

CARMEN CHAEO ILISARI, Plaintiff
v.
GUILLERMO M. TAROLIMAN, Defendant
Civil Action No. 1061
Trial Division of the High Court
Mariana Islands District
July 22, 1974

Action to quiet title. The Trial Division of the High Court, Turner, Associate Justice, held that homestead land may be conveyed after the homestead permit has matured, even if a contract to sell has been made prior to maturation of the permit.

1. Homesteads—Restriction Against Alienation

Where, after defendant obtained homestead permit but before the permit matured, he agreed to sell the land to plaintiff, and after defendant received his deed and certificate of compliance with the homestead laws he delivered the deed to plaintiff with the statement that plaintiff keep the deed as proof that the "land is yours", and plaintiff had paid the contract price prior to delivery of the deed, there was a valid oral sale executed at the time of the delivery of the deed to plaintiff and Land Commission was obliged to issue plaintiff a certificate of title.

2. Real Property—Transfers Generally—Statute of Frauds

Trust Territory law does not require a transfer of land to be in writing, and there is no statute of frauds.

3. Real Property—Deeds—Government Deeds

A government deed is conclusive upon the courts and the government when collaterally attacked.

4. Equity—Benefits From One's Own Wrong

A party may not take advantage of his own wrong.

<i>Assessor:</i>	IGNACIO V. BENAVENTE, <i>District Court Presiding Judge</i>
<i>Interpreter:</i>	HEDWIG HOFSCHEIDER
<i>Reporter:</i>	MARIANA SANTOS
<i>Counsel for Plaintiff:</i>	JOSE A. TENORIO
<i>Counsel for Defendant:</i>	Micronesia Legal Services, by GIDEON DOONE and SAMUEL WITHERS III

TURNER, *Associate Justice*

This was an action to quiet title to a house lot in Oleai Village, Saipan, described as Lot No. 1, Block 14, containing 540 square meters as shown on APWO Drawing No. 11581. Plaintiff sought judgment confirming an oral sale. Defendant denied any effective agreement to sell the land, but that the agreement concerned the sale of the house on the land. The house that defendant claimed he sold to plaintiff was destroyed by typhoon Jean in 1968 and a replacement was built by the government. Defendant's defense to plaintiff's claim that there was a sale of the land was that an agreement to sell the land was unenforceable as against public policy because the agreement involved "unmatured" homestead land.

Plaintiff filed her claim in 1970 for the land with the Land Registration Team in accordance with 67 TTC 107. The registration team, without adjudicating plaintiff's claim or referring the claim to the Land Commission for possible reference to this court, all as provided in 57 TTC 108, told plaintiff to obtain a deed from defendant for the land. When the defendant refused to give a deed this action was brought on October 6, 1972.

FINDINGS OF FACTS

- 1) Defendant obtained a homestead permit for the land in question from the Saipan Naval government on June 2, 1958. (Plaintiff's Exhibit 2.)
- 2) Plaintiff, with defendant's consent, moved into the house the same year.
- 3) At plaintiff's request, defendant agreed in 1958 to sell the property to plaintiff.
- 4) Plaintiff began making irregular payments in money, goods, and discharge of defendant's debts until 1962 when final payment was made. The agreed sale price was \$250.

The evidence is not clear how much was actually paid to defendant, except that defendant sent his nephew and his nephew's wife to repay plaintiff \$300.00 in 1972. Plaintiff refused to accept the money. This was after plaintiff had filed claim to the land with the Land Registration team and had asked defendant for a quitclaim deed in accordance with the instructions of the registration team at a 1971 hearing on plaintiff's claim.

5) Defendant received his certificate of compliance with the homestead laws and regulations, October 20, 1961. (Defendant's Exhibit A.)

6) Deed from the government to the defendant was executed, January 15, 1962, and was recorded with the Clerk of Courts, April 9, 1962. (Plaintiff's Exhibit 1.)

7) Defendant delivered the deed to plaintiff as evidence of her ownership of land. Defendant had previously given plaintiff the 1958 homestead permit.

8) Defendant, since 1962 when he delivered his homestead deed to plaintiff, has not asked the plaintiff to vacate the premises, nor has he claimed the property until this suit was brought.

OPINION

It is clear there are serious questions of law which can only be answered from the determination of the facts. Although the evidence is vague and unsatisfactory in many respects, it is sufficient, nevertheless, for the court to be persuaded as to the propriety of the foregoing findings.

[1] Plaintiff claims an oral agreement to sell the property in question was executed in 1962 after delivery of the government deed to the defendant. The delivery of that deed to the plaintiff by the defendant, together with defendant's statement to plaintiff to keep the deed as proof the "land is yours" is persuasive evidence of the sale of the land by defendant to plaintiff after title had passed from the govern-

ment. Plaintiff testified she received the government deed after she made her last payment to defendant. This is convincing evidence of an oral transfer of land.

