IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

PALAU PUBLIC LANDS AUTHORITY, Appellant, v. NGATPANG STATE PUBLIC LANDS AUTHORITY, Appellee.	:	CIVIL APPEAL NO. 13-001 (Civil Action No. 10-147) **OPINION**

Decided: May 21, 2013

Counsel for Appellant: Vameline Singeo
Counsel for Appellee: J. Roman Bedor

BEFORE: KATHLEEN M. SALII, Associate Justice; LOUDRES F. MATERNE, Associate Justice; R. ASHBY PATE, Associate Justice.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice, presiding.

PER CURIAM:

This appeal arises from a Trial Division's December 31, 2012, Decision and Order granting summary judgment in favor of Appellee Ngatpang State Public Lands Authority. For the following reasons, the decision of the Trial Division is **AFFIRMED**.

BACKGROUND

In April of 1975 the Fifth Palau Legislature passed Public Law 5-8-10, codified at 35 PNC § 201 et seq., to create a Palau Public Lands Authority (PPLA) and to authorize the creation of state public lands authorities. *ROP v. Ngara-Irrai*, 6 ROP Intrm. 159, 164 n. 10 (1997). Importantly, the law imbued the PPLA with authority "[t]o establish the basic guidelines and procedures for the operation of each Municipal Authority and to provide technical assistance thereto whenever necessary or appropriate." RPPL 5-8-10, § 10(13). Similarly, the law authorized PPLA "[t]o establish rules and regulations, in accordance with applicable law and procedure, for the conduct of its business and programs." PPL 5-8-10, § 10(11). The law also granted to PPLA the power:

> [T]o transfer and convey . . . to its Municipal Public Lands Authority . . . public lands within the geographical boundaries of that municipality . . . and to delegate and assign to the same at the time of said transfer certain or all of its rights, interests, powers, responsibilities, duties and obligations provided for and prescribed in this Act, except those powers reserved to the Authority by Section 12 hereof.

PPL 5-8-10, § 10(12).

On March 11, 1981, John O. Ngiraked, Chairman of the Board of Trustees of the Appellant Palau Public Lands Authority, executed a "QUITCLAIM DEED" in favor of the Ngaptang Municipal Public Lands Authority, the predecessor to Appellee Ngatpang State Public Lands Authority. The deed provided:

> [P]ursuant to the authority and subject to the terms and conditions of Public Law No. 5-8-10, the Palau Public Lands Authority, by these presents, does remise, release, and quitclaim to the Ngatpang Municipal

> Public Lands Authority, its successors and assigns, all its right, title and interest in and to the following described real property: All public lands . . . situated within the geographic boundaries of the chartered Municipality of Ngatpang . . . .

On April 6, 1999, PPLA adopted a series of rules and regulations relating to the administration of public lands. Part III, § 3(A)(x) ("the Regulation") of such rules provided that:

> If PPLA conveys land to a duly constituted state PLA which subsequently ceases to operate for a period of six months, PPLA shall act as trustee of all such lands until such time as the state PLA begins active operations. PPLA may act after less than six months to the extent that failing to do so may jeopardize the interests of the people of that state.

Palau Pub. Lands Auth., *Regulations Affecting the State Public Lands*, Part III, § 3(A)(x) (Apr. 6, 1999).

On June 28, 2010, PPLA informed NSPLA that NSPLA had failed to file with PPLA certain operational documents. On August 10, 2010, following continued non-compliance, PPLA notified NSPLA that NSPLA had been deemed non-operational and that PPLA would act as a trustee of NSPLA's lands.

Following the August 10, 2010, correspondence, NSPLA filed an action in the Trial Division challenging PPLA's authority to assume control of NSPLA's lands. Both parties filed motions for summary judgment and on December 31, 2012, the Trial Division granted summary judgment in favor of NSPLA. In its decision, the Trial Division found that "[n]owhere does the statute give Defendant the power to take back the lands it has deeded . . . or to take over the functions of [a State Public Lands Authority] because it has

failed to file reports or has become dysfunctional." Thus, the Trial Division concluded that "PPLA . . . conveyed the land to NSPLA. PPLA has no authority to take over the duties of the Board of Trustees of the NSPLA or the public lands of Ngatpang State." PPLA filed a timely appeal.

