


IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION

FILED  


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YUZI MESUBED, :  
 :  
Appellant, : CIVIL APPEAL NO. 12-045  
 : (LC/N 09-0402)  
 :  
v. : **OPINION**  
 :  
UREBAU CLAN and TOYOKO SINGEO, :  
 :  
Appellees. :  
 :  
-----X

Decided: May 21, 2013

Counsel for Appellant: Moses Uludong  
Counsel for Appellees: Toyoko Singeo, *pro se*

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and R. ASHBY PATE, Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

This is an appeal of a Land Court Determination awarding ownership of a parcel of land to Toyoko Singeo (“Singeo”). For the following reasons, the determination of the Land Court is **AFFIRMED**.

**PROCEDURAL HISTORY**

On July 20, 2009, Appellant Yuzi Mesubed (“Mesubed”) filed a claim for land known as *Boirang*. In his claim, Mesubed stated that the land claimed had been monumented and that it comprised Cadastral Lot numbers 05N001-137 and 05N001-140.

Competing claims for Lot 140 were filed by Masayuki Adelbai (“Adelbai”) and Singeo Techong (“Techong”) (as represented by his daughter, Toyoko Singeo).

The Lot 140 claims were addressed during a mediation at which Adelbai withdrew his claim to the disputed property and Singeo and Mesubed agreed that Lot 140 would be owned by Singeo, but that the road running through the lot would be deemed a public road. The parties also agreed that Lot Numbers 05N001-137 and 05N001-138 would be “transferred” to Mesubed. On October 28, 2009, Mesubed and Techong executed a Settlement Agreement and Stipulation for Entry of Judgment which recited that “[b]oth claimants agreed that lot # 05N001-140 [is] part of Singeo Techong’s property (lot # 05N001-141+136) but [is] remain public road . . .”

On October 9, 2012, the Land Court convened a consolidated hearing to determine ownership of Lot 140 and a neighboring lot identified as 05N001-139. Nathan Yuzi, Mesubed’s son, appeared as his father’s representative. Following the consolidated hearing, the Land Court issued an Adjudication and Determination of Ownership in which it noted that “claimants to [Lot 140] reached a settlement during the mediation process. Claimants all agreed that Lot 05N001-140 shall be part of Singeo Techong’s property.” Thus, the Land Court awarded ownership of Lot 140 to Singeo.

Mesubed appealed.

## STANDARD OF REVIEW

We review the Land Court's legal conclusions de novo and its factual findings for clear error. *Children of Dirrabang v. Children of Ngirailid*, 10 ROP 150, 151 (2003).

## DISCUSSION

Mesubed seeks reversal of the Land Court's Determination based on two grounds: (1) neither he nor his son knew that Lot 140 contained "his private concrete road and power pole;" and (2) his "right to due process was violated as he was not able to present his claim to [Lot] 140."

### I. Mesubed's "Mistake"

As a general matter, a party may not appeal a judgment to which he consented. 5 Am. Jur. 2d Appellate Review § 579.<sup>1</sup> However, this rule does not apply where:

- the consent was only as to the form of the proposed order.
- the judgment is alleged to have been entered in excess of the court's jurisdiction.
- it is alleged that the consent to the judgment was coerced or never given at all.
- a party requested the entry of a final judgment in order to challenge an interlocutory order which he or she wished to appeal without further delay.
- the question presented by the appeal is one of public interest.
- the judgment allegedly deviates from the terms of the parties' agreement.
- the judgment was allegedly obtained by fraud, collusion, or mistake.

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<sup>1</sup> "The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Republic in applicable cases . . . ." 1 PNC § 303. The Restatements do not cover the appealability of consent orders. Accordingly, we turn to the rules of law as applied in the United States. *Id.*

- the party appealing has unequivocally reserved the right to appeal the judgment.
- the judgment adversely affects the rights of a minor or other incompetent person.

*Id.*; see also *W. Caroline Trading Co. v. Kloulechad*, 15 ROP 127 (2008) (court may decline to accept stipulation where the stipulation is not conducive to justice).

When, as here, a party appeals on the grounds of mistake, the validity of the stipulation is determined by reference to contract law. See *Anita's New Mexico Style Mexican Food, Inc. v. Anita's Mexican Foods Corp.*, 201 F.3d 314, 319 (4th Cir. 2000) (“Because a stipulated judgment is analogous to a consent order or decree, it is also treated as a contract for the purposes of enforcement . . . .”); see also *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 236 (1975) (“[S]ince consent decrees and orders have many of the attributes of ordinary contracts, they should be construed basically as contracts . . . .”).

“Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake under the rule stated in § 154, and (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or (b) the other party had reason to know of the mistake or his fault caused the mistake.” Restatement (Second) Contracts § 153. A party bears the risk of mistake when “he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the

mistake relates but treats his limited knowledge as sufficient.” Restatement (Second) Contracts § 154.

In his affidavit submitted with his appeal, Mesubed admits that he was unaware of the contents of Lot 140 when he agreed to the Stipulation. Because Mesubed executed the Stipulation without actual knowledge of the scope of Lot 140, we conclude that he made the agreement while aware that he possessed only limited knowledge with respect to the fact to which the mistake relates. Having reached this conclusion, we further conclude that Mesubed bore the risk of mistake and thus may not void the Stipulation. See Restatement (Second) Contracts §§ 153–54.

## **II. Due Process**

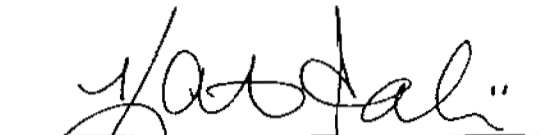
“The hallmark of procedural due process is the requirement that the government provide notice and an opportunity to be heard before depriving a person of life, liberty, or property.” *April v. Palau Pub. Utils. Corp.*, 17 ROP 18, 22 (2009). Here, Mesubed was provided with the panoply of rights afforded to a Land Court litigant. In this regard, he appeared at a compulsory mediation at which he entered into a stipulation of judgment. Following the entry of the stipulation, his representative was afforded the right to appear at an evidentiary hearing. Only after the hearing was a judgment entered.

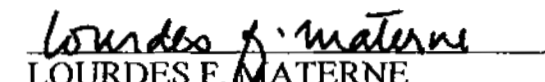
We are confident Mesubed received all process that was due and thus conclude that his due process claim is without merit.


**CONCLUSION**

For the foregoing reasons, the determination of the Land Court is **AFFIRMED**.

SO ORDERED, this 21<sup>st</sup> day of May, 2013.

  
KATHLEEN M. SALI  
Associate Justice

  
LOURDES F. MATERNE  
Associate Justice

  
R. ASHBY PATE  
Associate Justice