ANGELES YANGILMAU and FLORENTINE YANGILMAU , Appellants,

v.

MARIANO CARLOS, Appellee.

CIVIL APPEAL NO. 13-008
Civil Action Nos. 09-204, -284, and -288

Supreme Court, Appellate Division
Republic of Palau

Decided: April 4, 2014

[1] **Evidence:** Testimony of Witnesses

A trial court is not required to accept uncontradicted testimony as true.

[2] **Property:** Reasonably Exclusive Possession

With respect to *Echang* land, in a case where one party has clear legal title, both parties have use rights, and neither party can show continuous use of the land in question, the party who holds legal title is entitled to reasonably exclusive possession of the land.

Counsel for Appellants: J. Uduch Sengebau Senior
Counsel for Appellee: William L. Ridpath

BEFORE: KATHLEEN M. SALII, Associate Justice; and LOURDES F. MATERNE. Associate Justice; and KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable R. ASHBY PATE, Associate Justice, presiding.

PER CURIAM:

Angeles Yangilmau and Florentine Yangilmau appeal the Trial Division's Judgment and Decision in this trespass case stemming from competing gardens on a portion of Tochi Daicho Lot 1590 (Lot 1590) above the Echang road. For the reasons set forth below, the decision of the Trial Division is **AFFIRMED.**

BACKGROUND

This is a trespass case stemming from a dispute over competing farms in *Echang* on a portion of Tochi Daicho Lot 1590 ("Lot 1590") above the Echang Road on Arakebesang Island. The underlying dispute between the parties—Mariano Carlos and his family ("Carlos") and Angeles Yangilmau and her family (the "Yangilmaus" or "Yangilmau")—has been going on for over thirty years. A brief explanation of the earlier litigation concerning the land in *Echang* is necessary to discussion of this matter.

Civil Action No. 354-93 began in 1993 as a quiet title action over several lots in *Echang*. After an initial trial, the court concluded that the heirs of Borja owned the land, including Lot 1590, and that the ownership rights were "subject to the rights of all persons who have or had a family or lineage member who resided in *Echang* in 1962 to reside and use land in *Echang* without disturbance." Judgment, *Dalton v. Choi Engineering Corp.*, Civ. Action No. 354-93 (Tr. Div. Apr. 15, 1997). The latter conclusion was based on the Echang Land

Settlement Act of 1962 (Settlement Act), which provides, in relevant part, that then-residents of *Echang* and their heirs would be allowed to peacefully use the land "for an indefinite period in the future."

In the first of three appeals, we reversed in part and remanded for determination of who possessed legal title to Lot 1590 and other lots. *Heirs of Drairoro v. Dalton*, 7 ROP Intrm. 162, 168 (1999). But we affirmed the trial court's determination that "all of the land in question located within Echang is subject to a use right in the residents of Echang as of 1962 and their decedents." *Id.* Florentine Yangilmau was a party to Civil Action 354-93, and, upon remand and during interrogatories, he stated that he had "no interest" in Lot 1590. Ultimately, pursuant to a quitclaim deed issued as compensation for his legal services, Mariano Carlos was adjudged the owner of a portion of Lot 1590, including the area above the Echang road, which is the subject of the present litigation. Order, *Dalton v. Choi Engineering Corp.*, Civil Action No. 354-93, at 6 (July 28, 2004).

In spite of Carlos's legal title to the land, several others began or continued to farm the land. Of particular relevance to the matter before the Court, the Yangilmaus went so far as to obtain a temporary restraining order to prevent Carlos from entering or fencing in the land. The Yangilmaus contended that the land was part of their lot, which borders Lot 1590. Carlos found vegetables in his garden, including taro plants, uprooted. An employee hired to farm the land for the Yangilmaus admitted to removing some of the Carlos' vegetables and to planting several mahogany, betel nut, coconut, and noni trees on the property.

Carlos sued the Yangilmaus and others for trespass and damage to his property, which resulted in the case presently before the Court. The history of that dispute is laid out in substantial detail in the two final decisions of the Trial Division. We recite only the facts that are salient to this appeal.

The Yangilmaus claimed a right to enter and farm Lot 1590 by virtue of their long tenure farming in the area and based on their dispute of the boundary line between Lot 1590 and their adjoining lot. After a trial, the Trial Division found in favor of Carlos. In particular, the court rejected the Yangilmaus' claim to a use right to the land because it determined that the earlier case, Civil Action 354-93, was preclusive as to Carlos's ownership. In the body of its decision, the court further stated that the Defendants were jointly and severally liable for the loss of the Carlos's plants. The Yangilmaus appealed arguing that they have a right to farm Lot 1590 pursuant to the Settlement Act.

On appeal, we affirmed the Trial Division's Judgment and Decision relating to the liability and the damages flowing from the underlying torts committed by the Yangilmaus on the land, but reversed the portion of the Trial Division's Judgment dealing with the Yangilmaus' use rights to the land in question. Specifically, we stated that, "[b]ecause the Trial Division erred in its determination that the judgment in Civil Action 354-93 precludes the Yangilmaus claim to a use right to portions of Lot 1590, we reverse the judgment against the Yangilmaus and remand for proceedings consistent with this Opinion." *Carlos v. Carlos*, 19 ROP 53, 59 (2012) (original emphasis omitted).

