Trolii v. Rechelbang, 13 ROP 251 (Tr. Div. 2006)

TADAO TROLII,
Plaintiff,

v.

CALEB RECHELBANG, KAILANG MASANG, LOLITA RULUKED, MASAHIRO DANIEL, and JOHAN MELEDANG,
Defendants.

TMONG LINEAGE,
Intervenor,

v.

TADAO TROLII, THE HEIRS OF TROLII KARMELONG and JOHN DOES 1-10,
Defendants in Intervention.

RANGEM TADAO TROLII, SANTOS OLIKONG, AKEMI ANDERSON, MASAKO TARO and RACHEL BECHESERRAK,
Plaintiffs,

v.

PLOYCARP BASILIUS, MELEKEOK STATE GOVERNMENT BANK, COCORO HOTEL AND RESTAURANT and MAKOTO ITO,
Defendants.

TMONG CLAN,
Plaintiff,

v.

MIBUK DELMAU,
Defendant.

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CIVIL ACTION NOS. 313-95, 98-303 and 00-185 (Consolidated)

Supreme Court, Trial Division
Republic of Palau

Decided: May 2, 2006

Trolii v. Rechelbang, 13 ROP 251 (Tr. Div. 2006)

KATHLEEN M. SALII: Associate Justice

Presently before the Court are three motions: (1) Motion to Enforce Settlement Agreement or Dismiss the Case; (2) Motion to Dismiss Civil Action No. 00-185; and Motion to Amend Answer to Add Affirmative Defense.

PROCEDURAL BACKGROUND

This matter was set for a trial commencing on March 1, 2005. On that day, counsel for the parties appeared and informed the Court that the parties had reached a settlement and that they anticipated filing a stipulation by March 4, 2005. On September 27, 2005, the court, *sua sponte*, ordered the parties to file the agreed-upon stipulation before October 7, 2005 or the case would be dismissed for lack of prosecution. On October 7, 2005, Plaintiffs and Intervenors (hereinafter jointly referred to as "Plaintiffs") moved for an extension of time to file a settlement agreement, which motion was granted. On November 7, 2005, these same parties filed a "Notice of Failure Of Settlement And Request For Status Conference To Set Trial Date."

⊥253 On November 18, 2005, the Court entered additional pre-trial orders setting trial dates of April 24-May 4, 2006, and extended the deadline for the filing of any pre-trial motions. On February 24, 2006, the parties represented by Kevin Kirk, namely, Caleb Rechelbang, *et al.*, Tmong Lineage represented by Rangem Miser Rekemesik, Polycarp Basilius, *et al.*, and Aiko Armaluuk (hereinafter referred to as "Defendants"), filed the motions presently before the court. The court heard arguments on the motion on April 13, 2006 [1], and for the reasons set forth below, the motion to enforce the settlement agreement is GRANTED.

BACKGROUND

A brief history of these cases was recounted in the Court's March 16, 2004, Order on the Motion To Vacate Or Set Aside December 31, 2003, Injunction and is briefly recited here. It has been a decade since the most recent actions were filed in court relating to both the lands and the titles at issue herein. In Civil Action No. 313-95, Tadao Trolii, purporting to represent the heirs of Karmelong Trolii, filed suit against Caleb Rechelbang seeking injunctive relief for activities relating to property identified as Tochi Daicho Lot No. 838 in Iyebukel Hamlet, Koror State. In Civil Action No. 98-303, Tadao Trolii, representing members of Tmong Lineage, filed suit against Polycarp Basilius and others seeking injunctive relief for activities relating to property identified as Tochi Daicho Lot Nos. 740, 739 and 594. The most recent case herein, originally filed as *Tmong Clan v. Mibuk Delmau*, Civil Action No. 00-185, relates to a dispute as to the bearers of the titles of Tmong Clan. [2] Tadao Trolii, aka Tadao Andreas, (hereinafter "Tadao") filed the suit, purportedly on behalf of Tmong Clan and as the representative of the heirs of Trolii Karmelong, seeking a declaration that he bears the title Rangem and that his sister, Akemi

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[1] Counsel for Plaintiffs, Mr. Bedor, neither filed a response to the motion nor appeared for oral argument. In reviewing the pleadings, the Court finds that counsel for Intervenors, Mr.Oilouch, represents both Plaintiffs and Intervenors for purposes of this motion.

