Renguul v. ASPLA, 8 ROP Intrm. 282 (2001)

THOMAS RENGUUL and
ROMAN TMETUCHL FAMILY TRUST,
Appellants,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 99-32
Civil Action No. 255-97

Supreme Court, Appellate Division
Republic of Palau

Argued: August 3, 2000
Decided: March 23, 2001

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: John K. Rechucher

BEFORE: LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice; DANIEL N. CADRA, Senior Judge, Land Court.

MILLER, Justice:

In *ROP v. Ngara-Irrai* , 6 ROP Intrm. 159 (1997), this Court affirmed a judgment that land in Airai known as *Yelch* is public land with title held by Airai State Public Lands Authority ("ASPLA"). ASPLA brought this action to evict Roman Tmetuchl and Appellant Thomas Renguul from the elementary school facility on *Yelch*. The Trial Division granted summary judgment for ASPLA, issued an order evicting Tmetuchl and Renguul from the property, and awarded ASPLA back rent of $135,000. We affirm.

Background

This is the second case to reach this Court concerning the respective rights of Roman Tmetuchl[1] and the Airai State government to the elementary school facility built on *Yelch* by Tmetuchl's company Pacifica Development Corp. ("PDC"). In the previous case, Tmetuchl and the Ngara-Irrai, the Airai traditional council of chiefs,[2] claimed that *Yelch* was village land owned

[1] Roman Tmetuchl died on July 1, 1999. Appellant Roman Tmetuchl Family Trust is Tmetuchl's successor in interest.

[2] In that litigation, as here, Tmetuchl claimed to bear the title Ngiraked, paramount chief of Airai and head of the Ngara-Irrai. Tmetuchl's status as Ngiraked remains the subject of unrelated litigation. *See Matlab v. Ngireblekuu*, Civ. Act. No. 173-97 (June 7, 1999), *appeal*

by the council of chiefs. Tmetuchl and PDC also filed a counterclaim alleging that the government owed PDC approximately $1 million for the costs of building the school. Tmetuchl claimed he had made an agreement on behalf of the state while Governor of Airai that the land where the elementary school was previously located, *Beluaruchel*, would be transferred to the Ngara-Irrai in exchange for PDC's construction of the new school. Tmetuchl and PDC claimed that the state government administration succeeding Tmetuchl's administration refused to honor the agreement, making it liable for the costs of the school. The trial court held *Yelch* was public land belonging to the government and that the government was not liable for the cost of the school. *See ROP v. Ngara-Irrai* , Civ. Act. No. 337-91 (Dec. 7, 1995), *aff'd*, 6 ROP Intrm. 159 (1997).

In August 1997, ASPLA brought this action seeking ejectment of Appellants from *Yelch*. Appellants claimed they had been occupying the school facility pursuant to a 1995 lease. They produced a "Lease Agreement" signed by Tmetuchl and four other members of the Ngara-Irrai on behalf of ⊥283 ASPLA.[3] The contract gave Tmetuchl a 50-year lease to the school facility at a rent of $300 per year and was signed by Tmetuchl as Lessor and Lessee.

Appellants moved for summary judgment, arguing that Tmetuchl and the other signatories of the lease were members of ASPLA's Board of Trustees with authority to execute the lease. ASPLA moved for partial summary judgment, arguing that it was a conflict of interest for Tmetuchl to have signed the lease on behalf of ASPLA. Assuming that the signatories of the lease were members of ASPLA, the Trial Division determined that the lease did not violate 40 PNC § 654 or 33 PNC § 601. [4] However, the court held that the lease was executed in violation of common-law rules governing conflicts of interest and could not be given legal effect. The court granted ASPLA's motion for partial summary judgment and issued an order evicting Appellants from *Yelch*. In a separate order the court awarded ASPLA $135,000 in damages. The court found that the facility had a rental value of $5,000 per month and held that ASPLA was entitled to back rent in this amount for each month of Appellants' continuous occupation of the facility from June 29, 1997 through September 1999.

Issues on Appeal

Appellants make numerous arguments regarding the validity of the lease and the amount of back rent. We find no errors in the trial court's disposition of the case and affirm.

A. Tmetuchl's Right to Equitable Relief

Appellants contend that the lease should be upheld as an equitable matter because the

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pending, Civ. App. No. 99-19.

[3] The four members of the Ngara-Irrai other than Tmetuchl who signed the lease were Yaoch Daniel Ngirchokebai, Iyechad Ra Odelomel Rechirei, Ilabsis Edeluchel Eungel, and Rechuld Raymond Rebluud.

