Giraked v. Estate of Rechucher, 12 ROP 133 (2005)

KATEY O. GIRAKED,
Appellant,

v.

ESTATE OF EUSEBIO RECHUCHER,
Appellee/Appellant/Cross-Appellant,

v.

REPUBLIC OF PALAU and UNITED STATES OF AMERICA,
Appellees,

v.

KATEY O. GIRAKED,
Cross-Appellee.

CIVIL APPEAL NO. 04-021
Civil Action No. 01-81

Supreme Court, Appellate Division
Republic of Palau

Argued: April 4, 2005
Decided: July 4, 2005

⊥134, 135, 136, 137

Counsel for Giraked: Johnson Toribiong

Counsel for Estate: Oldiais Ngiraikelau and Antonio L. Cortes

Counsel for ROP: Christopher L. Hale

Counsel for USA: Richard Brungard and Traylor L. Mercer

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

Appeal from the Trial Division, the Honorable R. BARRIE MICHELSEN, Associate Justice, presiding.

PER CURIAM:

Giraked v. Estate of Rechucher, 12 ROP 133 (2005)

Eusebio Rechucher mistakenly believed he owned a parcel of land in Koror, and he proceeded to invest a considerable amount of money building apartment units on it. The Land Court eventually determined, however, that Katey O. Giraked was the rightful owner, and she sued to eject Rechucher from her land. Rechucher counterclaimed, seeking compensation for the improvements he made to the land. We affirm in part, as explained below, the trial court's decision to award Rechucher's Estate[1] an equitable lien for the value of his construction.

In addition to his counterclaim against Giraked, Rechucher filed a third-party complaint against the Trust Territory of the Pacific Islands (TTPI),[2] the United States of ⊥138 America (USA), and the Republic of Palau (ROP), related to his mistaken belief that he owned the property on which he started construction projects. Rechucher purchased the land from someone who purportedly obtained it from the TTPI, but the Land Court concluded that the TTPI did not have any interest in the property at the time it transferred the parcel. Rechucher sought relief against the three governments for that error, but the trial court dismissed all three on the basis of sovereign immunity. We affirm that decision as well.

BACKGROUND

A 2001 Land Court Adjudication and Determination awarded Tochi Daicho Lot Nos. 256 and 396 to Giraked,[3] rejecting Rechucher's claim of ownership. The Land Court decision, affirmed by this Court in *Rechucher v. Ngiraked*, 10 ROP 20 (2002), concluded that Giraked was the rightful heir of the land through Ngiraked, the landowner listed in the Tochi Daicho.

Rechucher, on the other hand, claimed to have purchased the disputed property in a series of three transactions from Joseph Tellei, who in turn allegedly received it from the TTPI via a 1969 Quitclaim Deed of Exchange. Believing he was the rightful owner of the land, Rechucher began constructing various buildings there in 1986, but Rechebei Ngiraului confronted him, claiming that the property belonged to another lineage. On Rechucher's motion, the Trial Division enjoined Rechebei from interfering with Rechucher's construction but did not quiet title, instead cautioning Rechucher to proceed with construction at his own risk given the competing claims of ownership. Additionally, during this time, Bilung Gloria Salii contacted Rechucher, asserting ownership of the land.

In evaluating Rechucher's claim for the property, the Land Court determined that the TTPI did not in fact have title to the land it purported to give to Tellei. Instead the Land Court found that the Japanese had paid rent to Ngiraked, the listed owner, during the period of its occupancy, supporting the conclusion that the property had not been taken from Ngiraked and thus was not converted to public land under the 1951 vesting order. The TTPI therefore never rightfully owned the property and could not have deeded it to Tellei, and Tellei in turn could not

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[1]During the pendency of the trial court proceedings, Rechucher died and his Estate was substituted as the named party.

[2]We are unsure why the TTPI, which no longer exists, was named as a party in the original action. Pursuant to terms of the Compact, the USA shall stand in the place of the TTPI in lawsuits against it. Compact of Free Association, Jan. 10, 1986, Palau-U.S., § 174(c) (hereinafter Compact).

[3]In prior pleadings, she is referred to as Katey Ngiraked or Katey Ochob Ngiraked.

have sold it to Rechucher.

Shortly after the Land Court issued its determination of ownership in Giraked's favor, she initiated a civil action in the Trial Division seeking ejectment of Rechucher from her land and compensation for damages from his unauthorized use of it. Giraked alleged that Rechucher had been trespassing on her land since July 1986, when he began building on and otherwise improving the property.

