Ngatpang State v. Amboi, 7 ROP Intrm 12 (1998)
NGATPANG STATE,
Appellant,

v.

JAMES AMBOI, et al.,
Appellees.

CIVIL APPEAL NO. 29-96
Civil Action No. 101 -93

Supreme Court, Appellate Division
Republic of Palau

Argued: January 9, 1998
Decided: February 16. 1998

Counsel for Appellant: Moses Uludong, T.C.

Counsel for Appellees: John K. Rechucher, Esq., Roman Bedor, T.C., and David Kirschenheiter, Esq.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice, LARRY W. MILLER, Associate Justice; and R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

Ngatpang State filed this civil action seeking a declaratory judgment that a series of determinations of ownership issued by the Land Claims Hearing Office in September 1989 involving land known as Ngerdubech are null and void and that Ngatpang State is the rightful owner of the land. The Trial Division upheld the 1989 determinations and Ngatpang State appealed. We affirm.

I. FACTS

A. Background

In the years leading up to World War ⊥13 II, the Japanese seized Ngerdubech. After the war, the Trust Territory government sought to return the property to the rightful owners and asked the public to file claims to the land. The inhabitants of Ngatpang Municipality held a meeting to discuss the matter. Because many inhabitants lacked the funds to pursue their individual claims, they decided to allow the Municipality to file a claim for the land, with the understanding that the Municipality would redistribute the land to the original owners once it secured title. On December 28, 1959, Palau District Land Title officer Harris issued Determination of Ownership and Release No. 126 ("D.O. 126"), granting the land to Ngatpang

Municipality.

In September 1975, the Ngaimis, the traditional council of chiefs of Ngatpang Municipality, decided that it was time to return the D.O. 126 land to its original owners. The Ngaimis issued an announcement that all claimants should put boundary markers on the lands claimed. Appellees or their predecessors in interest filed and monumented their claims at this time under the authority of the Palau Land Commission and with the approval of the Ngaimis.

In 1980, the Land Commission Registration Team began a preliminary inquiry concerning title to the lots that made up D.O. 126. In 1982, the Commission held a hearing on claims to this land. Although evidence was submitted, the hearing was never completed because Ngiratkel Etpison, Governor of Ngatpang State, [1] argued that the lands had been distributed already by D.O. 126. Apparently, Governor Etpison and certain members of the Ngaimis believed that the land might be needed for various state projects. Two registration team members and one Land Commissioner subsequently signed an "adjudication" stating that Ngatpang State owned the property. The Commission did not issue any determinations of ownership.

Although Ngatpang State conveyed several parcels of the property in the years following the 1982 hearings, disagreement among members of the Ngaimis continued about what to do with the balance of the land. In 1987, Ngatpang State enacted Public Law 7-86, authorizing and providing a system for clans, lineages and individuals to claim lots within the area of D.O. 126. On January 1, 1989, Governor Etpison became President of Palau and he resigned from his position in Ngatpang, State.

In a letter dated March 27, 1989. and signed by members of the Ngaimis and the new governor of Ngatpang State, Beches Etpison, the State informed the Land Claims Hearing Office that it was "releas[ing] and discharg[ing] any and all claims made on behalf of the State of Ngatpang" for lands under D.O. 126. [2] The letter asked the LCHO ⊥14 to hold hearings and to adjudicate private claims for D.O. 126 land. The LCHO reviewed the individual claims from the 1982 hearings, found them to be sufficient and determined that no further hearings were necessary. On September 22, 1989, the LCHO issued determinations of ownership to certain individuals for 19 parcels of land in Ngerdubech. Ngatpang State was served with these

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[1] Ngatpang Municipality had become Ngatpang State in 1982 when it approved a state constitution.

