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SUPREME COURT
OF THE
REPUBLIC OF PALAU

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGARAARD STATE PUBLIC LANDS AUTHORITY, *Appellant,* **v.** **PALAU PUBLIC LANDS AUTHORITY,** *Appellee.*
RDECHOR NGIRATRANG, *Appellant,* **v.** **PALAU PUBLIC LANDS AUTHORITY,** *Appellee.*
NGEREKLERONGEL CLAN/IDUNG CLAN, *Appellant,* **v.** **NGARAARD STATE PUBLIC LANDS AUTHORITY, PALAU PUBLIC LANDS AUTHORITY,** *Appellees.*

Cite as: 2022 Palau 27
Civil Appeal No. 21-023
Appeal from consolidated LC/E 17-00091, LC/E 17-00094, LC/E 17-00095, LC/E 17-00099, LC/E 17-00096, LC/E 17-00097, LC/E 17-00098, LC/E 17-00176, LC/E 17-00106, LC/E 17-00103, LC/E 17-00154, LC/E 17-00155, LC/E 17-00156, LC/E 17-00152, LC/E 17-00153.

Decided: December 2, 2022

Counsel for Appellant NSPLA	Brengyei Katosang
Counsel for Appellant Ngereklrongel Clan	Johnson Toribiong
Counsel for Appellant Rdechor Ngiratrang	Raynold B. Oilouch
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BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
DANIEL R. FOLEY, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This appeal arises from the Land Court's determination of ownership of three sets of public land lots in Ngkeklau County, Ngaraard State. Three appellants, Ngereklerongel Clan/Idung Clan ("Clan"), Rdechor Ngiratrang ("Ngiratrang"), and Ngaraard State Public Lands Authority ("NSPLA"), appeal the Land Court's determination. The Clan asserts that the Land Court erred in finding that it did not fulfill the requirements for a return of public lands claim, while Ngiratrang maintains that the Land Court erred in concluding that a homestead claim is incomplete without a Certificate of Compliance, and finally, NSPLA avers that the Land Court misinterpreted a quitclaim deed which conveyed public lands from the Palau Public Land Authority ("PPLA") to NSPLA.

[¶ 2] For the reasons set forth below, we **AFFIRM** in part the Land Court's decision to award the Uchol lots to PPLA, we **VACATE** and **REVERSE** the award of the Ngirchorachel lots to PPLA, awarding them instead to NSPLA, and we **VACATE** and **REVERSE** the award of the Ngertuker lots to PPLA, awarding them instead to Ngiratrang.

BACKGROUND

[¶ 3] During the month of July 2021, the Land Court held a hearing on seven sets of consolidated cases involving land lots in Ngkeklau County, Ngaraard State. Presently, the claimed lands are classified as public land. They were originally administered by PPLA, until PPLA conveyed the lands to the NSPLA through a Quitclaim Deed dated January 12, 2000. The Quitclaim Deed carved several exceptions for lands that would remain administered by PPLA. Several parties dispute ownership of the lots and ground their claims on different bases.

[¶ 4] The Clan claimed lots 16E02-029, 16E02-030, 16E02-032A, 16E02-032B, 16E02-034A, 16E02-034B, 16E02-035, 16E02-037A, 16E02-037B, and 16E02-048 ("the Uchol lots") on the basis that it owned these lots since time immemorial until they were wrongfully stolen by Japanese authorities. They further argued that Idung Clan had succeeded to Ngereklrongel Clan, and as such were the rightful owners of the Uchol lots. The Clan grounds its claim on the return of a public land claim filed in 1988 by Uchol Leon Medalarak, in his capacity as a senior member of the Ngereklrongel Clan. The claim asserts that the Japanese Administration took the land by force.

[¶ 5] Ngiratrang claimed ownership of five lots, Nos. 16E02-012, 16E02-014, 16E02-015, 16E02-016, and 16E02-017, commonly known as *Ngertuker*. Ngiratrang maintains these lots were given to him as his homestead through the Trust Territory Homestead Program in the 1950s, and that he had built his house on the land and cultivated it ever since.