Rechucher counterclaimed, seeking damages for Giraked's unjust enrichment given that she knew of the construction he was undertaking yet failed to protest that it was on her property. In addition, Rechucher filed a third-party complaint against the TTPI, USA, and ROP, claiming that the TTPI was negligent in conveying a deed to land for which it did not have good title and that he should recover under a quasi-contract theory as well. The USA, Rechucher asserts, is ⊥139 liable as trustee of the TTPI and under the Compact of Free Association, and he suggests that the ROP assumed the obligations of the TTPI and the USA via the Palau Constitution and the Palau National Code. Rechucher's third-party complaint also requested recission and specific performance as compensation for the damages he suffered, though his Estate has abandoned those claims on appeal.

The third-party defendants filed motions to dismiss, raising such grounds as sovereign immunity, failure to state a claim, personal jurisdiction, and ripeness. The trial court dismissed the third-party complaint on the basis of sovereign immunity, noting only that it accepted the reasoning set forth in the motions.

With respect to the claims between Giraked and Rechucher, the trial court granted partial summary judgment in favor of the Estate and awarded it an equitable *in rem* lien on Giraked's property in the amount of $1,568,405, representing the reproduction costs of the buildings Rechucher erected. The trial court ruled against Giraked on her request for any kind of monetary compensation but provided that she will be entitled to eject the Estate from her land upon satisfaction of the equitable lien. Both Giraked and the Estate appeal the judgment, and the Estate also challenges the dismissal of its claims against the governments.

ANALYSIS

I. Giraked's Appeal

Giraked argues that the trial court erred in awarding the Estate restitution for Rechucher's construction, a determination the trial judge made in the context of a summary judgment motion. We review that judgment *de novo*, considering whether the trial court correctly found that there was no genuine issue of material fact and that, drawing all inferences in the light most favorable to Giraked, the Estate was entitled to judgment. *Mesubed v. ROP*, 10 ROP 62, 64 (2003).

a. Restitution

The applicable law for this Court to apply is set forth in the Restatement, given that Palau

has no governing written or customary law on this issue. 1 PNC § 303. If an owner knows of another's construction activities on his property but takes no steps to correct the improver's mistaken belief of ownership, then the improver is entitled to restitution. Restatement of Restitution § 40(c) (1937); *see also id.* cmt. d & illus. 7. If an owner does not know of another's improvements to the land, then as a general rule, the owner need not pay restitution, *id.* § 41(a)(i), except as provided in § 42. Section 42 explicitly governs improvements to land and provides:

> [A] person who, in the mistaken belief that he . . . is the owner, has caused improvements to be made upon the land of another, is not thereby entitled to restitution from the owner for the value of such improvements, but if his mistake was reasonable, the owner is entitled to obtain judgment in an equitable proceeding or in an action of trespass or other action for the mesne profits only on condition that he makes restitution . . .

Id. § 42(1). The comments to this section note that the rule is harsh to the person ⊥140 making improvements and that it is "not wholly consistent with the principles of restitution for mistake." *Id.* § 42 cmt. a. Section 42, however, does not apply to a landowner who had "notice of the error and of the work being done [and] stands by and does not use care to prevent the error from continuing." *Id.* § 42 cmt. b.

Giraked admitted in an affidavit that she was aware of Rechucher's activities in 1986 but elected not to complain because, at that time, he was building only on a portion of land Giraked did not own. It appears, however, that his construction activities moved onto Giraked's land by 1990. During the land court proceedings, however, Giraked testified that it was 1994 or 1995 when she confronted Rechucher, but the affidavit she submitted to the trial court averred that she had that conversation with him in 1990. For purposes of the summary judgment motion, the trial court noted the contradiction and accepted her first position, using the 1994-1995 date as the time she first spoke to Rechucher about her interest in the land. We approve this factual determination given the well-settled rule that parties cannot create factual disputes by submitting an affidavit that contradicts earlier testimony. *Darnell v. Target Stores*, 16 F.3d 174, 176 (7th Cir. 1994).

Giraked argues that Rechucher had prior notice of competing claims to the property, which renders his continued improvement unreasonable. We do not reach the question of whether Rechucher's activities were reasonable, however, because the Restatement places the initial burden on a landowner to alert an improver of his mistaken belief of ownership. Given that Giraked was aware of Rechucher's construction activities but said nothing to him until 1994 or 1995, we apply § 40(c) of the Restatement to the situation up until Giraked attempted to correct the mistake, and we hold that Rechucher is entitled to restitution for the improvements he made to the property until that time.

