Ngersikesol Lineage v. Ngiwal State Legislature, 5 ROP Intrm. 284 (Tr. Div. 1994)

NGERSIKESOL LINEAGE, Rep. by
SIKESOL EMILIANO LLECHOLCH
and ANASTACIA LLECHOLCH,
Plaintiff,

v.

NGIWAL STATE LEGISLATURE,
TONY TAKADA, MELAITAU KOIBAD, et al.,
Defendants.

CIVIL ACTION NO. 230-91

Supreme Court, Trial Division
Republic of Palau

Decision
Decided: October 26, 1994

Counsel for Plaintiff	:	J. Roman Bedor, T.C.
Counsel for Defendant/Sadang	:	Johnson Toribiong, Esq.
Counsel for Defendants	:	Oldiais Ngiraikelau, Esq.

PETER T. HOFFMAN, Justice:

The court has before it two motions for resolution. First, Defendant Sadang has moved to dismiss the Plaintiff's amended complaint under the doctrine of the law of the case. Second, the Plaintiff has moved for summary judgment against the Defendant. As a matter of logic, the motion to dismiss should be ruled upon before considering the motion for summary judgment since the granting of the former would be dispositive of the latter. It is unclear under what rule of the ROP Rules of Civil Procedure Defendant Sadang is moving for dismissal, but the court construes the motion as being brought pursuant to Rule 12(b)(6).

The Plaintiff, Ngersikesol Lineage, represented by Sikesol Emiliano Llecholch and Anastacia Llecholch, is seeking declaratory relief and a writ of mandamus compelling the Ngiwal State Legislature (Kelulul A Kiuluul) to seat Sikesol Llecholch as a member. As gleaned from the allegations of the complaint and the subsequent amendments thereto the gist of the Plaintiff's claim is that Article VIII, § 2 of the Ngiwal State Constitution states the Kelulul A Kiuluul shall consist of seventeen members of which two shall be the first and second ranking chiefs from Ngersngai Hamlet. The position of Sikesol is the second ranking chief's title from Ngersngai and is therefore entitled to one of the seats created by ⊥285 Art. VIII, § 2. The Kelulul A Kiuluul refuses to seat Sikesol Llecholch as a member despite a prior judicial determination that he is the proper holder of the title. The Plaintiff by this action is seeking a judicial determination that he is entitled to a seat in the Ngiwal State Legislature.

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The Plaintiff has engaged in protracted litigation with the Defendant Ignacio Sadang over who is entitled to hold the title Sikesol and who should be permitted to take the seat in the Kelulul A Kiuluul designated for that title. The first round of that litigation was an action entitled *Chief Emiliano Llecholch and Ilengei Anastacia Llecholch, on behalf and for Ngersikesol Clan v. Ignacio Sadang* , Civil Action No. 65-85. Although the Clerk of Courts has misplaced the case file for that action, the Plaintiff's complaint incorporates by reference the decision and judgment from that action. From the decision, it is apparent that the issues in that previous action were twofold: 1) Whether Emiliano Llecholch was properly the holder of the title Sikesol in Ngersikesol Clan in Ngersngai Hamlet, Ngiwal State; and 2) Whether the Defendant Ignacio Sadang should be enjoined from interfering with the right of Emiliano Llecholch to be seated in the Ngiwal State Legislature as holder of the title of Sikesol. The Trial Division, per Justice Sutton, decided on a motion for summary judgment that Emiliano Llecholch was the proper holder of the title Sikesol and not the Defendant Ignacio Sadang and, more importantly for purposes of this motion, that the request for an injunction against Defendant Sadang should be denied. The trial court declared:

> "[T]his court declines to interfere with the lawful and constitutional process of the Ngiwal Legislature in certifying and seating Defendant holding that it is within the exclusive power of that entity to do so unless it appears that based upon clear evidence of conspiracy or political skulldugary [sic] there was an intention to deceive and thus a violation of Constitutional and statutory requirements. Here no such showing is made and the court simply expresses full confidence in the people of Ngiwal and their representatives to now comply with the findings of this court and make such adjustments as are necessary in compliance with Constitutional, Statutory and Customary law."
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> Decision and Orders Re Plaintiffs' Motion for Summary Judgment at 5-6.[1]

⊥286 Apparently in the intervening seven years since the decision in the first action declaring Emiliano Llecholch to be holder of the title Sikesol and the bringing of this action, the Kelulul A Kiuluul has continued to allow Ignacio Sadang to occupy the seat which he had been occupying before the decision in SC/CA 65-85. While the Ngersikesol Clan is now designated a lineage and the Ngiwal State Legislature and its members are now named with Ignacio Sadang as defendants, the current action is again seeking the seat in the Kelulul A Kiuluul designated for the second highest ranking chief from Ngersngai Hamlet. In addition, the Plaintiff is seeking any compensation he would have been entitled to if he had been properly seated.

