IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGEREMLENGUI STATE PUBLIC LANDS AUTHORITY and NGEREMLENGUI STATE GOVERNMENT,

Appellants/Cross-Appellees,

v.

NGARDMAU STATE GOVERNMENT and NGARDMAU STATE PUBLIC LANDS AUTHORITY,

Appellees/Cross-Appellants.

CIVIL APPEAL NO. 15-014
(Civil Action No. 13-020)

OPINION

Decided: November 16, 2016

Counsel for Ngeremlengui: Oldiais Ngiraikelau
Counsel for Ngardmau: Yukiwo P. Dengokl, Matthew S. Kane

BEFORE: KATHLEEN M. SALII, Associate Justice
LOURDES F. MATERNE, Associate Justice
C. QUAY POLLOI, Associate Justice Pro Tem

Appeal from the Trial Division, the Honorable R. Ashby Pate, Associate Justice, presiding.

PER CURIAM:

This appeal arises from a dispute between the neighboring States of Ngeremlengui and Ngardmau regarding their common boundary line. In 2013, the Ngeremlengui State Government and Ngeremlengui State Public Lands Authority (Ngeremlengui) filed a civil suit against the Ngardmau State Government and Ngardmau State Public Lands Authority

(Ngardmau), seeking a judgment declaring the legal boundary line between the two states. After extensive evidentiary proceedings and a trial, the Trial Division issued a decision adjudging that common boundary line.

Each state has appealed a portion of that decision and judgment. Ngardmau argues that the Trial Division applied an incorrect legal standard to determine the boundary line. Ngardmau also argues that the Trial Division clearly erred in making factual determinations concerning parts of the common land boundary. Ngeremlengui argues that the Trial Division clearly erred in making factual determinations concerning a part of the common maritime boundary. For the reasons below, the judgment of the Trial Division is **AFFIRMED**.

BACKGROUND

On July 9, 1958, the High Commissioner of the Trust Territory issued a charter establishing the Municipality of Ngeremlengui. Six days later, on July 15, the High Commissioner issued a charter establishing the Municipality of Ngardmau. Each municipal charter included a section defining the geographic boundaries of the municipality. The two municipalities were neighbors on the western side of Babeldaob. Ngardmau Municipality was located immediately north of Ngeremlengui Municipality, such that they shared a common boundary. Roughly, the southern boundary of the Municipality of Ngardmau was the northern boundary of the Municipality of Ngeremlengui. Very roughly, the common boundary ran east-west across Babeldaob and continued to the west through the sea to a reef.

Following ratification of the Palau Constitution, each municipality promulgated a constitution and became a state within the Republic. Each state constitution purported to declare the boundaries of the new state. The boundaries declared in each state constitution exceeded the boundaries found in the former municipal charters; the purported boundaries for

the State of Ngeremlengui and the State of Ngardmau overlapped with each other to a significant extent.

The overlap in claimed state territory did not historically result in significant tension between the two states. However, for various reasons, the location of the boundary recently became an issue. After attempts at settlement were unsuccessful, on March 12, 2013, Ngeremlengui filed a civil suit against Ngardmau, seeking a judgment declaring the legal boundary between the two states. Ngeremlengui argued that its northern boundary (Ngardmau's southern boundary) should be determined in accordance with Ngeremlengui's state constitution and the charter of its former municipality. Ngardmau countered that its southern boundary (Ngeremlengui's northern boundary) should be determined in accordance with the Ngardmau state constitution and, to a lesser extent, the charter of the former Municipality of Ngardmau.

In the Trial Division, each state introduced extensive evidence in support of its respective proposed boundary line. This evidence included both witness testimony and documents such as historical maps and textbooks. The Trial Division also ordered the Bureau of Lands and Surveys (BLS) to plot various proposed boundary routes and markers on a map. Finally, the trial justice, accompanied by representatives of each state, visited most of the proposed boundary markers and traveled along parts of the proposed boundary lines.

In reaching a judgment on the common boundary, the Trial Division began by finding that the former municipalities of Ngardmau and Ngeremlengui had had a legitimate historical dispute concerning their common boundary. The court found that the legacy municipal charters were not fully consistent with each other as to the common boundary between the municipalities. The court further found that these inconsistencies had not been resolved at the

time Ngeremlengui and Ngardmau adopted their state constitutions. Given these findings, the trial court concluded that the former municipal charters were not controlling as to the legal boundaries of the modern states.

The Trial Division observed that most of the inconsistency between the municipal charter boundary descriptions arose from what it characterized as a "scrivener's error" in the Ngardmau charter. When this error was accounted for, the court found the two charters to be "dramatically similar." Despite having concluded that the charters did not control the boundary dispute, the Trial Division nevertheless found the charters "highly probative" evidence of the proper boundary. The court noted that the charters were drafted within days of each other by a largely disinterested party, during a time in which it was clear that the High Commissioner had prioritized finalizing the respective boundaries of the municipalities.

The Trial Division observed that the dispute as to the route of the common boundary took two forms. First, the parties contested the proper boundary points to be used in tracing the boundary route. Second, in certain instances the parties agreed that a certain geographic feature was a boundary point, but contested the true location of that point. For example, both charters included "Ngel" as a common boundary point; however, each state asserted that a different hill was the proper Ngel through which the boundary ran.

To resolve the disputed portions of the boundary line, the Trial Division considered the whole of the broad array of evidence presented at trial. The Trial Division ultimately issued a more-than-fifty-page decision discussing that evidence and adjudging the common boundary. Both Ngeremlengui and Ngardmau timely appealed portions of that decision and judgment.

STANDARD OF REVIEW

We review a trial court's conclusions of law *de novo*. *Airai State Pub. Lands Auth. v. Aimeliik State Gov't*, 15 ROP 37, 40 (2008). We review a trial court's findings of fact for clear error. *Id*. Under the clear error standard, a lower court will be reversed "only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Id*.

DISCUSSION

On appeal, Ngardmau argues that the trial court committed legal error by considering the municipal charters "highly probative" evidence of the boundary line. Ngardmau argues that once the Trial Division determined that the municipal charters were not fully consistent and that the municipalities had had a legitimate historical boundary dispute, the court should not have considered the charters as evidence. Ngardmau argues that "traditional, constitutional evidence should be controlling in this case" and that "Ngardmau's Constitution [i]s the sole controlling document." Cross-Appellants' Br. at 11-12.

Both parties also appeal certain of the Trial Division's factual findings as to the location of common boundary points. Ngeremlengui appeals the specific location in Klairemasech reef that the Trial Division determined was a common maritime boundary point. Ngeremlengui argues that it was clear error to place the boundary point at the reef rock Delsachel el Chiloil. Ngardmau in turn argues that it was clear error to find that the peak of Ngerchelchuus is a common boundary point. Ngardmau further argues that it was clear error to find that the common boundary followed the ridgeline from Ngerchelchuus to a branch of the Ngermasech river. We address each of these arguments in turn.

I. The Law Governing Boundary Disputes

Ngardmau argues that the Trial Division committed legal error by treating the charters as "highly probative" evidence of the common boundary. We agree. However, the error was not, as Ngardmau argues, in giving the charters too much weight; the error was in treating the charters too lightly as only evidence of a boundary, rather than as a legal source or constraint on the boundary. As explained below, the legacy municipal charters are not just probative evidence of state boundaries: the municipal charters set a constitutional limit on state boundaries, and except in limited circumstances are dispositive of state boundary disputes.

However, the Trial Division's error appears to have been harmless. This is because, as explained below, by treating the charters as "highly probative" evidence and declining to credit most of the non-charter evidence, the Trial Division ultimately adjudged a boundary line that followed the charter line. We conclude that had the Trial Division applied the correct standard, the result would have been the same.

A. Precedent: The Peleliu *Rule.*

This is not the first time this Court has been called upon to resolve a boundary dispute between states. We first addressed a dispute between the States of Koror and Peleliu. *Peleliu State v. Koror State*, 6 ROP Intrm. 91 (1997) ("*Peleliu*"). In that dispute, Koror claimed that its boundaries were as set forth in its state constitution, which boundaries were the same as the former Municipality of Koror. *Id.* at 92. Peleliu claimed that its boundaries extended to its "traditional limits." *Id.* These traditional limits, set out in Peleliu's Constitution, exceeded the boundaries of the former Municipality of Peleliu. *Id.* The *Peleliu* trial court concluded that "under the Palau Constitution, the States were to adopt the same boundaries as the former municipalities." *Id.* We affirmed.