[4] The trial court determined that Tmetuchl's position as a traditional leader and member of ASPLA did not make him a government employee under either statute. *See* 33 PNC § 103(h); 40 PNC § 606(k).

government never reimbursed Tmetuchl and PDC for the school facility despite using the facility as the site of Airai elementary school from 1989 to 1994. They argue that ASPLA will be unjustly enriched if permitted to take possession of the school facility and that a constructive trust or an equitable lien should therefore be imposed on the property in Tmetuchl's favor. *See Restatement of Restitution* §§ 160, 161, 170 (1937) (setting forth causes of action for a constructive trust and an equitable lien).

ASPLA argues that Tmetuchl's right to compensation from the government for the cost of the school was adjudicated in the previous case and that Appellants' claims to equitable relief are barred by res judicata. [5] ⊥284 We agree. Under the doctrine of res judicata, the dismissal of a claim extinguishes any further right to relief based on the facts giving rise to the claim in subsequent litigation between the same parties. *See Restatement (Second) of Judgments* § 24 (1982). This rule applies even where the claimant is prepared to proceed under a different theory of recovery or seek a different remedy. *See id.* § 25. The Trial Division in the prior litigation considered at some length the question whether "any payment [was] due for the construction of the buildings," *Ngara-Irrai*, Civ. Act. No. 337-91 at 6-12, including an argument based on unjust enrichment, *see id*. at 9-11, and concluded that "[n]o construction compensation [was] due any defendant from Airai State or ASPLA." *Id*. at 13. These arguments were considered -- and rejected -- by the Appellate Division as well. *See Ngara-Irrai*, 6 ROP Intrm. at 166-68. The dismissal of Tmetuchl and PDC's counterclaim for reimbursement from the government for the cost of the school in the prior case precluded Tmetuchl from asserting in this case any further claim against the government for reimbursement or other compensation for the school.

B. The Validity of the Lease

Appellants argue that the Trial Division erred in holding that the lease was executed in violation of common-law conflict of interest rules. They argue that the common-law rules on which the Trial Division relied are inapplicable in Palau and that, even if applied, the lease was still valid.[6]

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[5] Appellants argue that this issue was not raised in the trial court. We disagree. In its opposition to Appellants' motion for summary judgment, ASPLA noted that Appellants' "facts and arguments . . . were presented to the court" in the prior litigation, and argued that the trial court here should not "re-evaluate and pass on a second decision on the same facts."

Appellants also suggest that if they are barred from raising these issues, ASPLA should likewise be barred from seeking back rent. Appellants would be correct to the extent that ASPLA were attempting to collect rent that was sought (or could have been) in the prior litigation. The relief sought by and awarded to ASPLA, however, arises out of Appellants' continued occupation of the buildings after the prior litigation was completed. *See Clark v. Yosemite Community College Dist.*, 785 F.2d 781, 789 (9th Cir. 1986) ("[R]es judicata extends only to the facts and conditions as they existed at the time the judgment was rendered[.] . . . When other facts or conditions intervene, forming a new basis for a claim, the issues are no longer the same and res judicata does not apply.") (citations omitted).

[6] Appellants also suggest that the trial court "exceeded its jurisdiction" and "showed partisanship" for ASPLA by basing its ruling on the common law instead of the statute on which

Recognizing that the development of common and statutory law in Palau would be gradual, the Trust Territory and the First O.E.K. enacted 1 PNC § 303, which provides:

> The 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, shall be the rules of decision in the courts of the Republic in applicable cases, in the absence of written law . . . or local customary law . . . .

Appellants argue that common law rules must be adopted by a majority of U.S. jurisdictions before they qualify as the law of Palau under this statute. We disagree. The manifest purpose of section 303 is to avoid gaps in the law during the development of Palau's legal system. Appellants' rule would substantially frustrate this purpose by rendering inapplicable many rules that, even if not expressly addressed or adopted by a ⊥285 majority of U.S. jurisdictions, are widely accepted as part of United States common law.

The Trial Division cited authority from several jurisdictions indicating that, at common law, members of government boards may not have a private interest in board contracts and may not vote on matters in which they have conflicts of interest. [7] This authority gives no indication that these rules are peculiar to any jurisdiction or that any jurisdictions follow competing rules. In the absence of contrary authority, the trial court did not err in concluding that these authorities describe rules of the common law, "as generally understood and applied in the United States."

Appellants argue secondarily that common-law rules do not apply because there is applicable written law, namely the conflict of interest provisions codified at 33 PNC § 601, *et seq.* and 40 PNC § 654, *et seq.* Again, we disagree. As we have previously held, in deciding whether there is statutory law which precludes the application of common law, we ask "whether the legislation has spoken directly to the question addressed by the common law." *The Senate v.*

ASPLA primarily relied. ASPLA's motion for partial summary judgment contains a lengthy quotation from *American Jurisprudence* setting forth the principle that "[a] contract entered into by a board with one of its members is void, or at least voidable, even in the absence of a statutory prohibition." Thus, as was the Trial Division, we are at a loss to understand Appellants' contention that the court addressed an issue "neither raised nor advocated by ASPLA."

