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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

**SOUTH PACIFIC CAPITAL INVESTMENT PALAU, INC.,
and DISCOVERY BLUE DIVING RESORT, INC.,**
Appellants,
v.
**MARINO GABRIEL, BENITA GABRIEL, RITA GABRIEL,
MELISA GABRIEL, VIVIAN SASAO, and OBIRIR YAEKO
MUKAI**
Appellees.

Cite as: 2023 Palau 9
Civil Appeal No. 22-007
Appeal from Civil Action No. 18-055

Decided: February 21, 2023

Counsel for Appellant Kassi Berg
Counsel for Appellee Masami Elbelau, Jr.

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
FRED M. ISAACS, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice,
presiding.

OPINION

PER CURIAM:

[¶ 1] Appellants Discovery Blue Diving Resort, Inc. (“Discovery Blue”) and South Pacific Capital Invest., Palau, Inc. (“South Pacific”) challenge the Trial Division’s finding that Appellees Marino and Benita Gabriel were senior strong members of their Clan. Appellants ask us to clarify what constitutes a senior Clan member in Palauan custom.

[¶ 2] Because we find that the trial record contains admissions that Marino and Benita were senior members of their Clan, we **AFFIRM**.

BACKGROUND

[¶ 3] This case concerns property in Peleliu State known as *Belual a Smau*, an island owned by Ngerbuuch Clan (“the Clan”). In 2015, Appellant Discovery Blue entered into a fifty-year lease with the Clan for *Belual a Smau*. Discovery Blue assigned its lease interest to Appellant South Pacific. The lease was originally executed through Amalei Ngirngesang (“Amelei”), who holds the highest male title of the Clan, *Smau*, and Sasako Meseral (“Sasako”), who holds the highest female title of the Clan, *Bilsmau*. Amalei and Sasako are respectively eighty-seven (87) and eighty-eight (88). Amalei stated during his testimony that he did not inform anyone of the signing of the lease, meaning that no one in the Clan was consulted before Amalei and Sasako signed the lease.

[¶ 4] Appellees Marino Gabriel, Benita Gabriel, Rita Gabriel, Melisa Gabriel, Vivian Sasao, and Obirir Yaeko Mukai (collectively “Appellees”) argued that they are strong, senior members of the Clan, and should have been asked to consent to the lease pursuant to customary law. Discovery Blue and South Pacific filed suit to quiet title in 2018 against Appellees to settle this dispute.

[¶ 5] During trial, the Trial Division heard testimonies as to whether Marino and Benita are senior strong members. The other Appellees did not testify at trial and the parties did not introduce evidence as to their status as senior strong members of the Clan.

[¶ 6] Marino and Benita Gabriel are the children of Dirrengas, who is Sasako’s sister. Dirrengas was an *ourrot* of the Clan and held the title of *Bilsmau* before Sasako. Marino Gabriel testified that he participated in the customary obligations of the lineage, and that the services he performed included preparing food, helping set up the events, and driving the boat transporting people. He also listed many individuals’ funerals where he performed the aforementioned services and donated money. Benita Gabriel is seventy years-old. Although her participation was limited due to her health, she also attended funerals and contributed money, as well as helped preparing and

serving food. The Trial Division found that both Marino and Benita's testimony were credible and that they indicated that they were senior strong members of the Clan. Three other witnesses, Jackson Ngiraingas, Leorry Ngiramowai, and Benedicta Mecholl, testified that Marino and Benita are considered strong senior members of the Clan. Most critically, during the hearing, both Amalei and Sasako admitted that Marino and Benita are senior strong members of the Clan.

[¶ 7] On January 31, 2022, the Trial Division found that Marino and Benita are senior strong members of Blai ra Ngerbuuch and that they should have been consulted before leasing *Belual a Smau*. South Pacific and Discovery Blue appeal this Judgment, arguing that the trial court should have made adequate factual findings that the Appellees had the requisite seniority to be deemed senior strong members of the Clan.

STANDARD OF REVIEW

[¶ 8] This Court has explained the appellate review standards 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*. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted).

[¶ 9] We review a trial court's conclusions regarding customary law *de novo*. *Imetuker v. Ked Clan*, 2019 Palau 30 ¶ 10. "The trial court is in the best position to hear the evidence and make credibility determinations, and status and membership in a clan are questions of fact." *Terekieu Clan v. Ngirmeriil*, 2019 Palau 37 (quoting *Imeong v. Yobech*, 17 ROP 210, 215 (2010)). Whether a given custom has met the traditional law requirements is a mixed question of law and fact, reviewed under a *de novo* standard. *Beouch v. Sasao*, 20 ROP 41, 49-50 (2013).