[2] "The law in the Trust Territory does not require a transfer of land to be in writing and there is no statute of frauds." *Lekeok v. Ilengelang* and *Tellames*, Palau Civil Action No. 516, entered June 21, 1974. *Rememang v. Belau*, 3 T.T.R. 552, *Trust Territory v. Konou, et al.*, Marshall Islands Civil Action No. 21-73, entered June 17, 1974, *Kaminanga v. Sylvester*, 5 T.T.R. 312.

Defendant advances three arguments why the plaintiff should not prevail. The first of these is twice told in defendant's memorandum of points and authorities as follows: 1) an agreement to sell land held under an un-matured homestead permit is illegal and unenforceable, and presumably by way of emphasis, the defendant added that the agreement in the present case to convey homestead land prior to maturation is unenforceable because such an agreement contravenes public policy.

The rule urged by defendant is largely derived from suits in United States courts involving Federal homestead statutes substantially different from the Trust Territory statute and regulations. Defendant also cites *Romolor v. Igisalar*, 4 T.T.R. 105, a hurried and incomplete decision written by the trial judge after he had retired from the bench. The case holds an agreement to sell made while land was "covered" by a homestead permit "is clearly illegal" and it therefor was "an unenforceable contract." Cited in support of the decision is *Bailey v. Sanders*, 228 U.S. 603, 33 S.Ct. 602. The holding in *Bailey* illustrates the distinction between United States decisions and *Romolor* decided under an entirely different statute. The court said in *Bailey*:

"Thus, the homestead law not only proceeds upon the theory that the land is to be acquired for the exclusive benefit of the entryman,

but contains provisions which make it impossible for him to perfect his claim, after alienation or contract therefor, without committing perjury."

The Trust Territory statute, 67 TTC 209, does not require any affidavit which could involve perjury. It merely prohibits the sale or transfer of rights in a homestead permit. Once the permit has been superceded by a certificate of compliance, and once the certificate has been superceded by a grant of legal title, there is, of course, no prohibition against sale or transfer of the interest in the land, as distinguished from the "rights in or to a homestead permit."

To remove any doubt as to the right of a homesteader to deal with his land after he has received his certificate and before the deed is issued, the Congress of Micronesia at its 1974 session adopted Public Law No. 5-71, "Defining property rights in certificates of compliance issued under the provisions of Section 208 of Title 67 of the Trust Territory Code."

The legislation provides:

"A certificate of compliance, as such, is an instrument evidencing an interest in real property, and such interest may be sold, leased, or in any other way alienated by the holder thereof . . ."

The court is not concerned whether or not this legislation applies to the present decision because the evidence is clear the executed oral sale was made after receipt of the deed by the homesteader. Under the statute he could have accomplished the same result in October, 1961, when he received his certificate of compliance.

The court does not find it necessary to decide whether defendant's proposition of law that an agreement to sell land subject to an unmaturred homestead entry is unenforceable is right or wrong. That was the holding in *Romolor*. There the court refused to grant specific performance of a contract to sell homestead land made prior to the time the entry permit "matured." The result may well have been

different if the court had been asked to confirm a sale made after issuance of the deed in accordance with a contract to sell made at the time of issuance of the homestead permit.

No decision is required on defendant's proposition of law for the very good reason this is not a suit to enforce a contract to sell before the homestead "matured." This case involves an actual oral sale, evidenced by sufficient extrinsic facts and testimony, made after the homestead "matured" in that the defendant had received both the government certificate of compliance and the deed to the land when he made the sale. Nor is this a case of specific performance of a contract of sale. Granted the agreement to sell was made before defendant obtained legal title, and assuming *arguendo*, we consider *Romolor* binding upon us, which we do not, plaintiff does not ask the court to enforce the agreement. Plaintiff asks that the court quiet title in herself because of sale, which the Land Commission wanted to be established by a written deed, which was neither necessary nor within the authority of the Commission.

Before leaving defendant's propositions that an agreement to sell is illegal, against public policy, and unenforceable, the court finds nothing in the Trust Territory statute prohibiting an agreement to sell contrary to the *Romolor* statement: "The agreement involved here is clearly illegal, being in violation of both the terms of the homestead permit and Section 958 (now 67 TTC 209) . . ." The statute says: "No rights in or to a homestead permit . . . shall be sold, assigned, leased, transferred or encumbered . . ." An agreement to sell in the future is none of those prohibited acts. Requirement No. 3 of the homestead permit is the same as 63 TTC 209.

Also the homestead permit provides in Requirement 4:

"If at any time within 3 years from the date of this permit the homesteader should abandon the land or fails to comply with the

laws, rules, and regulations appertaining to homesteads or the requirements set forth herein and *this is proved to the satisfaction of the Naval Administrator, then the permit shall be revoked and the land shall revert to the Government of the Trust Territory of the Pacific Islands.*" (Emphasis added.)

There was no finding of failure to comply with the "laws, rules, and regulations," and the permit was not revoked. To the contrary, the Naval Administrator affirmatively found that the defendant "complied with the provisions of all laws, rules, and regulations appertaining to his homestead." This finding is set forth in the certificate of compliance issued by the Naval Administrator to defendant, October 20, 1961.

