*Rechelulk v. Tmilchol*, 6 ROP Intrm. 1 (1996)

**RAFAELA RECHELULK,**
**Appellant,**

**v.**

**BECHESERRAK TMILCHOL and**
**B.T. CO.,**
**Appellees.**

CIVIL APPEAL NO. 22-95
Civil Action No. 145-86

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: October 10, 1996

Counsel for Appellant: John K. Rechucher

Counsel for Appellees: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice

MILLER, Justice:

This case, on appeal for the second time, *see Rechelulk v. Tmilchol*, 2 ROP Intrm. 277 (1991), is a dispute over the boundary of two lots located in Dngeronger Hamlet of Koror State. The previous appellate panel, over a dissent, vacated a grant of summary judgment in favor of appellees and remanded the matter for trial. Following trial, the trial court again granted judgment for appellees. This appeal followed.

The factual background to this dispute, discussed at length in the previous appeal, *see* 2 ROP Intrm. at 278-81, need not be repeated here. It suffices, for present purposes, to say that the resolution of the dispute by the trial court turned on the authenticity of certain documents which, if accepted, established that the boundary claimed by appellees was correct. The trial court, acknowledging a conflict in the evidence, found "by the greater weight of the evidence" that those documents were authentic.

As appellant all but conceded at oral argument, this appeal ⊥2 must fail if the trial court's finding in this regard is reviewed under the "clearly erroneous" standard. Given the conflict in the record, we have no basis to say that no reasonable trier of fact could have reached the same conclusion, nor are we left with a definite and firm conviction that the trial court erred. *See generally Umedib v. Smau*, 4 ROP Intrm. 257, 258-60 (1994).

Instead, appellant's primary, if not sole, contention, is that we should conduct a more searching inquiry, reviewing the evidence anew to conclude that the documents at issue are not authentic and that appellant should accordingly prevail. Appellant relies for this contention on a series of United States cases, interpreting an earlier version of Federal Rule of Civil Procedure 52(a), which held that where documentary evidence is at issue, the appellate court is in as good a position as the trial court to review the evidence and may substitute its own findings without reference to the "clearly erroneous" test.[1]

In the United States, this line of authority, which appears to have represented the minority view, was nullified by an amendment to Rule 52(a) in 1985. The pertinent portion of the Rule now provides: "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous . . ." (emphasis added).

ROP Civil Procedure Rule 52(a), based on the Federal Rule as it existed in 1983 and unamended since that time, states simply that "[f]indings of fact shall not be set aside unless clearly erroneous". [2] While we are free to adopt the U.S. minority position with respect to documentary evidence, we believe that that position is neither consonant with the plain language of the Rule, which ⊥3 refers to "findings of fact" without qualification,[3] nor desirable as a matter of policy. The Advisory Committee that promulgated the 1985 amendment to the U.S. rule noted that the principal argument favoring an exception for documentary evidence was that findings based on such evidence "do not rest on the trial court's assessment of credibility of the witnesses, . . . thus eliminating the need for any special deference to the trial court's findings." Nevertheless, we agree that such considerations are

> "outweighed by the public interest in the stability and judicial economy that would be promoted by recognizing that the trial court, not the appellate tribunal, should be the finder of the facts. To permit courts of appeals to share more actively in the fact-finding function would tend to undermine the legitimacy of the district courts in the eyes of litigants, multiply appeals by encouraging appellate retrials of some factual issues, and needlessly reallocate judicial authority."

Notes of Advisory Committee on Rules on 1985 Amendment to Rule 52(a). We hold that the clearly erroneous standard of review applies to all findings of fact made by the Trial Division.[4]

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[1] It appears that this exception to Rule 52(a) may have been applied only in "situations in which the factual determination rests solely upon documentary evidence". *E.g., LaSalle Street Press v. McCormick & Henderson, Inc.*, 445 F.2d 84, 87 (7th Cir. 1971) (emphasis in original). Given our conclusion below, we need not decide the proper scope of this exception nor its applicability here.

[2] Appellees are correct to note that the clearly erroneous test is also mandated by 14 PNC § 604(b). We are mystified, however, by appellees' contention that there is no Rule 52(a) in Palau.

[3] The "clearly erroneous" standard set forth in 14 PNC § 604(b), *see* n.2 *supra*, also applies unqualifiedly to "findings of fact of the Trial Division."

[4] We thus also reject those cases cited by appellant which suggest a different standard for

Notwithstanding this conclusion, we reject appellees' motion for an award of appellate sanctions pursuant to ROP R. App. Pro. 38. The issue decided herein has never been squarely presented to this Court and our rule, unlike the U.S. rule, does not contain the clarifying language that ended the debate over its meaning in the U.S. courts. While we ultimately reject appellant's contentions, it would be wholly inappropriate to conclude that a reading of Rule 52(a) that was adopted by several United States Courts of Appeals ⊥4 should be deemed frivolous by this Court.

Because the clearly erroneous standard applies here, and because the trial court's findings are not clearly erroneous, its judgment is AFFIRMED.

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so-called "ultimate" facts. *See generally Pullman-Standard v. Swint*, 102 S.Ct. 1781, 1788-89 (1982) (rejecting distinction under U.S. rule). Appellant is correct that conclusions of law are reviewed *de novo*. In the circumstances, however, the trial court's conclusion that the disputed documents are authentic -- that "they are true copies of the now vanished originals" -- is clearly one of fact, and not law. *Compare Remoket v. Omrekongel Clan*, 5 ROP Intrm. 223, 230 (1996) (interpretation of unambiguous contract is a question of law).