We began by noting that the Palau Constitution does not explicitly address the matter of state boundaries. Peleliu argued that this silence meant that the Constitution "permits the States to choose their own boundaries." *Id.* at 92-93. Looking to the intent of the Framers, we rejected Peleliu's argument. *Id*. at 93-94. We explained that:

> Peleliu's reading of the Constitution to permit the States to adopt their "traditional" boundaries is unsound, because the court has no meaningful way of determining what the "traditional" boundaries of the States are. As [Peleliu] concedes, the boundaries of the States have fluctuated with time. [Peleliu] has failed to pinpoint the particular period or date—much less shown that a particular date was intended by the Framers—that the Court should use to establish Peleliu's traditional boundaries. Given this uncertainty, Peleliu's interpretation of the Constitution would simply result in confusion. We therefore hold that the boundaries of the States, at the time of their creation, were confined to the boundaries of the former municipalities.

Id. at 94.

In *Peleliu*, the chartered boundaries of the former municipalities were not in conflict with one another. Thus it was straightforward to apply the legal rule that the boundaries of a state were confined to the boundaries of the former municipality: the boundaries of the State of Peleliu were the boundaries of the Municipality of Peleliu. The *Peleliu* rule would be less straightforward to apply if the former municipal boundaries were in conflict. We observed in a footnote in *Peleliu* that there "may yet be cases where two or more States have a legitimate boundary dispute based on an unresolved conflict between the former municipalities as to the appropriate boundaries." 6 ROP Intrm. at 94 n.4.

Following our decision, the State of Peleliu moved for a rehearing, in part pointing to our language about "legitimate boundary disputes." We denied the motion for rehearing. 6 ROP Intrm. 169, 169 (1997). In doing so, we clarified the *Peleliu* footnote. We explained that legitimate boundary disputes were "limited to circumstances where the municipal charters

of the respective States were themselves in conflict with respect to the boundaries of each municipality." *Id.* Because the municipal charters of Peleliu and Koror were not in conflict, there was no legitimate dispute about the legal boundaries of the States of Peleliu and Koror. *See id*.

B. Precedent: Conflicting Charters in Airai.

After our decision in *Peleliu*, we addressed a case of conflicting charters in *Airai State Public Lands Authority v. Aimeliik State Government*, 15 ROP 37 (2008) ("*Airai*"). That case involved a dispute between the State of Aimeliik and the Public Lands Authority of the neighboring State of Airai. In resolving the dispute, the trial court acknowledged our holding in *Peleliu* that state boundaries are confined to the boundaries of the former municipalities. However, the former municipalities' charter boundaries "overlap[ped] and conflict[ed] with each other." *See Airai*, 15 ROP at 44. The municipal charters for Aimeliik and Airai both purported to encompass a common area of land. Thus determining that the boundaries of both Aimeliik State and Airai State were the same as the boundaries of their former municipalities would not resolve the dispute; one state—or both—would necessarily have to have boundaries less extensive than its former municipality.

The Trial Division ultimately found that Aimeliik State's boundaries ran to the full extent of the former municipality of Aimeliik; Airai State's boundaries were therefore less extensive than its former municipality (as the state no longer encompassed the chartered area of overlap). *See* Decision on Remand, Civil Action No. 98-257, slip op. at 6 (April 25, 2007) (finding "that the Airai-Aimeliik boundary is that as set forth in the 1958 Aimeliik Municipal Charter"). We affirmed this final decision of the Trial Division. *See Airai*, 15 ROP at 45. In the dispute here between Ngardmau and Ngeremlengui, our decision in *Airai* has proven to be a source of some confusion. Our final decision in *Airai* came after a series of remands and

proceedings in the Trial Division, and much of the confusion appears to be the result of selectively quoting from various opinions in *Airai* without regard to the context. A history of that case is useful to provide the necessary context for our holding in *Airai*.

1. Origins of the Airai *Dispute*

The *Airai* dispute began when Aimeliik leased an area of land to certain individuals. Both Airai and Aimeliik claimed that the leased land was within their respective boundaries. It was undisputed that "[t]he boundary line described in the 1958 Aimeliik Municipal Charter overlap[ed] with an area within the boundary line described in the 1963 Airai Municipal Charter." *See Airai State Pub. Lands Auth. v. Aimeliik State Gov't*, 11 ROP 39, 40 (2003). In addition, Aimeliik argued that its boundaries should not be confined to its charter, but rather extend to its traditional limits. Those traditional limits further extended the area of disputed overlap between the States. *See* Order Granting Partial Summary Judgment, Civil Action No. 98-357, slip op. at 2-3 (December 13, 2001). The trial court ordered BLS to plot the charter and claimed boundaries on a map to clarify the area of overlap. Following BLS's efforts and before trial, Airai moved for partial summary judgment.

Airai first sought a summary judgment that Aimeliik State's boundaries were limited to the boundaries of the former Municipality of Aimeliik. Looking to our decision in *Peleliu*, the Trial Division agreed, holding that "Aimeliik State's boundaries at the time its state constitution was adopted [were] confined to the boundaries of the former Aimeliik Municipality." *See id*., slip op. at 3. Airai next sought a summary judgment on control over the leased land in dispute. Airai argued that based on BLS's plotting of both charter boundaries, the leased land was in Airai State regardless of which charter boundary was used. The Trial Division agreed, and granted judgment for Airai that the leased land was in Airai State. *See id*., slip op. at 3-4. The

only issue remaining for trial, then, was to resolve the issue of the overlapping municipal charter boundaries.

Following trial on that issue, however, the Trial Division *sua sponte* reversed its judgment on the location of the leased land. The court explained that it became evident at trial that BLS's plotting of the Aimeliik charter boundary was inaccurate and that the charter boundary encompassed a greater area of land than plotted by BLS. *See* Decision and Order, Civil Action No. 98-357, slip. op. at 2 (August 20, 2002). Accordingly, the Trial Division "repudiate[d] that part of its [prior order] in which it held that the [leased land was] . . . within Airai state." *Id*., slip op. at 8-9. Importantly, the Trial Division left intact the portion of its prior order limiting the boundaries of the states to their municipal charters. "[A]fter considering the evidence and legal arguments presented at trial," the court found "that Aimeliik's municipal charter . . . describes the true boundaries between the two states" and that that boundary encompassed the disputed leased land. *See id.*, slip op. at 2, 8-9.

In reaching its ultimate conclusion, the Trial Division made two subsidiary conclusions regarding which of the two charter boundaries should control. First, the trial court rejected Airai's argument that its charter should control because it was issued later in time. Airai had argued that as both charters were issued by the High Commissioner, the later charter (Airai's) implicitly repealed the earlier charter (Aimeliik's) to the extent they conflicted. The Trial Division held that the criteria to apply the doctrine of "repeal by implication" had not been met. *See id.*, slip op. at 7-8. Second, the trial court credited extensive witness testimony—buttressed by a site visit—that the area of overlap between the boundaries described in the two municipal charters had been used and occupied almost exclusively by citizens of Aimeliik or by individuals related to them. *See id.*, slip op at 4-5. Aimeliik argued in its written closing

argument that this evidence established that Aimeliik has exercised jurisdiction and control over the area of overlap and that the "doctrine of acquiescence" mandated that the Aimeliik charter boundaries should control. Although not explicitly adopting this argument, the Trial Division nevertheless concluded "that Aimeliik's municipal charter . . . describes the true boundary between the two states." *Id.*, slip op at 2.