The situation changes, we believe, once Giraked notified Rechucher of her claim to the land. Section 40(c) no longer applies as of that point, and Rechucher's right to restitution for money spent after that time turns on § 42(1) of the Restatement:

> [I]f [the improver's] mistake was reasonable, the owner is entitled to obtain judgment in an equitable proceeding or in an action of trespass or other action for the mesne profits only on condition that he makes restitution.

Restatement, *supra*, § 42(1). The Estate submits that Rechucher was reasonable, and it emphasizes the trial court's conclusion that Rechucher purchased the land from Tellei in good faith and without any knowledge that the TTPI had erroneously deeded the land to Tellei. Giraked does not dispute that, but she argues that Rechucher's mistake was not reasonable because he was aware of competing claims for the land and yet he continued his construction projects.

Once a landowner confronts an improver with an adverse claim to the land, it is incumbent upon the improver to investigate the competing claim of ownership,[4] otherwise ⊥141 his mistake cannot be reasonable. In this situation, Rechucher failed to investigate Giraked's claim and instead proceeded with construction activities at his own risk. His continued improvement activities after Giraked asserted her claim of ownership, particularly given that he was aware that Tellei had a quitclaim deed[5] from the TTPI, were therefore unreasonable, and he is not entitled to restitution for monies spent after that time.

The trial court did not make factual findings concerning precisely when in 1994 or 1995 Giraked's conversation with Rechucher occurred and so we must remand the case for a new trial judge to so find.[6] Also, keeping in mind that the Estate shall be entitled to receive "the reasonable value of [Rechucher's] labor and materials or . . . the amount which his improvements have added to the market value of the land, which ever is smaller," Restatement, *supra*, § 42 cmt. c, the trial judge will be tasked with calculating how much of the construction expenses occurred prior to the date Giraked notified Rechucher of her interest in the property.

b. Fashioning a Remedy

The trial court awarded the Estate an equitable lien on Giraked's property, in the amount of $1,568,405.00, and placed the property in receivership, with the income generated by the property starting on July 1, 2004 to be used to discharge the lien. The trial court specified that Giraked would be entitled to an ejectment of the Estate from her property when the lien is satisfied. Although we appreciate the remedy the trial court was attempting to arrange, we disagree with its choice of when to begin accumulating the income generated by the property.

Once the Appellate Division affirmed the Land Court's determination of ownership in

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[4]We thus disagree with the trial court's finding that the conversation Giraked claims to have had with Rechucher was insufficient to constitute "fair notice and due care" because it was too informal and did not provide Rechucher enough detail to evaluate her claim and justify halting a construction project.

[5]*See infra* p. 147 (defining quitclaim deeds and comparing to warranty deeds).

[6]In at least one affidavit Rechucher filed below, he asserted that Giraked did not mention her interest in the land until 1996. We do not mean to preclude a finding by the trial court that the conversation happened later than 1994 or 1995.

favor of Giraked, she was the rightful and legal owner of the property and, in theory, she assumed control over everything on that property, including the buildings Rechucher erected and any profit they generated. But the Estate has continued to operate and manage the buildings, even after the Appellate Division affirmed the Land Court on November 20, 2002. The Estate, therefore, has been receiving the profits from the buildings that technically belong to Giraked since that date.

Accordingly, we modify the trial court's remedy in the following manner: once the trial court has determined the precise amount of restitution Giraked owes, the Estate will be awarded an equitable lien in that amount. The receiver appointed pursuant to the trial court's order shall calculate profits from the buildings from November 20, 2002 forward. Once the Estate has collected profits equal to the amount of the equitable lien imposed, whatever that turns out to be, then it must vacate Giraked's property.

C. Mesne Profits [7]

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After the trial court determined that the Estate would be entitled to restitution from Giraked for the improvements made and, Giraked asserted a claim for mesne profits and argued that it should offset any restitution award. The trial court denied her request for additional compensation concluding that receipt of revenue-generating improvements at cost is ample compensation.

