action to set aside a fraudulent deed, a rescission action, required a plaintiff first to convince a court to set aside the deed. Only then could the plaintiff bring suit to eject the defendant from the land. *See James v. James*, 225 P. 208, 209 (Colo. 1924); *Foy v. Greenwade*, 206 P. 332, 335 (Kan. 1922); *Tomlin v. Roberts*, 258 P. 1041, 1042-43 (Okla. 1927); *Davidsen v. Salt Lake City*, 81 P.2d 374, 376-77 (Utah 1938).

Other cases reach the same conclusion by drawing a distinction between deeds that are void and those that are merely voidable. *See Chouteau v. Hornbeck*, 257 P. 372, 373-74 (Okla. 1927); *Chicago T.&M.C. Ry. Co. v. Titterington*, 19 S.W. 472, 474 (Tex. 1892). *Chouteau* is particularly illuminating. There, the plaintiff brought two causes of action: one based in fraud and the other based on the assertion that because the land she sold was the homestead of her and her husband, the absence of his signature on the deed resulted in a void deed. The Oklahoma Supreme Court stated that the action to rescind the allegedly fraudulent deed was barred by the fraud-specific statute of limitations. The second claim, however, was subject to the statute for the recovery of real property. The court opined:

> [I]t is alleged that the property was the homestead of the plaintiff and [her husband] . . . at the time the deed was executed, and, since the husband did not join in the deed it was void. This is a cause of action for relief as in ejectment . . . . This cause of action, therefore, was not barred by the statute of limitations when the petition was filed.

Chouteau, 257 P. at 374.

Although it did not canvass all of these authorities, the Trust Territory High Court essentially adopted the majority position in *Crisostimo v. Trust Territory*, 7 TTR 375 (App. Div. 1976) in interpreting 6 TTC § 302, "the source of" 14 PNC § 402. *See NSPLA v. Aguon*, 3 ROP Intrm. 110, 114 (1992). In *Crisostimo*, a regulation required that court-appointed property trustees secure the consent of all persons who had been awarded an interest in the land before conveying the property. The trustee in *Crisostimo* entered into an exchange of the property without securing the consent of all of the land owners, but they did not bring suit until fourteen years after the exchange. Like Appellants in the instant case, the landowners argued that the 20-

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jurisdictions have interpreted that language. 73 Am. Jur. 2d *Statutes* § 81 (2001) ("As a general rule, where a question of statutory construction is one of novel impression, it is proper to resort to decisions of courts of other states construing statutory language which is identical or of similar import.").

year limit should apply to their claim to undo the property exchange. In applying the six-year statute, the *Crisostimo* court stated that the "the statute of limitations for suing for the recovery of land generally related to adverse possession and 'is not applicable to a situation where a vendee has a valid deed of bargain and sale which the vendor contends he was fraudulently induced to execute.'" *Id.* at 384-85 (quoting *Burton v. Terrell*, 368 F. Supp. 553, 557 (W.D. Va. 1973)). Although fraud was not alleged there, the court concluded that "the essence of the action is to rescind a transaction" and therefore that the gravamen of plaintiffs' claim was a rescission action "and not a quiet title suit or a suit to recover land." *Id.* at 384.[6]

⊥72 In contrast with the approach taken by the majority of United States jurisdictions and by the Trust Territory High Court in *Crisostimo*, the minority position states that if "a part of the relief asked is that [the plaintiff] be let into possession, or that his title to the land be quieted, the action is in reality for the recovery of real property." *Murphy v. Crowley,* 73 P. 820, 821 (Cal. 1903). No distinctions are drawn by these courts based on how the deed was procured or on the participation of the owner in parting with his title.

