PPLA v. Salvador, 8 ROP Intrm. 73 (1999)
PALAU PUBLIC LANDS AUTHORITY,
Appellant,

v.

EBIBEI SALVADOR, et al.,
Appellees.

CIVIL APPEAL NO. 98-44

Supreme Court, Appellate Division
Republic of Palau

Argued: October 29, 1999
Decided: November 24, 1999
Amended: November 29, 1999

Counsel for Appellant: James T. Dixon Jr., Office of the Attorney General

Counsel for Appellees Reiko Ridep, Masae Yoshiwo, & Isor Kikuo: David J. Kirschenheiter

Counsel for Appellees other than those represented by Mr. Kirschenheiter: Johnson Toribiong

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

MICHELSEN, Justice:

This direct appeal from the Land Court comes in an unusual posture. The individual claimants do not argue that the land in question was originally their clan or lineage land. They do not assert that they bought the land, or that the parcels appear in Japanese or German documents as belonging to their families. Rather, they explain that in the confusion and disruption at the end of World ⊥74 War II, their families began to use the parcels in question, and thereafter treated the lots as if they were their property. On that basis only they requested the Land Court give them title to the land. Because we hold that one cannot assert a claim of adverse possession against the government, we reverse the Land Court holding awarding these parcels to the Appellees.

FACTUAL BACKGROUND

On appeal, the Government[1] accepts the findings of fact of the Land Court, and therefore

[1] The government agency involved here is the Palau Public Lands Authority ("PPLA"). The PPLA is "the entity to administer the public lands of the Republic." 35 PNC § 201. It holds title to the Republic's public lands. 35 PNC § 210(b). It may exercise the power of eminent domain. 35 PNC § 211(a). Its revenue is placed in the National Treasury. 35 PNC § 217. We

we will also. The pertinent Land Court findings were:

> The Ongewidel/Yamane area of Peleliu was mangrove swamp or submerged under water prior to the Japanese occupation of Palau. During the Japanese administration, a Japanese phosphate company named "Kohatsu" started a mining operation in this area of Peleliu. The company used this area for loading/unloading carts or "karrong" with phosphate. As a result of these mining activities, the once submerged land was eventually filled in and became dry land. Then a Japanese national by the name of Yamane took advantage of the dry land and began to cultivate crops and vegetables there, with his primary consumers being the mining company personnel. Henceforth, the area became identified by the produce farmer's name "Yamane." It is also known as "Ongewidel" which loosely translates as "dam."
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> During the compilation of the unofficial Tochi Daicho of Peleliu, the entire area was registered under Palau Administration as Lot No. 1068. When World War II ended and the Japanese left the islands, the land became idle and vacant until the various individual claimants herein began using it to plant subsistence crops.

ANALYSIS

The Land Court determined that the government "either never owned the land or abandoned its ownership over a half-a-century ago," and that "[t]he open, continuous and uninterrupted use of these parcels under a claim of right for approximately fifty (50) years entitles the individual claimants [to] ownership of the enumerated lots." The Land Court never used the expression, "adverse possession," but we believe the parties correctly construe the court's opinion as alternatively holding that PPLA failed to ⊥75 prove ownership, and/or lost title to the property by adverse possession.

Although the Land Court determined that the Palau Public Lands Authority failed to prove the property was government land, the above facts compel the opposite conclusion; the presently-contested filled land is owned by the PPLA whose chain of title can be traced back to the Japanese Mandate government.

At the beginning of the Trusteeship virtually all prior law of the previous occupying powers was declared void. *See* 1 PNC § 304, recodifying 1 TTC § 104. However, the Administering Authority expressly adopted the "portion of the law established during the Japanese Administration… that all marine areas below the ordinary high watermark belong to the government." *See* 35 PNC § 102 (recodifying 67 TTC § 2). This Japanese regulation was likely left in place because it was the same rule found in both English and American law. Known as Lord Hale's doctrine, the English common law provided that any marine area below the usual high tide watermark belonged to the state. *See Ngiraibiochel v. Trust Territory,* 1 TTR 485,493

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therefore believe that in these circumstances the PPLA may utilize any defenses generally available to the Government, so in this opinion we refer to the Government and PPLA interchangeably.

(Tr. Div. 1958).[2]

The subsequent filling of the area would not have affected government title. The usual American rule is that marine property that is purposely filled in (as distinguished from a natural process of erosion or accretion) remains government land. *See* B.H. Glenn, Annotation, *Rights to Land Created at Water's Edge by Filling or Dredging* , 91 A.L.R. 2d 857, 859-60 (1963). It is inconceivable that the Mandate Government would have had a different rule, in light of that Government's always-expansive view of what constituted public land. *See, e.g.*, Mark R. Peattie, *Nan'yo: The Rise and Fall of the Japanese in Micronesia, 1885-1945* 98-99 (1988); Francis X. Hezel, *Strangers in Their Own Land* 191 (1995). We therefore conclude that after the property was filled in, the land remained government land.

