

RTFT v. Airai State Pub. Lands Auth., 12 ROP 76 (2005)
ROMAN TMETUHL FAMILY TRUST and SURANGEL WHIPPS,
Appellants,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 03-055
Civil Action No. 342-96

Supreme Court, Appellate Division
Republic of Palau

Argued: November 22, 2004
Decided: February 18, 2005

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Counsel for Appellant Roman Tmetuchl Family Trust: Johnson Toribiong

Counsel for Appellant Surangel Whipps: Raynold B. Oilouch

Counsel for Appellee: John K. Rechucher

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
ALEX R. MUNSON, Part-Time Associate Justice.

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

PER CURIAM:

The Trial Division of the Supreme Court declared that the lands called Omsangel and Beklelachieb are part of the public lands of Airai, and awarded them to the Airai State Public Lands Authority (“ASPLA”). Roman Tmetuchl Family Trust (“RTFT”) and Surangel Whipps, the private claimants to the land, appeal the judgment of the Trial Division, each asserting superior title to the lands.

BACKGROUND

This case arises out of claims for the return of public lands, filed pursuant to ROP Const. Article XIII, Section 10. Roman Tmetuchl filed a timely Article XIII claim to Omsangel and Beklelachieb. After Tmetuchl’s death, his interests were succeeded to by RTFT. RTFT claimed that Omsangel and Beklelachieb were originally owned by Ngetchedong Clan who transferred

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them to Tmetuchl as a gift. Tmetuchl then made the Article XIII claim. The Trial Division found that RTFT's claim to the lands failed because Article XIII provides for the return of public property to the original owners or their heirs *only*, and Tmetuchl was an assignee of the original owners, not an heir. The Trial Division also found that RTFT's claim to Omsangel and Beklelachieb failed because the evidence indicated that Ngetchedong Clan was not the owner of the lands.

The claim of Surangel Whipps was initially brought by Telbadel Lineage, which had timely filed its Article XIII claim through Ebas Ngiralo. The Lineage claimed that Omsangel and Beklelachieb were forcibly taken without compensation by the Japanese. While the case was before the Trial Division, Telbadel Lineage conveyed its interests in **L78** Omsangel and Beklelachieb to Surangel Whipps. Whipps raised several alternative theories to the Trial Division in his effort to establish Telbadel Lineage's right to Omsangel and Beklelachieb.

First, Whipps contended a document transferring land from Remed, Ebas's adopted father, to Ngirateb established the Lineage's ownership over the lands. In the "1943 Application for Transfer," Remed transferred the title to "Lot 835." The Trial Division found that this document did not establish the Lineage's ownership of Omsangel and Beklelachieb because Lot 835 did not include these lands.

Whipps claimed, in the alternative, that Telbadel Lineage ownership of Omsangel and Beklelachieb was established by Ebas's 1962 lawsuit to eject the government from his property.¹ The Trial Division, however, found that the parcels at issue in that lawsuit did not include Omsangel or Beklelachieb, and thus, was not evidence of Telbadel Lineage ownership of the lands. Whipps also asserted that Telbadel Lineage demonstrated its title to Omsangel and Beklelachieb because rent was paid to the Lineage for the use of those lands prior to the war. The Trial Division, however, found that although some rent may have been paid, it was not paid in recognition of Lineage ownership. The Trial Division also found that neither the modern use of Omsangel and Beklelachieb, nor the testimony of adjacent landowners established Whipps' claim of title.

As the Trial Division found that neither of the Article XIII claimants, Whipps nor Tmetuchl, established their claims to Omsangel and Beklelachieb, the Trial Division awarded the lands to ASPLA. Both Whipps and Tmetuchl now appeal.

ANALYSIS

A

RTFT asserts a single issue on appeal: that the Trial Division erroneously concluded that an assignee of the original owner of land wrongfully taken by the previous colonial power of Palau is ineligible to claim such land under Article XIII of the Palau Constitution.² This Court

¹This lawsuit, styled *Ngiralo v. Daniels*, was filed in the Trust Territory High Court as Civil Action No. 273.

²The trial court distinguished between assignments made prior to an Article XIII claim and assignments

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does not need to address this issue, however, because the Trial Division's determination that RTFT did not establish Roman Tmetuchl's claim on Omsangel and Beklelachieb was based on two alternative holdings. The Trial Division also found that there was insufficient evidence that Omsangel and Beklelachieb were owned by Ngetchedong Clan. RTFT has not addressed this alternative holding on appeal, and this unchallenged rationale is sufficient to sustain the judgment against Tmetuchl. *Accord, Berna v. Chater*, 101 F.3d 631, 633-34 (10th Cir. 1996) ("In particular, if on appeal a claimant challenges only one of two alternative rationales supporting a disposition, [t]his choice of litigation strategy necessarily carries with it adverse consequences for [the] appeal as a whole. Since the unchallenged [rationale] is, by itself, a sufficient basis for the denial of benefits, [claimant's] success on appeal is foreclosed--regardless of the merits of [the] arguments relating to [the challenged 179 alternative].") (internal quotations omitted).

