IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

MERCY KRAMER, JERRY KRAMER, and DAVID KRAMER,

Plaintiffs/Appellees,

vs.

TALWOJ BING and CHRIS BING,

Defendants/Appellants.

Supreme Court Case No. 2021-01786

OPINION

BEFORE: CADRA, C.J.; SEABRIGHT, A.J.;[1] and SEEBORG, A.J.[2]

CADRA, C.J., with whom SEABRIGHT, A.J. and SEEBORG, A.J. Concur:

I. INTRODUCTION

Appellants, Talwoj Bing and Chris Bing, ("the Bings") appeal an October 6, 2021, "Order Granting Motion for Summary Judgment" in favor of Appellees, Mercy Kramer, Jerry Kramer and David Kramer, ("the Kramers") declaring *inter alia* that, as between these litigants, the Kramers are "the owners of the *Alap* and *Senior Dri Jerbal* and all *Alap* and *Dri Jerbal* titles, rights and interests over all of Bukien weto, Ajeltake Island, Majuro Atoll."

[1] Hon. J. Michael Seabright, District Judge, United States District Court for the District of Hawaii, sitting as RMI Supreme Court Associate Justice by designation of the Cabinet.
[2] Hon. Richard Seeborg, Chief Judge, United States District Court, Northern District of California, sitting as RMI Supreme Court Associate Justice by designation of the Cabinet.

The undisputed facts before the High Court were that the Kramers recorded various deeds conveying the relevant *Alap*, *Senior Dri Jerbal*, and *Dri Jerbal* titles and rights to the entirety of Bukien weto with the High Court under the law which existed at the time those deeds were recorded, the Real and Personal Property Act, 24 MIRC Ch. 1 (repealed in 2003). The Kramers then recorded their deeds in 2009 under the Land Recording and Registration Act 2003 (LRA 2003). In 2020, the Bings recorded and applied for registration of a deed they had previously obtained to a portion of Bukien weto in 1999 (referred to as the "Bing deed") under the LRA 2003. It is undisputed that the Kramers recorded their deeds prior to the Bings recording their deed.

The High Court entered summary judgment finding that the Kramers were entitled to judgment as a matter of law under both Acts because they recorded their land interests in Bukien weto first and that no exception to the priority afforded to the first to record existed under the LRA 2003, Section 421.

In this appeal the Bings do not identify a genuine issue of material fact which would preclude entry of summary judgment. Rather, liberally construing their briefing, the Bings contend the High Court "acted prematurely in granting summary judgment" because Appellants had an application for registration of their deed to a portion of Bukien weto pending before the Land Registration Authority (LRA) at the time summary judgment was entered.

Appellants also contend the High Court erred in granting summary judgment "based on the old and repealed Real and Personal Property Act from the Trust Territory time" rather than the Land Recording and Registration Act 2003 (LRA 2003) presently in effect.

Finally, the Bings contend that because they applied to register their deed to Bukien under the LRA 2003 and Appellees have not applied for registration of their deeds under that Act, Appellants claim of ownership under their deed has priority over that of Appellees.

We find that each of the Bings' theories and arguments lack merit and border on the frivolous. We have independently reviewed the High Court's entry of summary judgment under the *de novo* standard and, there being no genuine issue of material fact, conclude that Appellees are entitled to judgment as a matter of law. We, therefore, AFFIRM the High Court's entry of summary judgment in favor of the Kramers.

II. BACKGROUND, FACTS & PROCEEDINGS BELOW

This dispute arises out of conflicting deeds transferring the *Alap* and *Senior Dri Jerbal* titles and the *Alap* and *Dri Jerbal* ownership rights to various portions of Bukien Weto, Ajeltake Island, Majuro Atoll. The Kramers claim the relevant titles and ownership rights over the entirety of Bukien weto based on a series of deeds from the traditional landowners. The Bings, on the other hand, claim ownership of a portion of Bukien weto based on an alleged oral agreement with the traditional landowners to purchase half of Bukien weto. This oral agreement was later confirmed in November 1999 by the traditional landowners in a document entitled "*Kwon in Aje im Kabjor Maron,*" also known as the "Bing Deed." The Bings entered the portion of Bukien weto they claim under their deed. The Kramers then commenced an action to prevent the Bings from doing so and to resolve the dispute over the conflicting deeds. The Kramers then moved for summary judgment.