[2] The parties refer at various times to Tmong Clan and Tmong Lineage. The Court will refer to the entity as Tmong Clan, the named Plaintiff in the most recent action, Civil Action No. 00-185.

Anderson, bears the title Uodelchad. In February of 2004, nine years after the initial filing of the case concerning ownership of Lot No. 838, Marie Anderson and Maile Andreas, children of named parties, moved for leave to intervene as parties to the case, which motion was granted following a hearing. Since the filing of these cases, two of the principal parties, Tadao Trolii and Mibuk Delmau, have died.

ANALYSIS

Public policy favors the resolution of disputes by the parties to a lawsuit through compromise and settlement, and such settlement agreements will be upheld and enforced if they are fairly entered into. See 15A Am. Jur. 2d *Compromise and Settlement* § 5.

In this case, after the initial filing of the different actions, following years of attempted settlement talks and rescheduling of trial dates for various reasons, the most recent trial date was set for March 1, 2005, a decade after the first case was filed. On that day, however, the parties instead appeared and informed the Court in chambers that they had reached a comprehensive settlement in the above cases so that there was no need to ⊥254 proceed to trial. There was no equivocation by any of the parties at this conference; based on the representations made at this conference, the Court issued its order of the same date vacating the trial date and ordering the parties to file their stipulation by March 4, 2005.

When several months had gone by with no stipulation filed, the parties were ordered to file the agreed-upon stipulation before October 7, 2005, or the case would be dismissed for lack of prosecution. It was that order that ultimately resulted in the filing of the instant defense motions to enforce the settlement agreement or to dismiss the cases without prejudice. Attached to the motion was a draft settlement agreement containing what Defendants maintain are the terms of a comprehensive settlement of these cases which was circulated to the parties to review. In the eight months between the Court's order to file a stipulation and Plaintiffs' "Notice of Failure Of Settlement And Request For Status Conference To Set Trial Date," there was no indication that the parties had changed their mind about settling the case without resorting to litigation. In fact, on October 7, 2005, Plaintiffs moved for an extension of time to file the settlement agreement and nowhere in the motion did they indicate that they had changed their mind about settling these consolidated cases or that they had not been in recent communication with Defendants regarding any concerns about some of the terms of the settlement. Only in its opposition to the instant motion, over one year since the parties informed the Court that they had settled the cases, did Plaintiffs raise three issues with respect to the terms of the settlement in an attempt to establish that no settlement had, in fact, been reached.

Keeping in mind the generally-accepted policy that disputes amicably resolved through a mutually-agreed upon settlement are preferred to resolution through litigation, the Court looks at Plaintiffs' concerns with respect to some of the terms of the settlement. First, however, the Court addresses the argument that the fact that there is no signed settlement is "clear proof that no settlement agreement had been reached." Plaintiffs' Opposition at 1. The formal requirements of a compromise and settlement have never been addressed either by statute or in case law in the Republic, and in the United States, some jurisdictions require such compromise and settlement to

be set forth in writing or stipulated to in open court. In other jurisdictions, however, "no particular form of agreement and no writing is essential to a valid compromise, especially when the parties orally affirm the existence of a compromise before the court . . . ." *See* 15A Am. Jur. 2d *Compromise and Settlement* § 16.

In *Midwest Sports Med., Orthopedic Surgery v. United States* , 73 F. Supp.2d 870 (S.D. Ohio 1999), a pension plan sued the United States government for the alleged wrongful taking of its property. The Plan sought, *inter alia* , to enforce a settlement it allegedly reached with the government. Although the court found that no enforceable settlement existed based on other grounds, it nevertheless held that "an agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing." *Id.* at 878 (citing *Green v. John H. Lewis & Co.* , 436 F. 2d 389, 390 (3d Cir. 1971)).

