IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

IDID CLAN, represented by Bilung Gloria G. Salii, and YUTAKA M. GIBBONS,
Appellants,
v.
KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2019 Palau 22
Civil Appeal No. 18-030
Appeal from LC/B Case Nos. 09-158 through 09-169

Decided: December 4, 2019

Counsel for Appellants	
Idid Clan	Pro Se
Yutaka M. Gibbons	Yukiwo P. Dengokl Rachel A. Dimitruk
Counsel for Appellee	J. Uduch Sengebau Senior

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

AMENDED OPINION[1]

PER CURIAM:

[¶ 1] Appellants each claim ownership over lands in Medalaii Hamlet. Following a hearing, the Land Court determined that the land at issue was public land and denied both Appellants' claims.

[1] Pursuant to this Court's Order on Appellant Gibbons's Petition for Rehearing, this Amended Opinion replaces the original opinion in this matter issued on July 11, 2019.

[¶ 2] For the reasons set forth below, we **AFFIRM**.[2]

BACKGROUND

I. Appellant Idid Clan

[¶ 3] The Land Court denied Appellant Idid Clan's claim because Idid Clan did not own the land immediately before the alleged wrongful taking. Idid Clan argues that the land was wrongfully taken because Ibedul Ilengelekei, acting as the Ibedul of Idid Clan, granted the German Administration a use right in the land, but did not transfer title. To support its claim, Idid Clan relied heavily on two pieces of evidence: (1) Ibedul Ilengelekei did not obtain the consent of the senior strong members of Idid Clan before giving the German Administration the land at issue and (2) the testimony of Bilung Salii. Salii testified that the lots at issue are located in Medalaii Hamlet and historically, Idid Clan has owned the entirety of Medalaii. She also testified that Idid Clan does not have its own Council of Chiefs because it is directly under the Ibedul. Salii testified that several people were given permission to set up their residences on the land with the consent of Ibedul Ngoriakl and that Ibedul Ngoriakl constructed businesses on the lots because he believed that the land at issue was Idid Clan land.

[¶ 4] The Land Court noted that parts of Salii's testimony were uncorroborated or contradicted. Specifically, there "was no evidence that members of Idid Clan performed acts consistent with ownership of their claimed lots," Decision 13, that the clan did not file any adverse ownership claims to the land when the government posted it as public land in the 1950's, and that it was "more likely than not[] that Dr. Swei and others who established their residences in Medalaii did so with the consent of the government, not Ibedul Ngoriakl," *id.* at 14. Furthermore, the Land Court noted that even Ibedul Ngoriakl acquired a leasehold interest from the Trust Territory government on one of the lots at issue in the 1970's. Finally, while Idid Clan cites to an anthropologic writing regarding land tenure in Palau to support its view that the land at issue was Idid Clan land, the very exhibit it cites states that "the Ibedul, *ranking titular chief of Koror*, gave to the

[2] Although Appellant Gibbons requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

German government part of the [Medalaii] sector of Koror in a move allegedly intended to establish the administrative office in Koror instead of Airai." Idid Clan Ex. 11 (emphasis added). Another exhibit, a "request for the restitution of title" to the land Chelebacheb from the Palau Congress to the Civil Administrator of Palau, stated that "Medalaii, Koror Island, which is not included in the [return request,] was tendered without remuneration to the German office by the [I]bedul of that period." Idid Clan Ex. 10.

[¶ 5] Additional testimony was presented by Alexander Merep, who stated that, in order to prevent the German Administration from moving to Airai, Ibedul Ilengelekei gave the German Administration the land at issue pursuant to Palauan custom. Under such custom, a person may use clan land, but when that person leaves the land, the land remains with the clan. However, the Japanese Administration took control of the land from the German Administration when they arrived in Palau and the land was treated as public land from that point forward.

[¶ 6] Evidence submitted by KSPLA included German Administration records showing that it owned 40 hectares of land within Medalaii, which the Land Court concluded was the land before it in this case. It was originally "community land" within Koror Municipality and therefore, under the control of the High Chief of Koror. The land remained in government control throughout the German, Japanese, and American administrations before being passed to the Trust Territory government. The Trust Territory government maintained the land and issued individual leases to the area.

[¶ 7] Relying on this, the Land Court concluded that the land was community land that was gifted to the German Administration by Ibedul Ilengelekei, acting within his capacity as High Chief of Koror. Consequently, the Land Court concluded that the land did not belong to Idid Clan at the time it was given to the German Administration. The Land Court also concluded that because the land was gifted by Ibedul Ilengelekei, there was no forceable taking of the land as required by the statute.

