KOROR STATE PUBLIC LANDS AUTHORITY,
Appellant,

v.

DIBECH SINAICHI WONG,
Appellee.

CIVIL APPEAL NO. 12-006
Civil Action No. 11-143

Supreme Court, Appellate Division
Republic of Palau

Decided: October 31, 2012

[1] **Appeal and Error**: Standard of Review

Summary judgment is a matter of law reviewed de novo. Drawing all inferences from the evidence in favor of the non-moving party, the Appellate Division evaluates whether there were no genuine issues of material fact and whether the moving party was entitled to judgment as a matter of law.

[2] **Land Commission/LCHO/Land Court**: Collateral Attack

A party attempting to collaterally attack a land determination must show by clear and convincing evidence that statutory or constitutional procedural requirements were not complied with" during the land claims process.

[3] **Land Commission/LCHO/Land Court**: Collateral Attack

Provided a party was given the opportunity to be heard in the manner anticipated by statute,

the Court will not void the Land Court's determination of ownership.

[4] **Land Commission/LCHO/Land Court**: Claims

Separate and distinct procedural rules apply to superior title and return of public land claims.

Counsel for Appellant: Mark Jesperson
Counsel for Appellee: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

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

PER CURIAM:[†]

Appellant Koror State Public Lands Authority ("KSPLA") appeals the grant of summary judgment by the Trial Division in favor of Appellee Dibech Sinaichi Wong in this collateral attack on a Determination of Ownership issued by the Land Court. Because KSPLA was unable to show that the Land Court made a constitutional or procedural error rendering its determination void, we affirm.

I. BACKGROUND

On April 15, 2005, a public Notice of Monumentation and Survey was issued for a registration area in Ngerbeched Hamlet, including Tochi Daicho Lot 1173 ("Lot 1173"), known as *Babremchimch*. Koror State Government was not specifically served with the notice until June 2, 2005, the day before the scheduled deadline for filing claims on June 3, 2005. Wong was among the claimants, but KSPLA filed no claim to the lot. Although it filed no claims specifically identifying Lot 1173, KSPLA has a standing claim to all public lands in Koror based on a letter sent from former KSPLA Director Alexander Merep to the Land Claims Hearing Office on December 5, 1988. In response to this letter, then-Senior Land Claims Hearing Officer Jonathan Koshiba gave KSPLA a list of "a total of 336 individual claims against public lands in Koror State." Among the listed claims is Wong's claim to Lot 1173, though Koshiba's letter warned that some of the claims listed "may be referring to private land."

On May 1, 2007, all of the other private claimants withdrew their claims, and the Land Court vacated a scheduled hearing on the land. The court issued a Determination of Ownership to Wong on May 22, 2007.

Around July 2010, a KSPLA lessee[1] residing on Lot 1173 informed KSPLA that he

[†] EDITOR'S NOTE: Readers are advised that this case was in part overruled by implication due to conflicting language in the later cases *Klai Clan v. Airai State Public Lands Authority*, 20 ROP 253 (2013), and *Idid Clan v. Koror State Public Lands Authority*, 20 ROP 270 (2013). The Appellate Division recognized this in a subsequent case, slated for publication in the next volume of this Reporter, *Koror State Public Lands Authority v. Idid Clan*, 22 ROP ____, Civ. App. No. 14-005, slip op at * 5 n. 2 (May 26, 2015).

[1] Although KSPLA refers in its Opening Brief to a KSPLA lessee who had been living on the subject land in 2010, KSPLA did not make any reference to such a lease in its complaint or at the summary-judgment stage in the Trial Division. Moreover, KSPLA did not present any evidence at trial or on appeal to support its claim that it had leased the disputed lands, nor did it rely on the existence of any such lease in its arguments

heard the land was now owned by a private party. KSPLA filed a complaint with the Trial Division, asking that court declare void the Land Court's Determination of Ownership.