As a general rule, a landowner is entitled to seek mesne profits for time land was occupied by a trespasser, and the Restatement provides that any award of such profits should offset restitution that the owner is required to pay for improvements made on the land. Restatement, *supra*, § 42(1). But recovery for mesne profits is equitable in nature and so weighing notions of fairness is appropriate. *Amoco Oil Co. v. Burns*, 408 A.2d 521, 524 (Pa. 1979).

The Estate argued before the trial court that an award of mesne profits was inappropriate because profits are, by definition, to compensate for one who *unlawfully* occupies land. But Rechucher, the Estate argued, was not wrongfully in possession because, although the land was ultimately awarded to Giraked, Rechucher had a deed to the property.

Although mesne profits should be available in certain circumstances, the remedy fashioned by the trial court and modified above, which awards Rechucher a measure of restitution but allows Giraked to eject him from her land, does equity. We are inclined to agree with the trial court that in this instance obtaining revenue-generating property at cost is a huge benefit to Giraked, and thus mesne profits are inappropriate.

D. Evidentiary Error

Giraked next argues that the trial court erred in allowing the Estate to introduce certain

[7]Mesne profits are defined as "[t]he profits of an estate received by a tenant in wrongful possession between two dates." *Black's Law Dictionary* 1246 (8th ed. 1999).

exhibits into evidence, a decision this Court will review for abuse of discretion. *Chin v. ROP*, 10 ROP 81, 83 (2003). Giraked challenges the admission of Exhibits 5-9, which all appear to be hand-written lists of expenses for various parts of the construction project.

During the hearing to determine the proper amount of restitution, Rojegio Ventura, an employee of Rechucher's company, testified concerning Exhibits 5-9. He explained that at the conclusion of construction projects, Rechucher would give him a box of receipts for the various materials used in that project and ask him to collate the expenses. Ventura did so by preparing Exhibits 5-9, handwritten lists of the expenditures for the construction projects. After writing the lists, Ventura would give the receipts back to Rechucher and file the lists in the company office. He testified that this was the normal and continued practice of the company.

As each exhibit was admitted, Giraked objected that it violated the best-evidence rule and the prohibition against hearsay because it did not satisfy the business record exception. The trial court overruled these objections, and Giraked suggests that decision constitutes reversible error.

1. Best Evidence Rule

The Rules of Evidence provide that to prove the contents of a writing, a party must admit the original of that writing. ROP R. Evid. 1002. The Rules also stipulate, ⊥143 however, that an original is not required and other evidence of the contents of a writing is admissible if the originals have been lost, unless they were lost in bad faith. ROP R. Evid. 1004(1).

At issue here are the contents of the receipts Ventura used to compile the list of expenses. Ventura testified that after sorting through the receipts to create the list, he returned the receipts to Rechucher. George Rechucher (George), the late-Rechucher's son, testified that he was unable to locate any original receipts or invoices for the construction projects on Giraked's land.

Giraked asserts that George's "meager" testimony failed to prove that Rechucher maintained any regular records concerning the expenses improving Giraked's land. She also claims that his conclusory testimony was insufficient to prove that the original receipts were lost, were not "lost" in bad faith, and were diligently sought after.

Giraked failed to make these arguments before the trial court or to even cross-examine George on the location of the original receipts. George's testimony that he was unable to locate them is an adequate basis on which to find that the trial judge did not abuse his discretion in admitting the exhibits in question. *See, e.g.*, *Wright v. Farmers Co-Op of Ark. and Okla.*, 681 F.2d 549, 553 (8th Cir. 1982) (upholding trial court's discretion in admitting transcript because the original recording was lost where witness testified that "although he was not certain about the particular tape used to record [the] statement, many times after transcription the tapes were either reused or discarded").

2. Hearsay

The trial court overruled Giraked's hearsay exception, finding that the exhibits

represented data compilations that are admissible as an exception to the hearsay rule. Pursuant to Rule 803(6), records of regularly conducted activity, including data compilations, are admissible if they are (1) made from information transmitted by a person with knowledge, (2) kept in the course of a regularly conducted business activity, and (3) created as part of the regular practice of the business. ROP R. Evid. 803(6).

Ventura testified that he created the lists using receipts from the construction projects. Those receipts were labeled by project and given to him by Rechucher. Both he and George testified that it was the normal practice of the company to maintain lists like Exhibits 5-9 and that the company still utilizes that same procedure today. This testimony is sufficient to uphold the trial court's decision to admit the exhibits as business records, an exception to the hearsay rule. *See, e.g.*, *Rolfe v. Northwest Cattle & Res., Inc.*, 491 P.2d 195, 202 (Or. 1971) (holding that summation of freight invoices was business record in light of general manager's testimony about how it was prepared and that it was made in the usual course of business).

