

Whipps v. Ngatpang State Public Lands Authority, 14 ROP 200 (Tr. Div.)
SURANGEL WHIPPS, SR.,
Plaintiff,

v.

NGATPANG STATE PUBLIC LANDS AUTHORITY,
Defendant.

CIVIL ACTION NO. 05-208

Supreme Court, Trial Division
Republic of Palau

Submitted [sic]: December 29, 2006
Decided: May 24, 2007

Counsel for Plaintiff: Yukiwo P. Dengokl

Counsel for Defendant: John K. Rechucher

KATHLEEN M. SALII, Associate Justice:

This matter proceeded to trial on December 15 and 29, 2006, following denial of the parties' cross-motions for summary judgment. Having heard the testimony at trial and examined the other evidence adduced by the parties, the Court's decision is based on the following findings of fact and conclusions of law.

Background

Plaintiff, Surangel Whipps, Sr., commenced this action to void Determination of Ownership No. 10-22 and Land Court Certificate of Title LC 690-04, which declare Ngatpang State Lands Authority (hereinafter "NSPLA") the fee simple owner of certain land in Ngatpang State, and to declare him the owner thereof as the heir of Itacherchar Sambal ("Sambal"). The land awarded to NSPLA in both D.O. No. 10-22 and C.T. LC 690-04 is identified as Cadastral Lot No. 026 L 01, Tochi Daicho Lot No. 2-part, Worksheet Lot No. 107-8143, commonly known as *Telikeu*, containing an area of approximately 391,659 square meters, and is located in Ngerdubech, Ngatpang. The property which Plaintiff claims ownership of is identified as *Iyas* or *Omiull*¹, Tochi Daicho Lot No. 2-part, Worksheet Lot No. 107-8143, located in Ngimis Hamlet (also described as Ngerdubch, Emel Ngatpang, or Old Ngatpang) in Ngatpang State. Plaintiff claims that the parcel of land awarded to Defendant is the same parcel of land claimed by Sambal. Sambal died in 1996 and as his heir, Plaintiff has pursued Sambal's claim. Following

¹One of the parcels is identified interchangeably as either "Oimull" or "Oimiull" or "Omiull" and will be referred to in this as *Oimull* based on the Land Court Case No. LC/L04-229, which describes the land as *Iyas* or *Oimull*, Tochi Daicho Lot No. 2-part, Worksheet Lot No. 107-8143, located in Ngimis Hamlet.

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denial of cross-motions for summary judgment, the matter proceeded to trial.

Discussion

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The Court begins by noting that the history of the claims of ownership to the land at issue in this case is riddled with confusion, complicated by the fact that some of the claims have been resolved in the Land Court or its predecessors, others remain pending at the Land Court, while still other claims, originally filed in the Land Court or its predecessors, have been transferred to the Supreme Court for resolution.² When Plaintiff inquired at the Land Court about the status of Sambal's claim, he was informed by the Land Court that he would be notified of a hearing. When no such notice appeared to be forthcoming, he filed the instant action to have the claim resolved by this court.

In their December 13, 2006, Joint Pre-Trial Statement, the parties stipulated to certain facts that are not in dispute from other cases involving lands in Ngatpang. The most important stipulation is that the parcel awarded to NSPLA in the D.O. and the C. T., identified as *Telikeu*, is NOT, in fact, *Telikeu*. The parcel identified as *Telikeu* is located elsewhere.

In 1975, the Ngaimis, which was the governmental authority in Ngatpang Municipality at the end of World War II, enacted a land program whereby the Municipality would have the people of Ngatpang stake out claims of 70,000 square meter lots within an area known as Old Ngatpang which the Municipality owned pursuant to Determination of Ownership No. 126 (hereinafter referred to as "D.O. 126"). The Ngaimis memorialized this process in a March 27, 1989 letter to the Senior Land Claims Hearing Officer of the former Land Claims Hearing Office, disclaiming and releasing any interest Ngatpang State had in the D.O. 126 lands.

