Rechucher v. Ngermeriil, 9 ROP 206 (2002)
EUSEBIO RECHUCHER, et al.,
Appellants,

v.

MEROL NGIRMERIIL, et al.,
Appellees.

CIVIL APPEAL NO. 00-33
Civil Action No. 98-222

Supreme Court, Appellate Division
Republic of Palau

Argued: July 12, 2002
Decided: September 24, 2002

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Counsel for Rechucher: Carlos Salii

Counsel for Armaluuk: Pro se[1]

Counsel for Rengiil: Douglas Cushnie

Counsel for Appellees: Johnson Toribiong

BEFORE: LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN, Associate Justice, presiding.

MILLER, Justice:

This case is a sequel to the long-running litigation concerning the land Ngerielb, which was originally awarded to Ngerketiit Lineage (the "Lineage") in 1958 by the District Land Title Officer in Determination of Ownership No. 162 ("D.O. 162").[2] In *Ngerketiit Lineage v.*

[1]Although he filed an appeal, Appellant Francisco Armaluuk never filed an opening brief. We interpret his response to our order to show cause as a request to join in the brief filed by Mr. Cushnie and hereby grant that request.

[2]By conservative count, litigation relating to Ngerielb has been the subject of at least eight appellate opinions: *Kloteraol v. Ulengchong* , 2 ROP Intrm. 145 (1990); *Ngerketiit Lineage v. Ngerukebid Clan* , 7 ROP Intrm. 38 (1998), *reh'g denied* , 7 ROP Intrm. 64 (1998); *Tmetuchl v. Ngerketiit Lineage* , 7 ROP Intrm. 91 (1998); *Ngerketiit Lineage v. Seid* , 8 ROP Intrm. 44 (1999); *Ngerketiit Lineage v. Tmetuchl* , 8 ROP Intrm. 122 (2000); *Ngerketiit Lineage v. Ngirarsaol*, 8 ROP Intrm. 126 (2000); *Ngerketiit Lineage v.*

Ngerukebid Clan, 7 ROP Intrm. 38 (1998), this Court directed the trial court to award to Appellant Eusebio Rechucher four lots that had been conveyed to him by the Lineage, *id.* at 44-45, accepting its counsel's representation that "all senior strong members [of the Lineage] had assented to the conveyance." *Id.* at 44 n.9. Shortly thereafter, Appellees brought this action seeking, among other things, a declaration that they were senior, strong members of the Lineage and, on that basis, the setting aside of the deeds by which Appellant Francisco Armaluuk had conveyed the land to Rechucher and to which they had not consented.[3] The trial court issued a partial judgment declaring that certain plaintiffs were strong members of the Lineage and holding ⊥208 that "[a]ll of the Armaluuk-Rechucher documents are void to the extent they purport to convey an interest in land." These appeals followed. For the reasons set forth below, the judgment of the trial court is affirmed in part and vacated in part and the matter is remanded for further proceedings.

BACKGROUND

The Appellants' version of the facts, which the trial court generally accepted, is as follows: The original owner of Ngerielb was a man named Tengatel, who bore the title Oukerdeu. In his old age, Tengatel lived alone. In the 1920s, Armaluuk Kloteraol brought Tengatel from Ngerielb in Ngermid to his home in Ngerchemai so that he could be cared for by Kloteraol's mother, Badilai, and his sister, Appellant Ngetechedong Rengiil. In gratitude, Tengatel told Kloteraol he could have Ngerielb. After World War II, Kloteraol filed a successful claim with the District Land Title Officer for the return of Ngerielb, which had been taken by the Japanese in the 1930s. According to the testimony of Armaluuk, who is Kloteraol's son, Kloteraol claimed the land under the fictitious name of "Ngerketiit Lineage" because he did not feel the American land officers would believe that such a large portion of land belonged only to his immediate family for services rendered. The claim resulted in Determination of Ownership No. 162, which vested Ngerielb in the Lineage.

