

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED 

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SUPREME COURT OF THE REPUBLIC OF PALAU

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DOMINICA NGORIAKL,
Appellant,
v.
GEORGE RECHUCHER,
Appellee.
-----X

CIVIL APPEAL NO. 12-038
Civil Action No. 09-058

OPINION

Decided: September 19th, 2013

Counsel for Appellant: William Ripdath
Counsel for Appellee: Kevin Kirk

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. ASHBY PATE, Associate Justice; and HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

This is an appeal of a Trial Division judgment granting Appellee George Rechucher a use right for land owned by Tmetab Clan. For the reasons set forth below, the Trial Division's decision is **AFFIRMED**.

BACKGROUND

On August 20, 2007, Adelbai re Kesoao Jones Ngoriakl (Adelbai Jones), the highest ranking chief of Tmetab Clan, executed a "Land-Use Right Agreement" (the Agreement) on behalf of Tmetab Clan in favor of Appellant George Rechucher. The

agreement identified a portion of Cadastral Lot No. 023 B 01 (the Land) and provided that:

User shall have the right to possess, occupy, and use for whatever purposes the above-described portion of the Land and is free to conduct any construction, renovation, and/or improvement thereon as he himself deems necessary or appropriate. Furthermore, [he] shall have the right to transfer, assign, lease or sublease any of his interests in the above-described portion of the Land without consent of the Owner, provided, however, that any interest so transferred, assigned, leased or subleased shall not exceed User's own interests. Finally, Owner agrees, promises and covenants that it shall not void or attempt to void this Use-Right upon grounds that the boundaries of the portion of the Land subject herein are uncertain or for any other reason(s).

Approximately three weeks later, on September 10, 2007, Adelbai Jones, once again purporting to act on behalf of Tmetab Clan, executed an Amended Land-Use Right Agreement (the Amended Agreement) "to honor the August 20, 2007 Land-Use Right Agreement [and] to further extend the use-right in said portion of the Land to include User's children, heirs and/or successors." Specifically, the Amended Agreement provided that:

[Rechucher], his children, heirs, and/or successors shall have the right to possess, occupy, and use for whatever purposes the same portion of Land described in the August 20, 2007 Land-Use Right Agreement and are free to conduct any construction, renovation, and or improvement thereon as they deem necessary or appropriate. Furthermore, User, his children, heirs and/or successors shall have the right to transfer, assign, lease or sublease any of their interests in the said portion of the Land without consent of the Owner.

On March 19, 2009, Appellant Dominica Ngoriakl filed a complaint in the Trial Division seeking an injunction preventing Rechucher from exercising the rights granted

by the August 20, 2007, Agreement.¹ She also sought a declaratory judgment that the August 20, 2007, Agreement is invalid. Ngoriakl alleged that the Agreement was invalid because: (1) Rechucher was not a member of Tmetab Clan; (2) the Agreement was not supported by adequate consideration; (3) Adelbai Jones executed the agreement “without the prior, concurrent, or subsequent assent of plaintiff or any other strong or senior members of Tmetab Clan as is required by law, and such instrument is therefore voidable by plaintiff.” The case proceeded to trial at which three expert witnesses presented different opinions on a chief’s authority to transfer interests in clan lands.

Demei Otobed, Rechucher’s expert witness, testified that a chief may convey interest in clan property without the consent of the kldorolel² or other strong senior members of the clan. Kazumoto Rengulbai testified that the consent of the clan’s ourrot generally is required to convey interest in land but that the chief possesses unilateral authority to grant a use right. Florencio Gibbons, Ngoriakl’s expert, testified that before clan property can be conveyed (either in fee simple or as a use right) the male title holder must call a meeting with his kldorolel and other members and then reach a consensus on conveyance. All three witnesses testified that where a chief gives a use right, the right may be rescinded if the clan has a need for the property, or if the right is abused.

¹ The complaint did not reference the Amended Agreement.

² A chief’s female counterpart.

The Trial Division issued a Decision and Judgment concluding that a chief of a clan may unilaterally convey a right to a clan member to use clan land but that, prior to conveying a fee simple interest in such land, he must obtain approval from the ourrot. The Trial Division further found that the Amended Agreement was an agreement to convey a fee simple interest in the described land and was, therefore, invalid. However, rather than invalidate the entire Amended Agreement, the Trial Division severed the fee simple transfer from the Amended Agreement and upheld the portions granting Rechucher a use right. Elsewhere in the decision, the Trial Division found that Rechucher was an ochell member of the clan.