In accordance with this program established by the Ngaimis, Sambal staked and monumented boundaries of a parcel of land within this area in Ngerdubech in 1976, which he identified in the Land Acquisition Record, as parts of *Iyas* or *Omiull*, which was part of Tochi Daicho Lot No. 2. He subsequently filed a claim to the land with the Land Commission in 1980, and a copy of this claim remains in the Land Court file. This claim was assigned Land Court file no. LC/L01-459 (In the matter of a land known as *Iyas*, Tochi Daicho Lot No. 2-part, located in Ngaimis, Ngerdubech of Ngatpang State/Itacherchar Sambal, Palau Public Lands Authority, and Ngatpang State Public Lands Authority, claimants). This parcel of land is within the D.O. 126 lands, and consists of approximately 449,966 square meters. The Land Acquisition Record includes a Land Boundary Monumentation record with a sketch indicating that Sambal's claim includes land which abuts the road and extends to the shoreline. The same area of land is also described in Land Court File LC/L04-229 (In the matter of land known as *Iyas & Oimull*, TD Lot No. 2-part, Worksheet Lot No. 107-8143, Itecherechar Sambal, Sechewas Brobesong, and NSPLA, Claimants). Brobesong withdrew his claim on August 8, 2005. By order dated November 2, 2005, case LC04-229 was dismissed in light of Brobesong's withdrawal and the issuance of C.T. LC 690-04 to NSPLA (which Plaintiff 1202 seeks to have canceled in this

²Following a joint request by the parties, this Court has taken judicial notice of the Land Court files for the various claims.

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The Land Court file for Lot 026 L 01 contains a claim by Ngatpang State identified as File No. 10-215-88, for lands within the area described as Old Ngatpang covered by D.O. 126. The Land Court issued public notices on August 13, 2001, regarding monumentation, mediation, and hearings for lands in Ngatpang, including lands identified as *Telikeu* and *Iyas*, but the notices neither identified land known as *Oimull* nor referenced a lot identified as No. 107-8143. The land identified as *Telikeu* was claimed by several individuals, not including Plaintiff, and each claim was assigned a different case number. The claimants eventually signed a settlement agreement with NSPLA on November 7, 2001, in which they agreed that NSPLA owned the land known as *Telikeu*. Based on the settlement agreement, the Land Court Determination of Ownership Nos. 10-19, 10-20, 10-21, and 10-23, identified all the claims to the land known as *Telikeu* as being within Lot Nos. 107-8138A, 107-8147A, Lot No. 107-8147B, and Lot No. 107-8147G, and awarded *Telikeu* to NSPLA.

In a file involving a different parcel of land, on another LCHO form contained in Land Court File No. 10-75-90, an incomplete, handwritten form purports to be the claim of Sadako Madris to land referred to as *Ibobang*. The form is unsigned by any LCHO staff or employee. A hearing on claims to *Ibobang* was also listed in the August 13, 2001, Land Court public notices as file no. LC/L01-465. On November 12, 2001, Sadako Madris and NSPLA entered into a settlement agreement pursuant to which they agreed that NSPLA is the owner of *Ibobang*. Based on the settlement agreement, the Land Court issued D.O. No. 122 on November 15, 2001. It is in this D.O. that the land known as *Telikeu*, awarded to NSPLA, is for the first time described as being part of Tochi Daicho Lot No. 2-part and further identified as Lot No. 107-8143.

In yet another claim file for land within D.O. 126, in Land Court case LC/L01-460, for land identified as Lot No. 107-8145, Ellabed Rebluud was claiming a parcel of land for which he had filed a separate claim in the Supreme Court. He, however, did not receive notice of attempts by the Land Court to conduct another monumentation of Lot No. 107-8145. Rebluud then requested to continue the Land Court hearing for this land in light of the separate proceeding in the Trial Division.

In Land Court file LC/L01-459, involving the land *Iyas*, the Land Court set a hearing on November 12, 2001. It was at this hearing that the Land Registration Officer (LRO) for Ngatpang State, Jerry Nabeyama, informed the court that Sambal's claim overlaps and is partially contained within an area being claimed by Rebluud in LC/L01-460. However, Rebluud did not attend the hearing in this case because he never received notice to appear, so the Land Court then took the matter off its hearing calendar until all the claims that may overlap with Sambal's claim, including the claim of Rebluud, were identified and all the claimants noticed of the **L203** hearing. Since that order was entered on November 27, 2001, no hearing date has been set, Rebluud has prevailed on his claim for Lot No. 107-8145, and he has received a certificate of title to the land he claimed in LC/L01-460.