[¶ 6] NSPLA claimed all the lots on the basis that these lots were public lands, deeded by PPLA to NSPLA in January 2000 in a Quitclaim Deed. PPLA claimed that several of the lots were withheld in the 2000 Quitclaim Deed. NSPLA appeals the award of three sets of lots to PPLA:

> (1) the award of Lots No. 16E02-010 and 16E02-011, which were claimed by Ngirmekur Ngirchorachel, and determined to be an expired lease withheld by PPLA in the 2000 Quitclaim Deed, hereinafter referred to as "the Ngirchorachel Lots,"
>
> (2) the award of seventy thousand square meters from within Lots Nos. 16E02-029, 16E02-035B & 16E02-034A2, which were claimed by the Clan and determined to be an expired lease withheld by PPLA in the 2000 Quitclaim Deed, hereinafter referred to as "the Uchol Lots," and
>
> (3) the award of Lots Nos. 16E02-012, 16E02-014, 16E02-015, 16E02-016, and 16E02-017, which were claimed by Ngiratrang, and determined to be a homestead tract withheld by PPLA in the 2000 Quitclaim Deed, hereinafter referred to as "the Ngertuker Lots."

[¶ 7] The Land Court first issued a decision on October 15, 2021. NSPLA filed a motion for reconsideration, and the Land Court partially reconsidered its decision on December 6, 2021.

STANDARD OF REVIEW

[¶ 8] "We review the Land Court's conclusions of law *de novo* and its findings of fact for clear error." *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38, 40 (2015). Under clear error review, when the Land Court has found that clear and convincing evidence demonstrates that the Tochi Daicho listing is incorrect, we will not disturb this finding unless we conclude that no reasonable trier of fact could have made the same finding. *See Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 135 (2000). We do not reweigh the evidence. *Koror State Pub. Land Auth. v. Giraked*, 20 ROP 248, 250 (2013). We do not reassess the credibility of witnesses. *Id.*; *Marino v. Andrew*, 18 ROP 67, 69 (2011). "Where evidence is subject to multiple reasonable interpretations, a court's choice between them cannot be clearly erroneous." *Kebekol*, 22 ROP at 40 (emphasis added). "'Given the standard of review, an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous.'" *Id.* at 46 (quoting *Giraked*, 20 ROP at 250). Thus, we have often reminded appellants that "appeals challenging the factual determinations of the Land Court are extraordinarily unsuccessful." *Giraked*, 20 ROP at 250 (quoting *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007).).

[¶ 9] The parties also dispute the Land Court's interpretation of the 2000 Quitclaim Deed. The interpretation or construction of a contract is a matter of law for the court. *Ngiratkel Etpison (NECO) v. Abby Rdialul*, 2 ROP Intrm. 211, 217 (1991). Also, the question of whether contractual language is ambiguous is a question of law for the court. *Id.* Therefore, both of these issues are reviewed de novo, with no deference to the trial court's decision. *Id.*; *Palau Marine Indus. Corp. v. Pac. Call Invs., Ltd.*, 9 ROP 67, 71 (2002).

DISCUSSION

I. The Ngirchorachel Lots

[¶ 10] The Ngirchorachel Lots were initially claimed by Ngirmekur Ngirchorachel under a return of public lands theory. Ngirchorachel had obtained a lease from the Trust Territory government, Lease No. 355, which expired in 1965 and was not renewed. The Land Court found that the lots should be returned to the government as public lands upon the lease's

expiration. It then awarded the land to PPLA, reasoning that the withholding carved by PPLA in the Quitclaim Deed included lots leased to individual leaseholders before the execution of the Deed. In its December 6, 2021 Order, the Land Court stated:

> Under existing laws PPLA is the governmental entity legally empowered to implement the statutory requirements for Homestead lots, and when these claimants failed to prove their claims, ownership of these lots should remain with the governmental entity that initially allowed the claimants to enter the lands. Under existing laws that governmental entity is the PPLA.

[¶ 11] NSPLA contends that the plain meaning of the Quitclaim Deed did not include all lots leased to individual leaseholders unless they were listed within the Deed.

