IN THE SUPREME COURT OF THE REPUBLIC OF PALAU APPELLATE DIVISION

AIRAI STATE PUBLIC LANDS AUTHORITY,
Appellant,
v.
GHANDI BAULES and EMERACH BAULES,
Appellees.

Cite as: 2019 Palau 15
Civil Appeal No. 18-027
Appeal from Case No. SP/N 09-024

Decided: May 13, 2019

Counsel for Appellant ..... Mariano W. Carlos
Counsel for Appellee ..... Raymond B. Oilouch

BEFORE: JOHN K. RECHUCHER, Associate Justice
DANIEL R. FOLEY, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Associate Judge, presiding.

OPINION[1]

PER CURIAM:

[¶ 1] This appeal arises from a dispute over the validity of a conveyance of land between Airai State and Appellees' father, Baules Sechelong. The Land Court found that Appellees were the proper owners of the land because there was no consideration for the conveyance and no effective delivery of the conveyance document.

[¶ 2] For the reasons set forth below, we **REVERSE** and **REMAND**.

---

[1] The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

AIRAI STATE PUBLIC LANDS AUTHORITY,
Appellant,
v.
GHANDI BAULES and EMERACH BAULES,
Appellees.

Cite as: 2019 Palau ___
Civil Appeal No. 18-027
Appeal from Case No. SP/N 09-024

Decided: May 13, 2019

Counsel for Appellant ..... Mariano W. Carlos
Counsel for Appellee ..... Raymond B. Oilouch

BEFORE: JOHN K. RECHUCHER, Associate Justice
DANIEL R. FOLEY, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Associate Judge, presiding.

OPINION[1]

PER CURIAM:

[¶ 1] This appeal arises from a dispute over the validity of a conveyance of land between Airai State and Appellees' father, Baules Sechelong. The Land Court found that Appellees were the proper owners of the land because there was no consideration for the conveyance and no effective delivery of the conveyance document.

[¶ 2] For the reasons set forth below, we **REVERSE** and **REMAND**.

---

[1] The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

BACKGROUND

[¶ 3] The procedural history of this case spans just over four decades. In December 1978, the Land Commission held a hearing on *Ngerimel* (Lots 013 N 02A and 013 N 02B), a large parcel of land adjacent to the Airai International Airport that is at issue in this case.

In June 1983—prior to the Land Commission's decision in the 1978 hearing—Mr. Sechelong, Airai State Government (ASG), represented by then-Governor Roman Tmetuchel, and Toshitake Suzuki, a Japanese national, signed a document ("the Agreement") which Appellant contends conveyed the land to Airai. The three men met in the law office of Johnson Toribiong who, while acting as counsel for ASG, drafted the Agreement. All of the men signed the Agreement in Mr. Toribiong's office, and former Governor Tmetuchel took the Agreement to be filed in the Airai State office. According to the testimony of Mr. Toribiong, the Agreement was "merely an agreement in form, and was not to be filed with the courts, but merely filed at the state government office." Decision 5. The substance of the Agreement between the parties reads, in relevant part, as follows:

> 1. For good and valuable consideration given by Toshitake Suzuki, receipt whereof is hereby acknowledged by Senator Baules Sechelong, Senator Baules Sechelong agrees to and does hereby convey to Airai State in fee simple absolute all of that land located in and adjacent to the Airai International Airport . . . .
>
> 2. Airai State hereby accepts and acknowledges receipt of the above described property to be managed and administered by Airai State for the benefit of the people of Airai State . . . .
>
> 3. In consideration for the conveyance of the above described property, Airai State agrees to enter into a Lease Agreement with Mr. Toshitake Suzuki leasing the property to Toshitake Suzuki for a term of years . . . and for the beneficial use thereof, such use to be subject to the prior approval of Airai State which shall not be unreasonably withheld.

Id. at 3 (quoting ASPLA Ex. A) (omissions in original).

[¶ 4] Although the Agreement was never recorded in court, the Airai State Special Committee for Land Matters sent a letter to the Land Commission on January 23, 1985, which stated that, pursuant to the Agreement, *Ngerimel* is "clearly . . . public land of Airai State." *Id.* at 4 (quoting ASPLA Ex. B-1). It is unclear whether this letter was sent in relation to the pending 1978 matter before the Land Commission. It also does not appear that the letter was sent to any of the other claimants to the land, including Mr. Sechelong. There is also no indication that Mr. Sechelong took any action to inform the Land Commission about the Agreement or drop his claim to the land in that matter. No activity occurred on the land between the signing of the Agreement in 1983 and the issuance of the Land Commission's decision three years later.