3. Ventura's Personal Knowledge

Giraked also challenges the persuasive value of the exhibits, although she also categorizes this argument as a hearsay objection. She argues that Ventura lacked personal knowledge that the receipts he used to compile the list were in fact receipts at all, that they related to the construction on Giraked's property, or that they were ever paid by Rechucher. These arguments, however, go merely to the weight of the exhibits rather than to their admissibility. *Massey v. State*, 603 S.E.2d 431, 433 (Ga. Ct. ⊥144 App. 2004) (holding that as long as the witness is aware of the method of keeping the documents, his personal knowledge as to other matters will affect the weight given to such evidence and not its admissibility). None requires reversal of the trial court's decision to accept them into evidence.

4. Removal of Lis Pendens

Lastly, Giraked appeals the trial court's denial of her request to expunge the lis pendens Rechucher filed relative to her property. Rechucher served notice of the lis pendens on December 12, 2002, and it in turn provided notice of the pending lawsuit, including Rechucher's counterclaim which asked the court to enforce and foreclose on an equitable lien on the property in the amount of $3,000,000.00. Four days later, Giraked filed a motion to expunge the lis pendens, arguing that Rechucher was entitled to no such equitable lien on the property, either under Palauan law or under the Restatement. Giraked further asserted that the amount of the lien was overstated. Rechucher opposed the motion, asserting the merits of his counterclaim.

The trial judge denied the motion in a one sentence order, providing no reason for his decision. When Giraked specifically requested a reason, the trial court directed her to Rechucher's memorandum in opposition to the motion.

Giraked now asserts that the trial court erred in denying her request, though that argument is remarkable given that her motion to expunge addressed the very issues that were at the heart of the lawsuit. Clearly there was some possibility -- and a very real possibility, as it turns out -- that

the Estate would prevail in its claim for a lien, and the trial court acted properly in refusing to expunge the lis pendens at that early date. *Chevron U.S.A., Inc. v. Schirmer*, 11 F.3d 1473, 1479-80 (9th Cir. 1993) (holding that the threshold inquiry need not attempt to resolve the merits of the claims and finding that a notice of lis pendens is not groundless "[i]f there is an arguable basis for asserting that the underlying action will affect title to the property at issue -- even if a court might find that the action ultimately fails on the merits").

In further support of her contention that the lis pendens should have been removed, Giraked claims that the court proceedings do not directly affect the title or possession of real property and instead are more akin to a monetary judgment, for which a lis pendens is inappropriate. She raised this argument before the trial court, but waited until her reply memorandum to do so. The trial court was well within its discretion therefore in not considering that argument. ROP R. Civ. P. 7(c)(3); *see also McMillan v. United States*, 112 F.3d 1040, 1047 (9th Cir. 1997). Moreover, in some circumstances, the filing of a lis pendens is appropriate in actions seeking ejectment, 51 Am. Jur. 2d *Lis Pendens* § 30 (2000), or equitable liens, *id.* § 38; *see also Brossia v. Rick Constr., L.T.D. Liab. Co.*, 81 P.3d 1126, 1129 (Colo. App. 2003). The trial court did not abuse its discretion by allowing the notice to remain in effect, particularly given the possible outcomes of the case that would affect possession and use of the property.

II. The Estate's Cross-Appeal

The Estate, although ultimately asking that the trial court's judgment be affirmed in its entirety, quibbles with one paragraph of the court's memorandum decision about the formula for calculating the Estate's monetary ⊥145 relief.[8] Because the arguments raised by the Estate have no impact on the ultimate determination in this appeal, we decline to address them.

III. The Estate's Appeal of the Dismissal of the TTPI, USA, and ROP

Rechucher's third-party complaint alleged that the TTPI was negligent in failing to ascertain whether it had good title to the land in question prior to deeding it to Tellei in July 1969. The USA assumed that liability, Rechucher claimed, by signing the Compact of Free Association, and the ROP also accepted the liability via the Palau Constitution and a subsequent statutory provision. Additionally, Rechucher sought relief under a quasi-contract theory, claiming that the TTPI, USA, and ROP received the benefits of the land agreement, on which Rechucher relied to his detriment.