Having considered both of these approaches, we believe that certain distinctions are appropriate, and that the majority position presents the sounder guide for discerning which are actions for the recovery of land and which are not. Where the allegations of a particular claim amount to an assertion that the plaintiff never parted with the title to her land and is entitled to immediate possession of it, we believe that such a claim is one for the recovery of land and is governed by the 20-year statute of limitations. In bringing such a claim, a plaintiff is entitled, without more, to say "Get off my land." By contrast, where the essence of a claim is that the owner did part with title to his land, albeit through allegedly wrongful means, she is not–or not yet–in a position to say "Get off my land" because it will not be *her* land until some deed or other transaction is undone. Such claims are not for the recovery of land and are governed instead by the six-year statute of limitations.

The Chief Justice places great emphasis on the presence in 14 PNC § 402 of the phrase "or any interest therein." We agree that this phrase broadens the reach of the statute to include within the 20-year limitation period an "action for the recovery of . . . any interest in land" short of full ownership (an easement, for example). But we fail to see how that language bears upon, or changes the answer to, the antecedent question of which claims constitute "actions for the recovery of land." If, as the majority of courts have said and as is at issue in this case, an action to rescind a deed transferring title to land is not an action for the recovery of land, then neither is it an action for the recovery of a lesser interest in land.

Contrary to the dissent, we believe that this conclusion does not disregard, but on the contrary is compelled by an examination of, legislative intent. As noted above, 14 PNC § 402 was derived from 6 TTC § 302 and became part of the Palau National Code as part of the

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[6]It is at least arguable that the execution of the land exchange agreement by fewer than all of the land owners rendered that agreement void rather than voidable and justified application of the longer statute. In concluding otherwise, the court appears to have relied heavily on the fact that the plaintiffs' own complaint demanded that the land exchange be voided rather than seeking a declaration that it was void to begin with. *See id.* at 383.

recodification of Palau's laws, which was "not intended to effect any substantive changes in the law." RPPL No. 2-3, § 1. Thus, to the extent that *Crisostimo*, consistent with the majority view set forth above, adopted a narrower reading of "actions for the recovery of land" than that proposed by the dissent, it is that reading, coupled with the OEK's intention not "to effect any substantive changes" that best expresses the legislative will. "[C]onsiderations of *stare decisis* weigh heavily in the area of statutory construction, where [the legislature] is free to change [the court's] interpretation of the legislation." *Ill. Brick Co. v. Illinois*, 97 S. Ct. 2061, 2070 (1977). Although we would not hesitate to reject a prior interpretation of a statute if it was demonstrably wrong, had proven unworkable, or led to anomalous results, that is not the case here. The prior interpretation, as we have said, reflects the majority view and, by drawing an appropriate line between those claims which are entitled ⊥73 to the benefit of the 20-year limitations period and those which must be brought within the shorter, but still ample, period of six years, best accomplishes the "important social function" that statutes of limitation are intended to perform. *See Techemding Clan v. Mariur*, 3 ROP Intrm. 116, 119 (1992) (noting that statutes of limitation are "designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared").[7]

Turning to the specific causes of action brought in this case, because in both the fraud and breach of fiduciary duty claims Appellant-signatories admit that the deeds were signed by them, we find that Appellants are challenging the deeds as voidable rather than void and acknowledging that they must be set aside before Appellants can recover the land. Accordingly, the statute of limitations for rescinding the deeds on the basis of fraud and breach of fiduciary duty is § 405's six-year statute applicable to all causes of action not otherwise specifically covered by another statute of limitations.

In contrast, forged deeds have always been thought to be void and they "cannot pass good title to anyone." *See Bennerson v. Small*, 842 F.2d 710, 714 (3d Cir. 1988); *Hockett v. Larson*, 742 F.2d 1123, 1125 (8th Cir. 1984).[8] Moreover, because a claim of forgery is an assertion that the owner did not participate in the conveyance, for this cause of action we find Appellants are entitled to claim that the Clan never parted with its title. Similarly, where Appellants claim that the Clan did not consent to the transfer because the deeds were not signed or assented to by all of the senior strong members, Appellants are entitled to argue that the deeds were of no legal effect. *See Gibbons v. Bismark*, 1 TTR 372, 374 (Tr. Div. 1958). For these causes of action, rescission of the deeds is not required and the action is one to recover land. Thus, the forgery and violation

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[7]As noted above, *see supra* n.6, we are less sure that the *Crisostimo* court, having drawn the appropriate line, applied it correctly to the facts before it. Likewise, as our subsequent discussion makes clear, we believe that the trial court erred in applying *Crisostimo* to bar *all* of Appellants' claims. Our doubts on this score, however, do not alter our conclusion that we should–and indeed must–utilize the analytical framework adopted by the majority of courts and in *Crisostimo*.