2. First Appeal and Remand

Airai appealed. Airai first argued "that the trial court's *sua sponte* reconsideration of its Order granting partial summary judgment in favor of Airai without giving Airai notice and an opportunity to be heard was a violation of Airai's due process rights." *See* 11 ROP at 41. Airai also argued that the trial court erred "in holding that the boundary between the two states was the boundary as described in the Aimeliik Municipal Charter rather than the Airai Municipal Charter." *Id*. On appeal, we agreed with Airai that it was improper for the trial court to reverse its grant of summary judgment without providing the parties the opportunity to present additional evidence. *See id.* at 42. We remanded the case, noting explicitly that we would "not reach the merits of the boundary dispute at [that] time." *Id.*

The merits of the boundary dispute were addressed at a second trial. Following trial, the Trial Division again ruled for Aimeliik. *See Airai State Pub. Lands Auth. v. Aimeliik State Gov't*, 12 ROP 186 (Tr. Div. 2005). The Trial Division explained that "[t]he issue for the trial following the Appellate Division's remand was the location of the Airai-Aimeliik boundary based on their respective charters." *Id.* at 187 (emphasis added). The court first rejected an argument that Airai's charter—which used coordinates and courses rather than landmarks—was more specific and should therefore control. The court found that Aimeliik's charter boundary descriptions based on landmarks and directions was just as reliable and capable of being

interpreted and applied. *See id.* at 189. The court also again rejected the application of the doctrine of "repeal by implication" and made a further factual finding that Aimeliik had not consented to alter its municipal boundaries. *See id.* at 189-90. Because Aimeliik had not consented to modify its municipal boundaries, the Trial Division refused to find that Airai's later-in-time charter had altered Aimeliik's municipal boundaries. *See id.* at 191-92.

This refusal meant that Aimeliik's charter boundary description would control the common boundary between the modern states.[1] The remaining dispute at trial became the location of "Tebadel" that was referenced in Aimeliik's municipal charter. *See id.* at 191 (discussing whether Tebadel was located at Japanese Monument JM-2 or JM-3). The Trial Division discussed extensive testimonial evidence that Aimeliik's location for Tebadel at JM-2 was correct, but ultimately found that the question "need not be definitively answered to resolve [the] case." *Id.* at 191. The court explained that this was because even if Airai's placement of Tebadel at JM-3 was correct, Airai had long acquiesced to a municipal boundary defined by JM-2. *See id.* at 192 (citing *Massachusetts v. New York*, 46 S. Ct. 357, 363 (1926) and *Michigan v. Wisconsin*, 46 S. Ct. 290, 294 (1926)). The Trial Division's ultimate holding was that the common boundary between the states was that "set forth in the 1958 Aimeliik Municipal Charter" and ran through the boundary point JM-2. *Id.* at 192.

3. Second Appeal and Remand

Airai again appealed. *See Airai State Pub. Lands Auth. v. Aimeliik State Gov't*, 14 ROP 1 (2006). On appeal, we described the Trial Division's most recent holding thusly:

> The trial court found that the boundary as represented by the JM-1 to JM-2 line constitutes the Airai-Aimeliik border as described in the Aimeliik Charter. Relying on the testimony of Aimeliik's witnesses, the court held that JM-2 is part of the cor-

[1] This important conclusion does not appear to have been specifically challenged on appeal.

> rect boundary as it is most likely the area named Tebadel, which is identified as a boundary point in the Aimeliik Charter. Accordingly, the trial court entered judgment in favor of Aimeliik.

14 ROP at 2-3 (emphasis added). Airai argued that the trial court had reached this result by relying on "traditional" testimony that the boundary was at JM-2 rather than relying on BLS's earlier determination in the litigation that the boundary was at JM-3. After review, we ultimately concluded that "the trial court clearly chose to discount BLS's determination that JM-3 [was] accepted as being the best available evidence of the position of the boundary . . . described in the Aimeliik Municipal Charter" but "the trial court ha[d] not provided any reason for discrediting the comprehensive evidence provided by BLS." 14 ROP at 3-4. We accordingly remanded the case for the Trial Division to "provide a reason for declining to rely on BLS's plotting of the line as described in the Aimeliik Charter." *Id*. at 4.[2]

On this final remand, the Trial Division once again found in favor of Aimeliik. *See* Decision on Remand, Civil Action No. 98-257, slip op. at 6 (April 25, 2007). The trial court more fully explained its reasons for crediting Aimeliik's interpretation of its charter and rejecting BLS's interpretation. Among other things, it explained that BLS's conclusions as to the interpretation of the Aimeliik charter appeared to have been based in large part upon information provided by residents of Airai, not Aimeliik. *See id.*, slip op. at 6. The trial court

[2] Our appellate opinion also stated that "the trial court relied on testimony regarding the 'traditional' boundaries of Aimeliik to determine the Airai-Aimeliik boundary." *See* 14 ROP at 3. That statement may have been imprecise as it was in tension with other statements in our same opinion. As noted above, earlier in our opinion we stated that the trial court "rel[ied] on the testimony of Aimeliik's witnesses . . . that JM-2 is part of the correct boundary as it is most likely the area named Tebadel, which is identified as a boundary point in the Aimeliik Charter." 14 ROP at 2-3 (emphasis added). It is clear that this statement correctly characterizes the Trial Division's holding. To the extent our reference to "traditional boundaries" later in the opinion confused the issue, we explicitly disclaim that reference now. The trial court was determining which of two proposed interpretations of the Aimeliik charter was correct; we remanded for it to more fully explain why it had determined that BLS's interpretation of the charter was incorrect. *See* 14 ROP at 2-4.

explained that there "simply was not enough evidence" to conclude that the charter boundary was established where BLS had indicated. *See id.* The Trial Division concluded by holding "that the Airai-Aimeliik boundary is that as set forth in the 1958 Aimeliik Municipal Charter" including a portion "running from JM-1 to JM-2." *Id*.

4. Final Appellate Decision in Airai

Airai again appealed, arguing that the Trial Division had failed again to adequately explain its findings. We disagreed, upholding the trial court's "finding of fact regarding the location of the boundary between Airai and Aimeliik." *See Airai*, 15 ROP at 44. We further affirmed an earlier legal conclusion of the Trial Division, holding that the doctrine of "repeal by implication" did not apply. *See id.*

One aspect of our final opinion in *Airai* requires clarification, as it bears on the instant appeal. In *Airai* we stated that "as concluded by the trial court, the holding in *Peleliu State* does not directly apply here where two states have a legitimate boundary dispute based on an unresolved conflict between the former municipalities." 15 ROP at 44. We also noted that "the testimony clearly established that the municipalities of Airai and Aimeliik had unresolved conflicts as to their respective boundaries." *Id*. at 43.

These statements from *Airai* appear to have been the source of subsequent confusion in the trial in this case. We acknowledge that some confusion may have been reasonable, and take this opportunity to clarify the relationship between our holdings in *Peleliu* and *Airai*. First, as discussed, our order denying rehearing in *Peleliu* clarified that legitimate boundary disputes are "limited to circumstances where the municipal charters of the respective States were themselves in conflict with respect to the boundaries of each municipality." 6 ROP Intrm. at 169 (emphasis added). The municipal charters in *Airai* were indisputably in conflict. *See, e.g.*,

Airai, 11 ROP at 40. Thus the States in *Airai* had a legitimate boundary dispute under *Peleliu*. However, to the extent our opinion in *Airai* implied that something other than actual conflict between municipal charters is a basis for finding a legitimate boundary dispute, we expressly reject that suggestion here. We reaffirm our holding in *Peleliu* that legitimate boundary disputes are "limited to circumstances where the municipal charters of the respective States were themselves in conflict with respect to the boundaries of each municipality." *See* 6 ROP Intrm. at 169.

Second, although we stated in *Airai* that the *Airai* trial court had "sufficiently explained its reasoning for not adhering to [the *Peleliu* holding]," 15 ROP at 43, we conclude here that the *Airai* trial court in fact adhered to *Peleliu*. In *Peleliu*, we held that "the boundaries of the States, at the time of their creation, were confined to the boundaries of the former municipalities." 6 ROP Intrm. at 94. The trial judgment in *Airai* did not break this rule. The boundary of Aimeliik State was found to match the boundary of Aimeliik's municipal charter. *See* Decision on Remand, Civil Action No. 98-257, slip op. at 6 (April 25, 2007) (concluding that "the Airai-Aimeliik boundary is that as set forth in the 1958 Aimeliik Municipal Charter"). The boundary of Airai State was necessarily found to be *less* extensive than the boundaries set by the Airai municipal charter. *See id*. Therefore neither state boundary was adjudged to have exceeded the boundaries of its former municipality. The *Peleliu* rule that states are confined to their municipal charter boundaries is not violated when state boundaries are found to be less extensive than the municipal charter might otherwise allow. To the extent that our opinion in *Airai* implied that conflicting municipal charters provide a basis for a state's boundaries to *exceed* its municipal boundaries, we expressly reject that suggestion now.