II. Appellant Gibbons

[¶ 8] Appellant Gibbons's interest in the lots at issue arises from his purchase of mortgaged property at a court-ordered public auction on March

13, 1985. Ownership over the lots at issue have been the subject of much litigation. The mortgage at issue belonged to Jones and Saruang Ngoriakl (collectively "the Ngoriakls"). The mortgage was based on a standard form agreement stating that "the mortgagor hereby mortgages to the mortgagee all that certain plot, piece or parcel of land, together with the buildings and improvements thereon or to be constructed thereon, described as follows:" with a space for an individualized description of the mortgaged property. YMG Ex. 1C at 1. Typed into that blank space is the following description:

> All those ap[ar]tments constructed on public land located in Medalaii Hamlet, Koror Municipality, Palau District, Trust Territory[] of the Pacific Islands, and known as Lot[] Nos. 40627, 40628, 40629 and 40630, containing respectively areas of 2602.81 square meters, 2941.99 square meters, 3334.29 square meters and 3355.65 square meters, more or less, as shown on the Division of Land and Survey Drawing 4046/70[,] the original of which is on file at the District Office of Land Management, Koror, Palau District.

Id.

[¶ 9] The Ngoriakls defaulted on the loan several years later and were ordered by the Court in Civil Action No. 62-80 to pay the Trust Territory government $50,000 plus a yearly accrued interest of 5%. Following the Ngoriakls' failure to make the required payments, the EDLF Institute[3] sought to foreclose the mortgaged property and sell it at a public auction. The Trial Division of the Supreme Court issued a Notice of Sale on January 9, 1985, and later an Amended Notice of Sale on February 7, 1985, using only the language typed into the mortgage document. *See* KSPLA Exs. 15, 16.

[¶ 10] Following the sale notices, EDLF Institute assigned its judgment against the Ngoriakls and its right to sell the mortgaged property to Gibbons. Gibbons proceeded with the public sale and purchased the mortgage on

[3] The Economic Development Loan Fund Institute was a public corporation and was the entity that made the initial mortgage agreement with the Ngoriakls. *See* YMG Exs. 1C, 3. Although the Trust Territory government was the initial plaintiff in Civil Action 62-80, the subsequent Notice of Sale in the case listed the EDLF Institute as the plaintiff. *See* KSPLA Ex. 15; YMG Ex. 3.

March 13, 1985. The same day, a bill of sale was issued to Gibbons, describing the land sold as follows:

> All that certain plot, piece or parcel of land, together with the buildings and improvements thereon or to be constructed thereon, and all those apartments, commonly known as the "Jones Apartments", *constructed on public land located in Medalaii Hamlet*, State of Koror, Republic of Palau, and known as Lots No. 40627, 40628, 40629 and 40630, containing respectively areas of 2602.81 square meters, 2941.99 square meters, 3334.29 square meters and 3355.65 square meters, more or less, as shown on the Division of Lands and Surveys Drawing 4046/70 . . . .

YMG Ex. 4 at 1 (emphasis added).[4]

[¶ 11] On October 7, 1987—two years after his purchase of the mortgage—Gibbons acquired a business leasehold interest from KSPLA for Lot Nos. 40627, 40628, 40629, and 40630. Although Gibbons contended that the lease was an error, the Land Court found his contention "incredible" in light of his failure to take any action correcting the purportedly erroneous lease. Decision 19. The land was also included in KSPLA's 1988 ownership claim to all public lands in Koror, during which time Gibbons was the Chairman of the KSPLA Board.

[¶ 12] Later, Lots No. 40627, 40628, 40629 and 40630 became the subject of Land Court Case No. LC/B 99-04, which was referred to the Trial Division as Civil Action No. 99-349 before ultimately becoming the subject of the underlying Land Court case. Most relevant to this case from Civil Action No. 99-349 is the October 12, 2009 Decision regarding a motion for summary judgment. The main issue was "whether Gibbons purchased just the buildings, or the buildings and the real property on which the buildings

[4] This is the first time in the judicial proceedings that the phrase "commonly known as the 'Jones Apartments'" was used. It is likely that the language was pulled from the description of the property section of a mortgage Gibbons took out on the property on March 7, 1985. *See* KSPLA Ex. 20 at 2. In addition to adding this phrase, Gibbons made one other significant change to the description of the property: he deleted the word "public" from the phrase "constructed on public land in Medalaii Hamlet." *Id.*

stand." *See* Decision, *In Re Pub. Lands described as Lot Nos. 40627, 40628, 40629, and 40630, located in Medalaii Hamlet of Koror State, Republic of Palau*, Civ. Action No. 99-349, at 11 (Oct. 12, 2009). In its opinion, the Trial Division noted that "the description [of the property] in the Mortgage itself is confusing" because it "purports to transfer the plot or parcel of land in the boilerplate portion, but then the typed-in description of the property mentions only apartment buildings on public land." *Id.* at 10 n.7. Consequently, the Court held the issue was one of material fact that could not be resolved on summary judgment.