Given the lack of applicable statutory or case law in this area, the Court is of the opinion that where the parties have appeared before and informed the court that they have voluntarily reached a settlement to dismiss a lawsuit, the absence of a written settlement ⊥255 agreement does not negate the fact that the parties have reached a settlement.

In this instance, there was no doubt after the March 1, 2005, conference, based on the representations made by counsel, that the parties had reached an amicable settlement to resolve the major issues in the consolidated cases and that a stipulation to dismiss the lawsuits was forthcoming. The Court finds that, despite the lack of a writing at the time of the March 1, 2005, conference, the parties nevertheless reached a settlement. The whole point of a settlement agreement is for each side to compromise something in exchange for resolving their respective differences outside of litigation. It therefore goes without saying that because each side gives up something, makes mutual concessions and compromises some claims to reach a settlement, the court will enforce such a settlement absent any evidence of fraud in securing the settlement. There has been no such allegation of fraud, let alone misunderstanding in reaching the settlement.

"If . . . there is a disputed or unliquidated claim, based upon the parties' doubts and uncertainties, and if the parties, for purposes of avoiding or putting an end to litigation, agree to resolve their differences amicably and by means of mutual concessions, the promise or execution of such concessions by one party constitutes good consideration for the promise or execution of such concessions by the other party." *See* 15A Am. Jur. 2d *Compromise and Settlement* § 22.

As will be seen, each of the concerns regarding the terms of the settlement raised by Plaintiffs at this late date are nothing more than secondary concerns which should not be grounds for reneging on a settlement. Although Plaintiffs strenuously contend that the parties had never reached an agreement but instead discussed a proposed settlement agreement, the parties had, in fact, reached a valid settlement agreement which will be enforced. The Court reaches this conclusion based on at least two reasons.

First, at the March 1, 2005, status conference, the undersigned heard from all three

counsel in this case, Bedor, Oilouch, and Kirk, that they had reached a stipulated settlement to resolve the major differences among the parties and that a stipulation would be filed shortly. At no time during that conference did counsel for Plaintiffs indicate that his clients were *considering* entering into a settlement. In fact, there was no indication that Plaintiffs did not believe they had settled the matter until as late as November 2006, one year and 8 months after the trial date was vacated based on the representations made by counsel that a settlement had been reached, and the grounds presented in an effort to establish that they never reached an agreement are, in the Court's view, without merit.

Second, the affidavits of Plaintiff Akemi Anderson and Attorney Oilouch submitted in support of the opposition refer to three areas which Plaintiffs claim were never satisfactorily addressed by the proposed settlement agreement. Anderson, in her affidavit, maintains that while there were certainly discussions regarding a proposed settlement, and while the idea of a settlement appealed to Plaintiffs, there were certain matters in the draft settlement agreement to which they did not agree and which they did not want contained in a final agreement. She contends that this was why they had never agreed to a settlement in the first place. Oilouch, in his affidavit, avers that, contrary to Defendants' claims, there were at least two drafts reviewed by the parties, both of which had been prepared by counsel for Defendants. ⊥256 He maintains that the draft he and his clients reviewed is that attached as Exhibit 1 to his affidavit, which slightly differs from the draft attached as Exhibit A to Plaintiffs' motion. As with Plaintiff Anderson, Oilouch raises three areas which he maintains were issues never resolved to his clients' satisfaction, so there could not possibly have been a settlement.

Plaintiffs recite three terms of the draft they reviewed which they find unacceptable: first, that Defendants would occupy part of the land to the south of the road leading from Iyebukel to Taoch ra Irorou; second, that the draft settlement purports to resolve issues relating to lands not raised within the scope of this litigation; and third, that Plaintiffs do not want any of their claims against Defendants dismissed with prejudice.

Defense counsel contends that the most recent draft of the parties' settlement is not Plaintiffs Exhibit 1 to Mr. Oilouch's affidavit, but is instead Exhibit A to their motion, and that this is what the parties were working with in March 2005 and is the draft referred to in the conference at which the court was informed that a settlement had been reached. A review of the two versions reveals that the differences between the two drafts are minimal, and that the general terms remained the same between each draft. The Court is of the belief that the terms of the settlement agreement as reflected in Exhibit A is the final version of the draft that the parties were working on, and a review of this draft shows that it clearly sets forth the essential terms of the settlement agreement. Although Plaintiffs raise an argument that there may have been two different drafts that the parties were working with, it became clear at argument that the most recent draft which the parties were working with is that version identified as defense Exhibit A.