II. The Trial Court's Application of *Peleliu* and *Airai*

Having reviewed our legal precedents governing boundary disputes, we turn to the decision on appeal here. The Trial Division cited *Peleliu* and *Airai* for the legal proposition that "when two states have a legitimate boundary dispute based on an unresolved conflict between the former municipalities as to the appropriate boundaries, the Court may examine other sources, such as traditional boundaries or boundaries outlined in a later-enacted state constitution." *See* Decision, Civil Action No. 13-020, slip op. at 6 (May 7, 2015) ("Trial Decision"). The Trial Division found that Ngardmau and Ngeremlengui had such a legitimate boundary dispute. *Id.* at 13. In reaching that conclusion, the Trial Division considered sources wholly extrinsic to the municipal charters. *See* Trial Decision at 7-11. *Peleliu* clearly held that such legitimate boundary disputes are "limited to circumstances where the municipal charters of the respective States were themselves in conflict with respect to the boundaries of each municipality." 6 ROP Intrm. at 169. To the extent the Trial Division considered evidence of boundary disputes between Ngardmau and Ngeremlengui other than that tending to show the legacy municipal charters "were themselves in conflict," it did so in error.

However, the Trial Division also separately concluded "that the municipal charters themselves conflict." Trial Decision at 11. That conclusion, if correct,[3] would be sufficient to satisfy *Peleliu*'s limitation of "unresolved conflict[s] between . . . former municipalities" to cases of conflicting charters. 6 ROP Intrm. at 169. Thus the trial court's consideration of additional evidence, though erroneous, would not provide an independent basis for reversal.[4]

[3] Whether this conclusion is correct will be discussed below.

[4] The error was also harmless. We "will not reverse a lower court decision due to an error where that error is harmless." *Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163, 165 (2009) (citing *West v. Iyong*, 15 ROP 4, 10 (2007) and *Polloi v. ROP*, 9 ROP 186, 190-91 (2002)). As we explained in *Ngiraiwet*: "The 'harmless error' doctrine is derived from ROP Rule of Civil

Where a trial court provides multiple independent bases for a conclusion, we need only find one of them sufficient in order to affirm. *Cf. Idid Clan v. PPLA*, Civil Appeal No. 14-020, slip op. at 6 & n.7 (March 21, 2016).

The Trial Division next determined that given a legitimate boundary dispute, "its inquiry [was] not limited to the former municipal charter boundaries and [the Court would] consider testimony and documentary evidence related to traditional boundaries, including the state constitutions, to attempt to arrive at the actual and proper boundary between the states." Trial Decision at 13. The Trial Division further concluded that although its inquiry was not limited to the charter boundaries, it found the charters to be "highly probative" evidence. *Id*. On appeal, only Ngardmau challenges these legal standards applied by the Trial Division.[5]

Ngardmau argues that once the trial court found that the charters were in conflict, the court should have ceased to consider them and that it was legal error to treat the charters as probative evidence of the boundary. Ngardmau further argues that where chartered boundaries are disputed, traditional evidence should be the primary and presumptive source of evidence to resolve boundary disputes. We agree that the Trial Division's articulation of the legal standard was not fully correct; but the standards Ngardmau proposes are even farther afield.

Ngardmau's proposed standard simply cannot be squared with our prior cases. *Cf., e.g., Airai*, 14 ROP at 3 ("Due to the fluctuation of state boundaries over time and the resulting difficulty in determining the 'traditional' boundaries of the states, this Court has held that state

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Procedure 61, and . . . applies at both the trial and appellate levels. Under this doctrine, the court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." 16 ROP at 165 (internal citations omitted).

[5] Ngeremlengui's Notice of Appeal in this matter indicated that it intended to appeal the Trial Division's decision not to confine the boundary inquiry to the municipal charters. However, Ngeremlengui's appellate brief does not make any arguments on that issue.

boundaries in Palau are confined to the boundaries of the former municipalities.") (citing *Peleliu*, 6 ROP Intrm. at 94). But the more fundamental problem with Ngardmau's proposal—and the Trial Division's decision—is that it misapprehends the nature of "the boundary" being determined. The parties' briefs interchangeably refer to, for example, the "proper boundary," the "legal boundary," the "traditional boundary," the "correct boundary," or simply "the boundary." The Trial Division purported to find the "actual and proper boundary." Trial Decision at 13.

As discussed below, there is no abstract "actual and proper boundary" that a court can determine. The actual boundaries in dispute here are the boundaries of constitutional states. States are political entities, brought into being by a political process. The same was true of the former municipalities. Municipalities were political entities, brought into being by a political process. A court *can* determine the boundaries of municipalities or states from their charters or constitutions. Interpreting legal instruments such as charters or constitutions is a standard judicial task. *Cf., e.g.*, *Teriong v. Government of State of Airai*, 1 ROP Intrm. 664 (1989); *Silmai v. Kumangai*, 1 ROP Intrm. 47 (Tr. Div. 1982).

In the case of the municipalities, those political entities were brought into being by the issuance of a municipal charter by the High Commissioner of the Trust Territory. *See, e.g.*, *Teriong*, 1 ROP Intrm. at 665; *cf. also, e.g.,* 56 Am. Jur. 2d., *Municipal Corporations*, §§ 28, 30 (describing the creation of municipalities by political act of higher governmental authority). Municipalities chartered by the High Commissioner were obviously descendants of pre-existing political entities—a village or area traditionally governed by a particular group—and would be recognizable as such. But a municipality, as an entity, is defined by the scope of its charter. However much the drafting of a charter might have been informed by knowledge of the

pre-municipality political governance of an area, the municipality itself has only the powers and possessions conferred by its charter. *Cf., e.g.*, *Silmai*, 1 ROP Intrm. 47 (Tr. Div. 1982) (discussing powers and limitations of municipal government); *cf. also, e.g.*, 56 Am. Jur. 2d, *Municipal Corporations*, §§ 16, 23 (discussing limitations on municipal power). So, for example, while the name "Peleliu" may meaningfully refer to an area, or a people, or a traditional political entity, or all of the above, the Municipality of Peleliu is an entity that existed only as defined by its municipal charter. *Cf.* 56 Am. Jur. 2d, *Municipal Corporations*, § 41 (territorial limits of a municipality fixed by act of chartering).

Our modern states are the political descendants of the Trust Territory municipalities. *See, e.g.*, *Peleliu*, 6 ROP Intrm. at 92-93 & n.2. Our states were created and defined by constitutions, which constitutions serve roughly analogous functions to municipal charters. An important distinction between a constitution and a charter is that while the power to issue a charter resided with an external official—the High Commissioner—a constitution is adopted by the people who will be governed by it. However, the power of the people of a former municipality to adopt a state constitution was not boundless—that power was circumscribed in various ways by the Palau Constitution. For example, in *Teriong* we stated that "the formation of a state Constitution is for the people of each state to decide." 1 ROP Intrm. at 679. Nevertheless, *Teriong* invalidated a state constitution that was inconsistent with the Palau Constitution. *Id.* at 675-76. Thus the modern states are political entities created and defined by their respective constitutions, within the limits provided by the Palau Constitution. *See, e.g.*, *id.* at 666-67 ("The powers of the state governments under the National Constitution consist of those which are expressly delegated to them and those which are expressly denied to the National Government.").

The dispute here is about the boundaries of the State of Ngardmau and the State of Ngeremlengui. The boundaries of, for example, "traditional" Ngardmau, defined the limits of something else—a legacy political entity also called Ngardmau. Put another way, adjudicating "traditional" Ngardmau's boundaries, even if possible, would not resolve a dispute about the State of Ngardmau's boundaries because each is a distinct political entity.

The boundaries of the State of Ngardmau, or any other state, came into being when the state was constituted—that is, when its people adopted a valid state constitution. To be valid, the provisions of that state constitution, including the provisions purporting to establish that state's boundaries, must not be inconsistent with the Palau Constitution. As we explained in *Peleliu*, the Palau Constitution does not permit individual states to adopt boundaries that exceed the boundaries of its former municipality. 6 ROP Intrm. at 94. This is the flaw in Ngardmau's proposal to resolve this dispute through recourse to the boundary prescribed by Ngardmau's Constitution. To the extent the Ngardmau Constitution purports to adopt state boundaries in excess of the boundaries fixed in the charter of the former Municipality of Ngardmau, those boundaries are invalid under the Palau Constitution.