[¶ 13] This was the same question that was before the Land Court in this underlying case. After reviewing the evidence, the Land Court concluded that the land was public land and the mortgage purchased by Gibbons included only the buildings, not the underlying land.

STANDARD OF REVIEW

[¶ 14] In reviewing decisions of the Land Court, "[c]onclusions of law are reviewed de novo, factual findings are reviewed for clear error, and exercises of discretion are reviewed for abuse." *Elsau Clan v. Peleliu State Pub. Lands Auth.*, 2019 Palau 7 ¶ 7. "The Land Court's factual determinations will be set aside for clear error only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Id.* (internal quotation marks omitted). "Where there are several plausible interpretations of the evidence, the Land Court's choice between them shall be affirmed even if this Court might have arrived at a different result." *Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139, 141 (2015).

DISCUSSION

[¶ 15] There are two Appellants in this case, each claiming different plots of land awarded to Appellee. Appellant Idid Clan asserts ownership over Lots 06B012-30, 06B012-31, 06B012-41, 06B012-007, 06B012-043, 06B012-044, 06B012-017, 06B012-012, and 06B012-045, as shown on BLS

Worksheet No. 2006 B 12A.[5] Appellant Gibbons asserts ownership over Lot Nos. 40627, 40628, 40629, and 40630, now identified on BLS Worksheet No. 2006 B 12A as 06B012-25, 06B012-26, 06B012-27A, 06B012-27B, 06B012-27C, 06B012-28A, 06B012-28B, 06B012-29A, and 06B012-29B. We address each Appellant's claim in turn.

I. Appellant Idid Clan

[¶ 16] Appellant Idid Clan's claim is one for a return of public lands pursuant to 35 PNC § 1304(b). This statute creates a mechanism for the return of land wrongfully or unjustly taken by prior occupying forces. To succeed on a return of public lands claim, a claimant must prove three elements: "(1) the claimant is a citizen who has filed a timely claim; (2) the claimant is either the original owner of the claimed property, or one of 'the proper heirs'; and (3) the claimed property is public land which became public land by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration." *Remed Lineage v. Airai State Pub. Lands Auth.*, 2018 Palau 26 ¶ 20 (internal quotation marks omitted). At all times, the burden rests on the claimant to establish each of these elements by a preponderance of the evidence.[6] *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21, 24 (2015).

[¶ 17] Idid Clan argues that the Land Court committed reversible error because it "failed to review and consider Appellant[']s evidence," Idid Clan Opening Br. 8, and "chose to rely on KSPLA's evidence and assumed the role to translate and clarify KSPLA's evidence," *id.* at 11. Contrary to Idid Clan's assertion, there is no evidence in the record that the Land Court failed to consider its evidence. The Land Court discussed Bilung Salii's testimony

[5] Although Idid Clan initially included Lots 06B012-32 and 06B012-011 in its claim, it withdrew these lots from its claim during the Land Court proceedings. Additionally, Idid Clan abandoned its claim to any lots individually claimed by Gibbons—specifically, Lots 06B012-27B, 06B012-28B, and 06B012-29B.

[6] In its brief, Idid Clan misplaces the burden of proof through statements such as "KSPLA has failed to show proof that Germany and Japan lawfully acquired the lands in Medalaii, Koror." Idid Clan Opening Br. 10. In a return-of-public-lands case, a public lands authority may prevail without adducing any affirmative proof or arguments in favor of ownership. *See, e.g.*, *Masang v. Ngirmang*, 9 ROP 125, 129 n.3 (2002) ("If no claimant proves [the three necessary elements], title cannot be transferred pursuant to section 1304(b), and the property remains public land.").

and the evidence she presented in support, but ultimately found the evidence that Ibedul Ilengelekei gave the land to the German Administration as High Chief of Koror more persuasive. The critical piece of evidence here is that the lots at issue were not given with the consent of the senior strong members of Idid Clan. While Idid Clan argues this means that the land was granted as a use right to the German Administration, the Land Court concluded that it meant the land was community land which Ibedul Ilengelekei gave to the German Administration in his capacity as High Chief of Koror in an attempt to encourage development in Koror.