Admittedly, there was an agreement to sell entered into between plaintiff and defendant after the permit had been granted and prior to its maturation. The court declines to hold in accordance with *Romolor* or in accordance with the United States cases based upon an altogether different set of statutes that the agreement was illegal and unenforceable. As indicated previously, the court is not asked to enforce the agreement. The court also doubts it is illegal because as was said in *Romolor*, it was "in violation of both the terms of the homestead permit" and the statute. Neither the defendant's argument nor the language used in the statute convinces us the agreement was "in violation" of the terms of the two measures.

After arguing at length that the contract between the parties was "illegal and unenforceable," the defendant concludes his propositions of law with the assertion "There was no contract between the parties to convey land." It really does not make any difference whether there was or not a contract to convey because the court is not enforcing by specific performance or otherwise a contract to convey. There was an actual oral conveyance evidenced by the testimony and the fact defendant handed to plaintiff his

government deed "as proof" the land belonged to the plaintiff. The defendant argues that:

"One point which clearly emerges from the pleadings and testimony is that the defendant never executed a deed of the land in question to the plaintiff or anyone else."

The statement is accurate but immaterial because a written deed is not required in the Trust Territory to convey land. *George v. Walder*, 5 T.T.R. 9, cited by defendant in support of the argument that the attempted conveyance failed because there was no delivery of a deed, entirely misses the point. Defendant has wandered as far from the applicable Trust Territory law as the Land Registration team did in demanding production of a deed as proof of ownership. When there is a conveyance by deed the rules of *George* apply. When there is an oral conveyance there is, of course, no deed. Proof of the conveyance must be derived from extrinsic evidence other than a deed. In the present case, there was adequate proof of conveyance.

[3] Finally, the court will touch quickly on the last of defendant's contentions. It is that the proposition of law is incorrect "that only the government may enforce 67 TTC 209 prohibiting transfer of homestead rights." Defendant bottoms his argument on the Trust Territory cases dealing with 57 TTC 11101, relating to limitation of land ownership to Trust Territory citizens. The analogy is not appropriate. Two entirely different principles of law are involved. The present case involves the propriety of an attack upon a government deed. The question is not so much who makes the attack as how it is made. Once a government deed is issued it is not subject to collateral attack, only to direct attack.

A patent in United States courts and a government deed in the Trust Territory is conclusive upon the court and the

government on collateral attack. In *West v. Standard Oil Company*, 278 U.S. 200, 49 S.Ct. 138, 143, the United States court said:

“After issue of the patent or other like instrument, his (the Secretary of Interior) findings of facts are conclusive, in the absence of fraud or mistake, not only upon the Department, but upon the courts. (Citing.)”

Similarly, referring to direct attack upon a patent, the Supreme Court said in *U.S. v. Iron Silver Min. Co.*, 128 U.S. 673, 9 S.Ct. 195, 196:

“The presumption attending the patent, even when directly assailed, that it was issued upon sufficient evidence that the law had been complied with by the officers of the government charged with the alienation of public lands, can only be overcome by clear and convincing proof.”

[4] Defendant has made neither a direct nor a collateral attack upon the government deed to him. Nor can he do so in these proceedings merely to thwart the claim of the plaintiff. A party may not take advantage of his own wrong, if in fact, the deed was issued because of the fraud of the defendant.

As a further citation purportedly attacking the proposition, only the government may challenge the “transfer of homestead rights” defendant offers *Anderson v. Carkins*, 135 U.S. 483, 10 S.Ct. 905, as “a case virtually on all fours with the present case.” An examination of this decision in which the government “refused to mandate specific performance” of a contract to convey “a homestead prior to its maturation date” shows a similarity to *Romolor* but certainly not the present situation. How this case helps defendant’s proposition of law for which it is cited, escapes us. The law which it propounds has been demonstrated not to apply to the present situation.

Although this case was not referred to this court by the Land Commission as should have been done under 67 TTC

108, nevertheless, the Commission is now obliged to issue its certificate of title in accordance with this judgment and pursuant to 67 TTC 117. Under the statute, it is unnecessary to grant plaintiff's prayer to require defendant to "convey a title to plaintiff," which obviously is intended to mean issuance of an order requiring defendant to execute and deliver a deed to the property in question to plaintiff. This judgment shall be recorded in accordance with 8 TTC 2 as amended in 1972 and no further confirmation of title in plaintiff is required.

Ordered, adjudged and decreed:—

1. That plaintiff is the holder of the legal title granted by the government to the defendant, January 15, 1962, subject to the reservations contained in the government grant, free of any claim, right, title, or interest of the defendant to the following described land:

Lot No. 1, Block No. 14, Oleai Village, containing an area of 540 square meters, more or less, as shown in APWO Drawing No. 11581, on file with the Clerk of Courts, Saipan, Mariana Islands District.

2. That plaintiff shall have costs in accordance with law upon filing claim.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

MARIANO R. BERMUDES

Criminal Case No. 306-73

Trial Division of the High Court

Mariana Islands District

July 23, 1974

Prosecution for possession and sale of marijuana. The Trial Division of the High Court, Burnett, Chief Justice, held that the territory could control or