[8]The *Hockett* court, in an application of Iowa law, found partial validity of a deed wherein one grantor's signature was valid but another's was forged. *Hockett*, 742 F.2d at 1125-26 (citing *First Nat'l Bank v. Enriquez*, 634 P.2d 1266, 1268 (N.M. 1981) and *Clark v. Hoover* , 110 S.W. 792, 794 (Tex. Civ. App. 1908)). In the instant case because all signatures are required for a valid conveyance, if any of the signatures were found to be forged, the entire deed would be void and would pass no legal title to Appellee.

of custom causes of action are subject to the 20-year statute of limitations.[9]
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When Did the Causes of Actions Accrue?

Determining which statute of limitations to apply is only the first step. We must also determine when a statute of limitations has run. To do so, we must first know when each cause of action accrued. In this case, we need not decide when the causes of action based on forgery and custom accrued because the signing of the deeds, the first act that could have triggered the running of the statute of limitations, occurred only ten years before the action was filed. Thus, regardless of when the causes of action accrued, the statute of limitations could not have run at the time suit was brought.

For the fraud and breach of fiduciary duty claims, however, we do need to determine when those causes of action accrued. This Court has stated: "A 'cause of action accrues as soon as the party in whose favor it arises is entitled to maintain an action.'" *Fanna Mun. Gov't*, 8 ROP Intrm. at 10 (quoting *Fed. Sav. & Loan Ins. Corp. v. Haralson*, 813 F.2d 370, 377 (11th Cir. 1987)). We look to the elements of each cause of action to determine when the action accrued.

To sustain a case of fraud a plaintiff must prove (1) that the defendant made a fraudulent misrepresentation of fact, opinion, or law; (2) that the misrepresentation was made with the purpose of inducing the plaintiff to act upon the representation; (3) that the plaintiff justifiably relied on the representation; and (4) that the plaintiff was damaged as a result of that reliance. *Arbedul v. Isimang*, 7 ROP Intrm. 200, 201 (1999) (citing Restatement (Second) of Torts § 525). According to Appellants' account, Appellee misrepresented the deeds as a trusteeship agreement in order to induce them to sign away Clan land. Because each of the elements would have been present, if ever, when the deeds were signed, the cause of action accrued as to nine of the deeds on April 22, 1987 and as to six of the deeds on May 11, 1987. Consequently, the fraud action filed in 1997 is barred by the six-year statute of limitations.

No Palau law exists that defines the elements of breach of fiduciary duty, so we look to Restatements of Law. *See* 1 PNC § 303. "One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." Restatement (Second) of Torts § 874 (1979). "A person in a fiduciary relation to another is under a duty to act for the benefit of the other as to matters within the scope of the relation."[10] Restatement (Second) of Trusts § 2 cmt. b (1959). "If the fiduciary enters into a transaction with the [beneficiary] and fails to make a full disclosure of all circumstances known to him affecting

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[9]There are two other complicating factors in assessing Appellants' claim that we do not address above: first, that even as to the claims that fall within the category of claims for the recovery of land, Appellants also seek monetary damages from Appellee for the payments he has received from the various lessors and the one purchaser of the land; and second, that Appellants have settled with these third parties. As to the first, we note and then leave open to be addressed on remand the question whether, notwithstanding our conclusions above, Appellee is still entitled to argue that any monetary claims should go back no farther than the six years prior to the filing of the complaint. As to the second, while Appellants are still entitled to claim that title to the leased lands remains with the Clan, we note our uncertainty whether Appellants have any claim concerning the sold land other than their demand for a share of the purchase price.

