THERESIA OLKERIIL,
Appellant,

v.

REPUBLIC OF PALAU and MINISTRY OF EDUCATION,
Appellees.

CIVIL APPEAL NO. 09-027
Civil Action No. 03-018

Supreme Court, Appellate Division
Republic of Palau

Decided: June 23, 2010

[1] **Civil Procedure:** Summary Judgment

A successful Rule 56 movant must establish the absence of any genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. But, in considering such a motion, the court must view all evidence in the light most favorable to the non-moving party as well as draw all inferences in that party's favor. A grant of summary judgment is unwarranted when genuine issues of material fact persist or when, in the absence of genuine issues of material fact, the moving party is not entitled to judgment as a matter of law.

[2] **Civil Procedure:** Counterclaims

In ascertaining the compulsory or permissive nature of a counterclaim, it is relevant (1) whether substantially the same evidence will support or refute the plaintiff's claim as well as the defendant's counterclaim and (2) whether a "logical relationship" exists between the claim and the counterclaim.

Neither test is dispositive, but must be weighed with other considerations in light of the purpose of the compulsory counterclaim requirement: to settle all related claims in one action, thereby avoiding a wasteful multiplicity of litigation on claims arising from a single transaction or occurrence.

[3] **Civil Procedure:** Counterclaims

A failure to plead a compulsory counterclaim under Rule of Civil Procedure 13 bars a party from bringing a later independent action on that claim.

[4] **Civil Procedure:** Counterclaims

Constitutional claims may be barred by the compulsory counterclaim requirement of Rule of Civil Procedure 13.

[5] **Civil Procedure:** Counterclaims

The compulsory counterclaim bar imposed by Rule of Civil Procedure 13 is wholly separate from the common law doctrine of res judicata.

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellees: Nelson J. Werner

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

Theresia Olkeriil appeals the Trial Division's grant of summary judgment in favor of defendants-cum-appellees Republic of Palau and Ministry of Education ("MOE"). The Trial Division found that Olkeriil's current claims were extinguished for failure to bring them as counterclaims in an earlier suit filed by the Republic against Olkeriil and her (now-deceased) husband, Timothy Olkeriil. Although the Republic and MOE requested oral argument, we deny that request and decide this case on the briefs in accord with our appellate rules. *See* ROP R. App. P. 34(a). We affirm the Trial Division's grant of summary judgment.

BACKGROUND

In Civil Action No. 99-299, the Republic sought to enjoin the Olkeriils from trespassing on its land and to eject the Olkeriils and their house and other buildings from its land. *See* Civ. No. 99-299, Decision at 1 (Tr. Div. Mar. 2, 2000). The Trial Division stated that "[t]he land at issue is part of the land on which the Koror Elementary School is situated." *Id.* The Trial Division entered judgment in favor of the Olkeriils, finding that the Olkeriils' deed prevailed over the Republic's deed to the land. *See id.* at 4-5. The Olkeriils did not file any counterclaims to Civil Action No. 99-299.

In the presently-appealed matter, Olkeriil sued the Republic and MOE for trespass, ejectment, an injunction, and damages regarding a parcel of Olkeriil's land allegedly encroached upon by the Koror Elementary School. (*See* Olkeriil Compl. ¶¶ 7-23.). Olkeriil filed a motion for partial summary judgment, but the Trial Division denied the motion, finding that it was not

properly "made and supported" under ROP R. Civ. P. 56(e). The Republic then filed for summary judgment, claiming that Olkeriil's complaint is barred because she did not raise her claims as compulsory counterclaims in the earlier action as required by ROP R. Civ. P. 13(a). After receiving Olkeriil's written opposition and hearing oral argument, the Trial Division issued its Decision and Judgment granting summary judgment in defendants' favor and dismissing Olkeriil's complaint with prejudice.