The law of the case doctrine, which Defendant Sadang asserts should bar this action, takes several different forms. *See* 46 Am Jur 2d *Judgments* § 400 (1969); 5 Am Jur 2d, *Appeal and Error* §§ 744-759 (1962). In the context of this case, however, the relevant definition is as follows:

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[1] In a later motion for contempt, Justice Sutton stated "in the absence of a showing of some violation of constitutional or statutory requirements the court shall not interfere with the power of the Ngiwal Legislature . . . to be the sole judge of the qualifications of its members." Since this was not a final judgment and may not have been appealable this court does not rely on Justice Sutton's order in ruling on the motion to dismiss.

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> The "law of the case" doctrine is a rule which states that a judge should not for various policy reasons overrule a previous decision or order of the first judge on the same court level. The rule in the past was an absolute bar on the second judge from overruling or reconsidering the decision or order of the first judge. The rule has been modified to allow the second judge to overrule or reconsider the previous decision of the first judge for good reasons.
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> We hold that where there are no new facts, evidence, pleading or legal theory, the second trial judge should not overrule or reconsider a decision of the first trial judge. Our holding is necessary to "prevent undue controversies between courts of co-ordinate jurisdiction[;]" and to "promote an orderly administration of justice and to preserve the orderly functioning of the judicial system."

⊥287 *Tellei v. Daniel*, 2 ROP Intrm. 131, 135 (1990) (citations omitted).

Defendant Sadang's reliance on the law of the case doctrine is misplaced. While not expressly so stated in *Tellei*, that doctrine is limited to subsequent rulings in the *same* case and does not apply to rulings in separate cases. *See* 5 Am Jur 2d *Appeal and Error* § 744 (1962) and cases cited in *Tellei*. *See also Carmichaels Arbor Associates v. U.S.* , 789 F. Supp. 683 (W.D. Pa. 1992); *United States v. Wheeler* , 256 F.2d 745 (3rd Cir. 1958), *cert. denied*, 79 S.Ct. 111 (1958); *TCF Film Corp. v. Gourley* , 240 F.2d 711 (3rd Cir. 1957); *Cf. Hardy v. North Butte Mining Co.* , 22 F.2d 62 (9th Cir. 1927) (law of the case extended to another judge sitting in the same court on the same record). Since the instant dispute involves two separate cases with different parties, the doctrine does not apply. This, however, does not end the inquiry.

This court is obliged by the requirements of 1 PNC § 303 to follow "[t]he rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States. . . ." While it is difficult to follow the mandate of § 303 due to the long-standing absence of the Restatement (Second) of Judgments from the Supreme Court Library, nonetheless it appears that the doctrines of res judicata and collateral estoppel apply to the Plaintiff's claim. Specifically, § 27 of the Restatement (Second) of Judgments is applicable to Defendant Sadang's motion:

> When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

The qualification that the subsequent action be between the same parties, in other words that mutuality of parties exists, has now been abandoned by almost all modern courts. *See, e.g., Parklane Hosiery Co. v. Shore* , 99 S.Ct. 645 (1979); *Blonder-Tongue Laboratories, Inc. v.*

Ngersikesol Lineage v. Ngiwal State Legislature, 5 ROP Intrm. 284 (Tr. Div. 1994) *University of Illinois Foundation* , 91 S.Ct. 1434 (1971). While the previous action was brought by Emiliano Llecholch and Anastacia Llecholch on behalf of the Ngersikesol Clan and the present action is brought by the same individuals on behalf of Ngersikesol Lineage, the two are either synonymous or the Lineage is part of the Clan and therefore bound by the decision in the previous action. One of the defendants is the same as in the previous action, but all of the defendants, including those who ⊥288 were not a party to the previous action, may assert the estoppel effect of the determinations made in the previous action against the plaintiff's claim in this action. *Blonder-Tongue, supra*. Section 27 also makes pellucidly clear that the doctrine of collateral estoppel is equally applicable to issues of law as to questions of fact. Thus, if the other prerequisites for applying collateral estoppel are established, the holding in the previous action that the court will not issue an injunction requiring the seating of Sikesol Emiliano Llecholch in the Kelulul A Kiuluul is dispositive of the similar request in this action.

The exceptions to the application of collateral estoppel are set forth in § 28 of Restatement (Second) of Judgments; two are of relevance to the facts of this case:

> (2) The issue is one of law and ... (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws.
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> (5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, [or] (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context or a subsequent action . . . .

