IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

NINE JALLEY, Defendant-Appellant vs. JORNO MOJILONG, on behalf of ALMA TAKILANG, Plaintiff-Appellee.	S. Ct. Case No. 2007-005 H. Ct. Case No. 2003-141 FILED OPINION

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ASST CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

BEFORE Daniel N. Cadra, Chief Justice; J. Clifford Wallace, Associate Justice; and Barry Kurren, Associate Justice.

OPINION by Wallace, J.

Nine Jalley appeals from a High Court judgment ruling that Alexander Andrew, the successor-in-interest of Alma Takilang[1] and represented by Jorno Mojilong, is entitled to certain Section 177 payments due to the alap titleholder of Emej, Lonen, and Jitney wetos (the disputed wetos) on Utrik Atoll, Marshall Islands. In its "Order Granting the Plaintiff's September 6, 2006 Motion for Summary Judgment," the High Court concluded that two prior cases, which held that Andrew's predecessors were the proper alaps of the disputed wetos, are res

[1] Pursuant to the parties' November 8, 2006 stipulation, the High Court substituted Andrew for Takilang as plaintiff. Takilang died in Ebeye on October 15, 2006.

judicata to the current dispute. On appeal, Jalley challenges the res judicata effect of these prior adjudications.

We have jurisdiction to hear this timely filed appeal pursuant to section 207(a) of the Judiciary Act, 27 MIRC Ch. 2. We vacate the High Court's judgment and remand.

I.

Mojilong, on behalf of Andrew (collectively, the plaintiffs), filed suit against Jalley for rights to certain Section 177 payments[2] due to the alap of the disputed wetos. On September 6, 2006, the plaintiffs moved the High Court for summary judgment, arguing that Andrew is entitled to the payments at issue because he is the proper alap of the disputed wetos. In support of their summary judgment motion, the plaintiffs argued that two prior cases previously determined that the alap title belonged to Andrew's predecessors. It was asserted that by Marshallese custom, Andrew therefore has inherited the alap title through his familial lineage.

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[2] Section 177 payments refer to payments made pursuant to the June 1983 Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association (Section 177 Agreement). Under the Section 177 Agreement, the United States agreed to compensate citizens of the Marshall Islands for losses or damages suffered as a result of atmospheric nuclear tests conducted by the United States in the Marshall Islands during the period from June 30, 1946 to August 18, 1958. *See* Nuclear Claims Tribunal, Republic of the Marshall Islands, http://www.nuclearclaimstribunal.com/.

The plaintiffs argued that these cases thus preclude Jalley from claiming that she is the proper alap of the disputed wetos and therefore entitled to the Section 177 payments.

The first case, Trust Territory of the Pacific Islands (TTPI) High Court CA 19-74 (the 1974 case), determined that Lokonan, a predecessor of Andrew, properly held the alap title to the disputed wetos over Jokas, a predecessor of Jalley. The second case, Republic of the Marshall Islands High Court CA 1992-112 (the 1992 case), determined that Bonni and Aine, also predecessors of Andrew, properly held the alap title to two of the disputed wetos, Emej and Lonen, over Jokas and Salome, predecessors of Jalley.

Jalley opposed the plaintiffs' summary judgment motion on the following grounds: (1) important evidence was excluded from the 1974 case, (2) her predecessors did not have a full and fair opportunity to litigate the relevant issues in the 1974 case, (3) the current dispute involves different issues than the 1974 case, (4) new facts have emerged since the 1974 case that render the application of res judicata inappropriate, (5) Jalley is not in privity with either Jokas or Salome, the parties to the earlier proceedings, and (6) fundamental fairness precludes the application of res judicata in this case.

After a hearing, the High Court granted the plaintiffs' motion for summary judgment and ordered the Section 177 funds at issue to be paid to Andrew. In so ruling, the court relied exclusively on the preclusive effect of the 1974 case and the 1992 case on the current dispute. The court stated that, "the plaintiff seeks to invoke the application of claim preclusion (res judicata) based upon prior court decisions . . . . That is, the plaintiff seeks to bar the defendants from re-litigating who under custom is the proper person to exercise [alap] rights on the disputed wetos." The court then concluded that, "Jalley is barred under the doctrine of claim preclusion (res judicata) from re-litigating the plaintiff's customary alap rights in the disputed wetos." Accordingly, the court entered summary judgment in favor of the plaintiffs. This appeal followed.

