

**NGIRKELAU, representing the Ngermidol lineage,
NGORIAKL, representing the Idid Clan, Appellants
v.**

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
JOSEPH C. PUTNAM, ESQUIRE, its Alien Property Custodian,
SUMMANG, MIKEL, and RECHEBONG KELMAL, Appellees**

Civil Action No. 103

Trial Division of the High Court

Palau District

December 4, 1958

Action to determine title to land in Koror Municipality which was listed in Japanese survey as individual land of former chief of plaintiff clan. Chief sold land to Japanese national in 1940 and title later vested in defendant Alien Property Custodian. Plaintiff contends title was held for benefit of clan and was not individual property of chief. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that even if lands were held for clan, sale conveyed good title to bona fide purchaser without notice, and Custodian as transferee occupies same position as that of prior bona fide purchaser.

Affirmed.

1. Palau Land Law—Chief's Title Land—Sale

Even if property in Palau Islands is held for benefit of clan by its chief, sale by him to purchaser either without authority or in violation of instructions conveys to bona fide purchaser without notice a title good against the world.

2. Real Property—Sales—Bona Fide Purchaser

Where title to real property is permitted by rightful owner to stand in name of another who makes unauthorized sale to third person who pays value without notice of the infirmity, true owner is estopped from setting up his title or interest.

3. Real Property—Sales—Bona Fide Purchaser

As between two innocent persons, one of whom must suffer consequences of breach of trust, one who made it possible by his act of confidence must bear the loss.

4. Real Property—Quiet Title—Laches

Where clan had ample opportunity to protect its interest in land held for it by chief, and number of years passed from date property was leased to bona fide purchaser to date of sale to him, clan is estopped to complain of transfer by chief whom it allowed to hold title.

5. Public Lands—Succeeding Sovereign

Trust Territory's Alien Property Custodian is empowered to vest in himself title to alien property, including property formerly owned by private Japanese national. (T.T.C., Sec. 533)

6. Public Lands—Succeeding Sovereign

Japanese national's title to property in Palau Islands passed to Trust Territory's Alien Property Custodian just as effectively as if made in appropriate deed of conveyance.

7. Public Lands—Succeeding Sovereign

Although no consideration was paid by Trust Territory's Alien Property Custodian for transfer of property from Japanese national to him, and therefore he does not fulfill all requirements of bona fide purchaser, he is entitled to same position as was occupied by prior bona fide purchaser.

TOOMIN, *Associate Justice*

I. FINDINGS OF FACT

1. The land Ilengelang, located on the main road between Mektii and T Dock, Koror Municipality, Koror Island, Palau District, containing an area of 44,530 square feet, in which is included the land Sankak, was the individual property of Ngiraked, former Aibedul (High Chief) of Koror in 1937, and not of the Idid Clan of which he was the Chief.

2. Said lands in 1937 were occupied by tenants of Ngiraked, two Japanese nationals, Yamauchi and Kimura Eitaro, who then subleased smaller portions of these lands to other Japanese nationals. Yamauchi established a store on the land Ilengelang and operated it for a period of years.

3. Ngiraked bought merchandise from Yamauchi on credit, and also borrowed moneys from him, aggregating at least 700 Yen. In 1940, while still indebted to Yamauchi, Ngiraked started to negotiate a sale of Sankak to another Japanese national. When Yamauchi learned of these negotiations, he reproached Ngiraked for not giving

him the first opportunity to purchase land he (Yamauchi) was then leasing. As a result of discussion and negotiation between them, Ngiraked agreed in 1940 to sell Ilengelang (including Sankak) to Yamauchi at a price satisfactory to both, from which the debt due Yamauchi would be deducted.

4. The sale was consummated by delivery of documents and payment of consideration between July 23, 1940, and September 3, 1940, when Ngiraked died. The title papers showing Yamauchi as the new owner, though filed with the Land Office, were not registered by the office until sometime in 1941 and after completion of the land survey which had been under way for some 3 1/2 years prior thereto. The survey, when completed, showed the ownership of land on Koror Island through 1940, and listed Ilengelang (including Sankak) as the individual property of Ngiraked. After completion of the survey, the land records were changed to show Yamauchi as the owner.

5. After the sale, Yamauchi built a two-story store and residence on Ilengelang and remained in possession until after the end of the war when he was evacuated to Japan. The land Ilengelang (including Sankak) was listed as owned by Yamauchi on a schedule of lands owned by Japanese nationals, given the United States Department of the Navy by the Japanese Government.

6. Pursuant to Vesting Order of September 27, 1951, appellee Joseph C. Putnam, as Alien Property Custodian of the Trust Territory of the Pacific Islands, owns title to Ilengelang and Sankak, as property formerly owned by a Japanese national. Trust Territory Government has leased out the property and is presently collecting rental from the tenants in possession.