We summarize the statement of undisputed facts as set forth by the High Court:[3]

[3] "Order Granting Motion For Summary Judgment," pp. 1-4.

1. In March and June 1998, *Leroij* Atama Zedkeia, *Alap* Joria Jennet, and *Senior Dri Jerbal* Latior Jennet (the "traditional landowners") of Bukien weto signed a "Warranty Deed in Respect to a Portion of Bukein Weto, Ajeltake Island, Majuro Atoll, Marshall Islands" ("WD-1") by which the *Alap* and *Dri Jerbal* ownership rights and the *Alap* and *Senior Dri Jerbal* titles to a 3.3231 acre portion of the oceanside and lagoon side of Bukien were granted to Jerry Kramer and Mercy Kramer in exchange for payment of $30,000. This first Warranty Deed ("WD-1") was filed with the High Court on July 14, 1998.
2. In May and June 1999, the traditional landowners of Bukien signed a second "Warranty Deed in respect to a Portion of Bukien Weto ("WD-2") by which the *Alap* and *Dri* Jerbal ownership rights and the *Alap* and *Senior Dri Jerbal* titles on the 2.0791 acre remainder of the oceanside of Bukien were granted to plaintiffs (the Kramers) in exchange for payment of $20,000. This second Warranty Deed ("WD-2") was filed with the High Court on May 31, 2001.
3. In May and June 1999, the traditional landowners of Bukien signed an "Option to Execute a Warranty Deed in Respect to a Portion of Bukien Weto ("OP-WD") by which an option to purchase the *Alap* and *Dri Jerbal* ownership rights and the *Alap* and *Senior Dri Jerbal* titles to the 5.5210 acre remainder of the lagoon side of Bukien were granted to Appellees/Plaintiffs (the Kramers) in exchange for payment of $1,000. That OP-WD provided that upon payment of an additional $30,000 by Appellees/Plaintiffs to *Alap* Joria Jennet within 30 months, Appellees/Plaintiffs would acquire all the referenced land rights without further action. The option to purchase ("OP-WD") was exercised by Appellees/Plaintiffs and filed in the High Court on May 31, 2001.

4. Appellees/Plaintiffs' (the Kramers') purchase of the *Alap* and *Dri Jerbal* ownership rights and the *Alap* and *Senior Dri Jerbal* titles to the entirety of Bukien was confirmed and reconfirmed on January 28, 2005 by Joria Jennet; on April 13, 2005, by *Leroij* Atama Zedkeia; on May 4, 2005 by Joria Jennet and Latior Jennet; on June 24, 2020, by *Leroij* Esther Zedhkeia; and on June 28, 2021 by *Leroij* Esther Zedkeia.
5. Appellants/Defendants (the Bings) base their claim on a document entitled "*Kwon in Aje Im Kabjor Maron*" dated November 12, 1999, referred to as the "Bing Deed." In that deed, the traditional title holders, *Leroij* Atama Zedkeia, *Alap* Joria Jennet, and *Senior Dri Jerbal* Latior Jennet conveyed to Andrew Bing and his next of kin, *Alap* Joria Jennets and *Senior Dri Jerbal* Latior Jennet's rights in Bukien for an undisclosed sum. The "Bing Deed" does not contain the dates of the traditional landowners' signatures, the price of purchase, a legal description, or a survey map of the area to which the rights were purchased.
6. The "Bing Deed" was never filed by Andrew Bing or Appellants/Defendants in the High Court.
7. Appellees recorded their deeds WD-1, WD-2, and WD-3 with the LRA on November 10, 2009.
8. Appellants/Defendants recorded the "Bing Deed" with the Land Registration Authority (LRA) on July 16, 2020.

