

If we were to order revocation of the conveyance of Wounsapw Mwahu, we would be compelled to set aside the entire agreement, and reinstate Civil Action No. 261, thus making a futile exercise of the efforts of all concerned over the past four and a half years. This we decline to do. The Judgment Order of the trial court does no more than define and require compliance with an agreement freely made by the parties and sanctioned by order of this court. Litigation must, somewhere and sometime, come to an end. We affirm.

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FELIPE C. MENDIOLA, Appellant

v.

SILVESTRE T. CRUZ, Appellee

Civil Appeal No. 32

Appellate Division of the High Court

April 19, 1969

Appeal from action for ejectment. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that the relationship of landlord and tenant was never established and that as appellant was acknowledged to have legal title he could assert it against "tenant" in possession.

Ejectment in favor of appellant ordered.

1. Landlord and Tenant-Generally

The landlord-tenant relationship is created by a contract called a lease.

2. Landlord and Tenant-Leases-Generally

The lease is a conveyance of the landlord's interest to his tenant and whether a contract has been created is tested by the normal rules of contract law.

3. Landlord and Tenant-Generally

Where there was no lease there was, as a matter of law, no landlord-tenant relationship.

4. Landlord and Tenant-Estoppel

To give rise to the estoppel of a tenant to deny his landlord's title, it must first be shown that the relation of landlord and tenant in fact existed between the parties as regards the land in question.

5. Landlord and Tenant-Estoppel

Estoppel is not only applicable only when the landlord-tenant relationship exists but also only as long as the tenant is in possession.

6. Landlord and Tenant-Generally

A landlord cannot create any greater interest in the tenant than he himself has.

7. Landlord and Tenant-Generally

A lessee has no greater right of possession than his lessor.

8. Public Lands-Use Rights-Generally

Patents which are signed by the proper officers and in due form to convey the title of the state to the patentees are not subject of collateral or individual attack, but can be set aside only in judicial proceedings instituted on behalf of the state.

9. Ejectment-Generally

In an action for ejectment, which at common law is a possessory action for land, a plaintiff may only recover on the strength of his title and not on the weakness of his adversary's.

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WILLIAM B. NABORS, ESQ.

Before SHOECRAFT, *Chief Justice*, TURNER and  
BURNETT, *Associate Justices*

TURNER, *Associate Justice*

This is an appeal from the judgment of the Trial Division denying to the plaintiff-appellant the right to eject the defendant appellee from a town lot in San Jose Village, Tinian Island, Mariana Islands District.

Appellant holds a homestead deed to the land in question. His homestead permit was dated July 27, 1958, and he had been in possession of the property since 1956. The deed was dated October 25, 1963.

Prior to appellant's entry, the land was occupied by Juan B. Aguon who built a house on it in 1951-1952. Aguon left Tinian to live in Saipan in 1956 and, according to

appellant, the following arrangement was made in Saipan:-

"Q: "" would you relate to the court the conditions or stipulations under which you were permitted to occupy this land?

A: When I asked Juan Aguon to stay in that house, I asked him to rent but he said, 'You don't have to rent from me, but you just stay there and maintain the place.'"

The court asked:-

"Q: Did you have any conversation with him (Aguon), after that first one, about the land?

A: Yes because at that time he told me that I can have the land because he cannot get it."

Appellee's witness, Aguon, was asked and answered:-

"Q: Who, if anyone, occupied this house after you moved out in 1956?

A: Mr. Mendiola came and asked to rent but I said, 'No, you don't have to rent it.' "

Although Aguon obtained permission from the government administrator on Tinian in 1951 to move onto the lot in question and build a home thereon, he did not take any action to obtain title to the property. Except for appellant's testimony, the record is silent as to why appellee's predecessor did not obtain title to the land.

The record is clear neither appellee nor his predecessor had title to the land, nor any interest in it except permission to make the original entry. Appellant did obtain legal title.

Upon this state of facts the trial court concluded, as a matter of law, that appellant is:-

"... estopped to set up any right or title in himself against the defendant (Cruz) or Juan B. Aguon (appellee's predecessor) or anyone holding the lands in question under them." (Parenthetical material added.)

The reason given for this conclusion, which created an anomaly between legal title and right to possession, was

that "a tenant is estopped to deny the title of his landlord." The trial court's conclusion of law that the relationship of landlord-tenant existed between appellant and appellee's predecessor was a prerequisite to application of the rule of estoppel.

This court does not find sufficient or any evidence that the relationship of landlord-tenant was created as a matter of law. The testimony from which the conclusion must necessarily be drawn has been set forth above. The law applicable to the creation of a landlord-tenant relationship does not support the trial court's conclusion upon the foregoing facts.

[1,2] The relationship is created by a contract-called a lease. It is a contract of conveyance of the landlord's interest to his tenant. Whether a contract has been created is tested by the normal rules of contract law.