[¶ 5] In September 1986, the Land Commission awarded ownership of *Ngerimel* to Mr. Sechelong. ASG appealed the decision citing, among other reasons, the Agreement. ASG contended that the Agreement had effectively conveyed Mr. Sechelong's ownership rights to ASG. Mr. Sechelong countered by asserting that the Agreement was not a conveyance of the property, but a contract that had been terminated by the parties.[2] This appeal was dismissed on procedural grounds and remanded back to the Land Claims Hearing Office for further proceedings in September 1990. The Land Claims Hearing Office was replaced by the Land Court in 1996 and this case was transferred to the Land Court without further action at that time.

[¶ 6] In September 1999, still prior to any court action on this case, Mr. Sechelong leased *Ngerimel* to the Daewoo Corporation. The lease lists Mr. Sechelong, Techermel Geggie Anson (on behalf of Klai Clan), and then-Governor Tmeuang Rengulbai (on behalf of ASG and ASPLA) as lessors, and is signed by Mr. Sechelong and Ms. Anson, but not by former Governor Rengulbai.

[¶ 7] The first remand hearing in this case was held in December 2013—twenty-three years after the initial remand order. In July 2014, the Land Court again ruled in favor of Mr. Sechelong after concluding that the Agreement

---

[2] In response to Airai's May 2, 1989 interrogatory to Mr. Sechelong requesting the boundaries of "the land that you conveyed to Airai State in the June 1, 1983, Agreement," Mr. Sechelong stated that "[t]he land which was conveyed to State of Airai pursuant to Agreement on June 1, 1983 had been terminated by the parties involved and is null and void at present time pursuant to Status [sic] of Fraud 39 PNC 504." Sechelong Ex. C.

failed to adequately identify the land at issue as *Ngerimel*. ASPLA appealed and the case was remanded a second time on procedural grounds. In August 2016, the Land Court concluded that the land in the Agreement was *Ngerimel*, but again ruled in favor of Mr. Sechelong. ASPLA again appealed and this Court concluded that the Land Court had erred by treating the Agreement "as mere extrinsic evidence of some separate contemplated future conveyance that did not come to fruition, rather than treating the instrument as a potentially valid conveyance in its own right." *Rengulbai v. Baules*, 2017 Palau 25 ¶ 17. The Court stated that the language in the Agreement "sufficiently declares an intention to pass title" and therefore, "should have been independently evaluated to determine whether it in itself sufficiently conveyed" *Ngerimel* to ASG. *Id.* ¶ 18. Consequently, the case was remanded to the Land Court a third time "for determination of whether the [Agreement] effectively conveyed the land at issue." *Id.* ¶ 19.

[¶ 8] Utilizing the preponderance of the evidence standard on remand, the Land Court again held that the Agreement did not convey *Ngerimel* to ASG. The Land Court noted that, while the agreement stated "[o]n its face" that Mr. Sechelong had received payment for the land and conveyed the land to Airai, "the persuasive evidence shows that no actual payment was made or received by Baules [Sechelong]." Decision 9. This persuasive evidence included the testimony of multiple witnesses that they were unaware of any payments taking place for the land, testimony that the project the land was intended to be used for fell through due to investor pull out, and ASG's failure to lease the land to Mr. Suzuki—ASG's required consideration for the conveyance per the terms of the Agreement. Additionally, to conclude that ASG never acquired ownership of *Ngerimel*, the Land Court relied on the lease to the Daewoo Corporation, testimony by former Airai State Governor Charles Obichang that he believed the land was private land not owned by Airai State, and ASG's choice not to properly record the Agreement with the Court. *Id.* at 10–11. The Land Court also relied on that evidence, as well as Mr. Sechelong's continued efforts to obtain an ownership determination on *Ngerimel* and Mr. Toribiong's testimony that "the [A]greement was an attempt to resolve an ongoing dispute with the Airai chiefs over the property, and was not meant to be recorded in court" to conclude that there was no effective delivery. *Id.* at 12.

[¶ 9] ASPLA again appealed.

STANDARD OF REVIEW

[¶ 10] This Court has summarized the standards of appellate review as follows:

> A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. Matters of law we decide de novo. Exercises of discretion are reviewed for abuse. We review findings of fact for clear error. Under this standard, we view the record in the light most favorable to the trial court's judgment, and the factual determinations of the lower court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made.