Based on these undisputed facts the High Court entered summary judgment in favor of the Kramers. The High Court reasoned that the Kramers' deeds had priority over the "Bing deed" because the Kramers recorded their deeds with the High Court under the law then in existence, the Real and Personal Property Act, 24 MIRC, Chpt. 1, (repealed in 2003) whereas the "Bing

deed" was never recorded with the High Court. Thus, the Kramers' deeds to Bukien have priority under the Real and Personal Property Act, 24 MIRC Ch. 1 (repealed in 2003). The Kramers recorded their deeds again in 2009 under the Land Recording and Registration Act 2003 (LRA 2003) whereas the Bings did not record and apply to register the "Bing deed" until 2020, more than ten years after the Kramers recorded their deeds. No exception to the priority afforded to the Kramers' first recording of their deeds under the LRA 2003, Section 421 exists. Thus, under both Acts, the Kramers' deeds to Bukien have priority over the "Bing deed."[4]

The High Court granted the Kramers' summary judgment and decreed, *inter alia*, that as between the Kramers and the Bings, and those claiming through them, the Kramers are the owners of the *Alap* and *Senior Dri Jerbal* titles and all *Alap* and *Senior Dri Jerbal* rights, titles, and interests over all of Bukien weto, Ajeltake Island, Majuro Atoll.[5]

The Bings switched counsel and timely appealed.

III. THE ISSUES ON APPEAL

The first difficulty in resolving this appeal is identifying the issue or issues the Bings intend to raise. The Bings frame the issue on appeal as follows:

> The Land Recording and Registration Act 2003 *requires* that an interest in land *may* be registered, such interest among others, an ownership owned by the senior land interest holders, an ownership by any other person who is qualified to own land in the Republic. In this particular case, the court found that the plaintiffs recorded their interest first and defendants recorded their interest after. However, defendants did apply to register their interest with the LRA and such application is still in the processing stage as it is yet to be determined by the Authority according to the Act, while the plaintiffs did not apply for registration of their interest with the LRA as required by the law. Given that registration means a process which goes beyond just recording the interest within a maximum of three years, now did the lower court make an error in granting a summary judgment in favor of the plaintiffs based on mere recording rather than registration despite the fact that defendants' application for registration is still under review and in the processing stage within the required period of three years and it is yet to be determined by LRA?[6]

[4] "Order Granting Motion for Summary Judgment," pp. 5-6.
[5] "Order Granting Motion for Summary Judgment," p. 7.
[6] Notice of Appeal, p. 2; Opening Brief, p. 7.

The Kramers object to the Bings' statement of the issue on the grounds that it is not a "concise statement of the points on which appellant intends to rely" and "there is no summary statement explaining why the findings of fact and conclusions of law are alleged to be erroneous" as required by SCRP 28 (4)(C). Appellees therefore urge this Court to "disregard any points of error which may be gleaned from Appellants' Opening Brief and dismiss its appeal with prejudice pursuant to Supreme Court Rules of Procedure (SCRP) 28(b)(4), (6)."[7]

While we agree the Bings' statement of the issue is poorly articulated and their briefing obscure, we decline dismissal for failure to comply with the requirements of SCRP 28. There is a longstanding principle that "briefs are read liberally with respect to ascertaining what issues are raised on appeal." *See, e.g., Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 504 (5th Cir. 1981); accord *Allstate Ins. Co. v. Swann*, 27 F.3d 1539, 1542 (11th Cir. 1987). Applying this principle of liberal construction to the instant case, and in considering the issue as framed by Appellants within the broader context of their briefing and counsel's oral argument at hearing, we find that the issue(s) on appeal are sufficiently identified.

We identify the issues as follows:

(1) whether the High Court acted prematurely in ruling on the Kramers' motion for summary judgment while the Bings' application for registration of their deed was pending before the LRA;[8]

---

[7] Answering Brief, pp. 3-4.

[8] This issue is derived from the opening brief and Bings' counsel's oral argument. The Bings claim "[t]he standard of review is the *de novo* (sic) with the High Court's failure to allow the statutory process to continue and complete the determination of the pending issue of defendants' application for registration with regard to the disputed portion on Bukien weto, as required under the provisions of the Land Recording and Registration Act 2003." Opening Brief, pp. 6-7. The Bings also claim "...that the lower court erred in granting the summary judgment in favor of the plaintiffs without waiting for the decision of the Land Registration Authority on defendants' application to register their interest in Bukien weto, Ajeltake, Majuro Atoll." Opening Brief, p. 10. The Bings further "...submit that the application to register their interest in Bukien weto with the LRA is still in the process of being reviewed by the

(2) whether the Bings' interest in Bukien weto has priority over those of the Kramers because the Bings applied for registration of their deed with the LRA whereas the Kramers did not apply for registration;[9] and

(3) whether the High Court erred in applying the "old" Trust Territory law rather than the LRA 2003.[10]

The Kramers adequately respond to these issues in their Answering brief and do not claim they have been prejudiced in their ability to respond to the Bings' arguments on appeal. We therefore find that dismissal for failure to comply with SCRP 28 would be inappropriate.