That brings us to Mr. Yamane, the Japanese national using the property just before the war. On this record we do not know what his rights were. It cannot be determined if he had purchased the property at some point, or whether he was a government tenant. However, it does not matter. Whatever use right or title Yamane possessed at the end of the war was transferred to the Trust Territory Government, and that transfer occurred early in the trusteeship period as part of a 1951 vesting order. *See Ngiraikelau v. Trust Territory*, 1 TTR 543, 548 (Tr. Div. 1958). This vesting order was later codified at 27 TTC § 2. Therefore, the filled areas at issue here became Trust Territory Government property, either by way of 35 PNC § 102 (67 TTC § 2(1)), or 27 TTC § 2.

In 1974 the Secretary of the Interior directed the Trust Territory Government to (with exceptions not pertinent to this case) transfer title to public lands in Palau to the government agency created to hold such ⊥76 lands. *See* Secretarial Order No. 2969 (1974) reprinted in 1 *Trust Territory Code* 31 (The Michie Co. 1980). The PPLA was created by PL 5-8-10 for the purpose of receiving such lands. *See* 35 PNC § 201 *et seq.* Therefore, PPLA's chain of title begins with the property being government property before the war, later vested by law with the Trust Territory Government, and later transferred to PPLA.

In contrast, these Appellees did not previously have title and were only squatters [3] on the property. Consequently, the claimants must argue that they have acquired the land by adverse possession. However, one cannot obtain title against the government based upon a claim of adverse possession. This is a long-standing and well-known rule, admitting of few exceptions. *See* R.P. Davis, Annotation, *Acquisition by Adverse Possession or Use of Public Property Held by Municipal Corporation or Other Governmental Unit Otherwise than for Streets, Alleys,*

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[2] Coincidentally, this rule was not inconsistent with customary Palauan land tenure law. Traditionally, mangrove swamps, the reef, and the sea were considered public domain, usually under the control of an appropriate village klobak, and members of the village could use the area. Persons not from the village could, with permission of the klobak, also use public domain areas. 1 *Office Of The High Commissioner Trust Territory Of The Pacific Islands, Land Tenure Patterns: Trust Territory of the Pacific Islands* 296 (1958). The private claimants in this case do not make any claim under Palauan custom.

[3] A squatter is "[a] person who settles on property without any legal claim or title." *See Black's Law Dictionary* 1411 (7th ed. 1999).

Parks, or Common, 55 A.L.R. 2d 555, 559 (1957).

Appellees direct our attention to a Trial Division opinion in *Estevan v. Palau Public Land Authority*, C.A. No. 543-89 (Tr. Div. 1990). In that case Justice O'Brien held that 35 PNC § 1104(b) (now recodified at 35 PNC § 1304(b) as part of the Land Claims Reorganization Act of 1996) is a statutory basis for citizens to receive title to public lands based upon adverse possession. This interpretation of the statute is demonstrably wrong.

Subsection 1104(a) of Title 35 was the general jurisdiction provision for the Land Claims Hearing Office, and the comparable Land Court statute is 35 PNC § 1304(a). In both laws, the LCHO and its successor the Land Court are to "proceed on a systematic basis to hold hearings and to make determinations with respect to the ownership of all land[s] within the Republic." In contrast, subsection 1104(b) and the Land Court counterpart, subsection 1304(b), are not grants of general jurisdiction, but are the implementation provisions for Article XIII, section 10 of the Constitution.[4] Specifically, in pertinent part subsection 1104(b) provided that an award of public land may be made to any citizen who can

> prove that such land became part of the public lands, or became claimed as part of the public lands, as a result of the acquisition by previous occupying powers or their nationals . . . through force, coercion, fraud, or without just compensation or adequate ⊥77 consideration, and that prior to such acquisition such land was owned by such citizen or citizens or that such citizens are the proper heirs to such land. The statute of limitations, and adverse possession, may not be asserted against and shall not apply to claims for public lands by citizens of the Republic, except subsequent to a determination of ownership by the Land Claims Hearing Office pursuant to this section.

35 PNC § 1104(b).

We believe a number of conclusions are inescapable. First, the provisions of this subsection and its Land Court counterpart obviously apply only to Article XIII cases, not every case. But even if this language is lifted out of subsection (b) and applied to subsection (a) cases as well, it would not assist these claimants. The statute states that adverse possession claims "may not be asserted against and shall not apply to claims for public lands by citizens of the Republic . . . ." In this case, the Government is not asserting an adverse possession claim against these claimants. In summary, these statutory provisions cannot form a basis for upholding the Land Court decision in this case.

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[4] Article XIII, section 10 of the Palau Constitution provides:

> The national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.