[10]An explication of the duties of the trustee can be found in Restatement (Second) of Trusts §§ 169-85 (1959).

the transaction or if the transaction is unfair to the other, the transaction can be set aside." *Id.* Accordingly, to sustain a claim for breach of fiduciary duty on the facts of this case, Appellants would have to prove the following elements: (1) that Appellee stood in a fiduciary relationship to the Clan; (2) that the conveyance of the property was within the scope of that fiduciary relationship; (3) that ⊥75 Appellee failed to make a full disclosure of all circumstances known to him surrounding the deeds; and (4) that Appellee's failure to disclose caused harm to the Clan. Like the cause of action for fraud, each element of this cause of action would have been present on the day that the deeds were signed. Thus, the statute of limitations has expired and the cause of action instituted in 1997 is barred.

In an attempt to save these two causes of action, Appellants argue that the statute of limitations should have been tolled until they discovered or should have discovered the wrongful act.[11] However, the Palau limitations scheme has no provision for tolling the statute based on a plaintiff's discovery absent a defendant's "fraudulent concealment" of the cause of action. *See* 14 PNC § 409. Appellants purport to show facts that would hinder discovery by contending that Isimang was elderly and illiterate in English, and that no one read the deeds to her. However, they introduced no proof that Appellee sought to hide the true nature of the deeds beyond the alleged misrepresentation that they were a trusteeship agreement or that he engaged in any other acts of concealment. Rather, Appellee immediately recorded the deeds and over the next two years entered into a sale and lease agreements. The deeds were signed by or in the presence of Appellants or their predecessors. Appellants failed at summary judgment and again on appeal to argue a legal standard or recite facts sufficient to raise even the specter of fraudulent concealment. Accordingly, we find that Appellants are not entitled to toll the statute of limitations based on the fraudulent concealment of the transaction by Appellee.

Application of Laches

Finally, Appellee argues that laches should also work to bar Appellants' causes of action. We disagree. This Court has stated that "[l]aches is a purely equitable doctrine which cannot be invoked in a legal, or non-equitable, action. The fact that [Appellant] filed his claim within the time limit established by the appropriate statute of limitations ends the inquiry." *Ngirausui v. Baiei*, 4 ROP Intrm. 140, 141 (1994) (internal citation and quotation omitted). The forgery and custom claims are legal causes of action. As established above, both are actions to recover land and such actions are generally actions at law. *See* 27A Am. Jur. 2d *Equity* § 55 (1996). Also, Appellants seek the return of proceeds from the sale and lease of the properties. "Actions to recover money are typically actions at law." *See id.* § 43 (1996). Accordingly, we hold that laches cannot bar these legal causes of action.

CONCLUSION

For the reasons set forth above we affirm the Trial Division's grant of the summary judgment in regard to the fraud and breach of fiduciary duty claims. We reverse, however, as to

[11]Although much of the argument about discovery engaged in by Appellants in their briefs relates to the applicability of laches, they clearly believe that they were entitled to tolling of the statute of limitations pending discovery of the action. *See* Kebekol's Opening Brief at 17.

the actions for forgery and violation of custom and remand for further proceedings consistent with this opinion.

NGIRAKLSONG, Chief Justice, dissenting:

This appeal concerns several legal issues. The major one with which I disagree with the majority is the interpretation of our statutes of limitations and their application to this case. *See* 14 PNC §§ 402, 405, 409. My ⊥76 dissent is on a question of law, and that is reviewed *de novo*. *See Wenty v. ROP,* 8 ROP Intrm. 188, 189 (2000); 21 *Ryals v. St. Mary-Corwin Reg. Med. Ctr.,* 10 P. 3d 654, 659 (Colo. 2000).