[7] *See* 63C Am. Jur. 2d *Public Officers and Employees* § 262 (1997) ("Public officers are generally prohibited from contracting with the government agency which they represent or from having a private interest in its contracts.") (citing *Warren v. Reed*, 331 S.W.2d 847 (Ark. 1960)); *id.* § 252 n. 69 ("At common-law, a conflict of interest exists if an administrative official votes on the matter in which he or she had a personal direct and pecuniary interest.") (citing *Evans v. Hall*, 396 A.2d 334 (N.H. 1978)); *Carney v. State Bd. of Fisheries*, 785 P.2d 557 (Alaska 1990) (holding that members of a state regulatory board violated the common law by voting on regulations affecting industries in which they had a financial interest); *Anderson v. Parsons*, 496 P.2d 1333, 1337 (Ind. 1972) ("It has generally been held that the vote of a council or board member who is disqualified because of interest or bias in regard to the subject matter being considered may not be counted in determining the necessary majority for valid action.").

Nakamura, 7 ROP Intrm. 212, 218 (1999). This "includes an assessment of the scope of the legislation and whether the scheme established by [the legislature] addresses the problem formerly governed by" the common law. *Id.*

In this case, we find the O.E.K. has not "spoken directly" to the problem addressed by the common law. 33 PNC § 601, enacted as part of the National Public Service System Act, addressed the particular -- and distinct -- problem raised by national government employees engaging in potentially incompatible outside employment activities. [8] 40 PNC § 654, part of the law regulating government procurement, addresses the circumstances in which a government employee may participate in a procurement in which he or she may have an actual or potential conflict of interest. [9] Although each statute obviously addresses conflicts of interest in particular circumstances, neither attempts to address the issue in a comprehensive fashion or speaks directly to the broader concerns addressed by the common law.

⊥286 Appellants also argue that the lease is valid even taking into account the conflict of interest rules applied by the Trial Division. They contend that the lease only needed approval by a majority of a quorum of ASPLA board members and argue that the four board members signing the lease who did not have conflicts of interest composed a quorum of the board.

There is a division of authority on whether the failure of a member of a government board to properly disqualify himself or herself from voting or participating in board discussions concerning a matter in which he or she has a conflict of interest necessitates the invalidation of resulting board action if the measure is approved by a necessary majority of qualified board members. *See Schumacher v. City of Bozeman* , 571 P.2d 1135, 1141 (Mont. 1977). Some courts adopt a "vote-counting" approach in which a measure approved by a necessary majority of qualified board members is not rendered invalid by the illegal vote or participation of a disqualified member. *See id.* (citing *Singewald v. Minneapolis Gas Company* , 142 N.W.2d 739 (Minn. 1966); *Eways v. Reading Parking Authority* , 124 A.2d 92 (Pa. 1956)); *see also Waikiki Resort Hotel v. City of Honolulu*, 624 P.2d 1353, 1370-71 (Haw. 1981).

Other courts, however, take the view that the involvement of a disqualified member in the decision-making process may influence the votes of the other members and creates an appearance of impropriety even if the member's vote is not dispositive. *See Schumacher*, 571 P.2d at 1141 (citing *Piggott v. Borough of Hopewell,* 91 A.2d 667, 670 (N.J. 1952)); *see also Buell v. City of Bremerton,* 495 P.2d 1358 (Wash. 1972). These courts hold that the participation of a disqualified board member in the decision-making process necessitates the invalidation of the resulting vote either automatically, *see Schumacher*, 571 P.2d at 1141 (citing *Baker v. Marley,* 170 N.E.2d 900 (N.Y. 1960); *Aldom v. Borough of Roseland,* 127 A.2d 190 (N.J. 1956); *Wilson v.*

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[8] "No national government employee subject to the provisions of this division shall engage in any outside employment or other outside activity not compatible with the full and proper discharge of the responsibilities of his office or position or otherwise prohibited by law." 33 PNC § 601.

[9] "It is a breach of ethical standards for any employee of a government agency to participate directly or indirectly in a procurement with that government agency if: (1) the employee . . . has a financial interest pertaining to the procurement[.]" 40 PNC § 654(a)(1).

Iowa City, 165 N.W.2d 813, 820 (Iowa 1965)), or if the participation of the disqualified member affected the outcome, as determined by evaluating the extent of the board member's interest and involvement and whether the conflict of interest was disclosed or known. *See Griswold v. City of Homer,* 925 P.2d 1015, 1029 (Alaska 1996).