Rengulbai, 2017 Palau 25 ¶ 5 (internal citations omitted).

DISCUSSION

[¶ 11] This case presents a question of what requirements a document must meet to qualify as a deed that effectively conveys land. There are two separate but related requirements to convey land through a deed: the form of the document itself and the execution of the document. *See id.* ¶ 18 n.4 (citing *Uchelkumer Clan v. Sowei Clan*, 15 ROP 11, 14–15 (2008); *Ueki v. Alik*, 5 ROP Intrm. 74, 76 (1995); 23 Am. Jur. 2d *Deeds* § 12–13 (2013)). We address whether the Agreement satisfies each of these requirements in turn.

I. Format of the Agreement

[¶ 12] The first question we must answer is whether the Agreement qualifies as a deed. Although "[f]ormality and exactness are not required to transfer property," there are certain criteria that a document must meet to effectively convey property. *Rengulbai v. Solang*, 4 ROP Intrm. 68, 72 (1993). "A deed must be drawn in such language as to indicate who is granting the property, to whom is it granted, and what the property is . . . ." 23 Am. Jur. 2d *Deeds* § 13 (2013); *see also Ucherremasech v. Hiroichi*, 17

ROP 182, 195 (2010) ("To be given effect, a deed should adequately describe the property, which means some definite way to identify the land, such as the lot's configuration or its size."); *Salii v. Omrekongel Clan*, 3 ROP Intrm. 212, 214 (1992) ("If the land intended to be conveyed cannot be identified from the deed, with the aid of extrinsic evidence, the deed is inoperative."). The document must also be signed by the grantor, 23 Am. Jur. 2d *Deeds* § 12 (2012), and contain "language indicating the grantor's present intent to pass title," *Rengulbai*, 2017 Palau 25 ¶ 18 n.4 (citing *Uchelkumer Clan*, 15 ROP at 14–15; 23 Am. Jur. 2d *Deeds* §§ 12–13 (2013)).

[¶ 13] Here, while there is a third party involved in the conveyance, the Agreement clearly indicates that Mr. Sechelong is the grantor and Airai State is the grantee. Furthermore, no one disputes that the document was signed by Mr. Sechelong. Consequently, the only potential areas of contention are whether the language in the Agreement sufficiently identifies the land that was intended to be conveyed and whether Mr. Sechelong had a present intent to pass title.

[¶ 14] In a prior decision, the Land Court relied on testimonial evidence to determine that the land discussed in the Agreement encompassed *Ngerimel* (Lots 013 N 02A and 013 N 02B). Because the parties did not dispute the finding on appeal, this Court impliedly concluded the testimonial evidence sufficiently identified the land. *See id.* ¶ 17. Therefore, this criterion is satisfied.

[¶ 15] This leaves only the question of whether the language in the deed was sufficient to indicate Mr. Sechelong's present intent to pass title. Our prior opinion indicates that the language in the Agreement is sufficient. *See Rengulbai*, 2017 Palau 25 ¶ 18 ("The language of the 1983 instrument, specifically the phrase 'Senator Baules Sechelong agrees to and does hereby convey to Airai State in fee simple absolute all of that land located in and adjacent to the Airai State International Airport,' sufficiently declares an intention to pass title.").

[¶ 16] Consequently, the Agreement satisfies the necessary form requirements to serve as a valid deed.

II. Execution of the Agreement

[¶ 17] In addition to the necessary technical documentary elements, a deed must satisfy certain execution requirements before it can effectively convey land, one of which is delivery. *See Ueki*, 5 ROP Intrm. at 76 ("There is no question but that a deed, to be operative as a transfer of realty, must be delivered." (quoting 23 Am. Jur. 2d *Deeds* § 120 (1963))).

[¶ 18] Appellant argues that, because the Agreement is a valid deed, effective delivery occurred when Mr. Sechelong, without objection, allowed then-Governor Tmetuchel to walk out of Mr. Toribiong's office in possession of the Agreement. It is true that "[a] strong presumption of delivery of a deed arises from its possession by the grantee." 23 Am. Jur. 2d *Deeds* § 136 (2013). "However, 'delivery' of a deed in a legal sense is different than a mere transfer of physical possession or custody of the deed." *Ueki*, 5 ROP Intrm. at 76.