[¶ 12] "The rules for the construction of deeds are essentially those applicable to other written instruments and to contracts generally." 23 Am. Jur. 2d *Deeds* §196 (2013). "Contract interpretation involves utilizing the 'ordinary and plain meaning' of the words used 'unless all parties have clearly intended otherwise.'" *Airai State v. Republic of Palau*, 10 ROP 29, 32-33 (2002). If the language of a contract is clear and unambiguous, then there is no room for a court to weigh what is reasonable or likely to have been intended. *Yalap v. Umetaro*, 16 ROP 126 (2009); *see also In re Estate of Tmetuchl*, 12 ROP 171, 173 n.2 (Tr. Div. 2004) ("under the objective law of contract interpretation, the court will give force and effect to the words of a contract without regard to what the parties thought it meant or what they intended for it to mean.") (internal citations omitted).

[¶ 13] NSPLA maintains that the plain language of the deed is clear and unambiguous and that PPLA conveyed to NSPLA all the public lands within the geographic boundaries of Ngaraard State except for those specifically enumerated in the deed. NSPLA points to the language of the Quitclaim deed, which states:

> PPLA . . . assigns all its right, title and interest in and to the following described property:

> All public lands as described in Section 2(c) of Secretarial Order No. 2969 located above the ordinary high water mark within the geographic boundaries of Ngaraard State, Republic of Palau, BUT EXCEPTING THEREFROM, the following described real property:
>
> . . . Tracts 11-390 through 11-423, inclusive, as shown on Map No. PB-17, Serial No. 357, approved July 20, 1962, and a portion of the land known as Kuabes occupied by Albert Shiro, approved April 23, 1998; and
>
> All those parcels of land actually occupied and used with the concurrence of the government of the Republic of Palau by the hereinafter listed tenants at will and tenants by sufferance, such lands being more fully described in the lease agreements numbered and dated as follows to wit . . .

[¶ 14] The Quitclaim Deed then lists twenty-two (22) leases, including a lease number, the name of the tenant, and the square meters of the land. There is no mention of the "Ngirchorachel" lease amongst these twenty-two leases. NSPLA argues that the Land Court wrongfully considered extrinsic evidence to include the lease in the Deed.

[¶ 15] This Court agrees with NSPLA. The Land Court's finding that the withholding carved by PPLA in the Quitclaim Deed included all lots leased to individual leaseholders before the execution of the Deed does not comport with the plain reading of the Deed. The Deed excludes "[a]ll those parcels of land actually occupied and used with the concurrence of the government of the Republic of Palau *by the hereinafter listed* tenants at will and tenants by sufferance." That phrasing explicitly excludes unlisted tenants. Because the Deed did not list the Ngirchorachel lease, the Ngirchorachel lots were not included in the carve-out. Therefore, PPLA did not retain ownership of the Ngirchorachel lots, and the Land Court committed clear error in deciding otherwise.

II. The Uchol lots

A. Ngereklrongel Clan/Idung Clan's Claim

[¶ 16] The Clan asserts the Land Court erred in refusing to award it these lots. This claim is based on a 1988 return of public land claim filed by Uchol Leon Medalarak, which described the lots allegedly owned by the Ngereklrongel Clan and stated that the Japanese had wrongfully taken them. The Clan further argues that Ngereklrongel Clan was succeeded by Idung Clan, and that Ngereklrongel Clan has now disappeared.

[¶ 17] The Clan asserts the Land Court erred in refusing to award it these lots. This claim is based on a 1988 return of public land claim filed by Uchol Leon Medalarak, which described the lots allegedly owned by the Ngereklrongel Clan and stated that the Japanese had wrongfully taken them. The Clan further argues that Ngereklrongel Clan was succeeded by Idung Clan, and that Ngereklrongel Clan has now disappeared.

[¶ 18] Claims for a return of public land are governed by Article XIII, Section 10 of the Constitution, as implemented by 35 PNCA 1304(b). The statute requires that a claimant must be a citizen and must prove 1) ownership before the land became public, and 2) a wrongful taking of the land by occupying forces or their citizens before 1981. The statute defines a wrongful taking as acquisition "through force, coercion, fraud, or without just compensation or adequate consideration." The claim must be timely filed before or on January 1, 1989.