Ngoriakl appealed.

STANDARD OF REVIEW

Ngoriakl raises two issues on appeal: (1) the Trial Division erred in severing the contract (rather than invalidating it); and (2) the Trial Division erred in its finding of Rechucher's clan status. Because a person's status in a clan is a matter of custom which, for cases filed before January 3, 2013, was a determination of fact, we review the Trial Division's customary finding for clear error. *See Beouch v. Sasao*, Civ. App. No. 11-034, slip op. at 5, 17 (Jan. 3, 2013). Determinations of law, including a court's interpretation of a contract, are reviewed de novo. *Isechal v. Umerang Clan*, 18 ROP 136, 142 (2011).

DISCUSSION

I. Clan Membership

In its decision, the Trial Division found that “[t]he preponderance of the evidence established at trial is that Defendant is an ochell member of Tmetbab Clan through his mother’s matrilineal line. His mother, Martha, may be adopted, but she is nevertheless an ochell member of the clan” Ngoriakl contends that this conclusion was error because “the two expert witnesses who opined at trial on clan membership [testified] this is impossible under Palau customary principles.”

Ngoriakl submits that the Trial Division erred in finding that Rechucher holds ochell status and that such error requires reversal because:

[i]t appears, in the Court’s reasoning, to fundamentally undergird and lead to the Court’s next conclusion that Adelbai Jones had the authority to convey a use right to Mr. Rechucher without the consent of any other clan members. Otherwise, the finding of Mr. Rechucher’s ochell status, as opposed to some lesser or general status in the clan . . . would have no importance and be purely gratuitous.

We need not consider this argument because, even if the Trial Division erred in concluding that Rechucher held ochell status, such error was harmless.

Errors made by a lower court do not require reversal where the error is unrelated to the matter’s ultimate determination, rendering it harmless. See *Rengiil v. Debkar Clan*, 16 ROP 185, 191 (2009) (“Because that misstatement does not undermine the reasoning or validity of the Land Court’s [conclusion], it is harmless and does not justify remand.”).

In its decision, the Trial Division concluded that “because [Rechucher] is a member of Tmetbab Clan, Adelbai had the authority to grant him a use-right without first consulting with or getting approval from the ourrot of the Clan.” Ngoriakl would have us read the foregoing sentence as beginning with the clause “because Defendant is *an ochell* member of Tmetbab Clan.” We see no reason to do so.

“As a general rule, judgments are to be construed like other written instruments, and the legal effect of a judgment must be declared in light of the literal meaning of the language used.” *Mikel v. Saito*, Civ. App. No. 12-032, slip op. at 8 (Feb. 28, 2013) (internal punctuation omitted). Here, the plain reading of the decision is that the Trial Division based its decision that Adelbai Jones could convey a use right on the fact that Rechucher was a clan member. There is no indication that the finding of Rechucher’s specific clan status played any role in the ultimate conclusion that Adelbai Jones had the unilateral authority to grant Rechucher a use right to clan land. Indeed, of the two expert witnesses who testified that the male title holder of a clan could unilaterally grant a use right to a clan member, neither testified that the grant of a use right was conditional on the grantee’s ochell status.³ Accordingly, we conclude that Rechucher’s ochell status was immaterial to the lower court’s decision and that, therefore, any error in this regard was harmless.

³ Otobed testified that he was aware of a person who received a use right *because* he was an ochell member. This is not testimony that a person *must* be an ochell member to receive a use right.

II. Enforcement of the Contract

The Amended Agreement granted Rechucher a use right to the property and the ability to transfer and devise his right at will. The Trial Division found that the purported transfer was invalid insofar as it was an attempt to effectuate a fee simple transfer without the approval of the ourrot. However, noting that “contracts . . . can be severed for purposes of rescission if circumstances so require to yield a just result,” the Trial Division elected to treat the grant of the use right to Rechucher as severable from the purported grant of transferability of the use right. Ngoriakl contends that the Trial Division improperly reformed the Agreement. We disagree and hold that the Trial Division properly severed (rather than reformed) the parties’ agreement.