The Trial Division's "attempt to arrive at the actual and proper boundary," Trial Decision at 13, was destined to be unsuccessful because such an abstract "true" boundary does not exist. The boundaries that do exist, and are in dispute, are state boundaries. Conceptually, it would make sense to start by interpreting the state constitutions, which are the organic legal source of state boundaries. But because the Palau Constitution limits state boundaries to

municipal boundaries, *Peleliu*, 6 ROP Intrm. at 94, it is normally necessary to first interpret the municipal charters.[6]

Judicial resolution of a state boundary dispute can only result in deviation from a municipal boundary where the states' former municipal charters prescribed boundaries that conflicted and overlapped with each other. If the charter boundaries never conflicted there can be no valid dispute between the states: the Palau Constitution limits the states to adopting boundaries no more extensive that those charter boundaries, and so the states could only have adopted boundaries that did not overlap.[7] The trial court here should have first interpreted the charters to determine whether the charter boundaries overlapped. Only within an area of overlap would the court need to determine which charter should control, or determine that both must partly give way to determine the boundary.[8] *See, e.g.*, Decision on Remand, Civil Action No. 98-257, slip op. at 6 (April 25, 2007) (finding "that the Airai-Aimeliik boundary is that as set forth in the 1958 Aimeliik Municipal Charter"), *affirmed in Airai*, 15 ROP at 45.

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[6] The only time it might make sense to start with the state constitution is if it was apparent that the state had adopted boundaries *less* extensive than the former municipality. Here, both state constitutions purport to define boundaries more extensive than the municipalities.

[7] We noted in *Peleliu* that the Palau Constitution "gives the OEK the power to 'create or consolidate states with the approval of the states affected.'" 6 ROP Intrm. at 92 n.2 (quoting Palau Const., art. IX, § 5(18)). As relevant to the instant dispute, the Constitution limits states from unilaterally adopting boundaries in a state constitution that exceeded the boundaries of its former municipality. We do not suggest that the Constitution bars state boundaries from ever exceeding the boundaries of a predecessor municipality. The Constitution may enable state boundaries to un-tether from former municipality boundaries through the political process, which would appear to require the full agreement and express consent of at least the OEK and both neighboring states. The Constitution can also be amended through the political process. The Court, however, can only resolve disputes based on the law as it is now.

[8] The boundary cannot be found to exceed the area of overlap in either direction, as that would mean that one state's boundaries would exceed its former municipal boundaries, a result not permitted under the Palau Constitution. *See Peleliu*, 6 ROP Intrm. at 94. An adjudged boundary at either edge of the area of overlap, or within the area of overlap, does not result in a violation of the *Peleliu* rule, because neither state's boundary would exceed the boundary of its former municipality.

The Trial Division here determined that given the unresolved conflict between the former municipalities as to the appropriate boundary, "its inquiry [was] not limited to the former municipal charter boundaries and [the Court would] consider testimony and documentary evidence related to traditional boundaries, including the state constitutions, to attempt to arrive at the actual and proper boundary between the states." Trial Decision at 13. The Trial Division further concluded that although its inquiry was not limited to the charter boundaries, it found the charters to be "highly probative" evidence. *Id*. To the extent the Trial Division concluded that municipal charter boundaries could be exceeded, that was error. To the extent the Trial Division concluded that non-overlapping charter boundaries were not controlling, that was also error.

We have used the qualified "to the extent" language because, despite the Trial Division's stated standard that the common boundary could run to various traditional or constitutional boundaries, the Trial Division in fact adjudged a common boundary that appears to follow the charter boundaries. This result flowed from the trial court's decision to treat the charters as "highly probative" evidence and its decision to not credit or otherwise discount most of the other evidence that was not consistent with the charters. Thus to resolve this appeal, we must determine whether the trial court's adjudged common boundary differs in any substantial way from the common boundary that would result from treating the charters as controlling. Each state has at least a presumptive substantial right to the territory up to the boundary of its former municipality; if the adjudged boundary follows the charter boundaries, neither state's substantial rights have been affected, and the Trial Division's error in articulating the legal standard would be harmless. *See, e.g.*, *Ngiraiwet*, 16 ROP at 165 (explaining that "the court at every stage of the proceeding must disregard any error or defect in the proceeding which does

not affect the substantial rights of the parties"); *cf. also Idid Clan*, Civil Appeal No. 14-020, slip op. at 6 & n.7.

In the next section, we will consider the proper interpretation of the municipal charter boundaries to determine whether the Trial Division's adjudged boundary line follows the charters. Before turning to the charters, however, we pause to note that the proceedings below provide empirical evidence of the soundness of the *Peleliu* rule. In *Peleliu* we noted that there is "no meaningful way of determining what the 'traditional' boundaries of the States are" and that any attempt to do so "would simply result in confusion." 6 ROP Intrm. at 94. The record of trial proceedings here exemplifies that confusion, and the trial court's decision to discount essentially all evidence not closely tied to the charter boundaries illustrates the reason that the Palau Constitution confines the original state boundaries to those in the municipal charters.

III. The Boundaries Prescribed in the Municipal Charters

We now turn to the boundaries prescribed in the municipal charters. Both the municipal charters of the former municipalities of Ngardmau and Ngeremlengui describe the municipal boundaries using natural landmarks and compass directions. Each charter describes the boundary in a circuit, beginning at a point and proceeding around the perimeter of the municipality to return to the original point. Roughly speaking, the disputed common boundary here is the southern portion of the perimeter of Ngardmau and the northern portion of the perimeter of Ngeremlengui.

The Ngardmau municipal charter describes the southern portion of its perimeter from east to west, starting from:

> [A] point known as Ngedesaker immediately east of the peak known as Ngel;[9] on the South, from Ngedesaker proceeding in a westerly direction to the peak of Ngerchelchuus mountain and thence to the source of the Ngermasech river and continuing to its mouth, thence westward through a point on the reef known as Klairemasech.

Defendants' Exhibit I, at 1, Civil Action No. 13-020 (the "Ngardmau Charter").

The Ngeremlengui municipal charter describes the northern portion of its perimeter in the opposite direction, east to west, starting from

> [A] point . . . known as Klairemasech, also sometimes referred to as Yas or Kltaltechel, easterly to the mouth of the Ngermasech River and thence up that river to the peak of Ngerchelchuus mountain and from there east to and including the peak known as Ngel.

Plaintiffs' Exhibit 1, at 1, Civil Action No. 13-020 (the "Ngeremlengui Charter").

The two charters facially agree on most of the common boundary points. Both charters describe the boundary running through a point in Klairemasech reef, through the mouth of the Ngermasech river, along at least a portion of that river, through the peak of Ngerchelchuus mountain, and on to Ngel. The agreement between the charters as to these common boundary points resolves almost any legitimate dispute about these portions of the common boundary between the States of Ngardmau and Ngeremlengui. The Palau Constitution barred either state from adopting constitutional boundaries that exceeded the boundaries of its former municipality. *See Peleliu*, 6 ROP Intrm. at 94. For example, neither state could have validly adopted constitutional boundaries that would have brought the whole of Ngerchelchuus

[9] The first quoted clause is the ending point of the description of the eastern portion of the perimeter before the boundary turns to run along the southern portion of the perimeter. Although the eastern boundary is not part of the dispute in this case, that part of the charter description is still relevant here. The municipal boundary is continuous—it does not jump instantly from one point to another. Thus the end of the eastern boundary is also the beginning of the southern boundary. The description of the former may help with the interpretation of the latter.

mountain within its borders; to do so would have meant adopting a boundary that exceeded the boundary of the former municipality because both former municipalities only extended to the peak of that mountain. The Trial Division's adjudged boundary included all the common boundary points agreed between the two charters. To that extent, the Trial Division's legal errors were clearly harmless.

The agreement between the charters does not eliminate all legitimate dispute however. The first source of dispute, as the Trial Division noted, was the geographic location of certain boundaries points agreed between the charters. For example, both charters prescribe a boundary through "the peak known as Ngel." At trial, however, the parties disputed "which hill in Babeldaob is the proper Ngel." Trial Decision at 3 n.4. In other words, it was not sufficient for the court to determine as a matter of law that the charter boundary ran through Ngel; the court also needed to make a factual determination as to the geographic location of Ngel.[10] The parties have appealed certain of the trial court's factual determinations and we address those challenges below.