The Kramers frame the issue which we should address on appeal as:

> Did the High Court err by determining that appellees are the owners of the *Alap* and *Senior Dri Jerbal* and all *Alap* and *Senior Dri Jerbal* rights, titles and interests on all Bukien weto, Ajeltake Island, Majuro Atoll because appellees purchase documents were properly recorded 20 years before the appellants' purchase document?[11]

IV. THE STANDARD OF REVIEW

The standard of review on an appeal from a grant of summary judgment is *de novo*. *See, e.g., Jalley v. Mojilong*, 3 MILR 106, 109 (2009). The appellate court's review is governed by

---

LRA therefore the defendants hereby submit that the granting of summary judgment in favor of the plaintiffs is premature and contrary to the law and therefore it should be reversed." Opening Brief, p.6.

[9] The Bings argue "Thus, the fact that the plaintiffs recorded their interests first under Section 421 of the Land Recording and Registration Act, 2003, does not mean their interests have priority over those of defendants who recorded and later on filed an application to register their interest afterwards under the Land Recording and Registration Act 2003." Opening Brief, pp. 8-9. This issue is addressed by the Kramers in their Answering brief. "III. APPELLANTS' APPLICATION TO REGISTER THEIR OWNERSHIP INTERESTS IN LATE APRIL 2021 DOES NOT GIVE THEM OWNERSHIP RIGHTS UNDER THE LRA ACT AND IS IRRELEVANT TO THE DETERMINATION OF OWNERSHIP," Answering Brief, p. 10. Because this issue is fairly raised by the Bings' obscure briefing and addressed by the Kramers, we also address it.

[10] This issue is raised by the Bings' argument that "...there is an overlapping of two different laws here. The question is, which of the two different laws should govern? The principle of the latter promulgated law should prevail thus clearly shows that the Land Recording and Registration Act 2003 is the law that the Lower Court should have based its ruling on instead of the old and repealed Real and Personal Property Act from the Trust Territory time. *United States v. Booker* (no citation provided)." Opening Brief, p. 6. "Lastly, the decision of the Lower Court is based entirely on an old and repealed T.T. law therefore the summary judgment does not have the force of law." Opening Brief, pp. 10-11.

[11] Answering Brief, p. 5.

the same standard used by the trial court under Fed.R.Civ.P. 56(c). *Jesinger v. Nevada Federal Credit Union*, 24 F.3d 1127, 1130 (9th Cir. 1994). We must determine, viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material fact and whether the trial court correctly applied the relevant substantive law. *See, e.g., Matushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000)(*en banc*). Appeals from summary judgment, which are solely questions of law, are reviewed *de novo. In the Mat. of the Vacancy of the Mayoral Seat*, 3 MILR 114, 117 (2009).

V. DISCUSSION

A. The Kramers Are Entitled to Judgment as a Matter of Law.

The question on appeal, given our *de novo* standard of review, is whether there is a "genuine issue of material fact" and whether the moving party is entitled to judgment as a matter of law. The nonmoving party must identify with reasonable particularity the evidence that precludes summary judgment. *Keenan v. Allan,* 91 F.3d 1275, 1279 (9th Cir. 1996).

The Bings do not contest the facts upon which the High Court based its order granting summary judgment. They concede the Kramers recorded their interests first.[12] They have not identified any "genuine issue of material fact" in dispute which would require a trial. Rather, the Bings claim that the High Court erroneously applied the relevant substantive law to the uncontested facts.