Appellees rely upon a second case, *Ngarchelong State Public Land Authority v. Aguon* , 3 ROP Intrm. 110 (1992) [hereinafter, " *Aguon*"]. *Aguon* does not involve adverse possession, but there is a discussion concerning the applicability of the statute of limitations with respect to government claims. *Id.* at 113-14. Adverse possession and the statute of limitations must be considered together. A claimant obtains much the same result whether claiming under a twenty year adverse possession claim, or invoking a twenty year statute of limitations defense.

In *Aguon*,[5] the trial court found that Ngerchur island had been purchased by David O'Keefe, who thereafter gave it to Ramon Aguon, Sr. Mr. Aguon lived there for the rest of his life. The lots on the island were listed in the Tochi Daicho as belonging to the sons of Ramon. The family fled the island during World War II, but one of the sons, Carlos, returned after the war. Ngarchelong State Public Land Authority asserted ownership of the island, but the trial court ruled in favor of Aguon based upon its fact-finding. "The trial court also held that any claim NSPLA and its predecessors may have had was barred by the statute of limitations and in equity by virtue of their inaction for 118 years." *Aguon,* 3 ROP Intrm. at 111-112. On appeal, the Authority asserted that the trial court had committed error by: "1) relying upon plaintiff's testimony; 2) holding that plaintiff's long uncontested use established ownership; 3) holding that NSPLA failed to rebut the Tochi Daicho; and 4) awarding costs to Aguon." *Aguon,* 3 ROP Intrm. at 112.

The Appellate Division considered all issues raised by NSPLA and denied the appeal. The Court also discussed the applicability of the statute of limitations, an issue neither raised or briefed by the parties, [6] and offered the opinion that "[t]he trial court's ⊥78 conclusion that NSPLA's claims to ownership are barred by the statute of limitations and equity is correct as a matter of law." *Aguon,* 3 ROP Intrm. at 115. However, if the issue had been fully briefed and considered, the Court would have been constrained to hold that the Trial Division's alternative holding was in error as a matter of law because statutes of limitations do not run against the government. *See e.g. Federated States Dev. Bank v. Yap Shipping Coop.,* 3 FSM Intrm. 84, 86 (Yap 1987) (holding that 6 TTC § 305 cannot bar a claim by the Trust Territory Government).[7]

There is both a legal and practical basis for this doctrine. At common law, there was no time limitation to bringing an action. *See United States v. Thompson* , 23 L.Ed. 194, 195 (1879). Statutes of limitation have been interpreted as not applicable to claims by the government. This rule has long been followed in the United States. *See id.* The doctrine does not merely survive, however, upon this precedential basis. Justice Story explained:

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[5] The summary of facts is taken from *Aguon v. NSPLA*, 3 ROP Intrm. 110 (1992) and *Aguon v. Aguon*, 5 ROP Intrm. 122 (1995).

[6] *See* Appellate file, *NSPLA v. Aguon*, Appeal No. 6-91.

[7] The recent case of *Fanna and Merir Municipal Government v. Sonsorol State*, 8 ROP Intrm. 9 (1999), is not in conflict with our remarks here. In *Fanna*, the Municipalities argued that the wrong accrual dates were used by the trial court to determine the limitations period, and also asserted that partial payment restarted the time frame. We were not asked to determine if the statute of limitations does, or does not, apply in intragovernment litigation, and also do not reach the issue here.

> The true reason . . . is to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers. And though this is sometimes called a prerogative right, it is in fact nothing more than a reservation, or exception, introduced for the public benefit, and equally applicable to all governments.

United States v. Hoar , 26 Fed. Cas. P. 329, 330 (No. 15373), (quoted in *Guaranty Trust Co. of N.Y. v. United States*, 58 S.Ct. 785, 789 (1938)).

These public policy reasons are as compelling in the Republic of Palau as elsewhere, and require the conclusion that "[r]ights cannot be acquired in public lands by adverse possession or any statute of limitation." *Gauger v. State* 815 P.2d 501, 506 (Kan. 1991). We consider the remarks in *Aguon*, on an issue not raised or briefed by the parties, as erroneous *obiter dictum*.

CONCLUSION

Public land is held by the government as a public trust. Sometimes through honest error, a government official may treat public property as if it were private; for instance, by accepting payment of taxes. *E.g.*, *Yamashita v. People of the Terr. of Guam,* 59 F.3d 114 (9th Cir. 1995). Government officials may also treat public lands as if they were private property for their own criminal purposes. *E.g.*, *People of the Terr. of Guam v. Cruz* , 67 F.3d 176 (9th Cir. 1995). However,

> [t]he Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private ⊥79 disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.

United States v. California, 67 S.Ct. 1658, 1669 (1947).

The determination of the Land Court is reversed, and this matter is remanded to the Land Court with instructions to issue appropriate certificates of title in favor of the Palau Public Lands Authority.