Koror State Public Lands Authority
v.
Palau Public Lands Authority

Civil Appeal No. 14-012
Appeal from LC/B No. 09-0127

Supreme Court, Appellate Division
Republic of Palau

Decided: February 17, 2015

Counsel for KSPLA ..... Debra Lefing
Counsel for PPLA ..... Vameline Singeo

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
R. ASHBY PATE, Associate Justice
KATHERINE A. MARAMAN, Part-Time Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

[1] **Land Court**: Public Lands Authorities
Return of Public Lands: Elements of Claim

The statutory filing requirements cited by KSPLA, however, apply specifically to citizen claimants. *See* 35 PNC § 1304(b) ("All claims for public land *by citizens* of the Republic must have been filed on or before January 1, 1989." (emphasis added)).

[2] **Land Court**: Public Lands Authorities

A land authority is not required to participate in Land Court proceedings, satisfy any burden, or otherwise affirmatively assert its claim to a piece of public land in order to retain control over such land.

[3] **Appeal and Error**: Basis of Appeal

We have long held that the scope of appellate review is, in general, limited to the claims and theories presented by the parties to the appeal.

[4] **Appeal and Error**: Standard of Review
Standard of Review: Discretionary Matters
Standard of Review: Intervention

A lower court's decision on a motion to intervene "is to be overturned only if it constitutes an abuse of discretion."

[5] **Property**: Reversionary Interest

A reversionary interest is what remains in a transferor who owns a vested interest and has made a transfer that does not exhaust the transferor's interest in the property transferred, so that an interest in the transferred property may return to the transferor at some future date.

OPINION

Per Curiam:

This appeal arises from the Land Court's determination that Lot 2006 B 012-001 is public land under the administration of Palau Public Lands Authority (PPLA), with the exception of land within the lot that Koror State Public Lands Authority (KSPLA) presently leases to others. For the following reasons, the decision of the Land Court is **AFFIRMED**.

BACKGROUND

Both PPLA and KSPLA claimed to be the proper administrator of Lot 2006 B 012-001, which is a subsection of Lot 40947 located in Koror State. Through a series of deeds and agreements executed in the early 1980s, PPLA transferred to KSPLA the majority of the public lands located in Koror State that PPLA had acquired from the Trust Territory Government. These efforts apparently culminated in a quitclaim deed executed in 1983, which conveyed all of PPLA's remaining interests in any public lands within the boundaries of Koror State to KSPLA, subject to two exceptions. One exception was Lot 40947, which was then the site of Micronesian Occupational College (MOC) and is currently the site of Palau Community College (PCC).

In 1993, Title 22 of the Palau National Code (PNC), which concerns education, was enacted. With respect to the PCC campus, this law states, in pertinent part:

> The Republic shall provide land it deems necessary for the College. Currently the United States Government holds title to the land occupied or used by the College more particularly described as Lot No. 40947 . . . . In the event that the Trusteeship ends or the United States Government no longer holds title to said land by virtue of the termination of the Trusteeship Agreement, or if the United States Government conveys any or all interest in said land to the Republic in any other manner, or in the event that the Republic of Palau obtains an interest in said land, the Board of Trustees of Palau Community College is hereby empowered to receive, reserve and keep the interest in said land for the exclusive use of the College. *Provisions of any law to the contrary*

> *notwithstanding, the Palau Public Lands Authority shall not alienate any interest in said land.*

22 PNC § 341(b) (emphasis added). This section further provides, "Any claims that may be raised under Article XIII, Section 10 of the Constitution for any interest in any portion of said land may only be instituted as an action in inverse condemnation."

In 1997, the Republic of Palau (ROP), PPLA, Koror State Government (KSG), and KSPLA entered into a Land Settlement Agreement to consensually resolve an array of lawsuits concerning, *inter alia*, the validity of the 1983 deed. Paragraph ten of the Land Settlement Agreement identified sixty-four "areas" that "KSPLA and KSG will continue to allow the ROP to indefinitely use, free of charge," including "PCC Buildings, 40947." Paragraph twenty-one of this agreement, however, further addressed Lot 40947, as follows:

> ROP and PPLA acknowledge that they are constrained by 22 PNC § 341(b) from issuing any deeds of lands contained within Lot No. 40947, Palau Community College site. ROP and PPLA also acknowledge that KSPLA believes that such a deed is unnecessary. ROP will survey the PCC lot within fifteen days of the execution of this Agreement to assist with the relocation of the current leaseholds to locations satisfactory to PCC, and to provide locations for any other leases to be given on that lot, none others to be later given except as jointly agreed by ROP, PCC, and KSPLA.