Before addressing the Bings' theories or arguments on appeal, we consider the application of the relevant Acts to the uncontested facts. The undisputed evidence is that the Kramers recorded their deeds with the High Court in 1998 and 2001 under the law in effect at the

[12] Opening Brief, p. 10 "The evidence shows the plaintiffs had recorded their interests first ...."

time of those recordings, the Real and Personal Property Act, 24 MIRC Ch. 1 (repealed in 2003). The Kramers later recorded their deeds under the new law, the Land Recording and Registration Act, 24 MIRC (LRA 2003) on November 10, 2009.[13] The Kramers recorded first under both Acts. Appellants never filed their "Bing Deed" with the High Court at any time. Appellants recorded the "Bing Deed" with the LRA on July 16, 2020, more than ten years after Appellees recorded their deeds. Under this uncontested set of facts, Appellees' deeds have priority over Appellants' "Bing deed" under both the Real and Personal Property Act and the Land Recording and Registration Act 2003.

Appellees' deeds have priority under the Real and Personal Property Act, 24 MIRC Ch. 1 (repealed in 2003). Prior to its repeal, Section 117 of that Act provided:

> The Clerk of Court ...shall make and keep in a permanent record a copy of all documents submitted to him for recording which relate to title to real estate ....

Section 118, titled "Effect of Failure to Record," provided, in relevant part:

> No transfer of ...title to real estate or any interest therein...shall be valid against any subsequent purchaser ...of the same real estate or interest, or any part thereof in good faith for a valuable consideration without notice of such transfer ...or against any person claiming under them, if the transfer to the subsequent purchaser ...is first duly recorded [in the High Court]....

Section 118 is a "race-notice" recording statute. A race-notice recording statute is "[a] recording law providing that the person who records first, without notice of prior unrecorded claims, has priority." Blacks Law Dictionary, 10th ed. 2014. "Pursuant to a race-notice recording statute, between two purchasers of property, the first to validly record a conveyance without notice of a prior interest in the property takes the property over a purchaser who subsequently

[13] It is worth noting that the Kramers' would be afforded priority and protection of their deeds recorded under the former law even had they not recorded anew under the LRA 2003. Section 419(a) of the LRA 2003 requires all documents previously recorded with the Clerk of the Courts to have been transferred to the LRA by the effective date of that Act. There is no evidence that this transfer of documents did not occur as mandated by statute.

records a deed." *F.D.I.C. v. Taylor*, 267 P.3d 949, 960 (Utah 2011). It is abundantly clear that the Kramers' deeds have priority over the "Bing deed" under the Real and Personal Property Act because they were (i) purchasers (ii) for valuable consideration who (iii) recorded first (iv) without notice of the Bing's unrecorded oral agreement regarding Bukein weto.

Appellees' deeds also have priority under the Land Recording and Registration Act 2003, 24 MIRC,Section 401 *et seq*.

Section 421 of the 2003 Act, Failure to record, provides:

> No unrecorded document shall be valid against any person with an interest in the land who first records, or against those holding rights under such person, except as:
>
> (1) Between the parties to such unrecorded document;
> (2) Against those having notice thereof prior to recording such interest;
> (3) Against unrecorded tax or other statutory liens to the extent they take priority s provided in the relevant statute; and
> (4) Otherwise provided in this chapter with respect to registered land interests.

None of these exceptions apply in the instant case. The Bings do not contend any of these exceptions apply. Again, the undisputed evidence is that the Kramers filed their deeds with the LRA on November 10, 2009. The Bings did not file their "Bing deed" until July 16, 2020, more than 10 years after the Kramers filed their deeds. The Kramers'deeds thus have priority over Appellants' deeds under the 2003 Act also. The Bings offer no explanation of why their deed would have priority over the previously recorded deeds of the Kramers under either Act. Our answer to the issue as posed by the Kramers is "the High Court did not err by determining that appellees (the Kramers) are the owners of the *Alap* and *Senior Dri Jerbal* rights, titles and interests on all Bukein weto, Ajeltake Island, Majuro Atoll because appellees' (the Kramers') purchase documents were recorded 20 years before the appellants' (the Bings') purchase documents." There are no genuine issues of material fact and the Kramers are entitled to judgment as a matter of law. We address next the Bings' arguments made in their appeal.

B. The Bings' Arguments Lack Merit.

1. The Bings' theory that their claim has priority because they filed an application for *registration* of their deed has been waived by failure to raise that theory before the High Court.

