

IN RE DE FANG

2. This judgment shall not affect any rights of way there may be over the property.
3. No costs are assessed against either party.
4. Time for appeal from this judgment is extended to and including June 7, 1968.

In the Matter of the Estate of
NAPOLEON DE FANG, Deceased
Probate Case No.2
Trial Division of the High Court
Truk District
March 12, 1968

Motion to exclude certain matter from record of will treated as a motion in the nature of a proceeding to quiet title. The Trial Division of the High Court, Robert Clifton, Temporary Judge. held that where plaintiff in equity proceedings did not enter with "clean hands" due to improper activities, court would deny him any relief.

1. Equity-Clean Hands

A court of equity will grant no relief to a plaintiff who does not come into court with clean hands, that is, who has been fraudulent and deceitful in relation to the matter before the court.

2. Equity-Clean Hands

Under the maxim he who comes into equity must come with clean hands, a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair or dishonest, or fraudulent and deceitful as to the controversy in issue.

3. Equity-Clean Hands

A party in equity may invoke the maxim of "clean hands" without pleading it.

4. Equity-Clean Hands

In order that a suit in equity may be dismissed under the "clean hands" maxim, the defendant need not invoke the maxim, the court will act sua sponte or of its own motion.

5. Equity-Generally

A court of equity will not tolerate unfairness, inequitable conduct, or corruption in a complainant however strong and clear his equitable right against the other party may be.

6. Equity-Generally

While equity does not purport to enforce moral as distinguished from legal obligations, it can and should refuse aid to a litigant who has been guilty of such reprehensible conduct in reference to the subject matter of the litigation that good conscience must revolt against granting him relief.

CLIFTON, Temporary Judge

Robert Narruhn filed a motion in the above probate matter to "strike and exclude from the record of the will the certain piece of land located on the small island called Puenes, Truk District". A conference was held by Associate Justice Paul F. Kinnare on July 20, 1964, in the nature of a pre-trial conference and on that date an order, similar to the usual pre-trial order, was entered in which Robert Narruhn's claims were stated as follows:-

"At the conference it appeared that Robert Narruhn claimed he acquired all of the land Mesol' by purchase from Taro Setin. He claims that he first acquired half of Mesor by virtue of an agreement made with Taro on June 29, 1947, by which agreement Robert agreed to buy, and Taro agreed to sell one-half of the land Mesor for two hundred fifty dollars (\$250.00). Robert claims that he paid one hundred fifty dollars (\$150.00) to Taro on June 29, 1947 and made subsequent payments in installments, the final one of which was paid to Taro on December 27, 1956, at which time he paid Taro a total of two hundred seventy-five dollars (\$275.00)-\$25.00 more than the agreed purchase price.

"Robert claims he acquired the other half of Mesor from Taro on June 29, 1957, for two hundred fifty dollars (\$250.00), and Robert states he has receipts in his possession to show all payments agreed to by him were paid by him to Taro, and that these payments were the purchase price of the land Mesol'.

"Robert filed this motion because members of the lineage of deceased have been making some use of the land Mesor and arguing with him about his use of part of it since 1959."

The court, in said order, stated "The court considers the motion in the nature of a proceeding to quiet title" and said order also provided "It is ordered that Taro Setin be

and he is hereby made a party hereto as a respondent in the matter of Robert's motion".

The trial as to this land dispute thereupon was had, commencing on December 18, 1967, as if it were the usual quiet title action, with Robert Narruhn as the plaintiff and the Special Administratrix of the Estate of Napoleon de Fang as one of the defendants, and Taro Setin having died, Sintau, acting as Special Administrator in the matter of the estate of Taro Setin, was also a defendant.

At the expense of brevity the court will mention in detail some of the testimony which evolved in this case. Robert Narruhn testified, as per his claim set forth in the memorandum of conference mentioned, that he first acquired half of Mesor by, virtue of an agreement made with Taro Setin on June 29, 1947, by which agreement Narruhn agreed to pay, and Taro agreed to sell, one-half of Mesor for \$250.00. That he paid the first \$150.00 about June 29, 1947, and that present when he gave the \$150.00 to Taro were his wife Teuoiko and Wikkan his mother, and that this occurred in his home in Tunuk Village, Moen Island. Robert Narruhn also testified that he made subsequent payments in installments, the final one of which was paid to Taro on December 23, 1956, at which time he had paid Taro a total of \$275.00-\$25.00 more than the agreed purchase price.