[¶ 19] Because the Clan claims ownership under a return of public land theory, it must prove (1) ownership and (2) a wrongful taking. The Land Court found that the Clan failed to prove both prongs. First, the Land Court noted an inconsistency in the description of the land: the boundaries of the land described in the 1988 return differed from the boundaries described by the trial witnesses. Second, the Land Court found that none of the witnesses had any idea how or when the land became public and that aside from the 1988 return (which states that "the Japanese Admin took [the land] by force"), there was no evidence of wrongful taking.

[¶ 20] The Clan proclaims that the Land Court erred in making these factual findings. It states that because no map was available at the time of the

1988 filing, the resulting description of the land's boundaries was understandably generic and could differ from the more specific description offered by the trial witnesses. Additionally, the requirements of a return of public land claim did not include a specific description of the lands. The Clan then pointed to the 1988 claim again, in which Uchol Madalarak wrote that the land was listed in the Tochi Daicho, and as such was public land during the Japanese Administration. This does not contradict the Land Court's findings that there was insufficient evidence to support ownership and wrongful taking. Nothing in the record to which the Clan points comes close to leaving us with "a definite and firm conviction that an error [of fact] has been made" regarding any of the Land Court's factual findings. *Rengchol v. Uchelkeiukl Clan*, 19 ROP 17, 21 (2011).

[¶ 21] The Clan is asking this Court to determine that the Land Court erred in finding that it failed to satisfy the evidentiary requirements of its claim. Essentially, the Clan is asking this Court to re-weigh the Land Court's findings of fact. The Land Court's findings will not be set aside on appeal unless the Clan shows that no reasonable trier of fact could have made the same finding. The Clan has not made this showing. Therefore, we decline to reverse the Land Court's decision on this basis.

B. NSPLA's Claim

[¶ 22] NSPLA claims the 70,000 square meters from Lot Nos. 16E02-029, 16E02-035B & 16E02-034A2, which are part of the same lots claimed by the Clan. The 2000 Quitclaim Deed reveals that PPLA withheld a Lease No. 349 for Uchol. NSPLA asserts this lease is for land located in Telmong, Ngaraard, and does not cover Lot Nos. 16E02-029, 16E02-035B & 16E02-034A2. PPLA quarrels with that interpretation, stating that the Land Court properly found that the Uchol lots were located within Lot Nos. 16E02-029, 16E02-035B & 16E02-034A2, and that the Quitclaim Deed expressly withheld 70,000 square meters for Uchol's lease.

[¶ 23] We apply the same standards of contract interpretation as stated above. The 2000 Quitclaim Deed declares that PPLA retains:

> [a]ll those parcels of land actually occupied and used with the concurrence of the government of the Republic of Palau by the hereinafter listed

> tenants at will and tenants by sufferance, such lands being more fully described in the lease agreements numbered and dated as follow, to-wit:
>
> Lease No. 349; Name: Uchol; Date: 09/01/60; Area (sq. m.): 70, 000.

[¶ 24] The Land Court initially awarded all three lots to PPLA in its October decision, then reconsidered its decision in December to only award PPLA 70,000 square meters out of these lots, finding that it made a mistake in awarding lots that exceeded the total areas of land that were originally leased by the government. The Land Court did note in its October decision that "Evidence adduced showed that Uchol acquired a lease from the Trust Territory government to use a land located in Telmong, Ngaraard, Babeldaob, for coconut plantation, house and garden."

[¶ 25] The Land Court found that the Uchol lease was located on Lots Nos. 16E02-029, 16E02-035B & 16E02-034A2. We do not re-weigh the Land Court's finding of facts, and NSPLA's evidence does not leave us with "a definite and firm conviction that an error [of fact] has been made" as to any of the Land Court's factual findings. *Rengchol*, 19 ROP at 21. The Quitclaim Deed clearly indicates that PPLA withheld 70,000 square meters out of the conveyed lands for the Uchol lease. Therefore, we decline to reverse the Land Court's decision to award these lands to PPLA.