On remand, the Trial Division considered whether the Yangilmaus possessed

use rights pursuant to the terms of the Echang Covenant contained in the 1962 Settlement Act to all *Echang* land and, if so, whether the portions of the Tochi Daicho Lot 1590 located within *Echang* to which Carlos holds title are subject to the Yangilmaus' use rights. On June 13, 2013, the Trial Division concluded that: (1) the Yangilmaus possess use rights in all *Echang* land; (2) Carlos possesses use rights in all *Echang* land; (3) the Yangilmaus failed to prove continuous farming activities on the portion of Lot 1590 owned by Carlos; (4) because the Yangilmaus failed to prove continuous farming activities on the portion of Lot 1590 owned by Carlos, the Yangilmaus are not entitled to "reasonably exclusive possession" thereof; (5) Carlos holds title to the portion of Lot 1590 at issue in this dispute; and (6) by virtue of possessing both title and a competing use right in this particular *Echang* land, Carlos is entitled to reasonably exclusive possession of these lands.

Appellants timely appeal.

STANDARD OF REVIEW

We review findings of fact from the Trial Division for clear error. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Interm. 317, 318 (2001). As long as the court's findings are based on admissible evidence that could lead a "reasonable trier of fact" to the same result, we will not disturb those findings. *Id.* We review legal conclusions de novo. *Id.*

ANALYSIS

The Yangilmaus assert that the Trial Court erred in concluding that Carlos's possession of both title and competing use right to the land in question entitles him to reasonably exclusive possession of the land.[1] Specifically, the Yangilmaus contend that each of the Trial Court's conclusions discussed above is factually and legally erroneous.

I. The Trial Court's Findings of Fact.

The Yangilmaus contend that the Trial Court erred in determining that they failed to prove continuous farming activities on the portion of Lot 1590 owned by Carlos. The Yangilmaus believe that they established that they had farmed the land in question from 1947 to 2009 and they rely on the testimonies of Celestine Yangilmau, Angeles Yangilmau and Florentine Yangilmau in support of this assertion. Further, they assert that Celestine's testimony regarding the boundaries on his father's lease was uncontradicted.

[1] As an initial matter, we note that a "trial court is not required to accept uncontradicted testimony as true." *Ngetelkou Lineage v. Orakiblai Clan*, 17 ROP 88, 92 (2010) (citing *Ngerungor Clan v. Mochouang Clan*, 8 ROP Intrm. 94, 96 (1999)). However, the record in this case indicates that evidence and testimony were introduced which are contrary to the Yangilmaus' position

[1] Although the Yangilmaus pose this question as the central issue to be considered by this Court upon appeal, they do not further propound upon this assignment of error in their brief. Nevertheless, we address this issue in the course of our discussion resolving their other assignments of error. Additionally, in the Argument section of their brief, they present a different issue as the central issue upon appeal. Specifically, in the opening paragraph of their Argument section, Appellants assert that "[t]he issue is whether the Trial Court erred as a matter of law in failing to address whether Yangilmau's use right under covenant of the 1962 Land Settlement Agreement to his farm located on the portion of Tochi Daicho Lot 1590 at issue runs with the land." We address this issue in the course of our review of the Trial Court's findings.

regarding the location of the specific land in question. In its thorough Opinion, the Trial Division discussed its basis for reaching its ultimate conclusion that "whatever farming activities that Yangilmaus may have historically conducted in and around the land in question appear not to have been on Lot 1590, but rather on Lot 1718(b), which is well below Carlos's parcel." This conclusion was based upon the testimony of Carlos and his witnesses, upon the testimony of Florentine Yangilmau in which he expresses, at the least, confusion as to the exact location of the land in question, as well as upon Florentine Yangilmau's failure to argue for—or even mention—the existence of a use right to Lot 1590 in Civil Action No. 354-93. Given the ample evidence in the record which could lead a reasonable trier of fact to the same result, we will not disturb the Trial Court's findings in this regard.[2]

The Yangilmaus also appear to challenge the Trial Court's finding that Carlos holds title to the portion of Lot 1590 at issue in this dispute. The Yangilmaus' brief is unclear as to their rationale or basis for arguing that this conclusion is "clearly erroneous." Carlos's title to the land at issue in this dispute was established by the decision in *Dalton v. Choi Engineering Corp.*, Civil Action No. 354-93 (July 28, 2004). Therefore, this is not a determination that can be challenged by this appeal.

[2] It is also worth noting that, in their discussion regarding who was first in time to farm the land, the Yangilmaus appear to concede that Carlos did, in fact, farm the land in question. Thus, the Yangilmaus tacitly admit that whatever farming activities they may have conducted were interrupted and, as a corollary, were not continuous. This lends further credence to the Trial Division's finding that the Yangilmaus failed to establish continuous farming activities on the land in question.