STANDARD OF REVIEW

[1] Our well-worn standard of review of a grant of summary judgment is *de novo*. *See, e.g.*, *U Corp. v. Shell Co.*, 15 ROP 137, 140 (2008). A successful Rule 56 movant must establish the absence of any genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *See* ROP R. Civ. P. 56(c). But, in considering such a motion, the court must view all evidence in the light most favorable to the non-moving party as well as draw all inferences in that party's favor. *See, e.g.*, *U Corp.*, 15 ROP at 140. A grant of summary judgment is unwarranted when genuine issues of material fact persist or when, in the absence of genuine issues of material fact, the moving party is not entitled to judgment as a matter of law. *See* ROP R. Civ. P. 56(c).

DISCUSSION

Our Rules of Civil Procedure direct:

> A pleading shall state as a compulsory counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:
>
> (1) at the time the action was commenced the claim was the subject of another pending action; or
>
> (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.

ROP R. Civ. P. 13(a) ("Rule 13(a)").

I. Olkeriil's Appellate Arguments

Olkeriil argues that the Republic's earlier claim (Civ. No. 99-299) concerned only the parcel of land where Olkeriil's house was located and did not concern the parcel of land that is the subject matter of the present suit, namely the parcel of land upon which the Koror Elementary School is located. Because, in her view, the two suits concern different parcels of land, the two suits arise out of separate transactions or occurrences and therefore the present claims need not have

been presented as compulsory counterclaims in the earlier suit. Olkeriil also argues that the Trial Division did not define the property line between her land and the Republic's land in Civil Action No. 99-299 and therefore the instant case is needed to fully resolve the boundary.

For purposes of identifying compulsory counterclaims under Rule 13(a), Olkeriil contends that the phrase "arises out of the same transaction or occurrence" has no "all-embracing definition" and should be applied flexibly. (Olkeriil Br. at 7 (quoting 3 James Wm. Moore et al., *Moore's Federal Practice* ¶ 13.13 (2nd ed. 1996)).) But Olkeriil also quotes language stating that "[s]ubject to the exceptions, any claim that is logically related to another claim that is being sued on is properly the basis for a compulsory counterclaim" and "only claims that are unrelated or are related, but within the exceptions, need not be pleaded." (Olkeriil Br. at 8 (quoting 3 Moore et al., *supra*, ¶ 13.13).)

Olkeriil further argues that the presence of Koror Elementary School on her property constitutes a "taking" under ROP Const. art. IV, § 6, and therefore she is entitled to just compensation from the Republic or MOE or both. Olkeriil claims that a procedural rule such as Rule 13(a) cannot function to deprive her of her constitutional right to just compensation for this taking.

II. The Republic and MOE's Appellate Arguments

The Republic and MOE argue that the same parcel of land is at issue in the current action (Civ. No. 03-018) as was at issue in the earlier action (Civ. No. 99-299) and therefore the Trial Division properly dismissed the complaint for violating Rule 13(a). The Republic and MOE contend that Olkeriil has identified the land at issue in both cases as the same 2,482.5 square meters: compare Civ. No. 99-299, Pre-Trial Stmt. by Defs. at 1 (Tr. Div. Feb. 28, 2000) ("The issues to be presented by defendants during trial are the following: 1. Whether the May 27, 1992 Warranty Deed conveyed the ownership and title of 750 tsubos (2,482.50) square meters of Claim No. 90 land to defendants.") with Civ. No. 03-018, Olkeriil Compl. ¶ 5 (Tr. Div. Jan. 27, 2003) ("Plaintiff owns a certain parcel of land located in Ngerbeched Hamlet, Koror State, Palau, more fully described as: Lot No. 40175-part; land known as 'Desekel'; containing the size of 2,482.5 sq. mtr.; and shown on Drawing No. 4021/77 (herein referred to as the 'Land.').").