DISCUSSION

[¶ 10] Appellants assert that “senior” and “strong” constitute two distinct legal requirements that must be analyzed separately. Specifically, Appellants argue that this Court should adopt a bright-line rule under which only a member of the eldest generation of a Clan can be a senior strong member.

[¶ 11] The most basic and fundamental tenet of Palauan custom is that disputes are settled by consensus and, while senior strong members of a clan administer and are responsible for distributing a clan’s assets, including money, they must do it in a way that is fair to all clan members. *Terekieu Clan v. Ngirmeriil*, 2019 Palau 37 ¶ 11. “Customary law throughout Palau requires that assets of a clan or lineage obtained in the normal course be distributed fairly Often these qualities are assured by the use of consensus of strong, senior members.” *Sengebau v. Balang*, 1 ROP Intrm. 695, 699 (1989).

[¶ 12] “A party claiming to be a strong senior member of a clan has the burden of proving such status by a preponderance of the evidence.” *Dokdok v. Rechelluul*, 14 ROP 116, 118 (2007). “Where a party seeks to prove not that it is a strong member, but that instead another individual is a weak member, the burden of proof is placed on the party that would lose if no evidence were presented.” *Beouch v. Sasao*, 20 ROP 41, 51 (2013).

[¶ 13] To prove senior strong status, one must prove that “a combination of their ancestry and present-day involvement with the Clan’s affairs makes them senior strong members of the Clan.” *Obichang v. Etpison*, 2021 Palau 26 ¶ 17. Seniority and strength have often been intertwined in our case law, and this Court has not always drawn a fine distinction between these two requirements. For instance, we have stated:

Strong senior members are typically older people who have performed services for the clan, although there may be younger strong senior members as long as they have good knowledge of things in their clan. To determine relative strengths of strong senior members, a clan considers: participation in clan affairs, knowledge of internal clan matters, services to

the clan and the clan's village, the ability to make peace within the clan, knowledge of the history of the clan, financial contributions to the clan, and whether the member is *ochell* or *ulechell*. A clan member's ancestors—whether they had held titles, whether they were buried on the stone platform, whether they had managed clan lands—are also relevant to strength within the clan.

Isechal v. Umerang Clan, 18 ROP 136, 141 (2011); *see also Ngirmeriil*, 2019 Palau at ¶ 14 (stating that “senior strong members become so through service to the clan”). We have so far only once drawn a distinction between strength and seniority, when we noted that a person simply being an *ochell* member of a clan was not sufficient to show that she was a senior strong member, with an emphasis on senior. *Ibelau Clan v. Ngiraked*, 13 ROP 3, 4-5 (2005).

[¶ 14] Appellants thus raise an interesting question, which if we were to answer, could clarify our existing case law. Appellants suggest a “generational test”, where only the oldest generation of the Clan would meet the seniority requirement, and as such would be able to weigh in on decisions regarding a clan's asset. Appellants further underline that trial courts have a duty to provide clear written records of their findings, upon which we can perform meaningful appellate review, *Whipps v. Idesmang*, 2017 Palau 24 ¶ 37, and that the Trial Division should have explained how Marino and Benita met the seniority requirement. Unfortunately, we are unable to resolve this question on the facts of this case.

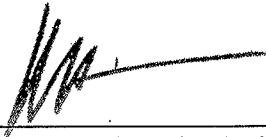
[¶ 15] Amalei and Sasako, the key witnesses to Appellants' argument, both stated during the trial that Marino and Benita are senior members. Trial Tr. at 110; 330. Amalei and Sasako may not be parties to the suit, but they are credible witnesses whose testimony is essential to Appellants' case. The Trial Division was entitled to find these concessions credible. *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015) (“Credibility determinations are generally the province of the trial court . . . A party seeking to set aside a credibility determination must establish extraordinary circumstances for doing so.”) Therefore, their admissions, coupled with the other evidence brought forward

by Marino and Benita, constituted sufficient evidence for the Trial Division to find that Marino and Benita were senior members of the Clan. Although we affirm the trial division's ruling that Marino and Benita are senior strong members of Ngerbuuch Clan, we emphasize that this ruling is based on the unique facts found in the trial record of this case.

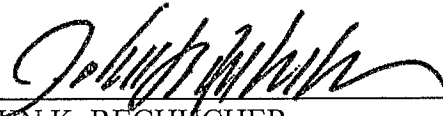
CONCLUSION

[¶ 16] For the reasons set forth above, we **AFFIRM** the Trial Division's judgment.

SO ORDERED, this 21st day of February, 2023.



OLDIAIS NGIRAIKELAU
Chief Justice



JOHN K. RECHUCHER
Associate Justice



FRED M. ISAACS
Associate Justice