With respect to Plaintiffs' first disagreement with the terms of the settlement regarding splitting the land and determining which party will occupy which part of the land to the south of the road leading from Iyebukel to Taoch ra Irorou, the Court finds that this concern is a minor difference that the parties can resolve without resorting to litigation. The more important point is

that the parties had reached an agreement in early 2005 to settle their differences without further litigation. The fact that there remained some details to finalize regarding which individuals would be on each side of the vacant land to be subdivided areas to be identified does not mean the terms were so indefinite that there could not have possibly been a settlement reached. The Court thus rejects this argument as a basis for finding that the parties had never reached a settlement.

Because the settlement agreement only involves lands at issue in these cases, Plaintiffs' position that any acquiescence on their part to Defendants' use of some of the lands at issue herein may be perceived as ratification or resolution of the Defendants' use of other lands outside the scope of this litigation is not well-taken. There is nothing in the draft settlement which even remotely suggests that any settlement of land issues in this litigation would resolve the parties' disputes regarding any lands not identified in this litigation. While Plaintiffs may certainly argue that the settlement could be interpreted this way, there is no basis for this given the language of the draft, and to continue to argue this point as a basis for holding out on resolving the majority of the parties' differences borders on bad faith.

Finally, Plaintiffs do not want any of their remaining claims against Defendants to be dismissed without prejudice. As has been made clear, however, the whole point of the ⊥257 settlement was to resolve those issues relating to the occupation of the lands by the parties and to leave the disputes regarding clan membership and titles to another day in the event the parties failed to resolve their differences. Upon review of the settlement agreement, and as clarified by counsel for Defendants at the hearing, it is clear that the settlement agreement in no way prevents any party from litigating claims relating to the titles of Tmong Clan after litigation in this case has been resolved through entry of a stipulated judgment based on the settlement agreement. Thus, the settlement herein does not prevent Plaintiffs from proceeding with any claims they have relating to the membership and title bearers of Tmong Clan.

In response to questioning by the Court, Plaintiff's counsel expressed at the hearing that prior to March 1, 2005, his clients had already informed him that they had concerns with some of the terms of the settlement, which are the same three concerns identified in their opposition, with some of the terms of the settlement. He was optimistic, however, that he and defense counsel would be able to resolve these concerns before filing the stipulation. In the Court's view, this statement in fact supports a finding that there was a settlement, because had the concerns been of a more substantial nature thus jeopardizing any possibility of settlement, Plaintiffs could and should have proceeded to trial on that day. Instead, the parties clearly represented to the Court in chambers on the morning of the first day of trial that they had reached a settlement.

"A valid compromise and settlement is final, conclusive, and binding upon the parties and upon those who knowingly accept its benefit. It is as binding as any contract the parties could make, and as binding as if its terms were embodied in a judgment." 15A Am. Jur. 2d *Compromise and Settlement* § 37. The Court having found that the parties entered into a valid settlement, said settlement is final and binding upon the parties herein, and the Court has the power to summarily enforce the settlement agreement. *See United States v. Hardage* , 982 F. 2d 1491, 1496 (10th Cir. 1993) (finding that the trial court has power to summarily enforce

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settlement agreement between litigants while litigation is pending).

CONCLUSION

There is room for resolution without litigation in these cases, as shown by the parties' attempts to resolve their differences over the years through negotiations. For the reasons discussed above, when the parties informed the Court on March 1, 2005, that they had reached a settlement, such a settlement became a binding contract on all the parties. Accordingly, the Defendants' motion to enforce settlement is GRANTED, and the Court will hold the parties to the terms of the Settlement Agreement entered into by the parties as reflected in the version previously identified as defense Exhibit A. In light of the Court's ruling on the motion to enforce the settlement agreement, the remaining defense motions are moot.