In 1990, when Kloteraol's health began failing, a Memorandum of Understanding/Power of Attorney ("MOU") was executed, appointing Armaluuk to be the administrator of Ngerielb.[4] The MOU recited that "[t]he only known and living strong and Senior members of Ngerketiit Lineage are ARMALUUK KLOTERAOL, Administrator of the property of the lineage, NGETCHEDONG RENGIIL, BERTANG NGIRMERIIL, UBURK NGCHAR, and their oldest sons, namely: FRANCISCO ARMALUUK, BENJAMIN SKILANG, MEROLL NGIRMERIIL and MISIUSCH MARTIN NGCHAR." It was signed by each of those named, with the exception that Armaluuk signed on behalf of Kloteraol, and that Merii, her sister, apparently

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Ngirarsaol, 9 ROP 27 (2001). We add two more to that list today. *See Ngerketiit Lineage v. Rechucher*, Civ. App. No. 01-27, slip op. (Sept. 24, 2002).

[Editor's Note: Civil Appeal No. 01-27 is reported at page 214 of this volume.]

[3]The plaintiffs brought other claims, but only this claim has been finally determined and certified for appeal pursuant to ROP R. Civ. Pro. 54(b).

[4]The document gave Armaluuk "full power to do and perform every act of power and authorities [sic] as an administrator does over the property of Ngerielb for us. Such power includes any transaction regarding the property of Ngerielb for lease or rental to any corporation, individual or agency on our behalf for our benefits [sic]."

signed on behalf of Bertang Ngirmeriil, who – despite the recitation above – was already deceased.

When litigation concerning the ownership of Ngerielb began in the 1990s, Armaluuk sought an attorney and then went to Rechucher asking that he finance the litigation on behalf of the Lineage. To secure the loans, Rechucher took increasing amounts of security in the form of deeds of trust, quitclaim deeds, deeds of transfer, extensions on the deeds of trust, as well as a "ratification of quitclaim deed." All of these documents were signed by Armaluuk with the consent of Rengiil and her son, Benjamin Skilang.

In 1994, an Amendment to the 1990 MOU was signed by Rengiil and her daughter, Agnes Sablan, stating that Skilang would be the administrator of the Lineage's property should Armaluuk fail to act. The acknowledgment prepared for this declaration was executed by Uodelchad, Sylvia Tangelbad and Uburk Ngchar as "members of Ngerketiit Lineage."
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Shortly after the Appellate Division issued its Opinion in *Ngerketiit Lineage v. Ngerukebid Clan*, *supra* n.2, in which a series of lots were awarded to Rechucher, Appellees, who asserted that they were strong members of Ngerketiit Lineage, filed this action, seeking to recover the lands given to Rechucher and the rental proceeds therefrom. They argued that although Armaluuk may have received permission from some of the strong members of the Lineage to alienate the land, they were not aware of the extent of such transactions.

The trial was bifurcated, and on September 1, 2000, the trial court entered its Findings of Fact and Conclusions of Law, in which it first determined that the Lineage membership "consists of the descendants of Ucheliou," who was Badilai's mother. Then, concerning the land conveyances to Rechucher, the trial court held that:

> [t]he 1990 "memorandum of understanding/power of attorney" gave Francisco Armaluuk powers of an "administrator," and expressly included the right to lease the property. The document did not recite any right to alienate the property, either through outright deed or "deeds of trust," and the document cannot be said to convey such power implicitly. An administrator of lineage property does not have the right to convey such power implicitly. An administrator of lineage property does not have the right to alienate property without consent of the senior strong members.

On September 25, 2000, the trial court certified this appeal pursuant to ROP R. Civ. Pro. 54(b). In its judgment, the trial court held that:

> [t]itle to all lands in Ngerielb village previously awarded to Defendant Eusebio Rechucher in *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38 (1998), particularly described as Cadastral Lot Nos. 016 B 05, 016 B 06, 016 B 07, and 016 B 08 is vested in Ngerketiit Lineage. The alleged land transfers by Francisco Armaluuk to Eusebio Rechucher were void, for having been made without the consent of all the strong senior members of Ngerketiit Lineage.