A. Severance and Reformation

It is important to distinguish between the judicial doctrines of severance and reformation. A court “reforms” a document when it employs its equitable powers to construe a legal document “to express or conform to the real intention of the parties when some error or mistake has been committed.” 66 Am. Jur. 2d Reformation of Instruments § 1. Relatedly, invalid or unenforceable provisions may “be severed [from an otherwise valid contract] for purposes of rescission if circumstances so require to yield a just result.” *Dalton v. Borja*, 12 ROP 65, 72 (2005).

The Trial Division, citing to *Borja*, stated explicitly that it was severing the portions of the Agreement it found to be unenforceable—those provisions granting

Rechucher the right to transfer and devise his use right. This was not a reformation of the contract, and Appellant's contention that the Trial Division misapplied the reformation doctrine is without merit.

B. The Trial Division's Decision to Sever the Unenforceable Terms

"The question whether a contract can be properly considered severable is considered in light of the language employed by the parties and the circumstances existing at the time of the contracting." *Palau Marine Indus. Corp. v. Pac. Call Invs., Ltd.*, 9 ROP 67, 71 (2002). "The primary criterion for determining the question is the intention of the parties as determined by a fair construction of the terms and provisions of the contract itself, by the subject matter to which it has reference and by the circumstances of the particular transaction giving rise to the question." 17A Am. Jur. 2d Contracts § 406.

In answering this question, we first address the interplay between the Agreement and the Amended Agreement. The Trial Division found, and neither party disputes, that the Amended Agreement constituted an attempt to transfer a fee simple interest in the property and that Adelbai Jones lacked authority to affect such a transfer. Because Adelbai Jones lacked authority to execute the Amended Agreement, the document is without legal effect. *See* Restatement (Third) of Agency § 1.01 cmt. c (2005) ("Only interactions that are within the scope of an agency relationship affect the principal's legal position."). Accordingly, the only question before us is whether the Agreement (as it existed before the Amended Agreement) may be enforced.

The Agreement provided that:

[Rechucher] shall have the right to possess, occupy, and use for whatever purposes the above-described portion of the Land and is free to conduct any construction, renovation, and/or improvement thereon as he himself deems necessary or appropriate. Furthermore, [he] shall have the right to transfer, assign, lease or sublease any of his interests in the above-described portion of the Land without consent of the Owner, provided, however, that any interest so transferred, assigned, leased or subleased shall not exceed User's own interests.

With regard to conveyances of property, “[p]ractically all courts agree that a deed will be given an interpretation which will cause it to be effective in preference to one which would render it inoperative.” 23 Am. Jur. 2d Deeds § 199. Accordingly, deeds typically will be enforced, notwithstanding the existence of unenforceable provisions. *See, e.g., Corner v. Mills*, 650 N.E.2d 712, 715 (Ind. Ct. App. 1995) (“[I]llegal covenants [in deeds] may be removed if to do so will not affect the intent or symmetry of the remaining covenants.”); *Connolley v. Harrison*, 327 A.2d 787, 789 (Md. Ct. App. 1974) (“[Unenforceable provision] can be severed from the instrument without destroying the instrument's overall validity or the validity of any other provisions if it is not so interwoven as to be logically inseparable from the rest.”); *Hawthorne v. Realty Syndicate, Inc.*, 268 S.E.2d 494, 500 (N.C. 1980) (“Defendants' contention that the residential restriction must fail because of its conjunction with an unenforceable racial restriction is meritless. Although expressed as part of the same covenant, the two clauses are so clearly independent that one need not infect the other.”).

Here, the Agreement split the rights of use and transferability into separate clauses. Based on this separation of the rights, and the presumption of intent for the validity of deeds, we conclude that the Trial Division did not err in severing the unenforceable portions of the Agreement from the enforceable use right.


CONCLUSION

For the foregoing reasons, we conclude that Rechucher possesses a non-transferrable use right to the Land described in the Agreement. The decision of the Trial Division is **AFFIRMED**.

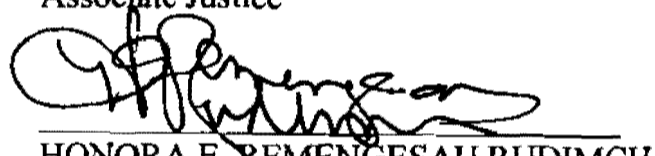
SO ORDERED, this 19th day of September, 2013.



ARTHUR NGIRAKLSONG
Chief Justice



R. ASHBY PATE
Associate Justice



HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem