

Brikul v. Matsutaro, 13 ROP 22 (2005)
**RENGULBAI BRIKUL, TERUO
NGIRABEDECHAL, DUYANG
KATOSANG, and THOMAS TARO,
Appellants,**

v.

**FRANCIS MATSUTARO, representing
the children of Ngiramechelbang Ngeskesuk,
Appellees.**

CIVIL APPEAL NO. 03-056
Civil Action Nos. 02-115, 02-116, 02-118, and 02-119

Supreme Court, Appellate Division
Republic of Palau

Argued: August 19, 2005

Decided: November 2, 2005

L23

Counsel for Appellants: Roman Bedor

Counsel for Appellees: Moses Uludong

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

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

PER CURIAM:

Teruo Ngirabedechal, Rengulbai Brikul, Duyang Katosang, and Thomas Taro (“Appellants”) appeal the trial court’s judgment of eviction against them instituted by the children of Ngiramechelbang Ngeskesuk, represented by Francis Matsutaro (“Appellees”). The court below found Appellants had failed to disprove Appellees’ title to Cadastral Lot Nos. 007 A 20 and 007 A 21 (Tochi Daicho Lot No. 1459), and Cadastral Lot No. 007 A 13 (Tochi Daicho 1460) (hereinafter referred to as “TD Lot 1459” and “TD Lot 1460”). Appellants advance two arguments on appeal: (1) Appellees are estopped from contesting the boundaries recognized by their father in the case of *Torul v. Arbedul*, 3 TTR 486 (Tr. Div. 1968); and (2) Appellees’ claim is barred by adverse possession and the running of the statute of limitations.

I. Estoppel

Appellees' certificates of title to TD Lots 1459 and 1460 are the product of a series of cases involving disputes over these and other lots in Ngerkebesang Hamlet, the most important of which for purposes of the present appeal is *Torul v. Arbedul*, *supra*.¹ In *Torul*, the Trial Division of the Trust Territory High Court awarded Lots 1459 and 1460 to the heirs of Dirrablong, represented by Ngiramechelbang (father of Appellees). The **L24** court's award was specifically based on a map used in the case upon which Ngiramechelbang outlined his claim.²

In this case, Appellants assert that they are not residing on either TD Lot 1459 or 1460, but rather on TD Lots 1470 and 1471, which are registered in the Tochi Daicho as belonging to Kelaolbai Lineage. They argue their claim is supported by the map used in *Torul*, which purportedly shows their residences to be outside the area designated by Ngiramechelbang. As a result, Appellants claim on appeal, as they did at trial, that Appellees should be estopped from challenging the boundaries of TD Lots 1459 and 1460 "established" by their father.

We disagree. Appellants concede that the Cadastral Plat generated by the Division of Lands and Surveys after the *Torul* decision shows their homes to be within the boundaries of either TD Lot 1459 or TD Lot 1460. Moreover, even assuming for the moment that their homes are in fact outside the area outlined by Ngiramechelbang, Appellants have made no showing that they ever relied on this map to their detriment. *See Graham v. Asbury*, 540 P.2d 656 (Ariz. 1975) (to invoke doctrine of estoppel, party must have reasonably relied to his detriment on the acts, promises or representations of the adverse party). Therefore, we hold that the trial court did not err in rejecting Appellants' argument concerning the boundaries of TD Lots 1459 and 1460.

II. Adverse Possession / Statute of Limitations

¹ There were also three other cases involving TD Lots 1459 and 1460. Years after *Torul*, the Palau District Land Commission determined that Dirrablong's "heirs" were her brothers, sisters, and adopted son. This finding was affirmed in *Ngeskesuk v. Solang*, 6 TTR 505 (Tr. Div. 1974).

In 1977, the five heirs of Dirrablong deeded the two lots to Ngiramechelbang's six children. In 1989, the Appellate Division of the Supreme Court addressed a quiet title action, in *Children of Ngeskesuk v. Espangel*, 1 ROP Intrm. 682 (1989), filed by the children of Ngiramechelbang against Esebei Espangel. Espangel claimed he had purchased TD Lots 1459 and 1460 from Ngiramechelbang in 1968 after the *Torul* decision. The court, however, held that any alleged sale between Ngiramechelbang and Espangel was invalid because it was in violation of Palauan custom. The court further held Espangel was bound by the earlier Land Commission Determination of Ownership, since he had failed to file an appeal despite being aware of the issuance of the determination.

Finally, in *Rengulbai v. Solang*, 4 ROP Intrm. 68 (1993), various quiet title actions were filed following the deaths of Ngiramechelbang and his sister, Ebil Rengulbai (original heirs of Dirrablong). However, the only issue in the case relevant to the present matter is the court's affirmation that TD Lots 1459 and 1460 belonged to the children of Ngiramechelbang.

² The court in *Torul* stated: "The portion of the land in question outlined in red on Sketch SK-230-B on file in this action, intended to represent Lots Nos. 1448, 1449, 1450, 1456 to 1460 inclusive . . . is owned by the heirs of Dirrablong . . ."

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In the alternative, Appellants claim that the property upon which they reside is Kelaolbai Lineage land, and that they are either living there based upon their membership (Rengulbai Brikul) or based upon a land use right granted by the lineage (Duyang Katosang and Teruo Ngirabedechal). Appellants further contend that because they have lived on the property, uninterrupted, for over twenty years, Kelaolbai Lineage has acquired ownership of the property through adverse possession and/or by the running of the statute of limitations.³

“Adverse possession and the statute of limitations are generally considered together . . . usually [with] the same party relying on both doctrines—arguing that they have occupied the land for longer than 20 years, thus satisfying the adverse possession requirements, and that the landowner failed to bring an action against an unlawful occupier within the 20-year limitations period and so the claim is now barred.” *Tmiu Clan v. Ngerchelbuche Clan*, 12 ROP 152, 155 (2005). “A claimant obtains much the same result whether claiming under a twenty year adverse possession claim, or invoking a twenty year statute of limitations defense.” *PPLA v. Salvador*, 8 ROP Intrm. 73, 77 (1999). Both doctrines require proof of the same elements. *See Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 135 (2000).

To acquire title by adverse possession, **125** the claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years. *Arbedul v. Rengelekel a Kloulubak*, 8 ROP Intrm. 97, 98 (1999). Where any one of these elements is lacking, adverse possession does not apply. *Otobed v. Ongrung*, 8 ROP Intrm. 26, 28 (1999). “The requirement for adverse possession that the possession be hostile does not require ill will or malice, but an assertion of ownership adverse to that of the true owner and all others. Possession is hostile if the possessor holds and claims the property as his or her own, whether by mistake or willfully.” 3 Am. Jur. 2d *Adverse Possession* § 43, at 123 (2002).

In denying Appellants’ adverse possession claim, the trial court stated:

Defendants claim to have been on the property since at least the 1950s, when Rengulbai first built his house on what he believed was Kelaolbai Lineage land. By Defendants’ own testimony, they recognized that their claim was subordinate to the lineage. Thus, their entry thereon cannot be construed as hostile. Additionally, Defendants alternatively claim to be on the property through the acquiescence of Plaintiffs’ predecessor and ask the Court to make the inference that Ngiramechelbang must have given Defendants or their ancestors some kind of use right to live on the property. If it was, in fact, the reason why Ngiramechelbang did not outline the entire Lot 1459 in the Sketch, then Defendants were not claiming the property to themselves, to the exclusion of all others, against the world. Once again, their claim was subordinate to that of Plaintiffs’ ancestors. Furthermore, Defendants’ occupation of the property was not hostile if Plaintiffs’ predecessor gave them permission to live thereon. By their own testimony, Defendants did not claim to be on the property to the

³ 14 PNC § 402(a)(2) provides in pertinent part: “[actions for the recovery of land or any interest therein] shall be commenced only within 20 years after the cause of action of accrues.”

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exclusion of all others, nor from evidence presented can the Court find a point at which their possession transformed from permissive to hostile.

Trial Opinion at 7-8.

We note at the outset that “[i]t is an established maxim that a plaintiff in ejectment can recover only on the strength of his own title and not on the weakness of his adversary’s.” *Levin v. Twin City Red Barn*, 207 N.E.2d 739, 741 (Maine 1973). A corollary of this principle is that a “defendant may show true title with right of possession to be outstanding in a third person [in order to] defeat the action.” *Redmeyer v. Cunningham*, 215 P. 83, 86 (Ariz. 1923). Therefore, we find the court erred in denying Appellants’ claim because it found that “they recognized that their claim was subordinate to the lineage.” We think it is clear that Appellants were not attempting to prove that they, as individuals, had acquired ownership of the property, but rather were attempting to prove ownership, through their continuous adverse possession, on behalf of Kelaolbai Lineage. Indeed, the requirement of actual possession of real property necessary to acquire title by **126** adverse possession “may be met through acts of another, who actually possesses and occupies the land for, and in subordination to, the adverse claimant.” *Adverse Possession*, *supra*, § 23, at 106. *See also Tmiu Clan v. Ngerchelbuche Clan*, *supra* (clan could acquire title through adverse possession after one of its members lived on the land for over 20 years); *Footte v. Kearney*, 290 P. 226, 228 (Wash. 1930) (“It is not necessary that the person claiming title by adverse possession should have been in personal occupation of the land. Possession by an agent . . . inures to his benefit and satisfies the requirements of the statute of limitations.”). Furthermore, title acquired by adverse possession is said to be “an actual, absolute, complete, and perfect legal title in fee simple, carrying all of the remedies attached thereto.” *Adverse Possession*, *supra*, § 248, at 286. Thus, if it is true that Kelaolbai Lineage, through the adverse possession of Appellants, acquired ownership of the disputed property (an issue not further fleshed out by the trial court), Appellee’s action for eviction against Appellants must fail. *See Hamilton Hauling, Inc. v. Sleyster*, 796 S.W.2d 936 (Mo. Ct. App. 1990) (affirming trial court’s denial of eviction action instituted by plaintiff-title holder against defendant because defendant proved ownership of the land acquired by third party through adverse possession).

Turning to the trial court’s alternative reason for finding possession was not hostile – that Appellants claimed to be on the property through the acquiescence of Appellees’ predecessor – we are simply unable to find in the record before us where this argument was made by Appellants. The only possible source we can find is in the Answer of Thomas Taro, wherein he stated that the land upon which he resided “is owned by the community of Meyuns and that [he] has the use right from the Chiefs of Meyuns to construct his house and to live on said lot 008 A 10.” Answer of Thomas Taro at 2. The case below, however, was a consolidated eviction action brought against numerous parties, some of whom asserted related defenses, while others, namely Taro, did not. Based on our review of the record, this particular acquiescence argument was never argued or adopted by the other co-defendants, Rengulbai Brikul, Duyang Katosang and Teruo Ngirabedechal (co-Appellants with Thomas Taro now on appeal). While Ngirabedechal and Katosang claim in their respective Answers that they were granted “use rights,” it is clear they are claiming the use rights were granted by Kelaolbai Lineage, not Appellees’

“predecessor.”⁴ Therefore, we are left to conclude that the trial court erred in using Taro’s defense as a ground for denying the other defendants’ claim of adverse possession.⁵

127 As a final matter, Appellees argue that the statute of limitations did not begin to run against them until they were issued certificates of title in 1991 and 2000, and thus, Appellants have not attained the necessary twenty years. We express our doubts as to the validity of this contention. Although Appellees officially received certificates of title within the last twenty years, it is clear they were deeded TD Lots 1459 and 1460 by the heirs of Dirrablong as far back in 1977, and transfers in title generally do not stop the running of adverse possession. *Cf. Adverse Possession, supra*, § 96, at 166.⁶ Nevertheless, because the record on appeal does not permit us to conclusively rule on this issue, we will leave it to be fully addressed by the trial court on remand.

CONCLUSION

Title in a third party is a valid defense in an ejectment action. While we leave it to the trial court to review the record and determine whether Appellants Rengulbai Brikul, Duyang Katosang and Teruo Ngirabedechal have met each of the elements for a claim of adverse possession, including the requisite hostility, we are unable to uphold the judgment based on the reasons stated by the trial court for rejecting that claim. The judgment of the trial court as to those Appellants is accordingly vacated and the matter is remanded for further proceedings in conformity with this opinion. As to Appellant Thomas Taro, the judgment is affirmed.

⁴ Both Ngirabedechal and Katosang’s Answers state:

Defendant’s house is not constructed on plaintiff and his siblings land but on the land owned by Kelaolbai Lineage and defendant’s father had a use right from Kelaolbai Lineage to live and use the land and that they have, through the lineage, in past more forty years lived and occupied the said land to the exclusion of the others.

Answer of Ngirabedechal and Katosang at 2.

⁵ Indeed, this Court is at a loss as to why Thomas Taro has been joined with the other Appellants in this appeal, as Taro is never even mentioned in the appellate brief. Unlike his other co-Appellants, there is no showing that his home is supposedly outside the area marked by Ngiramechelbang in *Torul*. Furthermore, as noted above, Taro has never claimed that the property upon which he lives is owned by Kelaolbai Lineage. Therefore, he obviously cannot benefit from any determination on the issue of whether the lineage acquired ownership of property through adverse possession. Because there has been absolutely no showing that the trial court erred in rejecting his claim, we will affirm the court’s judgment against him.

⁶ Even further, Appellees’ ancestors were awarded ownership of the lots in 1968, after *Torul v. Arbedul, supra*. We also note that legal proceedings involving property, such as the cases discussed in footnote 1, *supra*, do not stop the running of the statute of limitations unless they are brought against the party claiming adversely. *See Adverse Possession, supra*, § 109, at 175-76.