I agree with the majority that the *Crisostimo* Court (*Crisostimo v. Trust Territory,* 7 TTR 375, 385 (App. Div. 1976)) reached the wrong result. *See supra* n. 6. But the problem was not simply that the *Crisostimo* Court misapplied the law to the particular facts, as the majority contends. *Id.* The larger error was that the Court, instead of interpreting the statute before it, applied the six-year statute of limitation based entirely on the case of *Burton v. Terrell* , 368 F. Supp. 553, 557 (W.D. Va. 1973). The facts and the law before the *Crisostimo* Court and the *Burton* Court, however, are not even similar.

The *Burton* Court found facts involving fraudulent dealings and simply applied the appropriate existing statute of limitations for causes of action based on fraud. A cursory examination of the statutes of limitations in the State of Virginia in the *Burton* case[12] and in the case of *Stevens v. Abbott, Proctor, & Paine,* 288 F. Supp. 836, 844-45, (D. Va. 1968) shows that they are more detailed and comprehensive as to various causes of actions than the statutes before the *Crisostimo* Court and now before us. The *Burton* holding simply did not apply both in law and facts in the *Crisostimo* case.

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[12]The relevant statute of limitations of the Virginia Code before the *Burton* Court reads, in part:

Section 8-5 provides:

> No person shall make an entry on, or bring an action to recover, any land but within fifteen years next after the time at which the right to make such entry or bring such action shall have first accrued to himself or to some person through whom he claims.

Section 8-14 provides:

> The right to recover money paid under fraud or mistake shall be deemed to accrue, both at law and equity, at the time such fraud or mistake is discovered, or by the exercise of due diligence ought to have been discovered.

Section 8-24 provides:

> Every personal action, for which no limitation is otherwise prescribed, shall be brought within five years next after the right to bring the same shall have accrued, if it be a matter of such nature that in case a party die it can be brought by or against his representative; and, if it be for a matter not of such nature, shall be brought within one year after the right to bring the same shall have accrued.

Like the *Crisostimo* Court, the majority opinion relies on various cases that are not relevant because of the differences in our statutes. For example, in the case of *Chouteau v. Hornbeck,* 257 P. 372, 373-74 (Okla. 1927), which the majority finds "illuminating," the Supreme Court of Oklahoma characterized the two causes of actions before it, one involving cancellation of a deed by fraud and the other on ejectment, and simply applied the appropriate statutes of ⊥77 that state. [13] These statutes have absolutely no relevant similarities with our statutes. I fail to see how the holding of a case interpreting statutes with no similarity to ours can be "illuminating."

The relevant sections of our statute of limitations follow:

> 402. Limitation of twenty years
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> (a) The following actions shall be commenced only within 20 years after the cause of action accrues:
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> . . . .
>
> (2) actions for the recovery of land *or any interest therein*.
>
> . . . .

[13]The relevant Oklahoma statute before the *Hornbeck* Court reads in part:

> Issues of law must be tried by the court, unless referred. Issues of fact arising in actions for the *recovery* of money, or *of specific real* or personal *property*, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered, as hereinafter provided.

(emphasis added). That court characterized one cause of action as one in common-law ejectment, and it therefore qualified as an action to recover land under the above statute. The statute of limitations for that was 15 years.

On the allegations of fraudulent deed, the *Hornbeck* Court concluded that the action to cancel a deed on the grounds of fraud sought an "equitable" remedy and did not qualify as "a statutory action for the recovery of specific real property. " *Hornbeck*, 257 P. at 374. After taking this cause of action out of the statute, the *Hornbeck* Court then applied the two-year fraud statute of limitations to this cause of action.

Other than that we do not have the same statute requiring the Court to identify and separate causes of action for the purpose of determining whether a jury or bench trial is called for, we do not have a specific fraud statute of limitations like the one that existed in Oklahoma in 1910 and was before the *Hornbeck* Court. Section 409 of our statute is the only section on the subject of fraud, and it does not apply to any of the alleged causes of action in this case. Hence, everything not otherwise covered in § 409 cannot be implied or "imported" by way of case law adoption. That would be tantamount to "amending" the statutes. If the OEK had intended to have a specific fraud statute, § 409 would have been it. Again, the majority's reliance on the *Hornbeck* Court's analysis interpreting different statutes from ours cannot be justified as an acceptable or even known rule of statutory construction.