Of primary significance in this case is that the "landlord" had no estate to convey, not even the right of possession because Aguon, having permanently moved to Saipan, had given up possession. The only interest he had in the land was the right to remain in possession and apply for a homestead permit. But this right he surrendered.

[3,4] The trial court held the appellant was "a tenant of Aguon, a tenant at will." As a matter of fact there was no lease and, therefore, as a matter of law there was no landlord-tenant relationship. Estoppel is not applicable without the relationship.

"To give rise to the estoppel of a tenant to deny his landlord's title, it must first be shown that the relation of landlord and tenant in fact existed between the parties as regards the land in question." 32 Am. Jur., Landlord and Tenant, § 102.

Also see *Hughes v. The Trustees*, 8 L.Ed 430, 435, 6 Pet. (U.S.) 369, wherein the Supreme Court refused to apply estoppel in a situation involving a contract for a conveyance in fee which failed.

[5] There is an even more compelling reason for not applying the doctrine of estoppel in this case. Estoppel is not only applicable only when the landlord-tenant relationship exists but also only as long as the tenant is in possession.

"The doctrine that a tenant is estopped to deny his landlord's title is founded on public policy, in that it tends to encourage honesty and good faith between landlord and tenant. The duration of the estoppel, however, is limited to the period during which the tenant holds possession during the term of the lease or after its expiration; and if the lease has expired and the tenant no longer retains possession, there is no longer any room for the application of the doctrine." (Citing cases) *Stowers v. Huntington Dev. and Gas Co.*, 72 Fed. 969, 98 A.L.R. 536, 544.

"It is frequently stated that a tenant is estopped to deny his landlord's title while he remains in possession and until he surrenders the possession to the landlord. . . . In other words, the duration of the estoppel of a tenant to deny his landlord's title is limited to the period during which the tenant holds possession . . . ." 32 Am. Jur., Landlord and Tenant, § 126.

Even assuming the relationship existed while appellant was in possession of the land, that situation had long since ceased to exist. According to appellant, he left the land in 1960 or 1961 and according to appellee it was in 1958. It was not until 1963 that appellant received the "Grant of Public Domain Land" from the Trust Territory government after he had been out of possession for three to five years. It was this legal title which appellant asserted in the ejectment action against the defendant who claims to be Aguon's successor in interest.

[6,7] Appellee failed to show what legal interest he succeeded to. The right to possession of the land? But Aguon abandoned that when he went to Saipan to live, never to return. The right to apply for legal title? But that right was cut off by the issuance of title by the government to appellant. Whatever interest or rights in the land in ques-

tion Aguon may have had, they have long since been lost. When Aguon told the appellee, his brother-in-law, he could live on the land it was meaningless. A landlord cannot create any greater interest in the tenant than he himself has. A lessee has no greater right of possession than his lessor. *Deseret Salt Co. v. Tarpey*, 142 U.S. 241, 12 S.Ct. 158, 160.

**[8]** Appellee's defense to the ejectment action was confined entirely to an effort to show that appellant's title was improperly granted. The trial court correctly pointed out a collateral attack may not be employed against a land patent which is valid on its face. The rule is expressed in 42 Am. Jur., Public Lands, § 35:-

"Patents which are signed by the proper officers and in due form to convey the title of the state to the patentees are not subject of collateral or individual attack, but can be set aside only in judicial proceedings instituted on behalf of the state."

**[9]** Finally, it must be remembered that this was an action in ejectment which, at common law, is a possessory action for land. A plaintiff may only recover on the strength of his title and not on the weakness of his adversary's.

In this case appellant had legal title which carried with it, in the absence of a showing of separation, the right of immediate possession. That is all that was in issue before the trial court. From the evidence the trial court correctly ascertained legal title to be in the plaintiff-appellant. Such finding should draw to it the judgment of the court. The trial court failed to couple legal title and right of possession.

This court finds it necessary, as a matter of law, to reverse the judgment below. In doing so it removes the ambiguity created with respect to the land wherein the appellant was acknowledged to have a valid legal title but which he or his successors could not assert against the appellee and his successors in perpetuity.

JUDGMENT

The judgment appealed from is reversed, the case is remanded to the Trial Division for entry of an order in ejectment in favor of the appellant and against the appellee, and for such other proceedings and orders as are consistent with this opinion.

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GLORIA M. DALE and ARTHUR R. DALE, Appellants

v.

MICRONESIAN LINE, INC., Appellee

Civil Appeal No. 45

Appellate Division of the High Court

Mariana Islands District

April 28, 1969

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SHOECRAFT, *Chief Justice*

It appearing to the court that payment for a transcript in the above entitled action has not been made, pursuant to the notice given to counsel for the appellant that this matter would be dismissed if said payment was not made within fifteen (15) days from April 3, 1969, the date of the notice, this matter is hereby dismissed in accordance with the authority granted the court in Rule 32(a) of the Rules of Criminal Procedure, which rule is also applicable to civil actions. Costs are taxed to the appellant.