III. The Ngertuker lots

A. Ngiratrang's Claim

[¶ 26] A homestead is a plot of publicly owned land that the government may allot to an applicant for farming or developing village lots. 35 PNCA § 802; *see also* 67 TTC § 201. A homesteader receives a permit to use and improve the land, and he must comply with the conditions and requirements established under the homestead law. 35 PNCA §§802, 806; 67 TTC §§202, 206. Upon fulfilling the applicable requirements, the homesteader has "the *right* to acquire title" to the homestead. 35 PNCA § 801 (emphasis added); *see also* 67 TTC § 201. The statute further states that the government issues a certificate of compliance and, subsequently, shall issue a deed of conveyance

for the homestead lot, granting the homesteader any and all rights of the national government to the property. 35 PNCA §§810-11; 67 TTC §§208, 212.

[¶ 27] Therefore, a homesteader has a right to acquire his homestead. The issue revolves around whether the homesteader acquires a vested right in the property upon completion of the homestead conditions, or upon the issuance of the Certificate of Compliance from the government. This Court already established that while "receipt of a certificate of compliance constitutes evidence of a vested right" it is not a *sine qua none* requirement to find ownership. *Tmetuchl v. Siksei*, 7 ROP Intrm. 102, 105 (2007) (quoting *Sablan v. Norita*, 7 TTR 90, 92 (Tr. Div. 1974)). Rather, "one automatically becomes owner of the property upon compliance with all the homestead requirements." *Silil v. Silil*, 2021 Palau 37, ¶ 10. In *Tmetuchl*, this Court looked at unrebutted testimony that the homesteader had complied with homestead requirements, and found it sufficient to conclude he had become the property owner. Furthermore, once the homestead requirements are met, the government has a duty to issue the deed: "plaintiffs [are] entitled to their deeds which, in effect, [are] nothing more than evidence of the already acquired title." *Tmetuchl*, 7 ROP Intrm. at 104 (quoting *Sablan*, 7 TTR at 92).

[¶ 28] Ngiratrang called three witnesses who testified that Ngertuker was in fact Ngiratrang's homestead. The Land Court concluded that Ngiratrang met all the conditions and requirements of the homestead. However, the Land Court still declined to award him Ngertuker in the absence of a Certificate of Compliance. As the Land Court stated, "the government failed to fulfill its statutory obligations . . . when it did not conduct the required inspections of these lots." We cannot hold the government's own failure to inspect the homestead against Ngiratrang. In light of this compelling evidence, and the unambiguous *Tmetuchl* precedent, the Land Court drew the wrong legal conclusion.

B. NSPLA's Claim

[¶ 29] NSPLA avers that the Land Court misread the 2000 Quitclaim Deed, which withheld Homestead Tract 11-394 as a lease for Ngiratrang. NSPLA further asserts that Tract 11-394, is a different land, located in the northeastern part of Ngaraard State as indicated on the Ngaraard Homestead Map, than Lots 16E02-012, 16E02-014, 16E02-015, 16E02-016, and 16E02-017 (the

Ngertuker lots) which are located in the southwestern part of Ngaraard State, and not the same lot as Homestead Tract 11-394. Because Ngertuker was not withheld by PPLA in the Quitclaim Deed as a Homestead Tract, it was conveyed to NSPLA.

[¶ 30] During the hearing, the Land Court heard evidence and found that Ngiratrang's homestead was located on the Ngertuker lots. We do not re-weigh the Land Court's finding of facts. In addition, whether PPLA or NSPLA owned Ngertuker does not change the outcome of our decision, as Ngiratrang properly met the homestead requirements and acquired a vested interest in the land. Because we award the lots to Ngiratrang, NSPLA's claim on Ngertuker is denied.

CONCLUSION

[¶ 31] For the reasons set forth above, we **AFFIRM** in part the Land Court's decision to award the Uchol lots to PPLA, we **VACATE** and **REVERSE** the award of the Ngirchorachel lots to PPLA, awarding them instead to NSPLA, and we **VACATE** and **REVERSE** the award of the Ngertuker lots to PPLA, awarding them instead to Ngiratrang.

SO ORDERED, this 2nd day of December 2022.

OLDAIS NGIRAIKELAU
Chief Justice

JOHN K. RECHUCHER
Associate Justice

DANIEL R. FOLEY
Associate Justice