The question then becomes has the failure of the Kelulul A Kiuluul to seat Emiliano Llecholch during the intervening seven years between the determination by Justice Sutton that he held the position of Sikesol and today place the present action within one of the quoted exceptions to the application of collateral estoppel. Justice Sutton expressed his "full confidence in the people of Ngiwal and their representatives to now comply with the findings of this Court and make such adjustments as are necessary in compliance with Constitutional, Statutory and Customary law." Contrary to Justice Sutton's expectations, the people of Ngiwal and their representatives apparently have taken no action whatsoever to comply with the findings of the court. Should this permit the reconsideration of Justice Sutton's determination that certifying and seating members "is within the exclusive power of that entity [Ngiwal Legislature] to do so unless it appears that based upon clear evidence of conspiracy or political skullduggery there was an ⊥289 intention to deceive and thus a violation of Constitutional and statutory requirements?" I think not.

It appears that Justice Sutton's statement expressing his confidence that the court's determination would be followed by the people of Ngiwal State was nothing more than dicta or a gratuitous comment. It was not a statement of law nor was it a finding of fact and it certainly was not essential to the court's ultimate determination. The rule of law announced by the court

Ngersikesol Lineage v. Ngiwal State Legislature, 5 ROP Intrm. 284 (Tr. Div. 1994) was that the seating of members of the Ngiwal State Legislature is in the exclusive power of that entity. If the Plaintiff disagreed with that proposition, it should have appealed the ruling to the Appellate Division of this or on the interests of third parties occurred with entry of court rather than to engage in the present collateral attack on interest the previous judgment and not because of the application of collateral the previous decision. Any effects on the public estoppel. The Appellate Division has not announced any change in the applicable legal rules since Justice Sutton's decision thereby justifying a reexamination of the rule announced in Civil Action No. 65-85. In short, none of the exceptions of § 28 of the Restatement (Second) of Judgments applies to the facts of this case.

There is one further exception to the application of collateral estoppel that requires discussion. Section 29 of the Restatement (Second) of Judgments states in relevant part:

> A party precluded from relitigating an issue with an opposing party . . . is also precluded from doing so with another person unless the fact that he lacked a full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue. The circumstances to which the considerations should be given include those enumerated in § 28 and also whether:
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> (7) The issue is one of law and treating it as conclusively determined would inappropriately foreclose opportunity for obtaining reconsideration of the legal rule upon which it was based;

A review of the supporting comment to § 29 suggests several situations in which it would be inappropriate to apply collateral estoppel to an issue of law, but none of them are present in this case. Instead, it should be remembered that the issue presented in this case is exactly that which was presented in the previous ⊥290 action. While the defendants have changed, there is nothing in the facts as alleged nor in the naming of several additional defendants to this action that would suggest there should be any change in the applicable legal rule. The gist of the Plaintiff's action is that the Ngiwal State Legislature continues to refuse to seat him. This is exactly the issue raised in the first action and there is no principled reason why the outcome of the case should be different in this action than in the previous action.

The doctrine of res judicata also applies to the Plaintiff's claim against Defendant Sadang[2] and may apply to the other defendants as well. Section 17 of the Restatement (Second) of Judgments states:

> A valid personal judgment is conclusive between the parties, except on appeal or other direct review to the following extent:

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[2] The court recognizes that Sadang is a party to this action only because the court had suggested orally that he was a necessary and indispensable party. This, however, does not alter the analysis presented.

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> (1) If the judgment is in favor of the plaintiff, the claim is extinguished and merged in the judgment and a new claim may arise on the judgment;
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> (2) If the judgment is in favor of the defendant, the claim is extinguished and the judgment bars a subsequent action on that claim;
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> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in a subsequent action between them on the same or a different claim, with respect to any issue actually litigated and determined if its determination was essential to that judgment. (references omitted)

Thus, § 17 bars any claim against Defendant Sadang. With regards to the other defendants, § 49 states "[a] judgment against one person liable for a loss does not terminate a claim that the injured party may have against another person who may be liable therefor." But this apparently broad grant of a right to bring the same claim against different defendants is sharply circumscribed by "Comment a" to this section:

⊥291 The injured party's right to maintain separate actions against multiple obligors is subject to several important constraints. The most important of these is that ordinarily he may not relitigate issues determined against him in the first action.

Thus, the Plaintiff is barred by the doctrine of res judicata from bringing in this second action the same claim raised in the first action.

In light of the foregoing analysis, Defendant Sadang's motion to dismiss is granted and the Plaintiff is given 14 days in which to amend its complaint or judgment will be entered against it. The granting of the motion to dismiss moots the remaining defendants' motion for summary judgment. SO ORDERED.