The trial court granted the motions to dismiss from the governments, accepting their sovereign immunity arguments. The Estate appeals that order, which this court reviews *de novo*.

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[8]The Estate's notice of appeal also challenged the July 14, 2004 order of the trial court, setting the amount of lien and the method of enforcement. The Estate's brief, however, fails to address this particular order, and we therefore find that it has waived its argument. *See, e.g.*, *Dalton v. Borja*, 12 ROP 65, 75 (2005) (holding that issues identified in the "issues raised" section of a brief but not discussed in the "argument" section are waived); *Badureang Clan v. Ngirchorachel* , 6 ROP Intrm. 225, 226 n.1 (1997) (concluding that merely mentioning a claim in a complaint, but failing to advance any argument on that claim, results in waiver).

Becheserrak v. ROP, 8 ROP Intrm. 147, 147 (2000); *Clissuras v. City Univ. of N.Y.*, 359 F.3d 79, 81 (2d Cir. 2004). Sovereign immunity protects the government from lawsuit except to the extent that such protection has been waived, and the Estate, as the party raising a claim against the government, bears the burden of demonstrating waiver. *Becheserrak*, 8 ROP Intrm. at 147. For purposes of evaluating whether the Estate met its burden in the context of the motion to dismiss, all allegations in the complaint are accepted as true, and this Court is left to determine whether those allegations are sufficient to justify relief. *Baules v. Nakamura*, 6 ROP Intrm. 317, 317 (Tr. Div. 1996).

A. Sovereign Immunity of the USA

1. Compact of Free Association

Pursuant to terms of the Compact, the USA shall stand in the place of the TTPI in lawsuits against it. Compact § 174(c). The Compact also provides, subject to other portions of the agreement, that the United States government "shall be immune from the jurisdiction of the courts of Palau." Compact § 174(a). The USA explicitly accepted responsibility, however, for unpaid money judgments against the TTPI, settled claims that have not yet been paid by the TTPI, and settlements of pending claims against the TTPI. Compact § 174(b).

Section 174(c) provides that "[a]ny claim not referred to in Section 174(b) and arising from an act or omission of the Government of the [TTPI] or the Government of the [USA] prior to the effective date of this Compact shall be adjudicated in the same manner as a claim adjudicated according to Section 174(d)." Compact § 174(c). The Estate argues that this section, which merely ⊥146 directs the Court to § 174(d), is applicable here because the challenged governmental act—executing an invalid deed—occurred prior to the Compact.

Section 174(d) states that the USA will *not* be immune from jurisdiction in Palau

> in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought. This subsection shall apply only to actions based on . . . injuries or losses suffered on or after the effective date of this Compact.

Compact § 174(d). The Estate suggests that this provision applies as a waiver of sovereign immunity because the injury -- the loss of property -- occurred after the Compact.

We agree with the Estate up to this point in the analysis. But the USA is quick to point out that the Compact does not, by itself, create a separate cause of action. *Nahnken of Nett v. United States*, 6 FSM Intrm. 508, 526 (Pon. 1994). Clearly, the Estate must rely on and satisfy the requirements for a theory of recovery to redress the injury it is asserting. And the government's waiver of sovereign immunity must be explicit and unequivocal as to the particular type of claim. *Becheserrak*, 8 ROP Intrm. at 148. To that end, the Estate is asserting liability for negligence and under a quasi-contract theory of recovery, and it argues that 14 PNC §§ 501–03, the successor to 6 TTC §§ 251–53, specifically waives sovereign immunity for these claims.

2. Statutory Provisions

The Estate argues that the Palau National Code contains an express waiver of sovereign immunity for claims against the TTPI. Section 501(a)(3) of Title 14 provides that this Court shall have jurisdiction over

> civil actions against the government of the Trust Territory or the Republic on claims for money damages, accruing on or after September 23, 1967, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the government of the Trust Territory or Republic, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

14 PNC § 501(a)(3). The Estate asserts that its negligence claim for the TTPI's failure to investigate whether it had good title to the land it deeded fits into this category of actions for which sovereign immunity has been explicitly waived.