DISCUSSION

A. Appellants Armaluuk and Rengiil

Appellants Armaluuk and Rengiil primarily challenge the trial court's finding that the Lineage consists of the descendants of Ucheliou, Badilai's mother, which includes them, but which also includes Appellees. They argue that Ngerielb was given to only the immediate family of Badilai, *i.e.*, Kloteraol and Rengiil but not Appellees, for the services they provided to Tengatel before his demise, and contend that the trial court's determination that the children of Badilai's siblings shared in the ownership of the land as members of Ngerketiit Lineage is contrary to Palauan custom and therefore clearly erroneous. We find no clear error in the trial court's finding.

We begin with Appellants' argument ⊥210 that the trial court improperly ignored the expert testimony they presented on Palauan custom. Acknowledging that the trial court is not required to accept any testimony, even if uncontradicted, *e.g.*, *Ngerungor Clan v. Mochouang Clan*, 8 ROP Intrm. 94, 96 (1999), Appellants argue that the trial court here committed error by failing to make any findings concerning that testimony. We disagree. Although a trial decision must contain sufficient findings supporting its conclusions to allow appellate review, there is no rule that the court must make a finding with respect to every piece of evidence submitted, customary or otherwise. *Fritz v. Blailes*, 6 ROP Intrm. 152 (1997), on which Appellants rely, is not to the contrary. In that case, the trial court apparently had reached a conclusion based on Palauan custom, but, in our view, had failed to elucidate the basis for that conclusion.[5] Here, the trial court's findings of fact, which generally do not rely on custom, provide ample analysis of how its conclusions were reached.

The question remains, however, whether the trial court's findings are clearly erroneous in light of the customary or other evidence presented. We think not. Appellants' customary evidence might have been determinative if the Trial Division had been faced with the task of determining the owners of Ngerielb in the first instance. But that was not the question before the court: By the issuance of D.O. 162, Ngerielb became the property of Ngerketiit Lineage. But as Appellants urged below, and as the trial court accepted, Ngerketiit Lineage was a fictional entity invented by Kloteraol in the 1950s. Thus, while Appellants assert in their brief that "Ngerketiit Lineage begins with Badilai and her children," according to their own testimony, it is more accurate to say that "Ngerketiit Lineage began in the mind of Kloteraol." The question before the trial court, therefore, was not who, under custom, would be the owners of land originally given out to Badilai, but rather, who did Kloteraol have in mind when he asked the Land Title Officer to award Ngerielb to "Ngerketiit Lineage". Although the answer to that question might be informed by custom,[6] it is not controlled by custom, and we therefore find no error in the trial

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[5]*See id.* (reciting trial court's statement that "under Palauan custom Emaimelei could and apparently did decide to keep [the Palauan money in dispute] for herself," but noting that "[t]his statement could be based on any number of findings"); *see also id.* at 153 ("Where custom is applied it must be reduced to written form . . . .") (internal quotations and citations omitted).

[6]The trial court did find, for example, that in using the term "lineage", Kloteraol intended to follow the

court's having answered it by resort to non-customary evidence.

The ultimate issue, then, is whether the trial court's finding that Ngerketiit Lineage should be interpreted to mean the descendants of Ucheliou was "supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion."[7] We conclude that it was, and we are not "left with ⊥211 a definite and firm conviction that a mistake has been made." In its decision, the trial court began by recognizing that, on the one hand, Kloteraol could have, but had not, claimed the land in the name of Ngermeterkang Clan. It thus reasonably rejected Appellees' contention that the term "Ngerketiit Lineage" should be read to refer to Ngermeterkang. On the other hand, it recognized that Kloteraol could have claimed the land in the name of Badilai or her children, but did not do that either. Although that did not rule out the possibility that Kloteraol had intended Ngerketiit Lineage to refer solely to Badilai's descendants, such a conclusion was not inevitable. In the absence of any direct evidence from Kloteraol regarding his intent, the trial court looked to the "statements made by his close relatives," in particular, the MOU executed in 1990 and the amendment to the MOU executed in 1994. The MOU referred to both Bertang Ngirmeriil, who was the daughter of Ngertaoch, a sister of Badilai, and Appellee Merol Ngirmeriil, Bertang's son, as strong and senior members of Ngerketiit Lineage. Likewise, the 1994 amendment was acknowledged by Uodelchad, who was the daughter of Uchellas, another sister of Badilai, and Appellee Sylvia Tangelbad, a granddaughter of Uchellas through her mother Dilbosech, both of whom were identified as members of Ngerketiit Lineage.

