Iyar v. Masami, 9 ROP 238 (Tr. Div. 2002)

OBODEI S. IYAR,
Plaintiff,

v.

DWIGHT MASAMI,
GEORGE SUGIYAMA and
JOHN DOES 1-10,
Defendants.

CIVIL ACTION NO. 98-127

Supreme Court, Trial Division
Republic of Palau

Decided: November 7, 2000

[1] **Constitutional Law:** Land Transfers

The provision requiring the return of public lands must be read to require the return of lands unencumbered by prior leases.

[2] **Property:** Lease

The successor in interest to a lessor of land, whether by sale or grant, must honor the lease not because he is in privity with the original lessor, but simply because what he receives from the lessor is not the entire estate, but only the reversion that remains after the leasehold has been created.

[3] **Constitutional Law:** Land Transfers

Both the language of Article XIII, Section 10 – which calls for the return of land to its "original owners", and 35 PNC § 1304 – which directs the Land Court to "award ownership of public land", strongly suggest that what is to be given to the successful claimant is full ownership.

[4] **Property:** Lease
⊥239
The notion of "paramount title," and the rules associated with it, presuppose that there are circumstances in which a party gaining ownership of a particular property is not bound by prior leases executed by the owner who preceded him.

[5] **Damages:** Improvements to Real Property

Only such claimants as made improvements in good faith in the belief that they had a good title are entitled to an allowance against the true owner for the improvements.

[6] **Words and Phrases**

Good faith is, at least in part, a subjective standard indicating the actual, existing state of mind, whether so from ignorance, sophistry, or delusion, without regard to what it should be from given legal standards.

LARRY W. MILLER, Associate Justice:

This matter is before the Court on plaintiff Obodei Iyar's motion for partial summary judgment against defendant Dwight Masami.[1] The motion brings before the Court three issues: whether Obodei is the owner of the land in dispute, whether he has a right to immediate possession of the land, and, if so, whether Dwight is entitled to compensation for improvements to the land. As made clear in the briefing and at oral argument, there is no dispute that Obodei is now the owner of the land. Thus, this opinion is devoted to the latter two issues. For the reasons that follow, the Court concludes that Obodei does have a right to immediate possession of the land, but that the question of compensation requires more factual development.

Although the procedural history is lengthy, it suffices at the outset to say that Obodei became the owner of the land in question, a portion of the land known as Diberdii, through a successful claim for the return of public lands pursuant to Article XIII, Section 10 of the Palau Constitution, and its enabling statute, now codified at 35 PNC § 1304. Dwight, on the other hand, is a lessee under a lease from Koror State Public Lands Authority, which owned the land prior to its return to Obodei.[2] The first question raised by Obodei's motion is whether, as he contends, the return of the land to him, terminates all prior leases, or whether, as Dwight argues, his lease remains viable with Obodei stepping into the shoes of KSPLA as lessor. The Court concludes that Obodei has the better of this argument.

[1] Obodei's claim for immediate possession rests primarily, if not solely,[3] on ⊥240 the Constitution – that the provision requiring the return of public lands must be read to require the return of lands unencumbered by prior leases. The Court is inclined to agree with this argument. To find otherwise, as the Court suggested at oral argument, would be to allow states and public lands authorities to effectively nullify the intent of the Constitution by issuing leases for public lands that trump the possessory rights of the eventual, and rightful, owners of those lands. Even were the Court to accept the proposition that it could abrogate leases of such extreme length as to

[1]Defendant George Sugiyama, who is on the property through a lease from Dwight, has never entered an appearance in this matter, presumably because any claim to possession he has will rise or fall with Dwight's case.

[2]As discussed below, Dwight contends, through the affidavit of his mother and pointing to a written notation on his own lease, that he is the successor to a prior lease (now missing) between KSPLA and his father. As was discussed at oral argument, the existence *vel non* of that prior lease is relevant, if at all, only to Dwight's claim for compensation. His claim that he has a right to remain in possession of the land rests on his own lease, which by its terms superseded all prior leases.

[3]There was some discussion in Obodei's brief of the potential effect of 35 PNC § 1313(a)(2). At oral argument, however, his counsel noted that that discussion was pointed more to the question of ownership, which he believed Dwight was still contesting.

amount to virtual ownership of the land, the result would still be that lands that were meant to be finally returned after prior generations had tried and failed would remain out of reach for generations to come.[4] Dwight's lease, to use the most pertinent example, is for a 50-year term beginning in 1989, and with an option to renew for 25 years more. To give effect to that lease would be to decree that neither Obodei nor his children and only possibly his grandchildren would be able to take possession of the land. The Court is extremely doubtful that the framers of the Constitution intended this result.

But the Court believes that it need not rely solely on the framers' intent to rule in favor of Obodei. Dwight's argument to the contrary rests on the premise that Obodei is in privity with KSPLA, which issued Dwight the lease, and that Obodei must accordingly honor the lease as its successor. Even putting the foregoing discussion aside, however, the Court does not believe this premise is a valid one.

[2, 3] In the first place, the Court is doubtful that the concept of privity plays a role here. In the ordinary course, the successor in interest to a lessor of land, whether by sale or grant, must honor the lease not because he is in privity with the original lessor, but simply because what he receives from the lessor is not the entire estate, but only the reversion that remains after the leasehold has been created. Here, without attempting to divine their underlying intent, both the language of Article XIII, Section 10 – which calls for the return of land to its "original owners", and 35 PNC § 1304 – which directs the Land Court to "award ownership of public land", strongly suggest that what is to be given to the successful claimant is full ownership, not ownership minus any portion of the estate that a public lands authority had chosen to part with. Viewed in that light, it is simply a contradiction in terms to suggest that Obodei, the fee simple owner, is nevertheless subject to Dwight's leasehold.