[¶ 18] Both are plausible interpretations of the evidence before the Land Court. Where the Land Court chooses between two plausible interpretations of the evidence, its choice cannot be clearly erroneous. *See Eklbai Clan*, 22 ROP at 141. Therefore, the Land Court did not clearly err by concluding that Idid Clan failed to meet the second and third elements of its return of public lands claim.

[¶ 19] Idid Clan also argues that it was unaware of the procedure for examining evidence submitted by Appellee and that the Land Court had a responsibility to assist it because it was a pro se litigant. Idid Clan's contention appears to be that the Land Court had a special duty to assist it in the presentation of its case. This Court has repeatedly rejected claims that the Land Court is required to serve as an advocate for pro se litigants, and we do so again here. *See Rivera v. Ngirausui*, 2018 Palau 22 ¶ 10 ("Beyond fair treatment, it is clear that Appellant seeks the Land Court's assistance in making her case. . . . The Land Court, however, is not required to act as each claimant's advocate." (internal quotation marks omitted)); *Rengechel v. Uchelkeiukl Clan*, 16 ROP 155, 160 (2009) ("Although Palau has special Land Court rules designed to help pro se litigants, there is nothing in the rules that instructs a Land Court judge to act as an attorney for those parties choosing to represent themselves."). Furthermore, Idid Clan is a frequent claimant in Land Court and its representative has appeared there on numerous occasions.[7]

[7] Idid Clan's claims in the Land Court span over twenty years. A non-exhaustive list of cases in which Idid Clan appealed a decision from the Land Court includes: *Idid Clan v. Koror State Pub. Lands Auth.*, 2018 Palau 25 (*Idid Clan X*); *Idid Clan v. Koror State Pub. Lands Auth.*,

[¶ 20] We affirm the Land Court's judgment as to Lots 06B012-30, 06B012-31, 06B012-41, 06B012-007, 06B012-043, 06B012-044, 06B012-017, 06B012-012, and 06B012-045.

II. Appellant Gibbons

[¶ 21] Appellant Gibbons appeals the Land Court's conclusion that he does not own Cadastral Lot Nos. 06B012-25, 06B012-26, 06B012-27A, 06B012-27B, 06B012-27C, 06B012-28A, 06B012-28B, 06B012-29A, and 06B012-29B. Despite raising a variety of purported errors on appeal, his claim turns on whether the Land Court erred by concluding that the mortgaged property he purchased included only the buildings—and not the real property—on the lots at issue.

[¶ 22] We begin by addressing our standard of review. We have summarized our standards for interpreting contracts as follows:

> Generally speaking, the interpretation of a contract is a matter of law, which we review *de novo*. Whether the contract is ambiguous to an extent that would permit extrinsic or parol evidence of the content of the contract is also a question of law, which we review *de novo*. However, when the interpretation of a contract includes review of factual extrinsic evidence, the findings of fact are reviewed for clear error, and the principles of law applied to those facts are reviewed de novo.

2017 Palau 10 (*Idid Clan IX*); *Idid Clan v. Nagata*, 2016 Palau 18 (*Idid Clan VIII*); *Idid Clan v. Palau Pub. Lands Auth.*, 2016 Palau 7 (*Idid Clan VII*); *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 66 (2015) (*Idid Clan VI*); *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21 (2015) (*Idid Clan V*); *Koror State Pub. Lands Auth. v. Idid Clan*, 20 ROP 270 (2013) (*Idid Clan IV*); *Ngarngedchibel v. Koror State Pub. Lands Auth.*, 19 ROP 60 (2012); *Idid Clan v. Olngebang Lineage*, 12 ROP 111 (2005) (*Idid Clan III*); *Idid Clan v. Koror State Pub. Lands Auth.*, 9 ROP 12 (2001) (*Idid Clan II*); *Idid Clan v. Koror State Pub. Lands Auth.*, 6 ROP Intrm. 302 (1996) (*Idid Clan I*) (appeal from a Land Claims Hearing Office Determination). Furthermore, Bilung Gloria G. Salii represented Idid Clan or testified on its behalf in seven of those cases, *see Idid Clan X*, 2018 Palau 25; *Idid Clan IX*, 2017 Palau 10; *Idid Clan VIII*, 2016 Palau 18; *Ngarngedchibel*, 19 ROP 60; *Idid Clan III*, 12 ROP 111; *Idid Clan II*, 9 ROP 12; *Idid Clan I*, 6 ROP Intrm. 302, and was an appellant in her individual capacity in at least two appeals of Land Court decisions, *see Debkar Lineage v. Gibbons*, 2017 Palau 23; *Salii v. Koror State Pub. Lands Auth.*, 17 ROP 157 (2010).