The Kramers contend the Bings waived their argument "that their claim of ownership of Bukien has priority over appellees because appellants applied to *register* their land interests, as opposed to *record* their land interests" because that argument was never advanced in the trial court.[14] We agree this argument has been forfeited by the Bings' failure to raise it below.

As a rule generally followed by both federal and state courts, legal theories or arguments not raised before the trial court in opposition to a motion for summary judgment are waived on appeal. *See, e.g., Teamsters Local No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 21 (1st Cir. 1992)("[A]bsent the most extraordinary circumstances, legal theories not raised squarely in the lower court cannot be broached for the first time on appeal."); *Grenier v. Cynamid Plastics, Inc.*, 70 F.3d 667, 668 (1st Cir. 1995)("If a party fails to assert a legal reason why summary judgment should not be granted, that ground is waived and cannot be considered or raised on appeal."); *Nichols v. Mich. City Plant Planning Dep't*, 755 F.3d 594, 600 (7th Cir. 2014)("The non-moving party waives any arguments that were not raised in response to the moving party's motion for summary judgment."); *Birmingham v. Fodor's Travel Publications, Inc.*, 833 P.2d 70, 72 (Ha. 1992)(In considering an appeal from a grant of summary judgment, the appellate court stated "...we will not address a legal theory not raised by an appellant in the court below.")

The policy reason for not considering legal arguments raised for the first time on appeal is that "it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it

[14] Answering Brief, p. 10.

was never given the opportunity to consider." *See, e.g., Becker v. Rosebud Operating Services, Inc.*, 191 P.3 435, 439 (MT 2008).

An appellate court in its discretion, however, does have the authority to examine arguments raised for the first time on appeal. *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 121 (1976); *In re Am. W. Airlines, Inc.*, 217 F.3d 1161, 1165 (9th Cir. 2000)("Absent exceptional circumstances we generally will not consider arguments raised for the first time on appeal, although we have discretion to do so.") But "this power is to be used sparingly" and exceptions to the "raise-or-waive rule" should be "few and far between," *B&T Masonry Const. Co., Inc. v. Public Service Mutual Ins. Co.*, 382 F.3d 36 at 41 (1st Cir. 2004) , "reserved for exceptional cases in which the previously omitted ground is so compelling as to virtually insure appellant's success," *United States v. Slade,* 980 F.2d 27 at 31 (1st Cir. 1992). *See also Whyte v. Connecticut Mutual Life Ins. Co.*, 818 F.2d 1005, 1009 (1st Cir. 1987)(the rule "is relaxed only in horrendous cases when a gross miscarriage of justice would occur.")

The Ninth Circuit has recognized three exceptions to the general rule that arguments raised for the first time on appeal are waived: (1) there are exceptional circumstances why the issue was not raised in the trial court; (2) the new issue arises while the appeal is pending because of a change in the law; or (3) the question presented is a pure question of law and the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court. *Momox-Caselis v. Donohue*, 987 F.3d 835, 841 (9th Cir. 2021); *Raich v. Gonzales*, 500 F.3d 1161, 1165 (9th Cir. 2000). Even if a case falls within one of these three exceptions, we must "still decide whether the particular circumstances of the case overcome [the] presumption against hearing new arguments." *Raich, supra,* at 868 (quoting *Dream Palace v. City of Maricopa*, 384 F.3d 990, 1005 (9th Cir. 2004)).

The particular circumstances of this case do not overcome the presumption against hearing new arguments not raised below. The Bings have offered no explanation why the arguments it now raises on appeal were not or could not have been raised before the High Court in opposition to the motion for summary judgment. While the issues the Bings now raise may present "pure questions of law," they have not demonstrated that the legal theories or arguments they now advocate are "so compelling that their success on the merits is virtually assured." *Slade, supra.* Indeed, even if they were to succeed on their argument that "the High Court acted prematurely in granting summary judgment" a remand would only result in additional delay and increased expense to both parties while awaiting a decision on the registration of the "Bing deed" by the LRA. The Bings have not identified a genuine issue of material fact which would prevent entry of summary judgment. Their arguments that the High Court misapplied the law are without merit.