Before turning to those factual challenges, however, we address the second source of dispute regarding the charter boundaries. This second source of dispute arises from potential ambiguity in the path a charter boundary takes between two fixed boundary points. For example, although the charters agree that the boundary runs from a boundary point at

[10] We have previously accepted a distinction between interpreting the boundary description in a charter and determining how that description corresponds to the physical world, with the former considered a question of law, and the latter geographic "location of the boundary" considered a "finding of fact." *See, e.g., Airai*, 15 ROP at 45. The parties here have divided their arguments on appeal along this line and we have taken those challenges at face value. The exact distinction between questions of law and questions of fact has long vexed the legal mind, and we need not attempt to set out any definitive standard here. *See, e.g., Baumgartner v. United States*, 322 U.S. 665, 670-78 (1944); *Teva Pharmaceuticals, USA, Inc. v. Sandoz, Inc*., 135 S. Ct. 831, 844-45 (2015) (Thomas, J., dissenting) (noting that courts "have found it difficult to discern any . . . rule or principle that will unerringly differentiate the two").

Klairemasech to a boundary point at the mouth of the Ngermasech river, the charters do not explicitly explain how the boundary gets from the first point to the second point. In this particular example, the parties do not dispute that the boundary would follow a straight line between these points.

In many instances, there may be little ambiguity in the path the boundary takes between two boundary points, or there may be only one reasonable way to resolve the ambiguity. For example, the Trial Division heard and credited testimony from a Ngardmau witness that traditional boundaries often followed natural features of the land. *See, e.g.*, Trial Decision at 21 n.21. Thus if a boundary ran from the peak of one mountain or hill to another without the charter explicitly describing the path, and the two peaks were connected by a distinct ridgeline, the boundary is presumed to follow the natural boundary imposed by the ridgeline.[11]

In other instances, however, ambiguity in the path between boundary points might be susceptible of reasonable resolution in more than one way. For example, two charters might agree that the boundary includes Point A and Point D, but the first charter might include an intermediate Point B and the second charter include a different intermediate Point C. Determining the path of the boundary between Points A & D then might not be straightforward.

Here, there is a least some potential ambiguity in the path the boundary takes between agreed boundary points. The potential ambiguity arises from the fact that although the two municipal charters describe the boundary in very similar terms, they do not describe it in identical terms. The Ngardmau Charter refers to "a point known as Ngedesaker immediately east of the peak known as Ngel." This point is not explicitly referenced in the Ngeremlengui

[11] The presumption could of course be overcome if the charter stated, for example, that the boundary ran between the two peaks in a direct, straight line.

Charter.[12] The Ngardmau Charter also refers to "the source of the Ngermasech River," a reference not explicitly made in the Ngeremlengui Charter.[13] The presence of these additional descriptive points raises the possibility that interpreting each of the two charters independently would lead to municipal boundaries that irreconcilably conflict with each other.

It is far from clear, however, that the charters should be interpreted independently. The Trial Division noted that the two charters were drafted within days of each other during a time in which it was clear that the High Commissioner of the Trust Territory, a largely disinterested party, had prioritized finalizing the respective boundaries of the municipalities. Although each charter had a different purpose—to create and define a different municipality, *see Airai*, 15 ROP at 45—they both address a common subject: a description of what, presumably, should be the same boundary.

Legal instruments should generally be interpreted as a harmonious whole. *See, e.g.*, *Ucherremasech v. Hiroichi*, 17 ROP 182 (2010). The two charters are different legal instruments. But, for example, different statutes on the same subject should generally be interpreted to be consistent if reasonably possible. *See, e.g.*, *In re Ngirausui*, 5 ROP Intrm. 339, 341 (Tr. Div. 1996). It is a sound assumption that the High Commissioner would not have *intended* to issue two conflicting charters establishing neighboring municipalities within six days of each other.

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[12] The lack of explicit reference to that point does not necessarily place the two charter descriptions in conflict. The Ngeremlengui Charter describes the boundary running from the west "to and including the peak known as Ngel." A boundary that ran through the peak of Ngel to a point "immediately east" of Ngel would "include" the peak of Ngel on the way.

[13] Again, the lack of explicit reference does not necessarily place the two charter descriptions in conflict. The Ngeremlengui Charter describes the boundary as running to the mouth of the Ngermasech river and "thence up that river to the peak of Ngerchelchuus mountain." A boundary that runs all the way "up" a single river would run to that river's source.

Regardless, even interpreted independently, the two charter boundary descriptions do not irreconcilably conflict. Ngardmau argues that its charter prescribes a boundary running through Ngedesaker mountain. Such a boundary would appear to create significant conflict with the boundary prescribed in the Ngeremlengui Charter, although Ngardmau suggests that that charter could be read to run through Ngedesaker mountain despite any explicit reference to that mountain. The problem with Ngardmau's proposed interpretation is that its own charter does not say "Ngedesaker mountain"; it says "a point known as Ngedesaker immediately east of the peak known as Ngel."

Ngardmau's suggestion that "a point known as Ngedesaker" means "Ngedesaker mountain" is not unreasonable if the phrase is read in isolation. However, in the context of its boundary description, the Ngardmau Charter cannot be interpreted to refer to Ngedesaker mountain. The Trial Division extensively explained why the Ngardmau Charter does not prescribe a boundary running through Ngedesaker mountain. *See* Trial Decision at 13-20. We conclude that the trial court's interpretation of the charter is correct.[14]

First, the charter does not say "Ngedesaker mountain." Elsewhere, the charter consistently refers to mountains—including those higher than Ngedesaker mountain—by using the word "mountain" (*e.g.*, "Ngerchelchuus mountain," "Ikeyam mountain"), and given the size of mountains, consistently identifies how the boundary runs through the mountain (*e.g.*, "along the eastern slope of Ikeyam mountain," "to the peak of Ngerchelchuus mountain"). The charter does not call the point Ngedesaker a "mountain" or state whether the boundary runs through its

[14] Ngardmau takes issue with the Trial Division's use of the term "scrivener's error" in interpreting the charter. We need not decide whether that is a correct characterization, because that was not the sole basis underlying the trial court's interpretation of the charter. Interpretations of a charter or constitution are questions of law, which we review *de novo*. *See, e.g.*, *Otobed v. PEC*, 20 ROP 4, 7 (2012). As discussed below, we conclude that the trial court correctly interpreted the charter.

peak or along one of its slopes. Of course Ngedesaker mountain is a prominent natural feature that might not need further description, but the very prominence of the mountain cuts against any conclusion that the charter refers to it. The Ngardmau charter refers to the "point" Ngedesaker, and does so by reference to a natural feature much smaller than a mountain, Ngel: "a point known as Ngedesaker immediately east of the peak known as Ngel." It would be very odd, if the charter drafters in fact intended the boundary to run through a very prominent landmark, to describe the more prominent landmark by indirect reference to a much less prominent landmark.

Second, the charter places Ngedesaker "immediately east" of Ngel. Ngedesaker mountain is not at all close to Ngel (much less immediately so), and is in fact not to Ngel's east, but to Ngel's southwest. Ngardmau suggests that the direction ("east"), proximity ("immediately"), or placement of Ngel could just as easily have been erroneous instead of the placement of Ngedesaker. We are skeptical, but even assuming that is true, the charter boundary description cannot be reconciled simply by replacing "immediately east" with "significantly south and west."

This is because it is not possible to draw a boundary through Ngedesaker mountain without ignoring numerous other explicit boundary calls in the Ngardmau Charter. *Cf., e.g.*, 12 Am. Jur. 2d, *Boundaries*, § 2 ("In fixing the location of the boundary lines of land, rules of construction of deeds require that every call in the description of the premises in the deed must be answered, unless absurd results are achieved thereby.").[15] The Trial Division persuasively

[15] This same rule of construction might counsel more aggressive interpretation so as to answer a boundary call to Ngedesaker mountain. But that argument assumes the call *is* to the mountain, rather than some other point—an assumption that is seriously undermined by a host of reasons. Regardless, even explicit calls to natural objects such as mountains give way to inferior calls to

explained the many cartographic impossibilities and oddities required to contort the boundary to run through Ngedesaker mountain, *see* Trial Decision at 15-20, and we need not repeat them here. As just one example, the charter states that from the point known as Ngedesaker, the boundary should run "in a westerly direction to the peak of Ngerchelchuus mountain." But Ngerchelchuus mountain is not west of Ngedesaker (the mountain); it is north and east.