We need not decide this issue here, because, contrary to the claims of Appellants, there were not enough qualified board members to approve the lease without Tmetuchl's involvement. Members of government boards cannot act for the board absent a quorum consisting of a majority of board members. *See F.T.C. v. Flotill Products,* 88 S.Ct. 401, 404 (1967). A board member who is disqualified from voting on a matter also does not count toward the quorum if he or she is present for the voting. *E.g., In re Shapiro,* 392 F.2d 397 (3d Cir. 1968). The signatories needed a quorum of five qualified board members to act for ASPLA's board of eight. Tmetuchl's disqualification left them one member short of the necessary majority.

Appellants' only effort to avoid this conclusion is to argue that when a board member is disqualified from voting due to a conflict of interest the number of board members needed for a quorum is accordingly reduced. Appellants argue that a quorum in this circumstance consists of a majority of board members qualified to act on the matter rather than a majority of all the members of the board.

We are unpersuaded by Appellants' idiosyncratic definition of a quorum. We have found no authority, and Appellants have produced none, that indicates that the disqualification of a board member from voting due to a conflict of interest reduces the ⊥287 number of board members needed for a quorum. [10] In fact, the pertinent cases indicate that a disqualification of a board member has no effect on the size of the quorum. *In re Shapiro,* 392 F.2d 397 (3d Cir. 1968), held that four members of a board of six did not compose a quorum where one of the four was disqualified from voting due to a conflict of interest. If Appellants' definition were correct, the remaining three board members who were qualified to vote would have composed a quorum as a majority of board members qualified to act on the matter. *See also Davis v. Health Dev. Co.*, 558 P.2d 594 (Utah. 1976) (no quorum where two of four members present on board of five had conflict of interest); *Colorado Management Corp. v. American Foundation Life Ins. Co.* , 359 P.2d 665 (Colo. 1961) (no quorum where three of six members present on board of eight had conflicts of interest).

In addition, Appellants' definition of a quorum is inconsistent with the purposes of conflict of interest rules. Under Appellants' definition, fewer board members are required to act on a matter on which a board member has a conflict of interest than are required to act on a

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[10] The Sixth Edition of *Black's Law Dictionary* was inconclusive, as it defined a quorum as "a majority of those entitled to act" and "a majority of the entire body." *Black's Law Dictionary* (6th ed. 1990). The current edition simply defines a quorum as "[t]he minimum number of members (usu. a majority) who must be present for a body to transact business or take a vote." *Black's Law Dictionary* (7th ed. 1999). *Hotaling v. Hotaling*, 224 P. 455 (Cal. 1924), also cited by Appellants, held only that a disqualified board member does not count toward the existence of a quorum, not that he did not count as a member of the board for the purposes of determining the quorum. *Hotaling* is therefore consistent with the other cases on point.

matter on which all board members are disinterested. We fail to see how this result promotes the "accuracy of decisions" or mitigates the "appearance of impropriety" inherent in conflicts of interest. *See Griswold v. City of Homer,* 925 P.2d 1015, 1029 (Alaska 1996).

C. The Amount of Back Rent

Appellants make two arguments bearing on the amount of damages awarded to ASPLA. First, they contend that the trial court should have ruled on whether the lease was void or voidable. If the lease was voidable, they argue, they would only have been liable for the period of their occupation after the lease was voided, which they contend occurred on April 21, 1999. This argument is flawed. As indicated above, the signatories of the lease lacked authority to act for ASPLA's board. Consequently, the lease never came into effect as a binding contract and could have given Appellants no rights at any time to occupy the facility. Thus, to the degree that the distinction between voidable and void contracts applies to such an agreement, the lease was manifestly void *ab initio*.

Second, Appellants claim that the Trial Division erred in holding that they were liable to pay back rent for the entire facility rather than the part that they used and occupied. The Trial Division found that this argument was inconsistent with a stipulation entered after the eviction order was issued in which Appellants agreed that ASPLA's damages would be back rent for the entire facility. Appellants argue that the stipulation did not settle rent but only set conditions for the entrance of a stay of judgment and the eviction order. Appellants' argument is belied by the record. The stipulation read in pertinent part:

> Defendants and Plaintiff by their respective counsel do hereby stipulate and agree for the entry of an order in the above-entitled matter ⊥288 regarding damages as follows: 1. That damages to Plaintiff consisting of back rent (from April, 1997 to June, 1999) for the old Airai Elementary School compound consisting of the two (2) story concrete building - the elementary school; the head start building; the kitchen; the gymnasium; and the portion of Yelch upon which the buildings are located will be briefed by the parties and submitted to the Court for its ruling.

There was no reason for the parties to itemize the buildings of the facility if it was not their understanding that Appellants would be liable for the use of those buildings.

Conclusion

We affirm the Trial Division's rulings on the validity of the lease and the award of $135,000 in damages for Appellants' unlawful occupation of *Yelch* from June 29, 1997, through September 1999.