[¶ 19] Legally sufficient delivery of a deed occurs when "the grantor has transferred the deed to the grantee . . . with the intent that it presently become operative as a conveyance of title." *Id.* In evaluating whether delivery has occurred, "[t]he controlling factor is the intention of the grantor to make delivery," which "is to be inferred from the circumstances preceding, attending and following the execution of the deed." *Id.* (citing 23 Am. Jur. 2d *Deeds* § 120 (1963)). Consequently, "whether the requisite intent to make delivery existed and whether the grantor executed an intention to pass title by a sufficient delivery are both questions of fact and generally for the [fact finder]." 23 Am. Jur. 2d *Deeds* § 111 (2013).

[¶ 20] Under this standard, the Land Court's conclusion that there was no effective delivery is a factual finding reviewable for clear error. However, "[t]he presumption of delivery arising from possession of the deed by the grantee . . . may be rebutted only by clear and convincing evidence, such as by showing that there was in fact no delivery . . . or by showing circumstances inconsistent with such presumption." *Id.* § 136. The Land Court evaluated whether effective delivery occurred under a preponderance of the evidence standard. And while this is normally the correct standard for such an assessment, a higher burden is necessary to rebut the presumption of delivery that is established by possession of the deed. Because Appellant is in

possession of the Agreement—a valid deed, the Land Court clearly erred by applying the preponderance of the evidence standard to conclude that there was no effective delivery. It was required to apply a clear and convincing evidence standard. Thus, a remand is necessary to allow the Land Court to determine whether Appellees have proven, by clear and convincing evidence, that there was no effective delivery.

[¶ 21] The parties also argue over the Land Court's conclusion that Mr. Sechelong was never paid for the land.[3] Appellants cite to the language of the Agreement itself in which Mr. Sechelong "acknowledged" that he had received "good and valuable consideration" from Mr. Suzuki. Decision 3 (quoting ASPLA Ex. A). However, "[t]he acknowledgment of the receipt of consideration in a deed is prima facie evidence of that fact. A rebuttable presumption of the payment of a valuable consideration is raised by the recital." 23 Am. Jur. 2d *Deeds* § 80 (2013) (internal footnotes omitted). The language in the Land Court's opinion clearly indicates that the Land Court recognized such a presumption existed and found that it had been rebutted by the evidence. *See* Decision 9 ("Although the document states that Baules [Sechelong] acknowledged receipt of payment, the persuasive evidence shows that no actual payment was made or received by Baules [Sechelong].").

[¶ 22] Because this is a factual finding, it is reviewable for clear error. The Land Court was presented with evidence supporting both that Mr. Sechelong had received consideration for his ownership interest in *Ngerimel* and that he had not. Ultimately, the Land Court found the testimonial evidence that Mr. Sechelong had not received any payments, as well as the failure of ASG to satisfy its consideration under the Agreement by executing a lease with Mr. Suzuki, more convincing than the acknowledgment of

[3] The Land Court concluded that the Agreement failed to effectively convey *Ngerimel* to ASG because the consideration was never paid by the parties. However, "[b]ecause a deed is an executed contract, . . . the lack of consideration alone is not sufficient cause for setting aside a deed." 23 Am. Jur. 2d *Deeds* § 72 (2013). As such, even if Mr. Sechelong had never received any payment for *Ngerimel*, the deed would not be void. Instead, Mr. Sechelong would be entitled to a lien on the land. *See id.* § 78 ("Failure of consideration does not render a deed void. . . . Nonpayment of the promised price gives the grantor an implied equitable lien on the land, . . . but, in the absence of additional circumstance, such as fraud, justifying equitable relief, it does not entitle grantor to cancellation of the deed.")

receipt language in the Agreement itself. As it is rightly the province of the fact finder to choose between two conflicting but permissible views of the evidence, the Land Court's decision cannot be clearly erroneous. *See Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 165 (2002). Thus, it stands as fact that no payment was made or received by Mr. Sechelong.

CONCLUSION

[¶ 23] We **REVERSE** and **REMAND** the Land Court's judgment.

[¶ 24] The sole question on remand is whether Appellees have, under a clear and convincing evidence standard, successfully rebutted the presumption that there was effective delivery of the Agreement. In making this determination, the Land Court is limited to the existing record and may not hold any additional hearings or consider new evidence.

SO ORDERED, this 13th day of May, 2019.

JOHN K. RECHUCHER
Associate Justice

DANIEL R. FOLEY
Associate Justice

DENNIS K. YAMASE
Associate Justice