In short, the Ngardmau Charter explicitly states that the boundary runs through "a point" that is "immediately east" of Ngel. Such a boundary can be drawn as stated. The only argument for departing from the explicit language of the charter is that the charter refers to that point as "Ngedesaker" and there is a mountain that also goes by that name. Even if a name alone could overcome the explicit placement of the "point" somewhere else, the great weight of interpretative guidance would not permit Ngardmau's reading. We conclude that the Ngardmau Charter boundary runs just as it says, through a point immediately east of Ngel. That being the case, the Trial Division concluded that "the southern chartered boundary of Ngardmau would be nearly identical, if not outright identical, to the northern chartered boundary of Ngeremlengui." Trial Decision at 20. We agree.[16]

This identical common chartered boundary controls the boundary dispute between the States of Ngardmau and Ngeremlengui. Under the Palau Constitution, neither state could have validly adopted a constitutional boundary beyond that chartered line, and their respective state

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courses and directions where a mistake is apparent or where the result would be absurd. *Cf., e.g.*, 12 Am. Jur. 2d, *Boundaries*, §§ 55, 62.

[16] Even if we did not agree, it would not mean that Ngardmau's proposed boundary would prevail. The Court would then be faced with overlapping charter boundaries and would need to resolve which charter should prevail (or determine that the boundary runs through the area of common overlap). Ngardmau's charter was issued after Ngeremlengui's charter. We have previously rejected a rule that a later in time charter automatically repeals the earlier charter by implication. *See Airai*, 15 ROP at 45. Although we did not reach the issue in *Airai*, the trial court in that case determined that absent some clear indication or agreement, the *earlier* charter would prevail. *See* 12 ROP at 191-92. We need not address this issue now.

boundaries are accordingly confined to the common chartered boundary. *Peleliu*, 6 ROP Intrm. at 94. The trial court's conclusion that the consistent charters were "not controlling," Trial Decision at 20, was error. However, this error was harmless. The trial court's adjudged boundary line is consistent with the common chartered boundary as described in the two charters. The trial court treated the charters as "highly probative evidence" of the state boundaries. *See* Trial Decision at 20. The manifested effect of that treatment was that any significant dispute about whether the common boundary departed from the chartered line was resolved by the evidentiary weight of the two charters trumping less probative evidence that the boundary ran elsewhere.

Each state can only claim a substantial right to territory up to the boundary of its former municipality. Even through the trial court did not accord the charters the proper controlling legal weight, it accorded them essentially dispositive evidentiary weight, leading to an adjudged boundary that follows the charter boundaries. Neither state's substantial rights have been affected and the Trial Division's legal error was accordingly harmless. *See, e.g.*, *Ngiraiwet*, 16 ROP at 165 (explaining that "the court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties").

IV. Factual Determinations of the Location of Common Boundary Points.

The parties have specifically challenged three of the Trial Division's factual determinations regarding the location of the common boundary described in the municipal charters. We review these factual determinations for clear error. *Airai*, 15 ROP at 40. Under this standard, "the lower court will be reversed 'only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusions.'" *Id.* (quoting *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002)).

A. Klairemasech

Both municipal charters describe the reef Klairemasech as a boundary point. The Trial Division found that the reef boundary point was marked by the visible reef rock, Delsachel el Chiloil. Ngeremlengui argues that this finding was clearly erroneous.

Ngeremlengui points only to a purported inconsistency in the testimony of one Ngardmau witness. This individual testified that he had personally witnessed the chiefs of Ngardmau and Ngeremlengui plant flags on either side of Delsachel el Chiloil at the start of trochus season, thus indicating that Delsachel el Chiloil marked the maritime boundary between the two States. This witness also appeared to testify that it was possible to locate Delsachel el Chiloil by drawing a ruler line between two land points, Ngedesaker and Ulebuu el Yii, and continuing that line to the reef. Ngeremlengui argues that such a line does not intersect the reef rock Delsachel el Chiloil; from this, Ngeremlengui argues that the testimony was inconsistent and that it was therefore clear error for the Trial Division to find that Delsachel el Chiloil marked the maritime boundary point at Klairemasech.

We disagree. Assuming that Ngeremlengui is correct that the three points cannot be aligned, this would only indicate a mistake as to how Delsachel el Chiloil could be located, not whether Delsachel el Chiloil marked the boundary point at Klairemasech. During the trial court's site visit to the proposed boundary markers, the parties apparently had no difficulty locating Delsachel el Chiloil, as it juts prominently out of the sea. Regardless, the trial court's factual finding that Delsachel el Chiloil marks the common boundary was not based solely on a single witness's testimony. Multiple witnesses, credited by the trial court, testified that Delsachel el Chiloil marked the boundary point at Klairemasech. The trial court also observed that Ngeremlengui's proposed maritime boundary marker could only be approximately located during the court's visit to the proposed boundaries, as it was fully submerged by the tide.

Coupled with other observations, the trial court determined that Delsachel el Chiloil marked the common maritime boundary at the reef. In other words, even entirely discounting the challenged witness's testimony, there would still be evidentiary support in the record to support a determination that Delsachel el Chiloil marked the boundary at Klairemasech. Such a finding is not clearly erroneous. *See Airai*, 15 ROP at 40.

B. The Peak of Ngerchelchuus

Ngardmau argues that it was clear error for the Trial Division to find that the peak of Ngerchelchuus mountain was a common boundary point. As discussed above, this argument is legally foreclosed because under the Palau Constitution, "the boundaries of the States, at the time of their creation, were confined to the boundaries of the former municipalities." *Peleliu*, 6 ROP Intrm. at 94. Both municipal charters explicitly state that "the peak of Ngerchelchuus mountain" lies on the boundary. Thus the common boundary necessarily runs through the peak of Ngerchelchuus as a matter of law.[17]

C. From the Ngermasech River to the Peak of Ngerchelchuus

The Trial Division's adjudged common boundary line includes a stretch proceeding from the Ngermasech river "[a]t the area marked by a circled 'M' in blue ink . . . on Plaintiff's Exhibit 5 and following the ridgeline toward Ngerchelchuus, which ridgeline is depicted on Plaintiff's Exhibit 5 as a fat green line heading east, which itself is highlighted by a dark green line made in marker by a Ngardmau witness at trial."[18] On appeal, Ngardmau argues that it

[17] Even if the legal standard did not compel adjudging the boundary to run through the peak of Ngerchelchuus, the trial court heard abundant evidence that would support a factual finding that the peak marked the common boundary. It would therefore decidedly not be clear error to locate the boundary there.

[18] Plaintiff's Exhibit 5 is a large photographic map of the boundary area. It includes a variety of different lines drawn by BLS at the trial court's direction. These lines included, for example, a boundary based on the Ngardmau Constitution's boundary description and another based on

was clearly erroneous for the Trial Division to determine that the common boundary follows the ridgeline from the river to the peak of Ngerchelchuus mountain. Much of Ngardmau's brief on this point simply reargues issues related to the legal or probative evidentiary value of the municipal charters, which we have already resolved, or urges us to reweigh evidence or test the credibility of witnesses, which we may not do. *See Airai*, 15 ROP at 40 (collecting cases).

Ngardmau does raise one contention that merits discussion. As noted earlier, the Ngardmau Charter describes the boundary as proceeding from the peak of Ngerchelchuus mountain "thence to the source of the Ngermasech river and continuing to its mouth." Ngardmau argues that the Trial Division's adjudged boundary line thus departs "from the plain language of both municipal charters" because it leaves the river before reaching "the source."