In 2001, the ROP, PPLA, KSPLA, and KSG ostensibly executed an amendment to the 1997 Land Settlement Agreement (the 2001 Amendment). Pursuant to the 2001 Amendment, paragraph ten of the Land Settlement Agreement would be amended to read that, in the event the referenced areas were no longer used for their current purposes, they would "revert back to KSPLA automatically." The 2001 Amendment further purported to amend paragraph twenty-one of the Land Settlement Agreement to include the following, additional sentence: "In the event that PCC is relocated or ceases to exist, the land on which it is located will revert automatically to KSPLA."

The validity of these amendments came into question in 2008, when PPLA filed suit against KSPLA to invalidate the 2001 Amendment. Initially, the Trial Division dismissed the case, concluding that the PPLA chairman who signed the 2001 Amendment had the apparent authority to bind PPLA. On appeal, the Appellate Division reversed, holding that "because PPLA is a public entity and [the chairman] is a public officer, the doctrine of apparent authority does not apply [and cannot] bind PPLA to the 2001 Amendment." *Palau Pub. Lands Auth. v. Koror State Pub. Lands Auth.*, 19 ROP 24, 29 (2011). Rather, the Appellate Division found that PPLA could only be bound by the chairman's exercise of actual authority. *Id.* As "the trial court did not have any information concerning [the chairman's] actual authority in 2001 and did not make a determination in this regard," the Appellate Division was not able to make a finding on this point and so remanded the matter for further proceedings. *Id.* On

remand, however, rather than determining whether the chairman had actual authority to bind PPLA, the Trial Division dismissed the case on statute of limitations grounds. This decision was apparently not appealed.

On January 20, 2014, the Land Court began land determination hearings that included Lot 206 B012-001 within Lot 40947. KSPLA participated, claiming to be the proper administrator of the land. PPLA was given no written notice of the hearing. Upon receiving actual notice, PPLA moved to intervene. The Land Court granted the motion over KSPLA's objection. In its ensuing decision, the Land Court found that no citizen claimants proved their return of public land claims for Lot 2006 B 012-001, and concluded that the Lot shall remain public land administered by PPLA. KSPLA timely appealed this decision.

STANDARD OF REVIEW

This Court reviews the Land Court's conclusions of law de novo and its findings of fact for clear error. *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009). "The factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Id.* Where there are several plausible interpretations of the evidence, the Land Court's choice between them shall be affirmed even if this Court might have arrived at a different result. *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009).

DISCUSSION

I. Whether the Land Court Erred in Permitting PPLA to Intervene

[1] KSPLA argues that the Land Court erred in granting PPLA's motion to intervene, because PPLA failed to file a timely claim for the subject land. The statutory filing requirements cited by KSPLA, however, apply specifically to citizen claimants. *See* 35 PNC § 1304(b) ("All claims for public land *by citizens* of the Republic must have been filed on or before January 1, 1989." (emphasis added)). By contrast, in a return of public lands case, if no citizen claimant "satisfies § 1304(b)'s requirements, the land will simply remain with the land authority, *whether the authority is a party to the proceedings or not*." *Ngarngedchibel v. Koror State Pub. Lands Auth.*, 19 ROP 60, 64 (2012) (citing *Masang v. Ngirmang*, 9 ROP 215, 216-17 (2002)) (emphasis added). This default rule is entirely inconsistent with the proposition that a land authority can forfeit its claim to a piece of public land by failing to file the type of claim demanded of citizen claimants under section 1304(b).

[2] Put differently, section 1304(b)'s deadline for filing claims cannot apply to the land authorities because, unlike citizen claimants, a land authority is not required to participate in Land Court proceedings, satisfy any burden, or otherwise affirmatively assert its claim to a piece of public land in order to retain control over such land. *See*

Ngarngedchibel, 19 ROP at 63 ("A land authority has no obligation to press its claim before the [Land Court]; it need not even appear in court for it to retain lands it controls . . . ."). This is true even where there is a dispute over which land authority owns the land. *See id.* at 64 ("[H]ad the Land Court concluded that PPLA was the proper public owner rather than KSPLA, it could have made that determination without the participation of PPLA as a party."). A land authority's participation in Land Court proceedings is necessary only in so far as, if it does not participate, "its interests might not be fully vindicated by the adversarial process." *Id.* Considering this framework and the plain text of § 1304(b), there is no basis for concluding that this section barred PPLA from vindicating its interest in the land at issue in this case.