In assessing the phrase "arises out of the same transaction or occurrence" for purposes of Rule 13(a), the Republic and MOE advocate for the "logical relationship test," which inquires "whether the issues of law and fact raised by the claims are largely the same and whether substantially the same evidence would support or refute both claims." (Republic Br. at 7 (quoting *Sanders v. First Nat'l Bank & Trust Co.*, 936 F.2d 273, 277 (6th Cir. 1991)).) The Republic and MOE cite to additional American case law:

> a claim has a logical relationship to the original claim if it *arises* out of the same aggregate of operative facts as the original claim in two senses: (1) that the same aggregate of operative facts

> serves as the basis of both claims; or (2) that the aggregate core of facts upon which the original claim rests activates additional legal rights in a party defendant that would otherwise remain dormant.

(Republic Br. at 7 (quoting *Revere Copper & Brass Inc. v. Aetna Cas. & Sur. Co.*, 426 F.2d 709, 715 (5th Cir. 1970)); *see also* Republic Br. at 7 (quoting *Maddox v. Kentucky Fin. Co.*, 736 F.2d 380, 383 (6th Cir. 1984) (considering "the interests of judicial economy and efficiency" in analyzing the compulsory nature of a counterclaim)).[1])

As did Olkeriil, the Republic and MOE cite to authority stating that "transaction or occurrence" should be interpreted "flexibly," but by "flexibly," the appellees' authorities mean "broadly." (*See, e.g.*, Republic Br. at 8 (quoting *Warshawsky & Co. v. Arcata Nat'l Corp.*, 552 F.2d 1257, 1261 (7th Cir. 1977) ("As a word of flexible meaning, 'transaction' may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship.")); 3 Moore et al., *supra*, ¶ 13.13 ("courts should give the phrase 'transaction or occurrence that is the subject matter' of the suit a broad realistic interpretation in the interest of avoiding a multiplicity of suits").)

Because the Republic and MOE read the two claims—one claiming that the Olkeriils' house is on the Republic's land and one claiming that Koror Elementary School is on Olkeriil's land—arise from the same transaction or occurrence (the ownership of the greater 2,482.5 square meters of land), they contend that the Trial Division properly found that Rule 13(a) requires that Olkeriil's current claim must have been brought, if at all, as a compulsory counterclaim to the earlier suit.

The Republic and MOE also argue that, through Rule 13(a), res judicata bars the current suit (Civ. No. 03-318). The appellees state that res judicata bars relitigation of a claim or defense if a final judgment exists in which the parties, subject matter, and causes of action are identical or are substantially identical.

In response to Olkeriil's argument that Rule 13(a) cannot bar her claim that the Republic and MOE unconstitutionally have "taken" her property without just compensation, the appellees respond that constitutional claims—just like any other claim—may be waived if not properly raised. Therefore, according to the appellees, Rule 13(a) bars Olkeriil's constitutional claim along with her claims for trespass and ejectment.

ANALYSIS

We have not previously defined the phrase "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim" as used in Rule 13(a). In crafting our definition, we are mindful to avoid substituting words lacking inherent

[1] In its brief the Republic misquoted the language (albeit not the meaning) of the *Maddox* opinion. Counsel should take care that all citations are accurate.

meaning for the ones contained in the rule, as such a definition would bring us no closer to an objective test. *See* 6 Charles Alan Wright, et al., *Federal Practice and Procedure* § 1410 (2d ed. 1990) (finding "futility" in "trying to reduce transaction or occurrence to a single definition" and stating that "[b]y and large, the courts have refrained from making any serious attempt to define the transaction or occurrence concept in a highly explicit fashion.").

[2] The Trial Division applied two tests used by United States federal courts in ascertaining the compulsory or permissive nature of a counterclaim: (1) whether substantially the same evidence will support or refute the plaintiff's claim as well as the defendant's counterclaim, and (2) whether a "logical relationship" exists between the claim and the counterclaim. Both of these tests are helpful in analyzing whether a counterclaim is compulsory, but because neither is without flaw, we refrain from adopting either as dispositive. We must weigh these factors, as well as other considerations where appropriate, in light of the purpose of the compulsory counterclaim requirement: "to settle all related claims in one action, thereby avoiding a wasteful multiplicity of litigation on claims arising from a single transaction or occurrence." 6 Wright et al., *supra*, § 1409.