To substantiate his claim of this purchase made in 1947, he introduced in evidence Plaintiff's Exhibit #1 which, translated from Trukese, reads as follows : -

"June 29, 1947. I Taro allow Robert the sum of \$150.00 because I allowed him one-half of, Mesor with a total sum of \$250.00 and \$150.00 I received from him. \$100.00 is not paid.

Taro"

To substantiate his claim that he had paid the balance' of the \$250.00, plaintiff presented receipts which were re-

ceived in evidence as Plaintiff's Exhibits Nos. 2, 3, and 4. These will be given verbatim in a later part of this opinion.

Robert Narruhn then testified that on June 29, 1957, he bought the other half of Mesal' from Taro for \$250.00, \$150.00 of which was paid on June 29, 1957, and \$100 of which was paid on August 22, 1957, and he presented an agreement, Plaintiff's Exhibit No.5. Translated, it reads as follows:-

"1957-June 29-

"Agreement between Robert and I fol' the amount of money I received from Robert Narruhn. No. 1. This money I took from him -it is the payment of one-half of my land which I gave to Robert Narruhn which is located in small island of Puenes in Mesor_ June 29, 1957. I Taro allowed Robert my property for the sum of \$250.00 and this money I gave to him this day June 29, 1957-\$150.00-August 22, 1957-\$100.00. This money is the appropriate payment of this land. I sold it to Robert half of this land. This agreement will not be interfered by anybody.

Taro Setin

Witnesses: Ngapriel N.
Lutuik, F.

Taro Setin"

Robert Narruhn's testimony from the beginning thus showed an unusual coincidence. He bought the first half for \$250.00 with \$150.00 paid immediately and \$100.00 to be paid later, on June 29, 1947, and then ten years later *to the very day*, on June 29, 1957, he bought the other half on exactly the same terms, \$250.00 total price, with \$100.00 to be paid later. Counsel for the defendant Estate of Napoleon de Fang, immediately pointed this out with the implication that the agreements or receipts, Exhibits Nos. 1 and 5 covered the same transaction. He thereupon pointed out something that was apparent from a close examination of Exhibit No.1, that the numeral "4" in the date, "June 29, 1947" had been superimposed over what appeared to be a partially erased number "5". Plaintiff,

on the witness stand admitted that it looked like this change had been made. The cross examination immediately implied that there was only one transaction on June 29, 1957, but that two receipts had been made covering the transaction, and that one had been altered as above noted to make it appear that there were two transactions and that two halves of Mesor had been purchased by Robert Narruhn, instead of the one-half in 1957.

Counsel then called attention to the receipts, Exhibits Nos. 2, 3, and 4, which plaintiff claimed had been received by him after the 1947 purchase. As has been previously noted, these were introduced by Robert Narruhn to show that he had paid the full purchase price and also to substantiate that they were paid on the 1947 purchase. Plaintiff's Exhibit No.2 reads as follows:-

"Feb. 15, 1949. I Taro again received \$25.00 from Robert."

An examination of this exhibit shows that this receipt apparently had been altered in a similar fashion as Plaintiff's Exhibit No.1, that is, the number "4" in the date "February 15, 1949" had been superimposed over the number "5". In other words, the receipt was actually dated 1959 but had been altered by an attempted erasure which still showed the incriminating "5".

The next receipt, Plaintiff's Exhibit No.3 is also a very interesting paper. It reads as follows:-

"Dec. 1-1956. I Taro received \$60.00 from Robert to buy the things that I needed."

The interesting part of this Exhibit is that it purports to show a payment on the \$100.00 balance of the 1947 agreement *nine and one-half years* after Robert Narruhn had agreed to pay the \$100 balance. To add to the obvious suspicion that this had nothing to do with the alleged 1947 purchase, recourse may be had to the wording of the receipt, Exhibit No.3, which states that the \$60.00 was "to buy the things that I needed" instead of stating that it

was to pay part of the balance due on the 1947 land purchase.