We conclude that the Bing's legal theory that their deed has priority because they applied to *register*, as opposed to *record*, their deed first has been forfeited and waived by failure to raise that argument below. Even though we are not compelled to speak to the merits of the Bings' new argument, we note in the interests of completeness that Appellants would not prevail on that theory even if it had been properly preserved. There is no language in the LRA 2003 which gives priority to land interests which are *registered* over those which are *recorded.* Indeed, the LRA 2003 does not require either *recording* or *registration*; compliance with that Act is voluntary. The risk of failure to record is that a subsequently recorded deed or land interest may take priority under Section 421. The purpose of the LRA 2003 is to provide a procedure for resolving objections to registration prior to a certificate of registration being issued by the LRA. That procedure was followed in this case.

2. **Appellants' argument that the High Court acted "prematurely" in granting summary judgment is contradicted by the plain language of the Land Recording and Registration Act (2003).**

The Bings contend that the High Court acted "prematurely" by ruling on the Kramers' motion for summary judgment while their application for registration was pending before the LRA. The Bings' briefing on this issue leaves the reader with no hint of the legal theory proposed as a basis for that contention. They refer us to no statute, decisional authority, rational or reasonable basis in support of their theory that the High Court should have waited and not ruled upon the Kramers' motion for summary judgment while their application for registration was pending before the LRA.

There is no statutory basis for the Bings' argument. Statutes, such as the LRA 2003, are to be construed according to their plain and obvious meaning, absent some indication of legislative intent to the contrary. *Clanton, et al v. RMI Chief Elec. Off. (1)*, 1 MILR (Rev.) 146, 151 (1989). We will not read into the LRA 2003 a requirement not intended by the Nitijela. *See, e.g., Bates v. United States*, 522 U.S. 23, 29 (1997)("[W]e ordinarily resist reading words or elements into a statute that do not appear on its face."); *see also, Stanton Rd. Assocs. v. Lohrey Enters.*, 984 F.2d 1015, 1020 (9th Cir. 1993)(stating that courts "lack...power" to "read into the statute words not explicitly inserted by Congress.") There is no statutory language in the LRA 2003 which suggests the High Court should have waited or postponed its ruling on the Kramers' motion for summary judgment while the Bings' application for registration was pending before the LRA. Rather, the statutory language clearly provides the procedure for resolving objections to an application for registration of a land interest, which procedure was followed in this case.

The purpose of the LRA 2003 is to "provide a legal framework for the people of the Marshall Islands to voluntarily register their interests in land in order to produce certainty of the

identity of the legal owners of land and interests in land and to facilitate investment in and development of land in the Marshall Islands." Section 416 (a). To accomplish that purpose, the LRA 2003 provides a procedure whereby "any party may apply to the High Court for a determination of [a dispute over registration] at any time after the closing of the notice period." Section 427(5). That is what happened in this case, the parties followed the procedure outlined by the LRA 2003 to resolve the dispute over their land interests. The Bings "applied for registration of their interest on 4/29/21."[15] That application for registration "was objected to by the plaintiffs [the Kramers] on 7/16/20."[16] The Kramers then filed their complaint with the High Court on February 19, 2021.[17]

It is clear under the plain language of the Act that the High Court had jurisdiction to resolve the parties' dispute by way of summary judgment. At oral argument, the Bings conceded the jurisdiction of the High Court to do so. There is nothing in the statutory language of the LRA 2003 which requires the High Court to have awaited a decision by the LRA on the Bings' application for registration which had been contested before deciding the dispute by way of summary judgment or otherwise. Further, even were we to accept the Bings' theory that the High Court acted prematurely in ruling on the Kramers' summary judgment motion a remand on that basis would merely delay the inevitable entry of judgment in favor of the Kramers, thus imposing unnecessary delay and expense on all parties and the court. As discussed above, the Kramers have priority of their deeds to Bukien under both Acts. The Bings arguments to the contrary are meritless.

3. Appellants' Legal Theory that the High Court Erred In Basing Its Judgment On The "Old Law" Is Meritless.

[15] Opening Brief, p. 10.
[16] *Id.*
[17] Opening brief, p. 9.