Examining whether substantially the same evidence will be involved in both the claim and the would-be counterclaim directly reflects the purpose of the compulsory counterclaim rule. The interest of judicial economy is served by the avoidance of multiple suits in which substantially the same evidence is presented. However, we must be careful in weighing the overlap of evidence, because it is not an absolute proxy for the compulsory nature of a counterclaim. *See id.* § 1410 ("[T]his test also has a weakness because some counterclaims may be compulsory even though they do not meet it. Certainly a counterclaim arising from the same events as those underlying plaintiff's claim is compulsory, even though the evidence needed to prove the opposing claims may be substantially different.").

The "logical relationship" test is the leading Rule 13(a) test among federal courts in the United States. *See id.* ("[T]he logical relation test has by far the widest acceptance among the courts."). Our concern with assessing the existence of a "logical relationship" between the claim and the counterclaim is that the meaning of the words "logical relationship" are not inherently apparent on their face. It tests the meaning of words in need of definition ("transaction or occurrence") with words ("logical relationship") which themselves lack definiteness. Although brevity is often a boon, placing these two words in the stead of the original three does not satisfactorily clarify the matter the at hand, and the further we stray from the text of the rule the more likely we are to misconstrue its meaning. We do, however, find some guidance in the explanation of the logical relation test by the American courts: "[A] counterclaim is logically related to the opposing party's claim when separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts." *See Great Lakes Rubber Corp. v. Herbert Cooper Co.*, 286 F.2d 631, 634 (3rd Cir. 1961) (stating that the American version of Rule 13(a) renders counterclaims compulsory "[w]here multiple claims involve many of the same factual issues, or the same factual and legal issues, or

where they are offshoots of the same basic controversy between the parties").

We recognize that the logical relationship test "is a loose standard that should be interpreted broadly and realistically in the interest of avoiding a multiplicity of suits." 20 Am. Jur. 2d *Counterclaim, Recoupment, and Setoff* § 31 (2005). It's flexibility is both a virtue and a vice—it permits consideration of the particular facts at hand while carrying forth the potential for inconsistent application. But the murky work of probing the depths of these subtleties are trails better blazed by future jurisprudential explorers. Marking the trail head—as we have done—is sufficient for purposes of the present appeal. We now apply Rule 13(a) to the disputes at hand.

The same piece of land is at issue in the current suit as was adjudicated in the 1999 suit. As much as Olkeriil would like to now say that the 1999 suit only involved the plot of land on which her house was physically situated, that was not the case. The Trial Division clearly stated in its disposition of the 1999 suit that "[t]he land at issue is part of the land on which the Koror Elementary School is situated." Civ. No. 99-299, Decision at 1 (Tr. Div. Mar. 2, 2000). Nor is it the case that the current suit only involves the plot of land on which a portion of the elementary school is situated. As identified by Olkeriil, both suits call into question the ownership of the greater tract—the 2,482.5 square meters of land—comprising both the plots on which Olkeriils' house and a portion of the elementary school are situated. *See* Civ. No. 99-299, Pre-Trial Stmt. by Defs. at 1 (Tr. Div. Feb. 28, 2000) ("The issues to be presented by defendants during trial are the following: 1. Whether the May 27, 1992 Warranty Deed conveyed the ownership and title of 750 tsubos (2,482.50) square meters of Claim No. 90 land to defendants."); Civ. No. 03-018, Olkeriil Compl.¶ 5 (Tr. Div. Jan. 27, 2003) ("Plaintiff owns a certain parcel of land located in Ngerbeched Hamlet, Koror State, Palau, more fully described as: Lot No. 40175-part; land known as 'Desekel'; containing the size of 2,482.5 sq. mtr.; and shown on Drawing No. 4021/77 (herein referred to as the 'Land')."