Let us now examine Plaintiff's Exhibit No. 4 which covers two payments. It is also nine and one-half years after the alleged 1947 purchase. The receipt reads as follows:-

"12/13, 56 I Taro

I also get from Roberto \$20.00 continuation of the \$60.00. I

Taro Setin

"12/23 I Taro I also get from Roberto \$20.00

It is amount \$100 money I get from them."

It would be hard to imagine how this receipt, or receipts, so worded could by any stretch of the imagination be construed to cover, as plaintiff contended, payments on the 1947 land purchase balance, especially when the total of Exhibits Nos. 2, 3, and 4, amounted to \$125.00, that is, \$25.00 more than was alleged to be the balance on the 1947 land purchase.

Not daunted by the construction put on the testimony of the plaintiff himself, which could be said to clearly indicate an attempt by the plaintiff, by the use of altered documents and irrelevant receipts, to show that there was a purchase in 1947, plaintiff presented a number of witnesses to bolster his story. The first witness, Tainopan, testified that he was present at the time the agreement was made on June 29, 1947, and that there were present Taro's sister and brother-in-law, Kumus, and Wikkan, and Robert's wife Teuoiko. However, this does not agree with the testimony of the plaintiff, who, when asked whether anyone was present when he paid the \$150.00 and Taro made the receipt, stated that his wife, Teuoiko, and Wikkan were present, but the plaintiff did *not* testify that the witness Tainopan was present, as Tainopan claimed.

This witness was called to corroborate almost all of the other parts of the plaintiff's story. He testified that he was with Taro twice when he got money from Robert, the second time being on the ship Baker at the dock in 1956. When he was asked about what the money payment was about, he stated that it was a partial payment for the land: "I heard when he talked to Robert that it was a partial payment of the land.", notwithstanding the fact that the Exhibits 2, 3, and 4 above noted say nothing about the fact that these payments were for the land. He then testified that Taro Setin had told him, the witness, that after selling the property to the plaintiff, he, Taro Setin, had sold the same property to Napoleon de Fang because Robert had paid him less than de Fang. In other words, the witness testified that Taro Setin had admitted to him that he had sold the same property twice. It might be added that this witness to whom Taro Setin, now deceased, was alleged to have made this incriminating admission, also testified that Taro Setin had been a policeman.

It is unnecessary to comment on all of the plaintiff's other witnesses who testified about alleged payments made by Robert Narruhn to Taro Setin on the alleged 1947 agreement. One of them testified about a \$175.00 payment to Taro in 1949 by plaintiff and he testified that he saw a receipt for \$175.00 made by Taro but that only \$25.00 was paid to Taro. Further, that he wondered why the receipt was for \$175.00 when he only saw \$25.00, which Taro then gave to the witness. Obviously this witness was mixed up in his story because there was no other testimony about a \$175.00 payment. This witness also testified to an alleged admission by Taro that he had twice sold the property and the witness was steadfast in this as well as his story that the true amount of the receipt was \$175.00, until when shown the Plaintiff's Exhibit No.

2, he identified this as the receipt for the \$175.00 and when asked about where the \$175.00 was shown on the receipt, he said: "I guess I made a mistake."

As to plaintiff's other witnesses it may be stated that one witness, who was a magistrate at the time, testified as to some transaction between Robert Narruhn and Taro, but he testified that a writing as to this was something to the effect that "Today Robert Nal'ruhn bought a piece of Taro's land with more than \$100". However, he testified that this took place in 1956 and not in 1947, as claimed by the plaintiff. As to the writing, the witness stated that this had been lost by him. He also testified that in 1957 Robert Narruhn's brother Willy had asked him to stop Taro and de Fang from going to Puenes and that Robert Narruhn had asked him to settle the matter with de Fang, but that he had not contacted de Fang. He stated that Robert Narruhn had asked him a number of times about a paper covering the alleged 1947 transaction but that he had always asked Narruhn "which paper?" because he had no recollection of the matter which Narruhn was asking about. As noted, his testimony did not substantiate Robert Narruhn's story of a 1947 transaction.

It may be noted that at the pre-trial conference Taro Setin and his representative denied that an agreement was made with Robert Narruhn in 1947. However, this statement was *not* received or considered by the court as evidence, but as a denial in a pleading.