> 405. Limitation of six years.
>
> All actions other than those covered in the preceding sections of this chapter shall be commenced within six years after the cause of action accrues.
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> . . . .
>
> 409. Extension of time by fraudulent concealment.
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> If any person who is liable to any action shall fraudulently conceal the cause of action from the knowledge of the person entitled to bring it, the ⊥78 action may be commenced at any time within the times limited within this chapter after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards.

14 PNC §§ 402, 405, 409 (emphasis added).

An appropriate rule of statutory construction is that when the language of a statute is plain, the language of the statute controls without resort to other matters. *See Yano v. Kadoi,* 3 ROP Intrm. 174, 182-183, (1992); *ROP v. Etpison*, 5 ROP Intrm. 313, 317 (Tr. Div. 1995).

For a cause of action to recover land or for "any interest" in land, the statute is clear. The limitation is 20 years. *See* 14 PNC § 402; s*ee also Ei v. Inasios,* 2 TTR 317, 319 (Tr. Div. 1962). Unlike many statutes of limitations in the United States, the Palau statute does not provide different statutes of limitations for different causes of actions involving various interests in land. Hence, § 402 is the only applicable statute for all causes of action to recover land or to recover any interest in land. The statute is specific to land and encompasses all interests in land. It does not depend on any section of the statute.

"Any interest" in land is without qualification or condition. "[A]n interest in land is one which is enforceable in Court because it is grounded on recognized principles of law." *Healing v. Jones,* 210 F. Supp. 125, 175 (D. Ariz. 1962). None of the state statutes the majority cites contains the words "or any interest" in land.

The majority has not explained why "any interest" in land in § 402 does not cover all causes of action involving all interests in land as to bar a resort to the "catch all" six-year statute. The words "any interest" in land are not vague. Words used in a statute are presumed to be used in their ordinary and usual sense and with the meaning commonly attributed to them. *Yano*, 3 ROP Intrm. at 182. Again, "the starting point in statutory interpretation is the language of the statute itself, and . . . when the terms of a statute are unambiguous, the judicial inquiry is complete, except in rare and exceptional circumstances, such as clearly expressed legislative intention to the contrary." 73 Am. Jur. 2d. *Statutes* § 113. The majority has not shown that the case law relied upon sheds light on the clear intent of the Olbiil Era Kelulau as expressed in our

statute. "In the interpretation of statutes, the all-important or controlling factor is the legislative will." *ROP v. Palau Museum,* 6 ROP Intrm. 277, 278 (1995) (internal citations omitted).

In reaching its decision, the majority essentially deleted the words "or any interest herein" from § 402. This is judicial legislating that cannot be justified even if the majority is right that its conclusion would promote an "important social function." *Supra* p. 73. The Olbiil Era Kelulau legislates policies, not the Court. Whatever the majority may see as policy deficiencies of the existing statute, it is still the Olbiil Era Kelulau that has the constitutional duty to change the statute.

Therefore, given our statute, the majority asks and answers the wrong question. The question to ask is not how to characterize a cause of action for the purpose of determining what statute of limitations applies. The only question to ask is whether a cause of action, be it based on customary ⊥79 law, contract, recession, fraud, etc., involves an attempt to recover land or any interest in land. If the answer is affirmative, as it is here, then the 20-year statute of limitations applies. Since this section covers all interests in land, there is no reason to apply the "catch all" six-year statute.

With due respect, the majority has chosen to rely on irrelevant case law instead of reading the statute as it is written. Even assuming that our statute is ambiguous, the majority has chosen to interpret only a segment of our statute (actions for the recovery of land) and ignore the rest of the same statute which covers all interests in land. I do not find such reading of our statute persuasive. I, therefore, dissent.