Alik v. Ueki, 6 ROP Intrm. 148 (1997)

NGIRAIKELAU ALIK
Appellant,

v.

MINAMI UEKI,
Appellee.

CIVIL APPEAL NO. 5-96
Civil Action No. 779-88A

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: April 4, 1997

Counsel for Appellant: Yukiwo P. Dengokl and Oldiais Ngirakelau

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice

BEATTIE, Justice:

BACKGROUND

This litigation, which is before us for the second time, arises from a dispute about who owns the piece of land known as "Mariar" (Specifically, Tochi Daicho Lots 989, 990, and 991). Originally, the land was owned by Alik, who by intervivos transfer gave the northern portion of the land to his sons Ngiraikelau and Tebengel, and the southern portion to Max and Augusta, the half brother and sister of Ngiraikelau and Tebengel. In 1973, Max asserted that he owned all of Mariar -- both north and south -- and a dispute arose and litigation was commenced. Tebengel and Ngiraikelau hired John O. Ngiraked, a non-lawyer trial assistant to help them retain their property. Thinking that it would aid his clients' cause, Ngiraked drafted a deed of transfer (quitclaim deed) which, by its terms, conveyed Ngiraikelau's interest in the ⊥149 northern lot to Tebengel.[1] The deed was recorded in the Clerk's office of the Palau Supreme Court on August

[1] At trial, Ngiraked testified that he prepared the deed in order to solidify and memorialize the historical ownership of the lot -- to distinguish between Ngiraikelau and Tebengel's entitlement to a portion of Mariar and Max and Augusta's: "The intent was to establish two lines of the inheritance okay to back track the history of descent and inheritance as the history was told to me by Ngiraikelau and his own brother." (Remand Tr. Transcript, 38). Ngiraked had all the family members quitclaim their interest in the lot to Tebengel, each of them signing the document.

10, 1973.

In 1987, Tebengel executed a warranty deed, purportedly conveying all of the northern portion of Mariar to Minami Ueki. Tebengel (now deceased) and Ngiraikelau filed the present action to cancel the 1987 deed on the grounds that Tebengel never knew the contents of the document he was signing, and that Ngiraikelau, as co-owner, did not sign it at all. Ueki claimed that Ngiraikelau did not have to sign the deed because he gave up all interest in the land by the 1973 deed, and in any event, Ueki should be considered a bona fide purchaser. The trial court held that the 1973 deed between Ngiraikelau and Tebengel was ineffective because it had not been delivered. Moreover, it held that Ueki was not a bona fide purchaser because he had constructive notice that the Ngiraikelau might have a claim to the land. Thus, the trial court ordered that Tebengel had conveyed only his portion of Mariar to Ueki and that Ngiraikelau and Ueki were tenants in common.[2]

Ueki appealed the decision of the trial court. On appeal, we reversed the trial court insofar as it held that the deed to Tebengel had been delivered and remanded the case to the trial court, instructing it to "reconsider its decision in light of the strong presumption of delivery due to the recordation of the deed." [3] *Ueki v. Alik* , 5 ROP Intrm. 74, 79 (1995). ("Ueki I"). On remand, the trial court found that the deed to Tebengel had been delivered, so that Ueki owned all of the northern portion of Mariar. Ngiraikelau appeals this ruling, asserting that the trial court committed numerous errors of law and fact. This Court need address only one assignment of error, as it is dispositive in Ngiraikelau's favor.

⊥150 ANALYSIS

Ngiraikelau contends that the trial court failed to follow our instructions on remand. We agree.

In *Ueki I* we held that "generally, delivery of a deed imports that the grantor has transferred the deed to the grantee . . . with the intent that it presently become operative as a conveyance of title." *Ueki v. Alik*, 5 ROP Intrm. 74, 76 (1995). We noted that "[t]he controlling factor is the intention of the grantor to make delivery. This is to be inferred from the circumstances preceding, attending and following the execution of the deed." *Id.* We held that in cases where the deed is recorded, such as this one, a strong presumption arises that the deed has been delivered, and that this presumption can only be overcome by clear and convincing evidence. Because the trial court had not considered the presumption and the heavy burden placed on one who attempts to rebut it, we remanded the case to the trial court, instructing it to "reconsider its decision in light of the strong presumption of delivery due to the recordation of the deed," *id.* at 79, and to "determine whether sufficient evidence exists to rebut the presumption in this case." *Id.* at 77. In making this factual determination, the trial court was to determine whether clear and convincing evidence existed to prove that the grantor did not intend

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[2] The court did not reach the issue of the validity of the 1987 deed because Tebengel died and no one with standing was substituted for him.

[3] The appellate court also affirmed the trial court's ruling that Ueki was not a bona fide purchaser.

to deliver the deed.

On remand, the trial court made a finding that conformed to the terms of the appellate division's mandate:

> As stated in its earlier opinion, the Court continues to believe -- and believes there is clear and convincing evidence -- that when Ngiraikelau executed the 1973 deed, he did so with the intent and expectation that he would remain on the land and that his brother would continue to acknowledge his co-ownership of the northern part of *Mariar*.

(Trial Court Opinion at 2). This factual finding satisfied the terms of the mandate, and having found by clear and convincing evidence that Ngiraikelau did not intend that the deed become operative as a conveyance despite the presumption of delivery, the trial court should have ruled that the presumption of delivery had been rebutted and that the deed was not delivered. Instead, the trial court proceeded to re-analyze the doctrine of delivery utilizing a wholly different approach, and found that the deed was ⊥151 an effective instrument of conveyance. [4] The re-examination of the issue of delivery was not in conformance with what is sometimes called the "mandate rule." *See Moore's Federal Practice* ¶ 0.404[10] (2d ed. 1991).

> This rule derives from the law of the case doctrine [citations omitted] and simply means that "a [trial] court is not free to deviate from the appellate court's mandate." [Quoting *Wheeler v. City of Pleasant Grove* , 746 F.2d 1437, 1440, at n.2 (11th Cir. 1984)].

Pelletier v. Zwiefel , 987 F.2d 716 (11th Cir. 1993). [5] Accordingly, the trial court erred in re-analyzing the doctrine of delivery.

Due to the trial court's factual determination that clear and convincing evidence establishes Ngiraikelau did not intend to pass title when he executed the deed in question, we reverse and remand the case to the trial court for entry of judgment in favor of Ngiraikelau Alik consistent with this opinion.

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[4] The trial court held that because the language of the deed clearly and unambiguously conveyed the property, Ngiraikelau could not avoid the effect of that language by claiming that he did not intend to make a conveyance. It is generally true that, where a grantor executes and delivers a deed containing unambiguous language, his unexpressed or secret purpose cannot be considered in the construction of the deed. 23 Am. Jur. 2d *Deeds* § 225 (1983). In the instant case, however, we are not concerned with the construction of language in a deed to determine the nature and extent of the title and estate conveyed. Rather, we are concerned with the issue of whether the deed was delivered; that is, whether it ever became operative as a conveyance of title at all rather than the nature and extent of the estate conveyed. For that determination, we do not look to the language of the deed, but rather to "the circumstances preceding, attending and following the execution of the deed." *Ueki I*, 5 ROP Intrm. at 76.

[5] For a complete discussion of the mandate rule and its relationship to the law of the case doctrine, see *Litman v. Massachusetts Mut. Life Ins. Co.*, 825 F.2d 1506 (11th Cir. 1987) (en banc).