The plaintiff's next witness was one Kapriel Netleck, who testified that he was working on the ship "Baker" when Robert Narruhn was chief mate. He testified that he had seen Taro Setin come to see Narruhn on the "Baker" twice, in June 1957 and in August 1957. The first time he saw the money paid by Narruhn for the land, and he didn't notice the amount but heard that it was \$150.00. The second time he saw the money and heard Narruhn say to Taro, "this \$100.00".

Up to this point in the testimony, although it seemed apparent that Exhibits No.1 and No.5 covered the same transaction, that is, that two receipts were given for the same transaction, it was not shown as to how this happened. However, from the testimony of this witness it can be seen how it was done. He testified that at the August meeting, when the \$100 was paid, Narruhn said: "I will make the receipt including the \$150.00 you already took in the presence of these men" and made a receipt on a typewriter. The witness identified the receipt as Plaintiff's Exhibit No.5. On cross-examination he said, in relation to the receipts, that Robert Narruhn had made a receipt at the time for the first payment in June. He said that he saw the receipt and knew that it was destroyed. When asked how he knew that it was destroyed, he said that at the time of the making of the second receipt, after the second receipt was made, he saw Narruhn take the first receipt from the table and "destroy" it. When asked how it was "destroyed" he demonstrated by indicating that the paper was squeezed in a fist and tossed into a garbage can, but no tearing motions were made. He demonstrated twice how the paper was destroyed, and it was apparent that the paper was merely crumpled together in Narruhn's fist before he tossed it into the garbage can. The witness was then asked about Plaintiff's Exhibit No. 1 and the following is a verbatim transcript of the question and answer:

Question: "Isn't this the first receipt (I am referring to Exhibit No.1) ? Isn't this the one you thought was destroyed? Can you read?"

Answer: "Yes. I do not know whether this is it or not. *I think this is it.*"

Later, on re-direct examination, counsel for the plaintiff asked the witness again about Plaintiff's Exhibit No.1, as follows:-

Question: "Is this the paper that Robert threw into the garbage can as you stated 'Probably this is it'?"

Answer: "I don't think this is it."

There is not the slightest doubt by the Court that Robert Narruhn altered the dates on Exhibits Nos. 1 and 2 to make it appear that Taro Setin had sold Narruhn one-half of Mesol' in 1947, when no such sale had taken place and that, contrary to his testimony, the receipts, Plaintiff's Exhibits Nos. 2, 3, and 4, had no connection at all with the alleged sale in 1947. His attempt by this action to quiet title to all of Mesol' must fail and he cannot be given a judgment quieting title to *any* of Mesol'. His use of altered documents and false testimony in this action prevent the court from giving a judgment in his favor.

[1-4] It is a very well established rule that a court of equity will grant no relief to a plaintiff who does not come into court with clean hands, that is, who has been fraudulent and deceitful in relation to the matter before the Court. The Court of its own motion should refuse such a litigant any relief. This rule is clearly set forth in the following quotation from 27 Am. JUR. 2d, p. 666, 667:-

"The frequently stated maxim that 'he who comes into equity must come with clean hands' is an ancient and favorite precept of the equity court. The principle announced thereby is recognized as being a fundamental of equity jurisprudence, and the same principle is expressed in the language that he who has done inequity shall not have equity. The maxim and principle for which it stands signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair or dishonest, or fraudulent and deceitful as to the controversy in issue. It is held that equity denies affirmative relief because of such conduct even though it thereby leaves undisturbed, and in ostensibly legal effect, acts or proceedings which it must otherwise set aside

"According to good authority, a party may invoke the maxim without pleading it. Moreover, in order that the suit may be dismissed,

the defendant need not have invoked the clean hands maxim; the court will act sua sponte or of its own motion."

[5,6] And it is clearly the rule that even though he might have a clear claim against the other party for some relief, the court will not give him any relief even though the refusal of the court to act on his behalf might have the effect of enriching the person he attempted to defraud. This rule is explained in Note 18 on p. 671 of 27 Am. Jur. 2d as follows : –

"A court of equity will not tolerate unfairness, inequitable conduct, or corruption in a complainant however strong and clear his equitable right against the other party may be."

