

KSAU v. KUSKUS

NGIRMEKUR KSAU, Plaintiff

v.

KUSKUS, NGETUAI, YAOCH and KEKERELDIL, Defendants

Civil Action No. 514

Trial Division of the High Court

Palau District

May 13, 1974

Claim by *Tuchermel* of the Klai Clan, Palauan Islands, for refund of monies he and his relatives contributed at an *ocheraol* held to raise money for a house on clan land, to be used by plaintiff. Trial Division of the High Court, Robert A. Hefner, Associate Justice, held plaintiff not entitled to recover, even though he left involuntarily.

1. Palau Custom—"Ocheraol"—Refunds

If the *Tuchermel* of the Klai Clan, Palauan Islands, involuntarily leaves a house built on clan land from money raised at an *ocheraol*, he is not entitled to reimbursement for the money he and his relatives contributed at the *ocheraol*.

2. Palau Custom—"Ocheraol"—Nature and Purpose

An *ocheraol* is a party held to obtain contributions for the payment of the construction of a house.

3. Palau Custom—"Ocheraol"—Refunds

One contributing funds at an *ocheraol* is not entitled to a refund once the house is built.

Assessor:

FRANCISCO MOREI, *Presiding
Judge, District Court*

Interpreter:

AMADOR D. NGIRKELAU

Reporter:

SAM K. SASLAW

Counsel for Plaintiff:

FRANCISCO ARMALUUK

Counsel for Defendants:

JOHN O. NGIRAKED

HEFNER, *Associate Justice*

This matter involves customary law and issues concerning certain clan and title rights.

At the pre-trial hearing it was stipulated that the plaintiff is a member of the Klai Clan through the paternal line, living in Ngerusar Village of Airai Municipality. The defendants, except for Kuskus, who is now deceased, live in the same village and are members of the same clan but through the maternal line. Sometime prior to July, 1969, the clan bestowed on the plaintiff the title of *Tuchermel* which is the chief title of the clan. This honor, though not rare, is unusual since the plaintiff was from the paternal line and therefore a "weak member" of the clan. *Louch v. Mangelil*, 2 T.T.R. 121. It is also not disputed that the plaintiff and defendants negotiated with a carpenter for the construction of a house on Klai Clan property, said property being the traditional site of the clan. The house was built and in July 1969 the sum of \$3,500

was raised at an *ocheraol*, a house party. The contributors are listed on plaintiff's exhibit 1 received in evidence. It is also agreed that in November 1970 the plaintiff left the house and took with him the materials valued at \$500 which were from a "kitchen house" or old clan house near the new house. The plaintiff claims that he was forced to move out by the defendants who are the strong and dominant members of the clan and therefore he should receive from the defendants the sum of \$3,500, the amount raised at the *ocheraol*, less \$1,735, the amount contributed by the defendants and the clan and also less the sum of \$500, the value of the materials he received from the old clan house. His claim is therefore \$1,265. The defendants' position is that plaintiff is not entitled to any sums since the house, built on clan land, is clan or communal property and there is no precedent in Palauan custom for plaintiff's claim.

Plaintiff's testimony, in essence, was that he was forced out of the house because of five reasons: 1. He was called a cheater by defendant Yaoch. 2. Defendant Ngetuai told plaintiff's daughter who was then living in the house to move out, which she did. To the defendant this was an indication that he was also not wanted. 3. Defendant Ngetuai told him to move out. 4. The defendants paid plaintiff's debts which to the plaintiff, under Palauan custom, indicates that the defendants wished him ill will or even death as in Palau it is only proper to pay another's debts after he is deceased. 5. An incident took place whereby harsh words were spoken to the defendant and he as *Tuchermel* did not receive an apology or compensation for this incident.

Plaintiff denies doing any wrongful or contrary acts to the clan.

The defendants deny that the plaintiff was ever told to move out and, in essence, were just informed by the plain-

tiff that he was going to move out. They also deny that the plaintiff was called a cheater or that the payment of his debts was anything other than a gratuitous act by defendant Yaoch.

It would appear clear, although there are no reported cases, that if the plaintiff moved out of the house voluntarily, he could not receive or recover any damages and we can apply the general law of estoppel or waiver. See generally 28 Am. Jur. 2d 599 and 836.

From the testimony of the witnesses, there are direct contradictions as to what, if anything, was said to the plaintiff about having to move out of the house. The court is convinced that the plaintiff certainly thought that he was being told, by words or actions, to move out of the house and the court concludes that his departure, at least in his mind, was involuntary and he did not waive any claim he may have for damages.

[1] Therefore, the question to be answered is whether a holder of the title of *Tuchermel* who involuntarily leaves a house built on clan land from money raised at an *ocheraol*, is entitled to reimbursement for the money he and his relatives contributed at the *ocheraol*.

It is the opinion of the court that no reimbursement is due.

[2] An *ocheraol* is a party held to obtain contributions for the payment of the construction of a house. *Madris v. Ilab*, 2 T.T.R. 351. The house in question was built on the traditional site of the Klai Clan and the plaintiff given use rights as *Tuchermel*. There is nothing in Palauan custom which provides that a contributor at an *ocheraol* for raising funds for a clan house may have a claim for a refund or for reimbursement. On the contrary, the custom is that the house is a clan house for the use of the holder of *Tuchermel*.

The plaintiff conceded that his law suit had no precedent and that he could not say it was the custom to be entitled to reimbursement. He also stated that when he moved out, he considered that the house and title returned to the clan. The defendant Yaoch testified that he had never seen any payment or reimbursement to a contributor of an *ocheraol*.

[3] The very nature of an *ocheraol* does not lend itself to a plan for reimbursement or a refund. By custom, the contributors are selected but the amounts to be contributed are not specified. The relationship of the contributor and his financial status is usually his own guide as to the amount the contributor will give. The total cost of the house is usually known so the contributors know how much has to be raised. To allow a disgruntled or unhappy contributor to later obtain a refund could create a problem of raising the money, which has already been spent on the house, and conceivably cause dissension among the contributors if one receives a refund and the others do not.

The contribution is due by custom and is an irrevocable gift and therefore no refunds are due.

It is therefore the judgment of this Court that the plaintiff recover nothing by his complaint and he pay any court costs incurred by the defendants.