The USA argues that the Estate may not rely on this provision to assert a claim against it because the statutes allow causes of action only "if a private person, would be liable to the claimant." The USA maintains that no private person acting as the TTPI did would be liable to the Estate because the deed given to Tellei included no covenants or warranties from the TTPI. In response to this argument, the Estate merely reiterates that it is seeking relief under a negligence theory and not under any breach of warrant or covenant ⊥147 theory. And when questioned at oral argument about what duty the TTPI owed to Rechucher, the Estate's counsel responded with the general rule that an injured person -- here, Rechucher and not Tellei -- can maintain a cause of action if the injury was reasonably foreseeable. But the issue of what, if anything, the TTPI promised Tellei is relevant to determining whether the TTPI as a transferor of land breached any duty.

The deed to Tellei is entitled "Quitclaim Deeds of Exchange." A quitclaim deed, by definition, passes only the title which the grantor may have had. It does not promise that such title is valid. Nor does it contain any warranty or covenants for title. *Otobed v. Etpison*, 10 ROP 119, 121 (2003). As such, a private person would not be liable to the Estate based on its claim of negligence, given that the TTPI owed no duty to ensure good title to the property it transferred to Tellei.

Moreover, even if the TTPI transferred land to Tellei via a warranty deed, the Estate still would not be entitled to bring a cause of action. A warranty deed may contain, as relevant here, a covenant of seisin, which promises that the seller owns the land he is conveying. *Black's Law Dictionary* 393 (8th ed. 1999); *Nelson v. Growers Ford Tractor Co.*, 282 So. 2d 664, 666 (Fl. Dist. Ct. App. 1973). That covenant, however, is generally regarded as a "personal" covenant, as opposed to a covenant that "runs with the land," and so a remote grantee such as Rechucher would not be entitled to sue for a breach of that covenant. *Wolff v. Woodruff*, 61 So. 2d 69, 73

(Ala. 1952); *Bridges v. Heimburger*, 360 So. 2d 929, 931 (Miss. 1978); *Beecher v. Tinnin*, 189 P. 44, 45-46 (N.M. 1920); *Smith v. Peoples Bank & Trust Co.*, 119 S.E.2d 623, 627 (N.C. 1961). *But see Rockafellor v. Gray*, 191 N.W. 107, 108 (Iowa 1922) (rejecting the American rule and holding that covenants of seisin run with the land); *Coleman v. Lucksinger*, 123 S.W. 441, 442 (Mo. 1909) (relying on statute to conclude that covenants of seisin run with the land).

A private person would not be liable to the Estate, both because the TTPI issued a quitclaim deed and because Rechucher was a remote grantee. Thus, § 501(a)(3) is insufficient to waive sovereign immunity for the Estate's negligence claim.

3. Quasi-Contract Claim

The Estate also asks this Court to reverse the dismissal on its quasi-contract claim, which sought relief because the TTPI, USA, and ROP "received the benefit of the land exchange agreement with Mr. Tellei, upon which Mr. Rechucher reasonably relied to his detriment." The Estate asserts that the government expressly waived sovereign immunity as to claims based upon "any express or implied contract with the government," 14 PNC § 501(a)(2), and it argues that this language includes quasi-contracts, also known as implied-in-law contracts.

As the USA points out, the language of § 501(a)(2) is similar to, and likely based upon, the Tucker Act, which contains a waiver for "any claim against the United States founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). This waiver applies to actual contracts, either express or implied-in-fact, but it does not include implied-in-law (quasi) contracts, which are not contracts at all. *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1493-94 (D.C. Cir. 1984); *Knight Newspapers, Inc. v. United States*, 395 F.2d 353, 357 (6th Cir. 1968); *Baltimore Mail S.S. Co. v. United States*, 76 F.2d 582, 584 (4th Cir. 1935). We see no reason why this Court ⊥148 should not adopt the same distinction and hold that the Estate may not bring its quasi-contract claim against the governments.

B. Sovereign Immunity of the ROP

The Estate maintains that the trial court erred in dismissing the ROP on the basis of sovereign immunity. The Estate has never alleged that the ROP itself acted negligently or in violation of quasi-contract principles, and as such, the ROP is only a party because it may have assumed the liabilities of the TTPI or the USA. Given that the Estate has no viable action against the USA based upon any alleged wrongdoing of the TTPI, the trial court's dismissal of the claims against the ROP must also be affirmed.

CONCLUSION

For the reasons set forth above, we affirm in part and reverse and remand in part the trial court's decision concerning Giraked's action for ejectment and the Estate's claim for restitution. We hold that the Estate is entitled to restitution for monies spent improving Giraked's property, but only up until the date she confronted Rechucher about his mistaken belief of ownership. We affirm entirely the trial court's dismissal of the governments.