Wong and KSPLA filed cross-motions for summary judgment. The Trial Division acknowledged KSPLA's general claim to public lands in Koror, but determined that the evidence supported the conclusion that Lot 1173 was private land. The court pointed to the fact that Lot 1173 is listed as privately-owned in the Tochi Daicho and to the affidavits of representatives from BLS stating that they had no records indicating that Lot 1173 was public. Because it determined that the land was not public, the Trial Division granted summary judgment in favor of Wong.

KSPLA timely appealed, arguing that it was entitled to prevail in its collateral attack on the Land Court determination because (1) BLS and the LCHO should have determined that Lot 1173 is public and therefore KSPLA was not required to attend monumentation or file a claim and should have been treated as a party, and (2) KSPLA was entitled to, but did not receive, actual personal notice of the hearing regarding Lot 1173.[2]

II. STANDARD OF REVIEW

[1] Summary judgment is a matter of law reviewed de novo. *Giraked v. Estate of Rechucher*, 12 ROP 133, 139 (2005). Drawing all inferences from the evidence in favor of the non-moving party, we evaluate whether there was no genuine issue of material fact such that the moving party was entitled to judgment as a matter of law. *Id.*; *see also* ROP R. Civ. P. 56(c).

III. ANALYSIS

[2][3][4] In a collateral attack on a Land Court proceeding, the burden of proof is squarely on the party seeking to set aside the court's determination. *Ucherremasech v. Wong*, 5 ROP Intrm. 142, 146 (1995). A party leveling such an attack must show by clear and convincing evidence that "statutory or constitutional procedural requirements were not complied with" during the land claims process. *Id.* at 147. The touchstone of our review in such cases is due process. *See Uchellas v. Etpison*, 5 ROP Intrm. 86, 89 (1995). Provided a party was given the opportunity to be heard in the manner anticipated by statute, we will not void the Land Court's determination of ownership.

Our initial task is to ascertain which statutory rules apply in this case. The applicable standard in a land claim case turns primarily on the nature of the claim being pursued. Generally, there are two types of land claims in Palau. First, a party may file a claim of *superior ownership*. This is usually done either pursuant to the procedure outlined in 35 PNC §§ 1307-1312, which describes the process by which the Bureau of Lands and Surveys ("BLS") and the Land Court are to

to the Court. In addition, at summary judgment, Appellee Wong provided the affidavit of BLS employee, Akino Mekoll, who attested that BLS did not have any records suggesting public ownership of the land at issue. Thus, the Court's review of the record did not reveal any evidence to support a finding that KSPLA had leased the disputed land.

[2] KSPLA also argues the Trial Division erred in its application of ROP R. Civ. P. 60(b). However, because we affirm the trial court on other grounds, we need not address whether it was proper for the court to apply Rule 60(b)(4).

proceed with ownership determinations.[3] Briefly, the procedures outlined in these sections include (1) the issuance of public notice of monumentation and hearing and specific notice to "all persons personally known to the Registration Officer to claim an interest in the land, and to all persons listed on the Land Acquisition Records," 35 PNC § 1309(b) & (c); (2) a thirty-day period in which all claims to the land must be filed or else they are forfeited, § 1309(a); (3) a monumentation session by BLS with participation by the parties, § 1307; and (4) some form of adjudication resulting in a determination of ownership, as a result of mediation, settlement, or hearing, §§ 1308, 1310, 1312.

The second type of claim is for *return of public lands* pursuant to 35 PNC § 1304(b). In these cases the public land authorities, as presumptive owners, have a leg up on other claimants. Claimants are private parties who argue that the land at issue was wrongfully taken from them or their predecessors-in-interest by a colonial power. *See* § 1304(b). In such cases, the claimant *admits* that title to the land is held by a public entity, but seeks its return. *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 167 (2004). Unlike in superior ownership cases, return of public lands cases may be won by a public land authority who does not even participate in the proceedings. *Masang v. Ngirmang*, 9 ROP 215, 216 (2002). Because the land authority in such cases is the admitted owner, a court may decide that no private claimant has met its burden and award the land by default to the "prior public owner." *Id.*

[3] A party may also claim superior ownership by filing a quiet title action in the Trial Division. In such cases, the determination of ownership proceedings are initiated by the claimant rather than by BLS and are preclusive against all defendants. *See* 65 Am. Jur. Quieting Title § 81 (2011).

