Ucherremasch v. Rechucher, 9 ROP 89 (2002)
UBAI UCHERREMASCH,
Appellant,

v.

JOHN K. RECHUCHER,
Appellee.

CIVIL APPEAL NO. 00-18
Civil Action No. 98-386

Supreme Court, Appellate Division
Republic of Palau

Decided: April 11, 2002

[1] **Appeal and Error:** Standard of Review; **Civil Procedure:** Summary Judgment

A grant of summary judgment is reviewed *de novo*, with all evidence and inferences viewed in the light most favorable to the nonmoving party, to determine whether the trial court correctly found that there was no genuine issue of material fact and that the moving party was entitled to a judgment as a matter of law.

[2] **Land Commission/LCHO/Land Court:** Filing of Claims; Preserving Issues

Persons who have notice of determination of ownership hearing and fail to timely file claims or appear at the hearing to protect their interests waive whatever interest they might ostensibly have had in the property.

[3] **Land Commission/LCHO/Land Court:** Preclusive Effect of Land Title Decisions

The fact that a person had notice of determination of ownership hearing ensures that certificates of title issued for disputed property are preclusive against them on the question of ownership.

[4] **Appeal and Error:** Preserving Issues

The Appellate Division will not reach arguments not raised below.

[5] **Property:** Bona Fide Purchaser

Claims that were extinguished by issuance of certificate of title cannot prevent purchaser from being a bona fide purchaser.

[6] **Property:** Adverse Possession

The existence of a family relationship defeats the requirement that possession be hostile or adverse.

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; DANIEL N. CADRA, Associate Justice Pro Tem; J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

CADRA, Justice:

It is a well-settled principle of law in the Republic that after the Land Court calendars a hearing to determine the ownership of a parcel of property, each person with notice of that hearing and an alleged interest in the land must file a timely written claim asserting his or her position. Failure to do so constitutes a waiver of the claim. A similar rule applied to proceedings before the erstwhile Land Claims Hearing Office ⊥90 ("LCHO").[1] Appellant in this case asks us to make an exception to this rule due to her reliance on what proved to be the misleading assurances of her nephew that he would protect her interests in a parcel of property through the vehicle of his own claim. But she has failed to justify why such a departure from established law is warranted. Therefore, she cannot prevail on her claim.

BACKGROUND

Cadastral Lot Nos. 044 B 02 and 048 B 02 ("the disputed property") are located in Ikelau Hamlet, Koror. The disputed property was also known as Tochi Daicho ("T.D.") lot No. 953. The T.D. listed Mikel Ngireriil, who died in 1974, as owner of the disputed property. Appellant Ubai Ucherremasch is the widow of Mikel Ngireriil's oldest son Ucherremasch Mikel, who died in 1989. While both father and son were alive, a house was built on a portion of the disputed property. Appellant has resided in that house since 1973.

Another one of Mikel Ngireriil's children, Augustine Mikel, filed an application for land registration concerning the disputed property on October 7, 1989. It is undisputed that Appellant and her children were aware of the filing of Augustine's claim and of the pendency of a land court adjudication hearing, but neither Appellant nor her children ever filed a claim for the disputed property. Nor did they appear at the hearing to protect their alleged interest in this land.[2] On April 8, 1991, after notice and a hearing, the LCHO issued a determination of ownership in favor of Augustine Mikel. That decision was appealed by another claimant, Ebas

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[1]Although a written claim was not required under the prior law, any person claiming an interest in the property had to appear at the hearing or his or her claim would be deemed waived. *See* 35 PNC, Chpt. 11.

[2]Appellant explains that she did not file or appear because Augustine Mikel assured her that he would register the land for the benefit of her children. As will be discussed below, this explanation is unavailing.

Ngiraloi, affirmed by the trial court, but then remanded for further consideration by the Appellate Division in March, 1994. *See Ngiraloi v. Mikel*, 4 ROP Intrm. 175 (1994). Meanwhile, after receiving the determination of ownership but before the conclusion of the ensuing appeals process, Augustine Mikel leased the disputed property to the Hanpa Industrial Development Corporation ("Hanpa") for a term of 50 years.[3] In 1995, while the appeals process continued, Appellee John Rechucher purchased the disputed property from Augustine Mikel and substituted himself as the defendant in the ongoing litigation with Ebas Ngiraloi. That litigation ultimately was terminated in Rechucher's favor. *See Ngiraloi v. Mikel*, Civil Action No. 186-91 (Decision and Order, August 14, 1998). As no appeal was taken, the Land Court issued Rechucher certificates of title to the disputed property on September 18, 1998.