II.

We review the High Court's summary judgment de novo. *Metoyer v. Chassman*, 504 F.3d 919, 930 (9th Cir. 2007), *cert. denied*, 129 S. Ct. 394 (2008); *Lobo v. Jejo*, 1 MILR (Rev.) 224, 225 (1991) (holding that we review questions of law de novo). We must determine whether the High Court correctly applied the relevant substantive law, and whether there exists a genuine issue of material fact for trial. *Metoyer*, 504 F.3d at 930.

III.

This case involves the proper application of the doctrine of res judicata. Res judicata refers to the preclusive effect of a former adjudication on a subsequently-filed action. *Robi v. Five Platters, Inc.*, 838 F.2d 318, 321 (9th Cir. 1988); *Jeja v. Lajimkam*, 1 MILR (Rev.) 200, 203 (1990). Res judicata encompasses two separate preclusion doctrines: claim preclusion and issue preclusion. *Robi*, 838 F.2d at 321. Claim preclusion "treats a judgment, once rendered, as the full measure of relief to be accorded between the same parties on the same 'claim' or 'cause of action.'" *Id., quoting Kaspar Wire Works, Inc. v. Leco Eng'g & Mach., Inc.*, 575 F.2d 530, 535 (5th Cir. 1978). Thus, claim preclusion prevents parties from re-litigating the same claim including "all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined to the prior proceeding." *Fischel v. Equitable Life Assur. Soc'y of the United States*, 307 F.3d 997, 1005 n.5 (9th Cir. 2002), *quoting Robi*, 838 F.2d at 321-22.

Issue preclusion binds parties in a subsequent action whether on the same or a different claim when "'an issue of fact or law [has been] actually litigated and resolved by a valid final judgment.'" *Fischel*, 307 F.3d at 1005 n.5, *quoting Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 n.5 (1998). "In both the offensive and

defensive use situations, the party against whom [issue preclusion] is asserted has litigated and lost in an earlier action." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329 (1979). The issue precluded must have been "actually decided" after a "full and fair opportunity" for litigation. *Robi*, 838 F.2d at 322.

A principal distinction between claim preclusion and issue preclusion is that the former prevents the re-litigation of "claims" whereas the latter prevents the re-litigation of "issues." *Orff v. United States*, 358 F.3d 1137, 1142-44 (9th Cir. 2004) (detailing the different requirements of claim preclusion and issue preclusion, respectively). A "claim" refers to "the violation of but one right by a single legal wrong." *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 321 (1927); that is, the violation of a legally cognizable right. By contrast, an "issue" is a "single, certain and material point arising out of the allegations and contentions of the parties," or simply a question of law or fact presented as part of a party's broader claim. 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure, Jurisdiction and Related Matters § 4417 n.2 (2d ed. 2008), *quoting Overseas Motors, Inc. v. Import Motors Ltd.*, 375 F. Supp. 499, 518, n.66a (E.D. Mich. 1974).

Thus, in order to determine which of the two preclusion doctrines applies in a given case, a court must first decide whether the party invoking res judicata seeks

to preclude a claim or an issue. If the party seeks to preclude a claim, claim preclusion applies. If the party seeks to preclude an issue, issue preclusion applies. To illustrate, where a plaintiff sues for section 177 payments, but has previously sued to obtain the same payments and lost, claim preclusion applies to prevent the re-litigation of the plaintiff's entitlement to those payments, even if the plaintiff's theory of entitlement in the second action differs from that advanced in the first. By contrast, where a plaintiff sues for section 177 payments on the theory that he holds the requisite land title to receive the payments, but a previous land title suit has determined that the plaintiff is not in fact the proper titleholder, issue preclusion applies to prevent the plaintiff from re-litigating the issue of title, even though the previous suit involved land rights and the current suit involves rights to Section 177 payments.

With this understanding of the doctrine of res judicata, we turn to the merits of this appeal.

IV.