Appellants challenge the factual recitations contained in these documents, arguing, for example, that as a member of the younger generation, Merol Ngirmeriil would not be considered a senior member of Ngerketiit Lineage, and that since Uchellas was adopted out, her descendants "have no rights of property of Badilai's line." *See* Appellants' Opening Brief, December 10, 2001, at 15-16. But these factual challenges are either beside the point or beg the question as to who the members of Ngerketiit Lineage are. The evidentiary import of these documents is that they were prepared at the behest of, and signed by, Armaluuk and Rengiil themselves. If membership in Ngerketiit was limited to the descendants of Badilai, then why did Appellants execute documents entirely inconsistent with that assertion and entirely consistent with the trial court's conclusion that membership in Ngerketiit flows through all of the daughters of Ucheliou?[8] We do not suggest that these documents were the only evidence before the trial court, or that the trial court's conclusion was the only one that could have been reached on the record before it. As we have repeatedly held, however, where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. *E.g.*,

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Palauan custom of matrilineal descent.

[7]"The Appellate Division reviews the Trial Court's findings of fact under the clearly erroneous standard. Under this standard, the court's findings of fact will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made." *In re Estate of Rengiil* , 8 ROP Intrm. 118, 119 (2000).

[8]It is true enough that Kloteraol did not sign these documents. But the question remains why, if they were wildly out-of-synch with Kloteraol's true intentions, they were prepared and signed by his sister and his son.

Ongklungel v. Uchau, 7 ROP Intrm. 192, 194 (1999).[9] We therefore affirm the judgment insofar as it declares the membership of the Lineage to include ⊥212 Appellees.

B. Appellant Rechucher

Rechucher's appeal raises three issues. We first reject his argument that the trial court erred by ignoring the expert testimony on custom for the reasons we have already stated. *See* p. 210 *supra*. We also reject Rechucher's primary argument that, based on the doctrine of *res judicata*, appellees are bound by the prior appellate decisions as to the ownership of the various portions of Ngerielb and, in particular, as to the lots awarded to him. Rechucher quotes our most recent decision relating to Ngerielb for the proposition that "[r]es judicata, or claim preclusion, prevents the subsequent litigation by either party of any ground of recovery that was available in the prior action, whether or not it was actually litigated or determined." *Ngerketiit Lineage v. Ngirarsaol*, 9 ROP 27, 29 (2001). We are doubtful, however, that the doctrine of *res judicata* is applicable here.[10] The claims made in this case were not "actually litigated or determined" in any prior decision. As noted at the outset, *see* p. 207 *supra*, although the Appellate Division directed the trial court to award certain lots to Rechucher, it did not address the issues of membership and consent that are presented here, but simply accepted counsel's representation that the deeds to Rechucher had been properly consented to. Moreover, since the individual Appellees were not parties to the prior litigation, it is not clear to us that these claims, which relate to the disputes among the members of Ngerketiit Lineage rather than the rights of Ngerketiit Lineage vis-a-vis the rest of the world, were "available" in the prior action such that they should now be barred.

Notwithstanding this conclusion, we believe that the prior litigation, and Appellees' awareness of it, may be pertinent to the next argument raised by Rechucher, which concerns the trial court's denial of his motion for summary judgment.[11] As we read it, that motion raised the

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[9]Appellants also challenge the trial court's exclusion, as inadmissible hearsay, of testimony that, upon signing the amendment to the MOU, Uodelchad made statements disclaiming any authority over Ngerielb. We will reverse a judgment due to a wrongful exclusion of evidence only where the trial court abused its discretion. *Ngiraked v. ROP* , 5 ROP Intrm. 159, 167 (1996). Here, it is plain from the trial court's ruling that it viewed Uodelchad's oral statements, admissible or not, as less trustworthy than the statements she – and more importantly, Rengiil – made under oath in the 1994 amendment itself. Thus, even if we were to find that those statements were admissible, it would not affect our conclusion that the trial court's findings were not clearly erroneous. *See Tangelbad v. Siwal Clan*, 9 ROP 169, 171 (2002).