[2] The pertinent part of the letter stated:

> Therefore, we the members of Ngaimis and the Ngaimis, which is charged with the responsibility for managing all public lands. hereby declare that the land under Claim No.126 is a private land. We therefore release and discharge any and all claims made on behalf of the State of Ngatpang for the lands under Claim No. 126 and hereby authorize all clans within the State of Ngatpang and those people whose names are registered under the Japanese records, Tochi Daicho, to submit their claims for lands within the area under Claim No. 126 . . . The adjudication of claims shall be made by the Palau Land Claim Hearing Office and the decision of the Land Claim Office may be appealed in accordance with law . . . .

determinations on October 18, 1989 and never appealed.

B. Present Case

Governor Beches Etpison's successor, Ngirboketereng Merep, did not agree with the 1989 determinations of ownership and on February 17, 1993, filed the present lawsuit seeking to void them. A number of the parties who had prevailed before the LCHO intervened, hoping to quiet title to their parcels. Ngatpang State returned to its pre- 1984 argument that the land had previously been adjudicated as belonging to the State.

Trial began on September 19, 1995 with respect to 18 of the 19 determinations issued by the LCHO in September 1989. [3] Five of the claimants settled their claims during trial. On August 12, 1996, the court issued a judgment in favor of the remaining 13 claimants, upholding the September 1989 determinations.

II. ANALYSIS

A. Jurisdiction

Appellant Ngatpang State contends first that the LCHO lacked jurisdiction to issue the September 1989 determinations because both the Land Title Officer and the Land Commission had determined that appellant owned Ngerdubech and the LCHO had no authority to alter those determinations.

Two statutes controlled the LCHO's jurisdiction: 35 PNC §§ 1104(a) and 1110(c) [repealed 1996]. Section 1104(a) authorized the LCHO to "make determinations with respect to the ownership of all lands within the Republic not yet registered." Section 1110(c) provided that:

> The Land Claims Hearing Office shall not hear claims or disputes as to right or title to land between parties or their successors or assigns where such claim or dispute has already been finally determined by the former Land Commission or by a court of competent jurisdiction. A land claims hearing officer shall, for purposes of this chapter, ⊥15 accept such prior determinations as binding on such parties without further evidence than the judgment or determination of ownership.

These statutes do not prohibit the LCHO's September 1989 actions. Sections 1104(a) and 1110(c) prevented the LCHO from issuing determinations of ownership for lands that were already registered or that had been "finally determined by the land Commission or by a court of competent jurisdiction." In 1989 Ngerdubech was neither registered nor had it been the subject of a final determination by the Land Commission. The 1959 Land Title Officer proceedings resulted in a determination of ownership, but the land was not "registered" as that term came to be defined under the legislation establishing the Land Commission and the LCHO. Although the 1959 determination may have been "recorded," it could not have been "registered," because that

[3] The nineteenth determination was found to be void in *Inglai v. Emesiochel*, 3 ROP Intrm. 219 (1992).

term pertains specifically to the cadastral lot program instituted by the Land Commission and continued by the LCHO. Similarly, the 1982 Land Commission proceedings cannot act as a bar to the LCHO's 1989 awards because the Commission never "finally determined" ownership rights. The Commission stopped the 1982 hearings before they were complete and never issued any determinations of ownership. The "adjudication" signed by the registration team members had no binding effect.[4]

This conclusion is in line with our recent decision in *Secharmidal v. Techemding Clan* , 6 ROP Intrm. 245 (1997), concerning the jurisdiction of the Land Commission. In *Secharmidal*, the Court found that although the statutes establishing the Land Commission required the Commission to give res judicata effect to previous determinations of ownership, those statutes did not affect the jurisdiction of the Commission to issue new determinations of ownership for lands that had been the subject of previous determinations of ownership. Id at 248. The same logic applies to the LCHO. The LCHO had jurisdiction to hear cases even if prior determinations of ownership had been issued by predecessor government agencies. However, pursuant to § 1110(c), if a party introduced evidence of a prior determination of ownership, the prior determination was binding on the parties and the LCHO.