Anastacio v. Eriich, 2016 Palau 17 ¶ 8 (internal citations, alterations and quotation marks omitted).

[¶ 23] Although the Land Court did not explicitly state that it found the mortgage ambiguous, it turned to extrinsic evidence in evaluating the meaning of the mortgage document. We interpret the Land Court's decision to review such evidence as a legal conclusion that the language in the mortgage was ambiguous. Reviewing this decision *de novo*, we agree. As the Trial Division in the earlier proceedings noted, the description of the property in the mortgage appears to contradict itself because it "purports to transfer the plot or parcel of land in the boilerplate portion, but then the typed-in description of the property mentions only apartment buildings on public land." Decision, Civ. Action No. 99-349, at 10 n.7. Given this contradictory language, we conclude that the Land Court correctly turned to extrinsic evidence to interpret the mortgage. Therefore, we review the extrinsic factual determinations relied upon by the Land Court for clear error, and will affirm such determinations unless they "lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Elsau Clan*, 2019 Palau 7 ¶ 7 (internal quotation marks omitted). Accepting the Land Court's non-erroneous factual determinations, we then interpret the mortgage *de novo*.

[¶ 24] A review of the record before the Land Court shows ample evidence that the mortgage Gibbons purchased included only the buildings, and not the underlying land. Records show that Ibedul Torwal Ngoriakl, Jones Ngoriakl's father and Saruang Ngoriakl's husband, obtained a leasehold interest in Lot 40627 from the Trust Territory Government in 1971. KSPLA Ex. 12. The Land Court noted that the mortgage obtained by the Ngoriakls was based on that leasehold interest and the properties built on it, not an ownership interest to the land itself. To the extent that the Land Court found that the Ngoriakls mortgaged the leasehold interest itself, it erred. The leasehold interest in Lot No. 40627 is evidence supporting a conclusion that the mortgage was based on the buildings located on Lot Nos. 40627, 40628, 40629, and 40630, rather than the land itself. The leasehold interest is separate from the physical buildings on the land and is not itself part of the mortgaged property. However, we find no clear error in the Land Court's conclusion that the Ngoriakls did not own Lot No. 40627. Given the legal

principle that a person cannot mortgage property he does not own, Ibedul Ngoriakl's leasehold interest is compelling evidence that the Ngoriakls did not mortgage the land.

[¶ 25] Additionally, despite containing boilerplate language purporting to mortgage the land itself, the mortgage document specifically included a typed-in description, which identified the lots as public land and listed the mortgaged properties as the apartments constructed on that land. Taken together with the evidence that the land had been treated as public land by the government and even by Gibbons himself, both before and after the purchase of the mortgage, along with the legal principle that a person cannot mortgage property he does not own, the Land Court did not err in determining that the mortgage encompassed only the buildings. Appellant Gibbons's claim to the land fails.

[¶ 26] Gibbons also argues that the Land Court used the wrong standard in evaluating his superior title claim and in concluding that that claim was untimely. While it is true that the Land Court noted that a superior title claim requires that the land never became public in the first place, and Gibbons's claim is based on the purported sale of the land after it became public, any potential error was irrelevant to the Land Court's ultimate determination. The Land Court based its decision on its finding that the sale that occurred in 1985 was a sale of the buildings on the lots, not on the theory that the land could not be won on a superior title claim because it was public land. Similarly, the Land Court's conclusion that Gibbons did not file a timely claim to the land had no impact on the Land Court's ultimate determination that the sale at issue involved only the buildings.

[¶ 27] We affirm the Land Court's judgment as to Cadastral Lot Nos. 06B012-25, 06B012-26, 06B012-27A, 06B012-27B, 06B012-27C, 06B012-28A, 06B012-28B, 06B012-29A, and 06B012-29B.

CONCLUSION

[¶ 28] We **AFFIRM** the Land Court's judgment.

SO ORDERED, this 4th day of December, 2019.[8]

ARTHUR NGIRAKLSONG
Chief Justice

JOHN K. RECHUCHER
Associate Justice

KEVIN BENNARDO
Associate Justice

[8] Chief Justice Ngiraklsong approved this amended opinion on November 11, 2019.