A. Nature of Wong's Claim and the Applicable Legal Standard

KSPLA's first argument is that it was not required to comply with the claim procedures outlined in 35 PNC § 1309(c)(1). KSPLA does not seem to dispute that Wong's claim was styled as a claim of superior ownership, not one for return of public land.[4] However, KSPLA contends that because there was some evidence in the records available to BLS that Lot 1173 might be public land, this case should have been treated as a return-of-public-lands case, in which KSPLA was not obliged to stake its claim or make its case. KSPLA argues that, because 35 PNC § 101 defines "public lands" broadly,[5] public land authorities should be treated as parties whenever there is "any evidence that the lands were either 'owned' or 'maintained' as [public lands]."

We decline to adopt this standard. Instead, we determine that a public land authority must comply with the claim-filing procedures of 35 PNC § 1309(c)(1) in all cases involving claims of superior ownership, unless it is clear from the record available to BLS and the Land Court that the land is most likely publicly-owned. There is no statutory basis for treating public and private claims differently in superior ownership cases. Certainly, in return-of-public-lands cases,

[4] This understanding of Wong's claim is supported by the evidence KSPLA submits on appeal, a copy of a quiet title petition in which Dibech Wong asserted superior ownership of the land, denying any government ownership.

[5] 35 PNC § 101 defines public lands as "those lands situated within the Republic which were owned or maintained by the Japanese administration or the Trust Territory Government as government or public lands, and such other lands as the national government has acquired or may hereafter acquire for public purposes."

KSPLA is exempt from the claim-filing rules. *See Masang*, 9 ROP at 216. However, § 1309(c)(1) does not distinguish between public and private claimants. It requires "[a]ll claims to be filed within 30 days." This case illustrates the folly of giving land authorities the prerogative to forgo filing a claim. The result is that the Land Court does not receive the benefit of full argument on all possible claims. This short-circuits the adversarial process and jeopardizes the court's ability to reach the correct outcome.

The standard we adopt is consistent with our previous holdings concerning the distinct procedural rules applicable to superior title cases and return-of-public-lands cases. In *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185-86 (2002), for example, we held that a private claimant asserting superior title to a parcel of purportedly public land need not abide by the claim-filing deadline that applies to return of public lands cases. *See also Carlos v. Ngarchelong State Pub. Lands Auth.*, 8 ROP Intrm. 270, 271-72 (2001).

An exception applies where it is clear from the record available to BLS and the Land Court that the land is public. For example, the land may be listed in the Tochi Daicho as publicly owned during the Japanese administration or BLS may have records that indicate current public projects or ownership of the land. *See Carlos*, 8 ROP Intrm. at 171-72 (holding that if the Tochi Daicho lists land as public, return-of-public-lands standard applies). In such cases, the styling of the claim is irrelevant. The appropriate standard to apply will be that in 35 PNC § 1304(b). Absent a showing by the private claimants that the land was not public, a land authority will be the presumptive owner and the private claimants will be subject to the three-fold burden of § 1304(b).

The unique procedural posture of this case makes the burden higher on KSPLA than it would have been before the Land Court. KSPLA was obliged to show by clear and convincing evidence that the Land Court committed a constitutional or procedural error. *Ucherremasech*, 5 ROP Intrm. at 147. KSPLA failed to present evidence that Lot 1173 was clearly public land. Instead, before the Trial Division, KSPLA merely pointed to hints in the record that the land was public. On appeal, it does the same. First, KSPLA notes that a claim to Lot 1173 filed in 1979 lists the Tochi Daicho owner as "coveremnt" (sic). Nonetheless, KSPLA does not deny that the Tochi Daicho lists a private party as the owner of Lot 1173. It was not improper, in light of this document, for the Land Court to conclude that the land was private. KSPLA next relies upon a quitclaim deed, which KSPLA contends states that the "government continues claiming ownership of the said land at present." However, this merely suggests the presence of a government *claim*, not government *ownership*.