B. Inglai Clan Precedent

Appellant argues next that *Inglai Clan v. Emesiochel* , 3 ROP Intrm. 219 (1992), is applicable precedent. Inglai involved a different section of Ngerdubech from the parcels at issue in this case. In September 1989, the LCHO issued a determination of ownership awarding Emesiochel a parcel within Ngerdubech. Ngatpang State was dissatisfied with that determination because it had certified Inglai Clan as the owner of that land in 1985, and wrote a letter to the LCHO insisting that the land belonged to Inglai Clan. The LCHO wrote back to the State, instructing it to have Inglai Clan file an appeal if it wished to challenge the decision. Inglai Clan never did so, but instead brought an action for declaratory relief: The Court held that because the Land Commission had already "finally determined" title to the relevant land in 1982, 35 PNC § 1110(c) prevented the LCHO from changing that determination. ⊥16 Thus, Inglai Clan won title to the land even though it had failed to appeal the LCHO's September 1989 determination. The Court did not discuss the clan's failure to appeal or the significance of the clan's collateral attack.

Although we believe that the ultimate outcome of *Inglai Clan* was correct, the reasoning was inconsistent with that applied in this case and in other cases and we disapprove of the methodology. Once it is conceded that the 1982 Land Commission proceedings did not result in a final determination,[5] then the court was in error in applying § 1110(c), since that provision by

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[4] Under 35 PNC § 926 (repealed 1987), land registration teams were to forward "adjudications" to the full Land Commission, which would decide whether to issue a determination of ownership. An adjudication was not a final action. See Ulochong v. LCHO, 6 ROP Intrm. 174, 177 (1997).

[5] *See Inglai*, 3 ROP Intrm. at 220 ["In 1982, the Land became the subject of Formal Hearing No. 47 before the Palau Land Commission ("Commission"), which determined that the Land belonged to Ngatpang Municipality. However, the Commission never issued a notice of its Determination of Ownership nor a certificate of title."].

its terms applies only to final determinations.

Moreover, Inglai Clan should not have been permitted to raise that particular argument on a collateral attack. Unappealed determinations of ownership are generally valid against the world. *See Bilamang v. Oit* , 4 ROP Intrm. 23, 28 (1993). A party that chooses not to appeal loses the opportunity to come back in another lawsuit to raise arguments that should have been pressed in the original case.

The only collateral attack open to Inglai Clan on the facts presented was that the LCHO deprived it of due process by not holding a hearing before issuing the 1989 determinations. *See Uchellas v. Etpison* , 5 ROP Intrm. 86 (1995) (due process claim may be raised on collateral attack). One who challenges a determination of ownership the basis that statutory or constitutional procedural requirements were not met has the burden of proving non-compliance by clear and convincing evidence. *Ucherremasch v. Wong*, 5 ROP Intrm. 142 (1995).

In *Inglai Clan*, that requisite showing was made. As the Trial Division noted:

> The LCHO did not, in this instance, follow its usual practice of notifying the public and providing a period for filing claims, then holding hearings thereon before making a determination, perhaps because the procedures had been followed back in 1982 . . . .

Trial Division Opinion at 5 (Apr. 17, 1990).

Thus, Inglai Clan did not have an opportunity to explain the basis of its claims to the LCHO, and should have prevailed on appeal because of this due process violation rather than an argument based on § 1110(c).

In this case, Ngatpang State did not appeal the determinations of ownership. Instead, it waited four years and then filed this case. Like Inglai Clan, the State should be limited to challenging the procedural insufficiencies of the 1989 proceedings. However, unlike in *Inglai Clan*, we find no evidence, let alone clear and convincing evidence, that the LCHO deprived the State of due process in issuing the 1989 determinations. Appellant was responsible for initiating the LCHO's 1989 actions by sending it the March 1989 letter. Appellant knew that the LCHO was reconsidering ownership of Ngerdubech lands because it had asked the LCHO to do so. Moreover, the State had informed the LCHO that it was ⊥17 "releas[ing] and discharging] any and all claims" to those lands. Although the LCHO may not have followed the exact specifications of the land redistribution plan the State spelled out in the March 27, 1989 letter, the State cannot assert that it was deprived of due process when it had specifically released its claims in that letter.

Accordingly, it is hereby ordered that the judgment of the Trial Division is AFFIRMED.