The plaintiffs' arguments in this case invoke the doctrine of issue preclusion, not claim preclusion. The plaintiffs contend that two prior cases prevent the re-litigation of who between Andrew and Jalley is the proper alap titleholder of the disputed wetos. This argument seeks to preclude the re-litigation of a specific

question of fact – whether Andrew or Jalley is the proper alap for the disputed wetos – and not the assertion of a specific claim. Thus, issue preclusion applies.

The High Court erred in construing plaintiffs' arguments as invoking the doctrine of claim preclusion. As described above, claim preclusion applies only in cases where a party seeks to prevent the re-litigation of a particular claim. Here, the plaintiffs do not seek to preclude Jalley from asserting a claim, but rather a single issue within the plaintiffs' broader claim for Section 177 payments.

In holding otherwise, the High Court mistakenly characterized Jalley's assertion of alap rights as a separate claim for ownership rights in the disputed land. However, although an ownership interest in a particular weto may give rise to a specific claim for land title, Jalley's argument in this case is not made in service of a land title claim. Rather, Jalley's purported status as alap is relevant only to the extent that it defeats the plaintiffs' claim for Section 177 payments. Thus, although the prior lawsuits involved claims for land title, the plaintiffs invoke them here for their rulings on the issue of who is the proper alap to the disputed wetos.

Thus, properly construed, the plaintiffs' arguments invoke issue preclusion against Jalley. Specifically, plaintiffs seek to apply offensive nonmutual issue preclusion to prevent Jalley from re-litigating the issue of who is the proper alap to

the disputed wetos. Offensive nonmutual issue preclusion allows a plaintiff to prevent a defendant from relitigating issues that the defendant or those in privity with the defendant previously litigated and lost against a different plaintiff. *Syverson v. Int'l Bus. Machs. Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007). The application of offensive nonmutual issue preclusion is appropriate only if "(1) there was a full and fair opportunity to litigate the identical issue in the prior action, (2) the issue was actually litigated in the prior action, (3) the issue was decided in a final judgment, and (4) the party against whom issue preclusion is asserted was a party or in privity with a party to the prior action." *Id.* (internal citations omitted).

Unfortunately, the parties collectively failed to provide an adequate record, and we cannot determine whether the 1974 case and the 1992 case preclude the relitigation of the proper alap titleholder under the doctrine of offensive nonmutual issue preclusion. Jalley raises a number of arguments bearing on whether those prior cases fully and fairly litigated the issue of alap. However, we were not provided with the necessary records from the prior cases, making it impossible for us to determine the merit of Jalley's arguments. Therefore, we vacate the High Court's judgment, and remand for further factual development, and an initial review of the preclusion question. On remand, the High Court should construe the plaintiffs' arguments as invoking offensive nonmutual issue preclusion, and

determine whether the application of this doctrine is appropriate based on the standards provided above.

Although we express no opinion on the merits of the preclusion issue, we observe that Jalley's challenge to the preclusive effect of the 1974 case may be foreclosed by the ruling in the 1992 case. According to what we have before us, the 1974 case determined that the predecessor of Andrew properly held the alap title to the disputed wetos. The 1992 case then determined that the 1974 case precluded the relitigation of the issue of the proper alap to two of the lands in question. Based on the parties' briefs, it appears that Jalley challenges only the preclusive effect of the 1974 case. But as just described, the preclusive effect of the 1974 case was affirmed by the 1992 case. Therefore, to the extent that Jalley does not challenge the 1992 case, the ruling in the 1992 case may prevent her from now arguing that the 1974 case should not have preclusive effect. In any event, on remand, the High Court shall review this and all other relevant issues in the first instance.

On a final note, at oral argument, counsel for Jalley, John E. Masek, Esq., indicated that he also represents the local government in this action. He stated that if Jalley were to prevail in this case, the local government would have to pay additional amounts to Jalley. On remand, the High Court shall determine whether

Mr. Masek's representation of the local government constitutes a conflict of interest with his representation of Jalley in this dispute.

High Court summary judgment **VACATED and REMANDED.**

Dated this 10 day of March, 2009.

Daniel Cadra, Chief Justice

J. Clifford Wallace, Associate Justice

Barry Kurren, Associate Justice