³C.T. LC 690-04 for Cadastral Lot No. 026 L 01, Lot No. 107-8143, does not include the southeast portion of the parcel of land claimed by Sambal. After Brobesong withdrew his claim, Sambal became the sole claimant.

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At trial, Ellabed Rebluud, who bears the title Ucheldikes in Ngatpang, was called as a witness by both parties regarding the boundaries of Sambal's claim. Based on Rebluud's testimony, which the Court finds credible, the claims of Rebluud, Sambal, and Ngirumerang, at one point in time, shared a common boundary marker identified by a rebar, and Sambal's claim is below Rebluud's property towards the mangroves. The land that Ngirumerang filed a claim to may be that property now owned by Ngatpang State, but neither Rebluud nor the other witnesses who were asked about Ngirumerang's claim, Martin Blodak and Jerry Nabeyama, could say for sure whether Ngirumerang's claim is that same property now owned by the State.

As stipulated to by the parties and as was clearly established at trial, the land *Telikeu* which is the land listed on D.O. 10-22 as the property of NSPLA, is not the land described in said D.O. and corresponding Certificate. The land described therein, Cadastral Lot 107-8143, is that parcel staked and claimed by Sambal in 1976 in his claim, LC/L01-459, which has never been reset for a hearing at the Land Court.

A certificate of title is prima facie evidence of ownership and is conclusive on all persons who have notice of the proceedings. *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 158 (2000). Courts have, however, permitted collateral attacks on certificates of title where the certificates were issued without a hearing or determination of ownership, and were based solely on documents purporting to transfer title. *Uchel v. Deluus*, 8 ROP Intrm. 120, 121 (2000), citing *Emaudiong v. Arbedul*, 5 ROP Intrm. 31, 35 (1994); *Obak v. Bandarii*, 7 ROP Intrm. 254 (Tr. Div. 1998).

Here, it is not disputed that the Land Court issued both the determination of ownership and the certificate of title for the disputed property to Defendant without providing notice to Plaintiff or conducting a hearing. Accordingly, the validity of the Certificate in Defendant's name is reviewable by this court.

Plaintiff claims he never received notice regarding his claims to Lot 107-8143. Procedural due process requires that each claimant be granted notice and an opportunity to be heard. See *Lewiil Clan v. Edarucheil Clan*, 13 ROP 62, 64 (2006). NSPLA called Jerry Nabeyama to testify that when the Land Court calendared a hearing for Sambal's claim to the land known as *Iyas/Oimull*, the same calendar noticed a hearing for land called *Telikeu*, and that *Telikeu* is further identified as Lot 026 L 01, Worksheet Lot No. 107-8143, Tochi Daicho Lot No. 2-part. Thus, NSPLA argues, Plaintiff should have been aware and was on notice that a hearing for Sambal's claim was calendared. However, the facts established at trial do not support such a finding. The land *Telikeu* is identified in the August 13, 2001 calendar solely by Land Court file numbers (e.g., LC/L01-452 through 01-457, 01-466 through 01-470). The facts also establish that the land *Telikeu* was subsequently further identified as Lot No. 107-8138A, 107-8147A, Lot No. 107-8147B, **L204** and Lot No. 107-8147G. Nowhere in the calendar is *Telikeu* identified as Lot No. 107-8143. Instead, Sambal's claim for *Iyas*, identified as LC/L01-459, was noticed for a hearing; this initial hearing date was continued so that proper notice could be served on all claimants or interested persons. Nowhere in the submissions is there an indication either that notices were served or a hearing held to date.

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NSPLA argues that Sadako Madris filed a claim for the property at issue in this case, as evidenced by the record in LCHO File No. 10-75-90, in which Madris claimed the land identified as *Ibobang*. The evidence, however, shows no factual or legal support for NSPLA's argument that any agreement it arrived at with Sadako Madris regarding *Ibobang* supports the issuance of D.O. 10-22, awarding land known as *Telikeu*, to NSPLA. Madris never filed a claim either for land described as Lot No. 107-8143 (what is Cadastral Lot No. 026 L 01) or to any land known as *Telikeu* as described in the D.O. and the Certificate.