We appreciate that a claim-focused approach may cause miscategorization of public land as private land. However, this can be remedied through the adversarial process. As we have cautioned in the past, a land authority that fails to participate in proceedings assumes a certain risk of error because of the Land Court's virtually plenary power over fact-finding. *Palau Pub. Lands Auth. v. Ngiratang*, 13 ROP 90, 96 n.5 (2006). This is particularly true when the Land Authority does not deign to participate until a collateral action, in which the Trial Division reviews the Land Court's determination only for apparent errors of law.

B. Actual Notice

Section 1309(b) requires BLS to give notice describing the claim and stating "the date, time, and place of the monumentation" at least forty-five days before monumentation to "all persons personally known to the Registration Officer to claim an interest in the land." We have made clear that "unless [an] appellant lacked either actual or constructive notice of the LCHO hearing regarding the property, the determination of ownership is binding on him." *Ucherremasech*, 5 ROP Intrm. at 145. In the absence of a constitutional or procedural violation, land court determinations pursuant to the claims process are "conclusive as against the world." *Uchellas*, 5 ROP Intrm. at 89.

Koror State[6] was served with notice four days before monumentation was to commence on June 6, 2005. KSPLA states that this was insufficient notice. However, we note that KSPLA does not provide any explanation whatsoever describing why the notice it received was defective. We decline to manufacture a basis for KSPLA's objection beyond the obvious and conceded fact that the notice was served well after forty-five days before the hearing. The issue, then, is whether this *delay* constitutes a violation of the statute sufficient to release KSPLA from the Land Court's judgment and to reopen the proceedings. We conclude that it is not.

This Court has set a high burden for collateral attacks on Land Court proceedings because of the importance of "finality in determinations of ownership of real property." *Ucherremasech*, 5 ROP Intrm. at 146. However, collateral attack is allowed in order to ensure that all interested parties have a chance to argue their respective positions before the court. Regarding private parties deprived of notice, we have framed this as a due process issue.[7] *See Uchellas*, 5 ROP Intrm. at 89. Thus, unless a party has been deprived of a full and fair opportunity to be heard, a collateral attack must fail.

We assume without deciding that KSPLA was entitled to actual notice as a claimant under 35 PNC § 1309(b)(3).[8] KSPLA fails to explain how the untimely notice in this case was sufficient to deprive it of an opportunity to be heard. Once a party receives actual notice, it is incumbent on the party to vindicate its interest—not to take a wait-and-see approach, hoping for a positive outcome without expending any resources and relying on collateral attack as an alternative route to success. KSPLA gives no explanation for its inaction in this case. It did not elect to participate in monumentation and it did not seek to become a party by filing a claim or intervening in the action. Any of these avenues would have allowed KSPLA to have its day in court.

[6] KSPLA does not argue that it was improper for BLS to serve a Koror State Government employee.

[7] Though land authorities do not have due process rights per se, reciprocity and an interest in accuracy favor ensuring that interested public parties have their day in court as well as private parties.

[8] It is not clear that KSPLA was entitled to personal notice. The statute only requires notice to all those who "*claim* an interest in the land." 35 PNC § 1309(b)(3) (emphasis added). We have distinguished between "interested parties" (the phrase used in an earlier version of the statute) and those who *might* have some interest in an action. "[A] party is a person or entity who has *expressed* an interest in the outcome of an action, i.e., someone who has filed a claim." *Nakamura v. Isechal*, 10 ROP 134, 137 (2003). Arguably, former Director Merep's letter constitutes a claim to Lot 1173. Yet even this is unclear based on the foregoing discussion regarding whether the land is "public."

IV. CONCLUSION

Unless it is clear from the records available to BLS that land is publicly owned or maintained, public land authorities have a duty to file a claim just like every other land claimant. The rule we announce today does not lessen the duties assigned to BLS or the Land Court by statute. Instead, it ensures that, in a disputed ownership case, the Land Court will have the benefit of the adversarial process in reaching its conclusion and the court's determination of ownership will create true repose.

For the foregoing reasons, we **AFFIRM.**