[3*] Nonetheless, citing *Ngarngedchibel*, KSPLA maintains that, in a factually similar context, we upheld the denial of PPLA's motion to intervene in proceedings before the Land Court. In *Ngarngedchibel*, however, we did not review the Land Court's denial of PPLA's motion to intervene because PPLA did not appeal that decision, "for reasons unknown to the Court." *Id.* We thus had no cause to express, and did not express, either approval or disapproval for this decision. For the same reason, despite recognizing "the possibility that PPLA, rather than KSPLA, ought to be the public administrator of the lands in dispute," we did not consider the matter because it was not properly raised on appeal. *Id.* at 63-64 ("[B]ecause [PPLA] did not appeal the denial of its motion to intervene, we do not consider the relative merits of PPLA's claim as compared to KSPLA's.").[1]

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[*] [1] There may appear to be some inconsistency between: (1) our decision not to consider whether PPLA ought to have retained the land at issue in *Ngarngedchibel* because PPLA did not appeal the Land Court's decision in that case; and (2) the general rule that public land may be retained by a land authority even if it does not participate in the proceedings before the Land Court. This apparent conflict, however, simply reflects the different functions of trial and appellate courts. We have long held that the scope of appellate review is, in general, limited to the claims and theories presented by the parties to the appeal. *See Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 172 (2004) ("This Court has previously stated that the issues on appeal are identified and chosen by the parties, and an appellate court is limited in its deliberation by the record on appeal and the issues framed by the parties." (Ngiraklsong, C.J., concurring) (quotation omitted)); *Nakatani v. Nishizono*, 2 ROP Intrm. 7, 12 (1990) ("The scope of appellate review is generally limited to matters complained of or points raised in the appeal."). Since the relative strength of PPLA's claim to the land was not properly raised on appeal in *Ngarngedchibel*, it was within our discretion to decline to further consider the matter. *See, e.g.*, *Basilius v. Basilius*, 12 ROP 106, 109 n.6 (2005) ("We need not decide this issue, however, since Romana did not raise this legal theory on appeal.").

[4] In the present case, for the reasons discussed previously, section 1304(b) did not bar PPLA from intervening below. Furthermore, the Land Court did not abuse its discretion in allowing PPLA to intervene in order to assert its interest in the land at issue. *See* LCR Proc. 2; *see also Bemar v. Dalton*, 7 ROP Intrm. 161 (1999) (ruling that a lower court's decision on a motion to intervene "is to be overturned only if it constitutes an abuse of discretion." (quotation omitted)).

II. Whether the Land Court Erred in Determining that PPLA Owns Lot 2006 B 012-2007

KSPLA argues that the Land Court erred in naming PPLA the proper administrator of Lot 2006 B 012-001, because the 2001 Amendment provides clear evidence of KSPLA's ownership interest in this land. This document, which states that the land shall revert back to KSPLA in the event that it is no longer used by PCC, seems to presume that KSPLA has a future interest in this land, specifically a possibility of reverter. *See, e.g.*, *Black's Law Dictionary* 1354 (10th ed. 2014) (defining "possibility of reverter" as "[a] reversionary interest that is subject to a condition precedent; specif., a future interest retained by a grantor after conveying a fee simple determinable, so that the grantee's estate terminates automatically and reverts to the grantor if the terminating event ever occurs.").