Certificates in hand, Appellee filed an ejectment action against Appellant on December 21, 1998, seeking to remove her from the disputed property. Appellant contested the action, alleging that the disputed ⊥91 property and the house in which she lived had been transferred to her children at her husband's 1989 *eldecheduch*. Cross motions for summary judgment were subsequently filed and, after conducting a mini-trial on a semi-related matter, the trial court denied Appellant's motion and granted summary judgment in favor of Appellee on the ground that whatever ownership claims Appellant might have had to the disputed property were erased by the 1991 determination of ownership in favor of Appellant's nephew and the 1998 issuance of certificates of title to Appellee. Also unsuccessful was Appellant's assertion that Appellee was not a *bona fide* purchaser of the property because he had actual and/or constructive notice of Appellant's claim to the disputed property by virtue of her longstanding residence there. The trial court rejected this argument, again because the issuance of the certificates of title extinguished whatever interest Appellant might once have had. After a delay for the resolution of a dispute for back rent, the trial court entered judgment in favor of Appellee and against Appellant on June 23, 2000.[4] This appeal followed.

STANDARD OF REVIEW

[1] A grant of summary judgment is reviewed de novo, with all evidence and inferences viewed in the light most favorable to the nonmoving party, to determine whether the trial court correctly found that there was no genuine issue of material fact and that the moving party was entitled to a judgment as a matter of law.

Rechelulk v. Tmilchol, 2 ROP Intrm. 277, 281 (1991). This standard applies with equal force in cases, such as this one, when there are cross motions for summary judgment. *Becheserrak v. ROP*, 5 ROP Intrm. 63, 65 (1995).

ANALYSIS

[3]Subsequently, this lease was modified substantially, apparently because of the cloud on the title to the disputed property. A separate suit between Hanpa and Augustine Mikel was consolidated with this case but has been resolved and is not a subject of this appeal.

[4]Judgment was also entered in Appellee's favor against other parties to the litigation below. None of these parties has pursued an appeal, however.

[2, 3] Appellant levels two claims of error against the trial court's decision. First, she asserts that the trial court was wrong to conclude that Appellant's children did not own the disputed property as a matter of law. But she is the one who is mistaken. It is undisputed that the children had notice of the LCHO hearing and that they nevertheless failed to file timely claims or to appear at the hearing to protect their alleged interest in this land. As the trial court correctly noted, this failure effected a waiver of whatever interest they might ostensibly have had in the property. Moreover, as the trial court again correctly explained, the fact that Appellant's children had notice of the LCHO hearing ensures that the certificates of title issued to Appellee for the disputed property are preclusive against them on the question of ownership. *See* 35 PNC § 1313(a)(2). Consequently, Appellant's children do not and cannot own the disputed properties, and Appellant's arguments based on a contrary view fail.

[4] Appellant's effort to identify a genuine issue of material fact, and thereby preclude summary judgment, is no more successful. She contends that such a genuine issue surrounds the conclusiveness to be afforded to the certificates of title issued to Appellee in light of her purported excuse for failing to ⊥92 attend the LCHO hearing, namely her reliance on Augustine Mikel's representations. But this argument cannot succeed for the simple reason that Appellant failed to propound it below. *See Sugiyama v. Ngirausui*, 4 ROP Intrm. 177, 179 (1994).

[5] Nor does Appellant's focus on Appellee's ability to claim the protections afforded a *bona fide* purchaser of property identify a genuine issue of material fact. Appellant argues that Appellee cannot be a *bona fide* purchaser because he had actual or constructive notice of Appellant's claim to the disputed property, and that without these protections he was not entitled to prevail on summary judgment. In making this argument, Appellee relies heavily – as she did before the trial court – on *Ueki v. Alik*, 5 ROP Intrm. 74 (1995). But, as the trial court correctly noted, our case is on very different footing from that one. In *Ueki*, the trial court held a transfer of land invalid because of a failure to deliver the deed of transfer. *Id.* at 75. The would-be purchaser sought to enforce the transfer by availing himself of the protections afforded to *bona fide* purchasers. *Id.* at 77. The *Ueki* Court concluded that the would-be purchaser could not do so because he had constructive notice of the other party's claim to the property. *Id.* at 78-79. In the matter at hand, by contrast, whatever claims Appellant might have had to the disputed property were extinguished by the issuance of the certificates of title to Appellee. Therefore, the notice question is irrelevant because Appellant has no legally cognizable claim that Appellee could have noticed.

[6] Finally, to the extent that Appellant suggests that she has an interest in the disputed property not through her children but by operation of the doctrine of adverse possession, her position is even less meritorious. Although it is undisputed that she has resided in a house on the property since the early 1970s, it is also undisputed that her family members owned the property until the transfer to Appellee in 1995. It is black letter law that "[t]he existence of a family relationship defeats the requirement that possession be hostile or adverse." *Osarch v. Kual* , 2 ROP Intrm. 90, 92 (1990). The doctrine of adverse possession, therefore, cannot salvage Appellant's case.

CONCLUSION

For the foregoing reasons, the trial court's Decision of March 8, 2000, is AFFIRMED.