7. The claims of appellants to ownership of Sankak and Ilengelang, respectively, are based on alleged ownership of said lands by the Idid Clan, and the theory that Ngi-

raked was holding title thereto for the benefit of the clan, and not individually; that the clan Idid in 1952, after the death of Ngiraked, purported to transfer Sankak to appellant Ngirkelau, as chief of the Ngermidel lineage, in satisfaction of a debt owing by Ngiraked to a member of said lineage.

8. The Japanese land survey of 1941 listed clan lands separately from those owned by individuals. It listed lands assigned to chiefs as chief's title lands with the chief as administrator.

9. There is no satisfactory evidence that Ilengelang was ever owned by the Idid Clan, nor that the clan ever collected or received any part of the income therefrom. There is no satisfactory evidence that either the clan or the Ngermidel lineage, or anyone on their respective behalfs, attempted to collect rental from the subject properties after the death of Ngiraked.

II. CONCLUSIONS OF LAW

1. As is apparent from the findings of fact above, it is the view of this court that the lands in question were the individual property of Ngiraked, that he sold them to a bona fide purchaser for value, and consummated the transaction before his death by receipt of consideration and delivery of documents. If this conception of the facts is borne out by the record, no further consideration need be given to the contentions of appellants.

[1] However, it seems equally demonstrable under the admitted facts, that even though the property in question was actually held for the Idid Clan by its chief Ngiraked, nevertheless his sale to the tenant either without authority or in violation of instructions, conveyed to the tenant as a bona fide purchaser without notice, a title good against the world.

It is undisputed that the tenant had been in possession of a substantial part of the tract for a number of years, paying rental to a representative of his landlord, either his wife or a relative. It is also undisputed that the title record indicated the properties to be individually owned, and that there was a separate record and designation of the representative character of title holding under the Japanese land record system, where title was held by a chief for the benefit of his clan.

It is undisputed that a valuable consideration was paid by the tenant, and that after closing the deal, he made valuable improvements on the land. There is no evidence that he had any notice or knowledge that the land was in fact the property of his landlord's clan.

[2] Under these circumstances, if this controversy were between the tenant and the clan, or parties in privity with them, respectively, the applicable rule to be applied is that which is raised where title to real property is permitted by the rightful owner to stand in the name of another, who makes an unauthorized sale to a third person, who pays value without knowledge of the infirmity. In such cases it is held that the true owner is estopped from setting up his title or interest. 19 Am. Jur. 764, Estoppel, § 112.

[3] The rule has been well stated in *Eliason v. Wilborn*, 281 U.S. 457, 50 S.Ct. 382, as follows: "As between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible by his act of confidence must bear the loss".

[4] Nothing has been shown by appellants entitling them to application of a rule less harsh. Obviously ample opportunity existed for the clan to have protected its interest, either by notification to the Land Office, or to the tenants, disclosing its interest. Considering the number of years

which passed from the leasing of the subject property to the date of its sale, the court is constrained to apply the rule with relation to two innocent persons above stated, and to hold that appellants are estopped to complain of the transfer by the holder of title.

2. While the rule referred to in the preceding paragraph is effective with respect to the parties involved in the transaction described, and their privies, appellees Trust Territory of the Pacific Islands and the Alien Property Custodian do not fit into either of these categories.

[5] The interest of the Alien Property Custodian arises in accordance with Section 533 of Trust Territory Code (formerly Interim Regulation 448 as amended) under which he is empowered to vest in himself title to alien property, as that term is defined in Section 532. Under that section the subject property was included, as being the property of a private Japanese national. Testimony of a former employee of the Japanese Land Office at Koror was received that the subject property was listed as belonging to a Japanese national on the list turned over by the Japanese Government. (See Finding of Fact No. 5).

[6, 7] Title was acquired by the Alien Property Custodian pursuant to Vesting Order dated September 27, 1951, of which the court takes judicial notice. Under it the title of Yamauchi to the subject property passed just as effectively as if made in an appropriate deed of conveyance. It will be considered that although no consideration was paid by the Alien Property Custodian for the transfer, and therefore he does not fulfill all the requirements of a bona fide purchaser, nevertheless he is entitled to the position enjoyed by a transferee from a bona fide purchaser. In such event the rule is general that such a transferee is entitled to the same position as was occu-

ped by the prior bona fide purchaser. 55 Am. Jur. 1118, Vendor and Purchaser, § 759.

III. JUDGMENT

It is therefore the judgment of this court that the title to the land Ilengelang (including therein the land Sankak), located in Koror Municipality, Koror Island, Palau District, is in Joseph C. Putnam, as Alien Property Custodian of the Trust Territory of the Pacific Islands, free and clear of any right, title, or interest therein on the part of appellants, or the parties whom they represent in this litigation.

It is further ordered that this judgment shall not affect any rights of way on, over, or across said above described lands. No costs are taxable against or in favor of any party hereto.