It is further explained in note 8 on p.670, as follows:-

"While equity does not purport to enforce moral as distinguished from legal obligations, it can and should, as a matter of public policy involving the standing and integrity of the court, refuse aid to a litigant who has been guilty of such reprehensible conduct in reference to the subject matter of the litigation that good conscience must revolt against granting him relief."

Not only has the plaintiff forced the other parties to engage in a lengthy law-suit to defend themselves against his false claims, but he has taken a great deal of time of a number of officers of this Court in the trial of this case, time which could have been used in trying cases in which other litigants had a right to have their cases heard and decided. In this case it may well be said that "good conscience would revolt against granting him relief", that is, awarding the plaintiff any part of Mesor after he has attempted to use the Court to give him all of Mesor when, at most, he would have been entitled to only one-half of it. It is simple justice for the plaintiff to get nothing.

From the testimony it is clear that Napoleon de Fang purchased one-half of Mesor from Taro Setin and that Taro Setin owned and had a right to sell this half. As to the other half, plaintiff cannot be given judgment for it

and the effect of this is to leave this half in the estate of Taro Setin. Judgment will be entered accordingly.

FINDINGS OF FACT

1. That it is true that prior to 1957 Taro Setin owned all of the land Mesol".

2. That it is not true that the plaintiff, Robert Narruhn, purchased one-half of the land Mesol' from Taro Setin on or about the year 1947.

3. That it is true that Napoleon de Fang purchased the north one-half or thereabouts of the land Mesol' from Taro Setin, together with certain *taro* patches not involved in this action, and paid to said Taro Setin the whole of the purchase price, some \$1,600.00.

JUDGMENT

It is, therefore

Ordered, adjudged, and decreed as follows : -

1. That the Estate of Napoleon de Fang is the owner of and entitled to the land described as follows:-

"The north one-half of the land Mesor, located on Puenes Island, Uman Municipality, Truk District, and more particularly described as follows:-

Starting at a point on the west shore line of Mesol" and the south boundary line of the lands of Uresema, and proceeding southward along said west shore line of Mesol' to a large coconut tree approximately one-half the distance along the shore line along the north boundary lines of the lands which belonged to Rapich, Kepue and Nemirock, and thence in a straight line from said coconut tree through a large lemon tree to a *taro* patch on the easterly boundary of Mesal', thence northerly to the south boundary of the lands of Uresema, and thence in a westerly direction along the south boundary line of the lands of Uresema to the point of beginning, such one-half or more of Mesal' being delineated as the north one-half or more of the land marked No.2 on the diagram or sketch on file in this action and entitled 'Robert Narruhn's sketch submitted July 17, 1964'."

and that the plaintiff Robert Narruhn and the Estate of Taro Setin, deceased, and the defendant Sintau, acting as Special Administrator in the matter of the Estate of Taro Setin, have no right, title or interest in or to said above-described lands, and they are each of them forever enjoined from interfering with the rights of the Estate of Napoleon de Fang, deceased, and Ester, the Special Administratrix in the Matter of the Estate of Napoleon de Fang, deceased, in and to said lands.

2. That the lands described as follows:-

"The south one-half of the land Mesor, being the lands south of the lands described in the preceding paragraph 1, up to the north boundary lines of the lands which belonged to Rapich, Kepue or Nenirock, and which one-half of the land Mesor is delineated on the sketch mentioned in said paragraph 1 as being the southerly one-half of the parcel marked No.2 on said sketch, with the north boundary of this half being a line drawn between the large coconut tree on the west shore line of Mesor and the large lemon tree, all as described in said paragraph 1,"

are the property of and belong to the Estate of Taro Setin, deceased, and that said plaintiff Robert Narruhn and Ester, the Special Administratrix of said Estate of Napoleon de Fang, deceased, have no right, title or interest in the lands just described, and that they and each of them are forever enjoined from interfering with the rights of the Estate of Taro Setin, deceased, and Sintau, acting as Special Administrator in the matter of the Estate of Taro Setin, deceased, in and to said lands.

3. That the plaintiff Robert Narruhn shall take nothing by this action, and that the said Ester and Sintau, acting in their respective capacities in relation to the estates of Napoleon de Fang and Taro Setin, have judgment against said Robert Narruhn for their costs incurred in the land dispute in the above-entitled action.

4. This judgment shall not affect any rights-of-way which may exist across said lands.