Tsao v. Mesubed, 6 ROP Intrm. 313 (1996)

RITA K. TSAO,
Appellant,

v.

DIRRACHEMIICH MESUBED,
Appellee.

CIVIL ACTION NO. 106-94
IN RE: LCHO D.O. NO. 04-D-09-94

Supreme Court, Trial Division
Republic of Palau

⊥314
Decision and order
Decided: March 7, 1996

Counsel for Appellant: J. Roman Bedor, T.C.

Counsel for Appellee: Johnson Toribiong

JEFFREY L. BEATTIE, Associate Justice:

This is an appeal from a Determination of Ownership in which the Land Claims Hearing Office (LCHO) held that appellee was the owner of Tochi-Daicho Lots 818, 819 and 834 [1] in Ngiwal State.

It is undisputed that appellee, the child of the Tochi-Daicho registered owner, Kerasai, inherited the property in 1956 when Kerasai died. In 1985, appellee sold the property to appellant. A copy of the warranty deed conveying the property to appellant was received into evidence by the LCHO, together with a copy of the appellant's cancelled check for evidencing a $4,000 payment to appellee.

Appellee filed a claim with the LCHO in which she claimed the property as Kerasai's heir. Appellant filed a claim based on the deed from appellee. However, appellant did not appear at the hearing.

At the hearing, appellee acknowledged her signature on the deed to appellant, which deed was duly recorded on December 20, 1985. Appellee testified, however, that the deed "was not completely settled" and that she would talk to appellee later.

In its findings of fact, the LCHO found that appellee had indeed executed the warranty deed conveying the property to appellant, but held that "according to [appellant's] communication to the panel and [appellee's] statements during the hearing, [appellant's] claim

[1] Designated as temporary lots 67-24 and 67-23 on Cadastral Worksheet No. 67.

is... dismissed." There are no statements of appellant in the transcript. In the Summary of Claims and Testimonies, the LCHO states that appellant orally informed a hearing officer that she would not appear at the hearing, as it had been agreed that appellee would appear on her behalf.

As a threshold issue, appellee argues that because appellant did not appear at the LCHO hearing, she has no standing to appeal its decision. The argument is without merit. Appellant filed a claim and the LCHO dismissed her claim. Clearly she is a "party aggrieved" by the LCHO determination and therefore has standing to ⊥315 appeal. 35 PNC § 1113.

Turning to the merits, the record shows, and the Court finds, that appellee transferred the property to appellant in 1985 by warranty deed. Appellee admitted executing the deed and the evidence shows $4,000 in consideration was paid to appellee. There is no evidence in the record which would support a finding that the deed was ineffective. Indeed, the LCHO found that the deed conveyed the property to appellant, but it dismissed her claim in spite of that finding. The dismissal was based upon unspecified statements made by appellant and appellee.

The record contains no statements of appellant other than those in her claim form wherein she stated that she owns the property due to purchase from appellee. The LCHO Summary recites that appellant advised a hearing officer that appellee would be appearing on her behalf.

The Court will first examine appellant's statement that appellee would appear on her behalf to see if it provides a basis for the dismissal of appellant's claim. Because there were additional claimants other than appellant and appellee, appellant had to establish that appellee owned the property at the time she conveyed it to appellant. Since the deed had been submitted to the LCHO, appellant only needed the testimony of appellee and her witnesses to establish that appellee inherited the property and therefore could convey title. She evidently concluded that her own testimony was unnecessary and chose to rely on appellee's testimony. Even assuming, without deciding, that appellee was the agent of appellant and that the LCHO panel reasonably concluded the same when appellee told them she would not appear because appellant would appear on her behalf, it was clear error to assume appellee had authority to dismiss appellant's claim.

The *Restatement (second) of Agency* § 39 states that

> Unless otherwise agreed, authority to act as agent includes only the authority to act for the benefit of the principal.

Thus, the LCHO could not reasonably infer that the scope of the agency was so broad as to include dismissal of appellant's claim.[2]

⊥316 The statements made by appellee are likewise no basis for the dismissal. She admitted

[2] The record does not reflect that appellee ever expressly asked that appellant's claim be dismissed. Finding of Fact number 4 indicates that the LCHO thought that dismissal was requested impliedly by appellee's conduct in pursuing her own claim.

signing the deed but said the deed was not completely settled. That ambiguous statement does not support dismissal of appellant's claim.

A claimant who chooses not to appear at an LCHO hearing does so at his peril. When he relies on others to act in good faith and testify truthfully, he takes the risk that they may not do so and nobody will be present to repair the damage. If appellee had denied signing the deed, for example, the LCHO may have found the signature to be a forgery and the deed to be void and there would be no testimony to refute appellee's claim or support appellant's claim. However, a claim cannot be dismissed solely because the claimant chose not to appear, where the great weight of the evidence shows that the property was conveyed to him by a person holding good title. Without more evidence, Appellee's vague and ambiguous statement that the deed was "not completed" is insufficient to defeat a fully executed deed existing of record for more than eight years as of the time of the hearing.

The determination of the LCHO is reversed and it is ORDERED that appellant Rita K. Tsao is the owner of the subject property in fee simple. The LCHO or it's successor (Land Court) is directed to issue a Certificate of Title to said appellant.