The Bings argue that "[t]he evidence shows the plaintiffs recorded their interests first, at the time the Real and Personal Property Act, 24 MIRC Ch. 1 was no longer in force since such an Act was repealed by the Nitijela only to be replaced by the Land Recording and Registration Act (2003), 24 MIRC Ch. 4. The defendants, on the other hand, recorded their interest later, at the time the Land Recording and Registration Act 2003 was in force. Thus, the fact that the plaintiffs recorded their interests first under section 421 of the Land Recording and Registration Act, 2003, does not mean their interests have priority over those of defendants who recorded and then later on filed an application to register their interest afterwards under the Land Recording and Registration Act, 2003. The principal of the latter promulgated law shall prevail appropriately in this matter."[18]

The Bings' argument misrepresents the facts. Their claim that the Kramers recorded their interests when the Real and Personal Property Act was "no longer in force" is contradicted by the record. The undisputed evidence is that the Kramers promptly recorded their deeds while the Real and Personal Property Act was still in effect or force. The Kramers later recorded their deeds pursuant to the LRA 2003 in 2009, more than ten years prior to the Bings filing and seeking registration of their deed with the LRA. The High Court's "Order Granting Motion For Summary Judgement" is clearly based on the law which existed when the Kramers originally filed their deeds as well as the LRA 2003 in effect when the Kramers filed their deeds in 2009. The Kramers' deeds have priority under both Acts because they recorded first and there is no exception to their priority under the LRA 2003.

The Bings claim "[m]oreover the Lower Court based its decision on the old Trust Territory law which was repealed by the Nitijela in 2003. See U.S. Supreme Court decisions in

[18] Opening Brief, pp. 8-9.

similar circumstances in *United States v. Booker*, *Marbury v. Madison*, and *Martin v. Hunters' Lessee*."[19] The Bings' argument that "the principal of the latter promulgated law shall prevail appropriately in this matter" and their citations to U.S. Supreme Court authorities is not sufficiently developed for us to consider. An issue is inadequately briefed if the argument merely contains bald citations to authority without development of that authority and reasoned analysis based on that authority. 4 C.J.S., Appeal & Error, Sec. 731 *citing Rodriguez v. Kroger* Company, 422 P.3d 815 (Utah 2016). The Bings do not explain how the cases they reference apply to their theory that the "principle of the latter promulgated law" somehow has relevance to the facts of this case or that the High Court did not apply "the latter (sic) promulgated law" in reaching its order granting summary judgment. The Bings do not even provide proper citations to the authorities they reference.[20] In the absence of any discussion of how those authorities apply to the facts of this case, we are left to speculate as to what the Bings' argument is. To the extent the Bings may be arguing that the "principle of latter promulgated law" means a case must be decided under the law which exists at the time of decision, the High Court clearly did so. The High Court based its decision on both the prior Real and Personal Property Act (repealed in 2003) and the LRA 2003.

VI. CONCLUSION

The Bings have failed to support their arguments with any persuasive or sound legal authority. They have misrepresented the facts and misconstrued both the High Court's "Order Granting Summary Judgment" as well as the applicable law. Their arguments are meritless and border on the frivolous. An appeal is frivolous when the result is obvious or the appellant's

[19] Opening Brief, p. 5.

[20] There is no proper citation for *U.S. v. Booker* which the Bings cite as 543 18 USC Sections 3533(b)(1), 3742 (c) and no citation is provided for *Marbury v. Madison,* which case is well known to first year law students but which we are provided no explanation of how that case applies to the instant appeal.

arguments are wholly without merit. Sanctions can be awarded against the party taking a frivolous appeal. *See, e.g., Blixseth v. Yellowstone Mountain Clud, LLC,* 796 F.3d 1004 (9th Cir. 2015). Because the Kramers have neither claimed the Bings' appeal is frivolous nor have they sought sanctions, we do not address this issue further.

We have reviewed the order granting summary judgment under the *de novo* standard and conclude there are no genuine issues of material fact and that the Kramers are entitled to judgment as a matter of law. We therefore AFFIRM the order of the of the High Court granting summary judgment to the Kramers.

Dated: 1/17/2023 /s/

Daniel Cadra, Chief Justice

Dated: 1/17/2023 /s/

J. Michael Seabright, Associate Justice

Dated: 1/17/2023 /s/

Richard Seeborg, Associate Justice