II. The Trial Court's Conclusions of Law.

The Yangilmaus challenge the Trial Division's determination that Carlos is entitled to reasonably exclusive possession of the land by virtue of possessing both title and a competing use right. Although their argument is undeveloped at best, the Yangilmaus appear to argue that they should be entitled to reasonably exclusive possession and that Carlos' possession of title cannot extinguish their use rights to the land.

As discussed at length in the lower court's Opinion, and as clarified below in this Opinion, title to *Echang* land does not, in and of itself, trump a use right. However, neither does a use right, without more, establish reasonably exclusive possession to a particular parcel of land. In this case, it was not Carlos's title to the land at issue, alone, which precluded the Yangilmaus' reasonably exclusive possession. Rather, it was a combination of factors; most notably the Yangilmaus' failure to establish a meaningful claim for reasonably exclusive possession of the land in question.

The Trial Court explained in its Opinion that its findings were, in part, an attempt to give meaningful effect to the Appellate Division's announcement in *Torul v. Arbedul* that it was never the intent of the Echang Covenant to create entirely new rights in the land for *Echang* residents. *Torul v. Arbedul*, 3 TTR 486, 492 (Tr. Div. 1968) (The 1962 Settlement "sought to re-establish former rights rather than to create entirely new ones."). In applying that theory to the matter before it, the Trial Division held that "if Yangilmau has not proven continuous farming activities, his use right should not entitle him to a reasonably exclusive possession of new

lands to which he previously had no meaningful claim." This singular statement accurately captures the thesis of these types of cases which strive to protect *Echang* residents from unreasonable interference of their use and enjoyment of *their property*—meaning property *to which they have some entitlement*.

The Trial Division's choice of words is also significant because it explains that its decision to extinguish the Yangilmaus' use rights was not based solely upon the fact that Carlos held legal title to the land. Indeed, as the Yangilmaus point out, this is the precise concept which we determined did *not* eliminate their use rights in our previous Appellate decision. *Carlos*, 19 ROP at 59 ("while there may be some other reason that the Yangilmaus' use rights have extinguished, the determination that [Carlos] has legal title did not do so."). Neither was the Trial Division's decision based exclusively on the fact that the Yangilmaus had not established continuous farming activities. The Trial Division even noted that Carlos had likewise failed to establish continuous farming activities. Rather, what the Trial Division established was that use rights alone, without more, did not create reasonably exclusive possession. Thus, the Yangilmaus needed some other tie to the land in question before reasonably exclusive possession could be established. This conclusion properly echoes the sentiment of the dicta in *Torul v. Arbedul* and the underlying purpose of the 1962 Settlement Act itself, which was to "re-establish former rights rather than to create entirely new ones." *Torul*, 3 TTR at 492.

Rather than leave the matter unresolved because of both parties' failure to establish continuous farming activities, the Trial Division relied on previous Appellate and Trial level decisions in this case and determined that there existed other methods of establishing reasonably exclusive possession of *Echang* lands. Specifically, the Trial Division concluded that, "in addition to proving continuous farming activities as a means of establishing reasonably exclusive possession, an *Echang* resident with use rights may also establish reasonably exclusive possession in lands to which he or she holds title as against another *Echang* resident with use rights but no title." Ultimately, the Trial Division's finding that Carlos, and not the Yangilmaus, held reasonably exclusive possession to the land in question was premised upon that conclusion, which we now affirm.

The Yangilmaus also repeatedly assert that the covenant provided for in the 1962 Settlement Act runs with the land and, therefore, land owners—like Carlos—are bound indefinitely to the rights of the people residing in *Echang*. We agree to an extent. The covenant does run with the land; and land owners are bound indefinitely to refrain from unreasonably interfering with the use rights of residents of *Echang*. What the Yangilmaus fail to grasp, however, is that it must first be established that a party's use rights are superior to the land owner's own use rights in order to bind said land owner indefinitely pursuant to the terms of the covenant in the 1962 Settlement Act. Here, the Yangilmaus failed to establish that their use rights were superior to those of Carlos.

[2] Finally, in various sections of their brief, the Yangilmaus seem to suggest that they are entitled to reasonably exclusive possession because they were first in time to farm the land in question. The Court has conducted a review of the record below and, although they mention several times that they have farmed the land for many years, the

Court cannot find reference to the specific argument that merely being first in time entitles them to reasonably exclusive possession. Arguments not raised in the court below are waived and cannot be argued for the first time on appeal. *Children of Merep v. Youlbeluu Lineage*, 12 ROP 25, 27 (2004); *Tulop v. Palau Election Comm'n*, 12 ROP 100, 106 (2005). Furthermore, as a corollary to our ruling affirming the Trial Court's factual determination that the Yangilmaus' farming activities were not conducted on the land in question, Appellants' "first in time" argument, even if properly preserved, similarly does not relate to the land at issue in this dispute. Therefore, we decline to address whether being first in time is yet another way *Echang* residents with use rights can establish reasonably exclusive possession of *Echang* lands. We simply hold that, in a case where one party has clear legal title, both parties have use rights, and neither party can show continuous use of the land in question, the party who holds legal title is entitled to reasonably exclusive possession of the land.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is **AFFIRMED.**