One significant problem with this argument is that Ngardmau's premise is incorrect: "both" municipal charters do not refer to "the source of Ngermasech river"; only Ngardmau's does. The Ngeremlengui Charter states that the boundary runs from "the mouth of the Ngermasech River and thence up that river to the peak of Ngerchelchuus mountain." While Ngardmau argues that this could be interpreted to mean *up that river until reaching the source*, that is not in fact what it says, and is only one possible interpretation of that charter. By way of illustration, it turns out that at least one presumptively neutral party to the dispute did not interpret it the way Ngardmau urges. During evidentiary proceedings, the Trial Division directed BLS to chart various proposed boundaries. When BLS carried out this directive, it charted a boundary that went up the river and then to the peak of Ngerchelchuus by following the ridgeline from the point it reached the river. It is simply not the case that both municipal

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Ngeremlengui's claimed boundary in litigation. The map includes various geographic labels that each State claimed was the proper location of some feature. For example, the map includes two large labels for "Ngel," one at the location claimed by Ngardmau to be Ngel and one at the location claimed by Ngeremlengui.

charters plainly direct that the common boundary runs through "the source" of the river—as they do, for example, "the mouth" of the river.

Ngardmau's argument mixes legal interpretation with factual determinations. Although, as we earlier noted, it is often difficult to cleanly distinguish between legal and factual questions, fixing the route of the boundary from the indisputable boundary point at the peak of Ngerchelchuus to the indisputable boundary point at the mouth of the Ngermasech river, strikes us as predominantly a question of fact.[19]

The trial court found that there was no single "source" of the Ngermasech river.[20] This finding is not clearly erroneous. The trial court observed that, unlike the mouth of a river, it is rarely possible to pinpoint a single source for a river. Specifically for the Ngermasech, the trial court noted the parties' agreement that numerous streams and forks and waterfalls all feed into waterways that combine to become the river.

The trial court noted that when the Ngermasech river reaches its first major fork traveling inland from the sea, it is no longer universally referred to as "Ngermasech," but often

[19] We observe that Ngardmau's appellate briefing refers to the trial court's finding on this point as clear error. *See, e.g.*, Cross-Appellants' Brief at 38. Clear error describes the standard of review governing challenges to factual findings.

[20] Construing this as a legal question of interpretation of the Ngardmau Charter, it is reasonable to interpret the charter to mean "a source" of the Ngermasech river, or even just to refer generally to the river itself. Even otherwise clear and plain language must give way in the face of results that are absurd, defying common sense. *See, e.g.*, *Lin v. ROP*, 13 ROP 55 (2006). The record makes clear that numerous streams and forks and waterfalls and springs all feed into what, at some point, is indisputably the Ngermasech river; as the trial court observed, common sense militates against the idea that the river has one single, identifiable source. *See, e.g.*, Trial Decision at 48-49. Further, the trial court specifically rejected Ngardmau's proposed location for "the" source. Among other things, during the site visit the trial court observed that although it "was, in fact, raining at the time" of the visit, "[t]here was simply no water, or even much of anything resembling a river bed, at the purported site." Trial Decision at 49. A factual finding that this site was not "the," or even "a," source of the Ngermasech river is decidedly not clearly erroneous. Ngeremlengui suggested that the source was significantly farther north, at a sizeable waterfall feeding into a main fork off the Ngermasech. The trial court ultimately also rejected this as "the source," and Ngeremlengui did not appeal that determination.

as the Thomas river (to the north) and the Dudiu river (to the south).[21] Other record evidence indicates that as these rivers are followed inland, they fork and take additional different names as well. The trial court ultimately found that the Dudiu branch represented the continuation of the Ngermasech beyond the first fork. There was credible record testimony that the Dudiu branch is the larger of the two, and that the river is sometimes referred to as the Ngermasech for some distance up that branch. Thus the trial court's finding that the Ngermasech continued some way up the Dudiu branch is not clearly erroneous.

The trial court, however, did not find that the Ngermasech continued identifiably any significant distance up the Dudiu branch beyond the major Thomas/Dudiu fork. The trial court adjudged the boundary to follow a prominent ridgeline, from a point that a Ngardmau witness identified as Mekaud on the river, to the peak of Ngerchelchuus mountain. Ngardmau's principal argument that this determination was clearly erroneous is that it was based on "conflicting testimony" and "takes up a confusing series of ridges . . . [that] purportedly leads to" the peak of Ngerchelchuus. Cross-Appellants' Br. at 37. This argument lacks merit. As an initial matter, and fundamentally, resolving conflicting testimony and evidence is what trial courts do for a living; equally fundamentally, appellate courts do not generally second guess those determinations. *See, e.g.*, *Airai*, 15 ROP at 40 (explaining that under the clear error standard, an appellate court "may not reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence"). The trial court had evidence, including credited testimony from a Ngardmau witness, that there is a ridgeline running from Ngerchelchuus

[21] This suggests that this major fork, after which the Ngermasech no longer carries that name for many people, is another plausible alternative "source" of the Ngermasech.

down to a specific point on one of the many forks feeding into Ngermasech.[22] As such, we cannot say that the record lacks evidence from which a reasonable trier of fact could reach the trial court's conclusion.

Finally, Ngardmau suggests that the Trial Division's adjudged boundary description may be infirm because it refers to the boundary ridgeline being "depicted on Plaintiffs' Exhibit 5 as a fat green line." Ngardmau asserts that the green line may not actually follow the ridgeline. This is at least in part because, according to Ngardmau, BLS did not draw that line

[22] Again viewing this determination as an interpretative matter, rather than a factual finding, we conclude this is a reasonable interpretation of the charter description. The Ngeremlengui Charter, describing the boundary running up against the flow of the Ngermasech, does not reference any source of the river; the adjudged boundary is fully consistent with its description. The Ngardmau Charter describes the boundary running down from the mountain peak to the river source. The trial court heard testimony that traditional boundaries often followed the land; a boundary running from the mountain could reasonably be understood to follow a natural ridgeline that terminates at the river.

The adjudged point was identified by a Ngardmau witness. *See* Transcript of Trial, Civ. Action Nos. 13-020 & 12-186, at 596 ("Trial Tr."). The point was marked with an "M" because that witness referred to this point as "Mekaud." The trial court rejected that name for the point, but credited the witnesses' testimony that this point represented the geographic end of the ridgeline at an identifiable point. *See* Trial Decision at 41 n.30 & n. 32. Several witnesses testified that in addition to a proper name, variants of the word *mekaud* refer to natural features. Another Ngardmau witness testified that *mekaud* "is like a dam or something blocking water" and that "[*M*]*engaud, mekaud*, it's about the same." Trial Tr. at 455. This testimony is consistent with dictionary definitions. *See* Lewis S. Josephs, New Palauan-English Dictionary 172 (1990). The Ngardmau witness who indicated the ridgeline intersection at the point "M" knew the point as *mekaud* because the elders said "a big rock . . . fell down and it blocked the main river." Trial Tr. at 591.

The Ngardmau Charter describes the boundary as running from "the peak of Ngerchelchuus mountain and thence to the source of the Ngermasech river." Applied to the natural features of the land in Babeldaob, this language can reasonably be understood to mean that the boundary follows the natural ridgeline from the mountain peak to where a big rock from the ridge blocks the river; the point at which the river is blocked is a reasonable interpretation of the point from which the river starts to flow.

for the purpose of charting the ridgeline.[23] We are unable to determine from the record alone whether the cited green line in fact depicts the geographic ridgeline. However, we note that the adjudged common boundary is not the green line itself on the map, but rather the actual geographic ridgeline that the green line purports to depict. To the extent Ngardmau suggests that the actual geographic ridgeline path may need to be surveyed, the States are encouraged to work together, perhaps with the assistance of BLS, to do so.

CONCLUSION

Properly interpreted, the two municipal charters here describe the same common boundary. The trial court should have accorded that common boundary description controlling legal weight and its decision to treat the description only as highly probative evidence was error. However, the effect of according the charters such substantial evidentiary weight was that the trial court still adjudged the boundary to follow the charter descriptions. The trial court's legal error was therefore harmless as to the substantial rights of the parties. Having further reviewed the parties' challenges to the trial court's factual determinations of the locations of chartered boundary points, we find these factual determinations are not clearly erroneous. Accordingly, the judgment of the Trial Division is **AFFIRMED**.

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[23] We observe, as did the trial court, that the BLS map underlying Plaintiff's Exhibit 5 has the phrase "RIDGE LINE" printed in blue capital letters directly above and along the green line purporting to depict the geographic ridgeline.

SO ORDERED, this 16th day of November, 2016.

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice

C. QUAY POLLOI
Associate Justice Pro Tem