Contrary to the recitations contained in D.O. No. 10-22, there was never either public or private notice to the claimants of record regarding claims to Lot No. 107-8143. To reiterate, Defendant relinquished any claims to lands within D.O. 126 lands; Sadako Madris filed some type of document for land identified as *Ibobang*; Sambal filed a claim to land identified as *Iyas* and/or *Omiull*. Defendant and Madris then entered into a stipulation for entry of judgment in Defendant's favor for land identified as *Telikeu* but which is in actually the land known as *Ibobang*. Madris never filed a claim for land known as *Telikeu*. Yet, a certificate of title for lands within the D.O. 126 lands was issued to Defendant, based on a settlement agreement it had with Madris wherein Madris purportedly waived her claim, for land which she never filed a claim for and for which Defendant relinquished all claims to, which is the land Sambal filed a claim to in 1976 and which has never been heard.

Defendant also argues that Plaintiff received notice of proceedings regarding the land *Ibobang*, which is the land that Sadako Madris and NSPLA reached a settlement on, LC/L01-465, inclusive of the land at issue in this case. Jerry Nabeyama testified that notice of the monumentation, mediation, and hearing on this land was given to a sister or relative of Sambal, a woman named Imechei, but that no one representing Sambal appeared for either the monumentation or the hearing on this claim. He further testified that he recalled Plaintiff attending a mediation session for this land some time in 2001 at the Land Court, but could not recall exactly when this session took place. The one-page notice to the general public dated August 13, 2001, identified the lands to be monumented as *Ibobang* and *Telikeu*. The 3-page calendar attached to the notice referenced a scheduled monumentation for LC/L01-459, land known as *Iyas*. Even accepting that notice was duly served on a representative of Sambal or Plaintiff, it is undisputed that the hearing was taken off-calendar until notice was given to all parties, and that since then, the claim has yet to be re-calendared for a hearing.

The Ngaimis and Ngatpang relinquished claims to the D.O. 126 lands, which includes the property at issue in this case. Consistent with the policy of the Ngaimis, Sambal submitted his claim for land **L205** known as *Iyas* or Oimull, in 1976 and again in 1980, and this claim, identified as Cadastral Lot No. 026 L 01, remains pending. The overwhelming evidence is that notice was never given to Plaintiff before the D.O. and Certificate were issued to NSPLA for Cadastral Lot No. 026 L 01.

Defendant finally argues that even if Plaintiff should have received notice of the hearing but did not, in fact, receive any such notice, he has failed to meet the homesteading requirements and therefore should not be awarded the property. The Court rejects this argument, as it has

Whipps v. Ngatpang State Public Lands Authority, 14 ROP 200 (Tr. Div.) previously done in another case involving pending claims to land within the D.O. 126 lands, because it is undisputed that various people of Ngatpang proceeded to stake out their claims without going through the formal homesteading procedure of either the national or municipal government. *Ngatpang State v. Amboi*, 7 ROP Intrm. 12 (1998).

Plaintiff's evidence, through the testimony of Ellabed Rebluud, Plaintiff himself, and Martin Blodak, as well as the Land Court files for Sambal's claim, establish that Sambal monumented his claim, cleared and planted the property, while waiting for his claim to be heard. Following Sambal's death, Plaintiff was told he would be given notice of the next hearing date following the Land Court's taking the matter off-calendar until the LRO provided proper notice to all the claimants of record. Plaintiff did not receive any notice before the issuance of D.O. 10-22 and C.T. LC 690-04.

Conclusion

For all the foregoing reasons, based on the evidence presented at trial, Plaintiff is entitled to judgment that he is the owner in fee of Sambal's interests in Lot No. 107-8143, Cadastral Lot No. 026 L 01, Tochi Daicho Lot No. 2-part, land known as *Iyas* and/or *Omiull* as docketed in Land Court files LC/L01-459 and LC/L04-229. Certificate LC 690-04, which identifies this same property as *Telikeu* and awarded the property to NSPLA, is hereby declared void ab initio and is hereby vacated. The Land Court is **ORDERED** to cancel the existing Certificate No. LC 690-04 for land described as Cadastral Lot No. 026 L 01 and mistakenly identified as *Telikeu* in favor of Defendant and to issue a new Certificate for said land, land identified as *Oimull*, in favor of Plaintiff in accordance with its regulations.

A separate judgment in accordance herewith will be issued forthwith.

SO ORDERED this 24th day of May, 2007.