STANDARD OF REVIEW

On appeal, PPLA contends the Trial Division misinterpreted PPLA's power under its implementing statute and erroneously concluded that the quitclaim deed prohibited PPLA from assuming control over NSPLA's lands. The trial court's interpretation of a statute is reviewed de novo. *Isechal v. Republic of Palau*, 15 ROP 78, 79 (2008); *see also Louis v. Nakamura*, 16 ROP 144, 146 (2009) (appeals of summary judgment are subject to de novo review).

ANALYSIS

This appeal gives rise to two questions: (1) whether the Regulation falls within the scope of PPLA's authority; and (2) if the Regulation is valid, whether PPLA had the power to invoke the regulation to assume control over NSPLA's lands following the execution of the quitclaim deed. Because we conclude the Regulation is contrary to the statute, and is thus invalid, we need not address whether PPLA's invocation of the regulation was proper.

In assessing the validity of regulations, we have recognized that:

> Administrative regulations must be consistent with the constitutional or statutory authority by which they are authorized. Administrative rules may not enlarge, alter or restrict the provisions of the statute being administered. Whatever force and effect a rule or regulation has is derived entirely from the statute under which it is enacted, so administrative regulations that are inconsistent or out of harmony with the statute or that conflict with the statute, for instance by extending or restricting the statute contrary to its meaning, or that modify or amend the statute or enlarge or impair its scope are invalid or void, and courts not only may, but it is their obligation to strike down such regulations.

Becheserrak v. ROP, 5 ROP Intrm. 63, 70 (1995). In this regard, "an agency cannot expand by its regulations the power . . . granted to it." *Strickland v. U.S.*, 423 F.3d 1335, 1338 (Fed. Cir. 2005) (citing *Civil Aeronautics Board v. Delta Air Lines, Inc.*, 367 U.S. 316, 322 (1961)).

Pursuant to 35 PNC § 210(e), PPLA has authority "to sell, lease, exchange, use, dedicate for public purposes, or make other disposition of public lands with the approval of the government of the state within whose geographical boundaries the subject lands are situated." The corollary of this provision is that PPLA lacks the authority to sell, lease, exchange, use, dedicate for public purposes or make other disposition of public lands *without* the approval of the government of the state within whose geographical boundaries the subject lands are situated. *See Carlisle v. United States*, 517 U.S. 416, 431–32 (1996) (providing examples where permissive language creates a restrictive rule).

The transfer of property to the control of a trustee is the very definition of a disposition of property. *See* Black's Law Dictionary (9th ed. 2009), disposition (defining

disposition as "[t]he act of transferring something to another's care or possession, esp. by deed or will; the relinquishing of property."); *see also* Restatement (Third) of Trusts § 42 (2003) (trustee obtains legal title to property). Accordingly, PPLA may not transfer property to a trustee without the permission of the relevant state government.

The challenged regulatory provision provides that PPLA will act as a trustee for public lands transferred to a state authority by PPLA when that state authority ceases to operate for six months, or where the state authority's failure to operate may jeopardize the interests of the people of the state. In contravention of section 210(e), the Regulation allows the transfer of the subject lands to take place without approval of the relevant state government. Accordingly, we conclude the Regulation conflicts with the statute and, therefore, must be struck down.[1] *See Becheserrak,* 5 ROP Intrm. at 70.

[1] In reaching this conclusion, we underscore the narrowness of our holding here. We merely hold that the Regulation is invalid insofar as it allows PPLA to effect a transfer of title without obtaining the approval from the proper state authority. This holding in no way prejudices PPLA's authority to assume title to lands through the exercise of eminent domain, or to exercise control of a non-compliant state authority through legal means. *See* 35 PNC § 311(a) (PPLA retains authority to exercise eminent domain); *see also* 35 PNC § 310(k) (granting PPLA the authority to "establish the basic guidelines and procedures for the operation of each state authority and to provide technical assistance thereto whenever necessary or appropriate."); *see also Ortiz-Barraza v. U.S.*, 512 F.2d 1176, 1180 (9th Cir. 1975) ("[T]he power to regulate is only meaningful when combined with the power to enforce.").

CONCLUSION

For the reasons set forth above, the Trial Division's grant of summary judgment is **AFFIRMED**.

SO ORDERED, this 21st day of May, 2013.

KATHLEEN M. SALII
Associate Justice

LOUDRES F. MATERNE
Associate Justice

R. ASHBY PATE
Associate Justice