Nonetheless, the Land Court did not err in determining that the subject land is presently owned and properly administered by PPLA. First, even assuming that the 2001 Amendment affords KSPLA some interest in this land, the existence of such a future, reversionary interest is not necessarily inconsistent with the Land Court's finding that PPLA currently owns the land in fee simple. *See* Restatement (Third) of Prop.: Wills & Other Donative Transfers § 25.2 cmt. b ("A *possibility of reverter* was a future interest retained by the transferor that could become possessory upon the termination of a fee simple determinable."); *see also Black's Law Dictionary* 1514 (10th ed. 2014) (defining "automatic reversion," of the sort contemplated by the 2001 Amendment, as "[t]he spontaneous revesting in a grantor of property that the grantor had earlier disposed of, as with a fee simple determinable."). In other words, the Land Court's determination that Lot 2006 B 012-001, which indisputably was and is being used by PCC, is owned by PPLA does not necessarily resolve, or in fact even reach, the question of who ought to own this land should it ever cease to be used by PCC. *See* Restatement (Third) of Prop.: Wills & Other Donative Transfers § 25.3 cmt. c (explaining that a "fee simple determinable" has been defined as "an estate that is created by any limitation which, . . . (a) creates an estate in fee simple; and (b) provides that the estate shall automatically expire upon the occurrence of a stated event." (quotations omitted)).

More importantly, KSPLA failed to present any significant evidence to substantiate the existence of its claimed reversionary interest. There is no evidence that suggests title to this land passed directly from the Trust Territory Government to KSPLA, such

that KSPLA could have sometime later granted it to PPLA, while reserving a future interest for itself. To the contrary, the relevant history, law, and the 1983 deed strongly suggest that title to Lot 2006 B 012-001 originally transferred from the Trust Territory Government to PPLA. *See, e.g.*, Palau Const. art. XV, § 4 ("On or after the effective date of this Constitution, but not later than the termination of the Trusteeship Agreement, the national government of Palau shall succeed to any right or interest acquired by the Administering Authority, the Trust Territory of the Pacific Islands, and the government of Palau District, ..."); *Ngerukebid Lineage v. KSPLA*, 9 ROP 180, 180 (2002) ("In 1974, the [Trust Territory Government] was directed by the United States Secretary of the Interior to transfer title to all public lands in Palau to a governmental agency designed to hold such title. The Palau Public Lands Authority (PPLA) was created in response to this directive."); *PPLA v. Salvador*, 8 ROP Intrm. 73, 75 (1999) ("The PPLA was created by PL 5-8-10 for the purpose of receiving [lands transferred from the Trust Territory Government]. . . . Therefore, PPLA's chain of title begins with the property being government property before the war, later vested by law with the Trust Territory Government, and later transferred to PPLA." (citations omitted)).

Although PPLA then transferred many of its holdings to the state public land authorities, including KSPLA, the evidence of record shows that PPLA did not, and by law could not, transfer its interest in Lot 2006 B 012-001. In particular, the 1983 deed expressly excluded Lot 40947, of which Lot 2006 B 012-001 is a part, from the properties conveyed by this instrument. Subsequently, 22 PNC § 341(b) was enacted and explicitly prohibited PPLA from "alienat[ing] any interest in [Lot No. 40947]." While the Land Settlement Agreement states that "KSPLA and KSG will continue to allow the ROP to indefinitely use" this land, this statement is not an unequivocal assertion that KSPLA owns the land and nothing in the Land Settlement Agreement purports to deed this land from PPLA to KSPLA. To the contrary, the Land Settlement Agreement contains an explicit acknowledgment that such a conveyance would be precluded by section 341(b).

[5] Thus, although the 2001 Amendment states that the land "shall revert back to KSPLA," there is no evidence that KSPLA ever previously acquired an interest in this land that would support the existence of this reversionary interest. "A reversionary interest is what remains in a transferor who owns a vested interest and has made a transfer that does not exhaust the transferor's interest in the property transferred, so that an interest in the transferred property may return to the transferor at some future date." Restatement (Second) of Prop.: Donative Transfers § 1.4 cmt. c. In this case, the record contains no evidence that suggests KSPLA ever possessed an interest in the subject land that it could have transferred to PPLA in fee simple determinable. On this record, then, the origin of the reversionary interest claimed in the 2001 Amendment is, at best, entirely unknown.

As the record is devoid of any evidence that KSPLA acquired a cognizable ownership interest in the subject land, the Land Court did not clearly err in finding that PPLA is the current owner and proper administrator of Lot 2006 B 012-001. *Palau Pub. Lands Auth., et al. v. Tab Lineage*, 11 ROP 161, 165 (2004) ("[R]eversal under the clearly erroneous standard is warranted only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.") (internal citations omitted).

CONCLUSION

For the reasons set forth above, the decision of the Land Court is **AFFIRMED**.