[10]Moreover, we are doubtful whether this argument, at least as it is now framed, was presented below. Neither Rechucher's motion for summary judgment, appended to his opening brief, nor his counsel's closing argument at trial, contains a word about the doctrine of *res judicata*.

[11]Appellees' sole response to this aspect of Rechucher's appeal is to argue that, the trial having been completed, it is too late to question the trial court's denial of his motion for summary judgment. The general rule in most jurisdictions is that "a denial of a summary judgment cannot be reviewed on appeal following a trial on the merits." *See Miner v. Delngelii*, 4 ROP Intrm. 163, 165-66 (1994). To that extent, we agree with Appellees that we should not revisit the trial court's conclusion to deny summary judgment in favor of a full presentation of the facts at trial. The reasoning behind the general rule, however, is that "the refusal to review an order denying a summary judgment can in no sense prejudice the substantive rights of the party making the motion since he still has the right to establish the merits of his case upon

question whether the Appellees' awareness of the prior litigation, including Rechucher's role in financing it and Armaluuk's role in hiring an attorney to represent the interests of Ngerketiit Lineage, could support a conclusion that the Appellees either ratified or acquiesced in the transfer of land to Rechucher. This argument was renewed at trial, Rechucher's counsel arguing that Appellees' awareness of that litigation and their acceptance of Armaluuk as their representative now estops them from ⊥213 complaining about the transfers, which were made known on the record there.

We agree with Rechucher that there is a question whether Appellees' express or tacit authorization of Armaluuk to borrow money and to retain counsel to represent the Lineage – who in turn had the authority to act on behalf of the Lineage in court proceedings – serves to bar them now from challenging the outcome of that litigation; the Appellees were not parties to the prior litigation, but Ngerketiit Lineage was, and the Lineage fully supported Rechucher's claim for the lands he was awarded. Although Appellees appear to suggest that the trial court rejected Rechucher's contentions in this regard,[12] it is not clear to us that this issue was addressed, much less determined adversely to Rechucher, in the trial court's findings or conclusions.[13] Following our usual practice, *e.g.*, *KSPLA v. Diberdii Lineage*, 3 ROP Intrm. 305, 312 n.3 (1993), we believe this issue should be addressed in the first instance by the trial court, which must address the remaining claims in any event. We therefore vacate for the trial court's further consideration that portion of the judgment which voided Rechucher's ownership of the four lots in question.

CONCLUSION

For the foregoing reasons, the trial court's resolution of the Lineage's membership was a reasonable one that is fairly based on the record before it. We thus affirm the judgment of the trial court in that respect. We vacate the trial court's judgment with regard to Appellant Rechucher, however, and remand the matter for further proceedings consistent with this opinion.

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the trial of the cause." *Id.* (citations omitted). Accordingly, so long as these issues were presented before the court at trial, as we believe they were, *see infra*, Rechucher was entitled to raise them on appeal.

[12] *See* Appellees' Responsive Brief, March 20, 2002, at 16 ("the issues between the parties were subsumed in the Decision and Judgment based on the evidence").

[13]

> To the contrary, the transcript of the later hearing on Appellees' motion for relief from judgment in the quiet title litigation, *see Ngerketiit Lineage v. Rechucher* , Civil Action No. 121-94, reflects that the trial court raised – without deciding – this same issue:
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> > I guess the area that concerns me is when the members of the lineage appoint someone to represent them in litigation. And when that duly appointed person hires an attorney, they know that the litigation is going on. I'm concerned about the idea that that duly appointed representative and their attorney can make judicial admissions [and] that later on those who actually did appoint that person as an agent can say "well, that part I don't agree with."
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> Tr. of May 25, 2001 Hearing at 42-43.