[3] Olkeriil's current suit is related to the "same transaction or occurrence" as the 1999 suit—it involves a contest between the same parties over ownership (under the guise of trespass and ejectment) of the same tract of land. Any claim for ejectment or trespass that Olkeriil wished to bring against the government should have been brought as a counterclaim in the 1999 case in which the government attempted to eject Olkeriil from the very same land. Because Olkeriil failed to bring her claims as counterclaims in the earlier suit, Rule 13(a) works to bar her from bringing them now. *See* 6 Wright et al., *supra*, § 1417 ("A failure to plead a compulsory counterclaim bars a party from bringing a later independent action on that claim.).[2]

[2] Olkeriil further argues that the instant action is needed to define the precise boundaries of her property that apparently went undefined in Civ. No. 99-299. As the Trial Division correctly pointed out, if Olkeriil feels that the decision in that case failed to fully address all the issues before the court, she could move to enforce the judgment. A new suit is not necessary for that purpose.

[4] Olkeriil sets forth a constitutional argument in addition to her rule-based one. Olkeriil contends that the elementary school's presence on her land constitutes a "taking" under the Palau Constitution, Article IV, Section 6, and that Rule 13(a) cannot be used to bar such a constitutional claim. Regulation of procedure—such as statutes of limitation and compulsory counterclaims—generally apply to constitutional claims and non-constitutional claims alike. *See* 51 Am. Jur. 2d *Limitation of Actions* § 36 (2000) ("A constitutional claim may become time barred, just as any other claim can, unless *the constitution itself provides otherwise."); see also* 14 PNC §§ 401, *et seq.* (creating no exception for constitutional claims for purposes of the statutes of limitation). *But see Kumangai v. Isechal*, 1 ROP Intrm. 587, 590 (1989) (expressing reluctance in applying time bars to actions involving issues of custom and traditional law under ROP Const. art. V, § 2). The takings clause does not guarantee Olkeriil the right to bring a claim in any manner, at any time, no matter how far removed from the alleged taking; it only creates a cause of action to be brought within the bounds of reasonable procedural rules.[3] As the Trial Division succinctly put it: "Plaintiff cannot sleep on her Constitutional rights." Civ. No. 03-018, Decision and Judgment at 8 (Tr. Div. Sept. 15, 2009).

[5] As its final argument, the Republic wishes to employ res judicata—or a hybrid of res judicata channeled through Rule 13(a)—in barring Olkeriil's claim. We must be plain: the claim-extinguishment that Rule 13(a) has wrought is simply a rule-based one. It is not appropriate to speak of the extinguishment of a claim via Rule 13(a) in terms of the judicially-created common law doctrine of res judicata, nor vice versa. *See* Restatement (Second) of Judgments cmt. b (1980) ("In the absence of a statute or rule of court otherwise providing, the defendant's failure to allege certain facts either as a defense or as a counterclaim does not normally preclude him from relying on those facts in an action subsequently brought by him against the plaintiff."); *id.* § 22 cmt. f ("Normally, in the absence of a compulsory counterclaim statute or rule of court, the defendant has a choice as to whether or not he will pursue his counterclaim in the action brought against him by the plaintiff."); 6 Wright et al., *supra*, § 1410 ("[Most courts apply the doctrine that] absent a compulsory counterclaim rule, a pleader is never barred by claim preclusion from suing independently on a claim that he refrained from pleading as a counterclaim in a prior action."). Let those which are separate be treated separately. Our compulsory counterclaim rule and res judicata are not two sides of the same coin; mixture of these concepts only leads to unnecessary confusion and clouded analysis. And, because we have found a rule-based bar to Olkeriil's claim, we will not indulge in a dicta-laden discussion of res judicata.

CONCLUSION

After reviewing the relevant submissions and legal authorities, we find that the Trial Court's decision is in accord with our own analysis. We therefore AFFIRM the Trial Court's grant of summary judgment.

[3] Of course, overly-strict procedural rules that limit the filing of constitutional claims so severely as to strip the constitutional guarantees of their meaning would not survive review.