B

Surangel Whipps alleges five errors in the Trial Division's factual findings. We review the Trial Division's findings of fact for clear error. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Under the clear error standard, this court will reverse only if "left with a definite and firm conviction that a mistake has been committed." *Sugiyama v. Tikei Clan*, 9 ROP 73, 75-77 (2002).

Whipps first contends that the trial court erred in finding that Ebas did not include Omsangel and Beklelachieb as part of his property in his 1962 action seeking to eject the government from his property. In reaching its finding, the trial court stated that the complaint described the boundaries of the property in very general terms. The description became more specific, according to the trial court, in the sketch accompanying Ebas's complaint. The court went on to state that the sketch did not include Omsangel and Beklelachieb. Although Whipps correctly points out that no sketch can be found in the file from the 1962 civil action, the lack of a sketch does not affect the outcome here. The 1962 civil action does not clearly establish that Ebas owned Omsangel and Beklelachieb, and the remaining evidence relied upon by the court was sufficient to support the decision. The court relied on the fact that despite repeated litigation regarding properties they held title to during the 1960s, Telbadel Lineage never specifically included the lands at issue here as being among their properties, the fact that there was credible witness testimony that rent was not paid to the Telbadel Lineage for use of this property prior to the war, and the fact that use of the lands by Lineage members after the 1960s did not clearly establish ownership of the lands. As the court's finding that the Lineage did not establish original ownership of Omsangel and Beklelachieb is supported by sufficient evidence, the reliance on the sketch is not reversible error. *See Sugiyama*, 9 ROP at 75-77.

Next, Whipps contends that the trial court erred in finding that Ebas was precluded from establishing title to Omsangel and Beklelachieb based on his failure to assert ownership of the lands during title claim actions in the 1960s. Whipps asserts that Ebas did not mention Omsangel and Beklelachieb because those earlier title claim actions were focused on other pieces of land, thus, no testimony about either Omsangel nor Beklelachieb should have been

made subsequent to an Article XIII claim, finding that an assignee could not prevail on an Article XIII claim for Return of Public Lands when the transfer was prior to the filing of an Article XIII claim.

expected. Contrary to Whipps' assertion, the Trial Division did not find that the Lineage was precluded from establishing title to Omsangel and Beklelachieb due to Ebas's failure to mention those lands during the 1960s title claim actions. The Trial Division merely used Ebas's failure as some evidence tending to support the conclusion that the Lineage did not claim ownership of Omsangel and Beklelachieb at that time. Although Whipps points out that that is not the sole conclusion that can be drawn from the omission, it is certainly a plausible interpretation. Accordingly, the Trial Division's reliance on Ebas's failure to mention Omsangel and Beklelachieb in the 1960s title claim actions is not clearly erroneous.

Whipps next alleges that the trial court's reliance on Baules Sechelong's testimony during the 1975 Esuroi Clan case, Civil Action No. 6-74, was improper because his testimony was hearsay. However, Whipps did not object to the introduction of this testimony at trial. Evidentiary objections not raised at trial are waived. *Klsong v. Orak*, 7 **180** ROP Intrm. 184, 187 (1999). Accordingly, the Trial Division did not err in relying on Sechelong's testimony to conclude that Telbadel Lineage did not have a claim over Omsangel and Beklelachieb.

Whipps also contends that the trial court erred in characterizing Telbadel Lineage's use of Omsangel and Beklelachieb as inconsistent with ownership, because according to Whipps, the trial court did not consider testimony that members of Telbadel Lineage used the lands. This Court's review of the record demonstrates that Whipps' assertion fails. It is apparent that the trial court did consider the testimony of members of Telbadel Lineage. The court merely failed to accord the testimony the weight that Whipps would have liked. The court found that the occupation of Omsangel and Beklelachieb was equally consistent with the behavior of squatters on government property, and considering other evidence, such as the fact that Omsangel and Beklelachieb had not been specifically claimed by Ebas earlier, the latter characterization was more likely. The trial court specifically rejected the testimony that Whipps now asserts was not considered. Accordingly, Whipps has not shown reversible error.

Finally, we reject Whipps' contention that the trial court failed to give sufficient weight to the testimonies of adjacent landowners that it was their understanding that Omsangel and Beklelachieb were historically owned by Telbadel Lineage. The trial court concluded that the testimony of the adjacent landowners, which was admitted was because there was no objection to the testimony, was nevertheless hearsay which was not persuasive in light of the other evidence presented. This weighing of the evidence cannot be deemed clearly erroneous. *See Ngetchab Lineage v. Klewei*, 8 ROP Intrm. 116, 117 (2000) ("Where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous.").

CONCLUSION

The trial court's judgment against Roman Tmetuchl Family Trust is supported by its unchallenged finding that Ngetchedong Clan was not the original owner of Omsangel and Beklelachieb. Its judgment against Surangel Whipps that there was no clear evidence that Telbadel Lineage owned Omsangel and Beklelachieb was supported by the evidence. The judgment is **AFFIRMED**.