[4] Even if the issue were framed in terms of privity, however, the Court believes that the result is the same. One would not ordinarily think of Obodei and KSPLA as being in privity with each other. Privity connotes a commonality of interest. But there was no common interest between Obodei and KSPLA; they were adversaries whose claims were directly opposed to each other. Nor can it be said that privity arises from the mere fact that one succeeded the other as owner of the land. It is clear that not every succeeding owner is in privity with his predecessor such ⊥241 that he is bound to honor the leases entered into by that predecessor. To the contrary, there is a chapter of the Restatement devoted to the rights and liabilities of a landlord and tenant when a person with "paramount title" evicts (or threaten to evict) a tenant from the leased premises. *See* Restatement (Second) of Property: Landlord and Tenant, Chapter Four, *Paramount Title Prevents Contemplated Use*. The notion of "paramount title," and the rules associated with it, presuppose that there are circumstances in which a party gaining ownership of a particular property is not bound by prior leases executed by the owner who preceded him.

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[4]Dwight's counsel alluded at oral argument to Justice O'Brien's decision in *Odilang Clan v. Obakrakelau*, Civil Action No. 541-89 (October 15, 1990), which held that a 99-year lease violated the constitutional prohibition against noncitizens (there a corporation not wholly owned by Palauans) acquiring title to lands. The legislative response to that decision was 39 PNC § 302, which forbids leases to noncitizens in excess of fifty years.

In *O'Donnell v. McIntyre*, 23 N.E. 455, 456 (N.Y. 1890), for example, although the precise holding is somewhat difficult to discern, the court declared that "one who acquires real estate pursuant to a tax-sale is not in privity with the former owner":

> The purchaser is not subjected to any inconveniences of the old title, nor can he take any advantage from it. Covenants running with the land do not bind him, nor do him any good . . . . He not only obtains his title from a source other than the former owner, but the estate acquired is not of necessity the same.

Of slightly more recent vintage is *Bookstein v. Dragunaitis*, 214 N.W. 219 (Mich. 1927), a suit by tenants against their landlords following their eviction by a third party. As the court there explained: "At the time of the execution of the lease, there was pending . . . an action against the lessors by one Louis Wisper, who was seeking specific performance of an executory contract of sale which would make him and not defendants the owner of the premises." *Id.* Wisper subsequently won the suit. Based on these facts, the court held, "After Wisper was decreed to be the owner, the lease from defendants offered plaintiffs no protection; Wisper, being the owner, was entitled to possession . . . ." *Id.* at 220.

The constitutional and statutory provisions for the return of public lands have no direct analogue in U.S. law. Nevertheless, these cases point to a similar result here, namely, that although Obodei became the successor in title to KSPLA, he should not be "subject to the inconveniences of the old title" and that the lease from KSPLA can afford Dwight "no protection" – Obodei, "being the owner, [is] entitled to possession." The Court accordingly grants his motion to that extent.

The remaining question to be determined, then, is whether Dwight is entitled to any compensation for the building that is located on the land. It is clear from the decision in *Meriang Clan v. ROP*, 7 ROP Intrm. 33 (1998), that Obodei does not own that building since it was constructed long after the land was seized. Thus, theoretically, Dwight has the right to take the building away when he surrenders possession of the land.[5] As a practical matter, however, the nature and size of the building make that unlikely. So the question remains: If Dwight leaves the building behind, is he entitled to some sort of compensation?

[5] Obodei notes the decision of this Court in *Sadang v. Etumai*, Civil Action No. 263-94, ⊥242 which recites the law governing improvements as follows: "only such claimants as made improvements in good faith in the belief that they had a good title are entitled to an allowance against the true owner for the improvements." 41 Am. Jur. 2d *Improvements* § 11 (1995). He argues that Dwight cannot show good faith since he did not enter into his lease until 1989, after KSPLA had already lost its claim for the land before the Land Claims Hearing Office. Dwight's response is twofold: first, that the determination by the LCHO was not final; and second, that the building was constructed at an earlier date, "around 1987".[6]

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[5]This Court's concurring opinion in *Meriang* suggested that this was all a former owner should be entitled to. *See id.* at 35-36. The majority did not address the question, however, and it remains open.

[6]It is here that Dwight argues that the prior leasehold in his father's name may have significance.

[6] For several reasons, the Court believes that this aspect of the case is not ripe for summary judgment at this time. First, although the Court believes that most, if not all, of the pertinent objective facts bearing on good faith can probably be stipulated, it would be helpful if they were nailed down – particularly as regards the construction of the building – before the Court addresses the issue. Second, the same authority from which the Court derived the general rule on improvements states that good faith is, at least in part, a subjective standard "indicating the actual, existing state of mind, whether so from ignorance, sophistry, or delusion, without regard to what it should be from given legal standards." *Improvements*, *supra*, § 12. Finally, in comparison with the thought given to the possession issue addressed above, neither party devoted a great deal of attention to this issue in their briefs – plaintiff devoting only a paragraph to it and defendant perhaps two. The Court having resolved the question of possession, it would be beneficial for the parties – and the Court – to now focus more closely on both the factual and legal matters left unresolved.

This matter is currently set for trial beginning on December 12. A status conference is hereby set for November 20, 2000, at 1:30 p.m. to discuss the desirability of filing pretrial statements and to further refine the matters to be addressed at trial.