IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FLAVIAN CARLOS, MOHAMED YOUSUF, ANGELES YANGILMAU, and FLORENTINE YANGILMAU,	CIVIL APPEAL NO. 10-032 (Civil Action Nos. 09-204, 09-284, & 09-288) (consolidated)
Appellants,	
v.	**OPINION**
MARIANO CARLOS and JUANITA CARLOS,	
Appellees.	

Decided: February 6th, 2012

Counsel for Appellants Yangilmaus: J. Uduch Sengebau Senior
Counsel for Appellants Carlos and Yousuf: Yukiwo P. Dengokl
Counsel for Appellees: William L. Ridpath

BEFORE: LOURDES F. MATERNE, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem; RICHARD H. BENSON, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

Flavian Carlos, Angeles Yangilmau, and Florentine Yangilmau[1] appeal the Trial Division's decision in this trespass case stemming from competing gardens on a portion of Tochi Daicho Lot 1590 ("Lot 1590") above the Echang road.

I. BACKGROUND

A prerequisite to a discussion of this matter is an explanation of earlier litigation concerning the land in Echang. Civil Action No. 354-93 began in 1993 as a quiet title action over several lots in Echang. After an initial trial, the court concluded that the heirs of Borja owned the land, including Lot 1590, and that the ownership rights were "subject to the rights of all persons who have or had a family or lineage member who resided in Echang in 1962 to reside and use land in Echang without disturbance." Judgment, *Dalton v. Choi Engineering Corp.*, Civ. Action No. 354-93 (Tr. Div. Apr. 15, 1997). The latter conclusion was based on the Echang Land Settlement Act of 1962 ("Settlement Act"), which provides, in relevant part, that then-residents of Echang and their heirs would be allowed to peacefully use the land "for an indefinite period in the future."

In the first of three appeals, we reversed in part and remanded for determination of who possessed legal title to Lot 1590 and other lots. *Heirs of Drairoro v. Dalton*, 7 ROP Intrm. 162, 168 (1999). But we affirmed the trial court's determination that "all of the land in question located within Echang is subject to a use right residing in the residents of Echang as of 1962 and their decedents." *Id.* Florentine was a party to Civil Action 354-93, and, upon remand and during interrogatories, he stated that he had "no interest" in Lot

[1] We refer to parties with last names in common by their first names. Mohamed Yousuf was formerly party to this appeal but is no longer pursuing it.

1590. Ultimately, pursuant to a quitclaim deed issued as compensation for his legal services, Mariano Carlos was adjudged the owner of a portion of Lot 1590, including the area above the Echang road, which is the subject of the present litigation. Order, *Dalton v. Choi Engineering Corp.*, Civil Action No. 354-93, at 6 (July 28, 2004).

The history of the present dispute is laid out in substantial detail in the final decision of the Trial Division below. We recite only the facts that are salient for the purpose of this appeal. In spite of Mariano's legal title to the land, several other individuals began or continued to farm the land. The Yangilmaus went so far as to obtain a temporary restraining order to prevent Mariano and his wife, Juanita Carlos, from entering or fencing in the land. They contended that the land was part of their lot, which borders Lot 1590. Juanita found vegetables, including taro plants, in her garden uprooted. Mohamed Yousuf, Flavian's employee hired to farm the land, admitted to removing some of the vegetables and to planting several mahogany, betel nut, coconut, and noni trees on the property.

Mariano, but not Juanita, sued the Yangilmaus, Yousuf, Flavian, and others for trespass and damage to his property. Yousuf testified that he was told to farm the land by his employers. Flavian denied that he ever ordered Yousuf to farm on Lot 1590. The Yangilmaus claimed a right to enter and farm Lot 1590 by virtue of their long tenure farming in the area and based on their dispute of the boundary line between Lot 1590 and their adjoining lot.

Juanita testified at trial and estimated that her uprooted vegetables were worth about $265. Mariano testified that it would cost between $800 and $1200 to uproot and

remove the trees from the somewhat remote lot. None of the Defendants presented any contrary evidence regarding the amount or apportionment of damages among them.

The Trial Division found in favor of Mariano. The court rejected the Yangilmaus' claim to a use right to the land because it determined that the earlier case, Civil Action 354-93, was preclusive as to Mariano's ownership. In the body of its decision, the court further stated that the Defendants were jointly and severally liable to Juanita for the loss of her plants. However, in the judgment, the court awarded $157 to Mariano for the uprooted vegetables. Angeles, Flavian, and Yousef were held jointly and severally liable for the removal of the trees, for which Mariano was awarded $1000.

Flavian and the Yangilmaus appealed. Flavian tenders three arguments on appeal: (1) it was error for the Trial Division to find Flavian liable for Yousuf's trespass; (2) it was error for the Trial Division to award Mariano damages for the uprooting of Juanita's vegetables; (3) and it was clear error for the Trial Division to hold Flavian and the other Defendants jointly and severally liable for the tree removal. The Yangilmaus make only one contention: that they have a right to farm Lot 1590 pursuant to the Settlement Act.

II. STANDARD OF REVIEW

We review findings of fact from the Trial Division for clear error. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Interm. 317, 318 (2001). As long as the court's findings are based on admissible evidence that could lead a "reasonable trier of fact" to the same result, we will not disturb those findings. *Id.* We review legal conclusions de novo. *Id.*

III. ANALYSIS

A. Flavian's Vicarious Liability for Yousuf's Tort

Flavian concedes that Yousuf was his employee when he uprooted plants on Mariano's land. Nonetheless, Flavian contends that he should not have been held liable for Yousuf's torts because he did not direct Yousuf to uproot the plants.

The basic rule of respondeat superior is that an employer is vicariously liable for the torts of his employee committed within the scope of the employee's employment. Restatement (Second) of Agency § 219 (1993). Even though the notion that the "servant" is a mere appendage of his "master" has fallen by the wayside, employers remain "responsible for the mistakes, the errors of judgment and the frailties of those working under [their] direction and for [their] benefit," just as they stand to "gain from the intelligent cooperation" of their employees. *Id.* cmt. a. This liability extends even to acts not specifically commanded by the employer. As long as the employee's actions were reasonably related to the duties of his employment, and not for the exclusive benefit of a third party or himself, then the employer is liable. *See* Restatement (Second) Agency § 219 cmt. c.; *see also Obak v. Tulop*, 6 TTR 240, 243 (1973) (holding that employer was not liable for employee's "frolic").

Although Flavian may never have explicitly directed Yousuf to uproot Mariano and Juanita's plants, Yousuf's torts were within the ambit of his employment. As the trial court found, and as Flavian now admits, Yousuf was listed as Flavian's employee in Division of Labor records, and Flavian paid Yousuf to farm. During his employment, Yousuf uprooted Mariano and Juanita's plants and planted trees that later needed to be removed. Yousuf's activities were plainly within the scope of his employment and not a

mere frolic for his own benefit. Thus, the Trial Division properly held Flavian liable for Yousuf's torts.

B. Damages Awarded for Juanita's Taro Plants

Flavian argues it was inappropriate for the trial court to award Mariano $157 in damages in Civil Action 09-284 for Juanita's uprooted taro plants and her labor. Juanita was not a plaintiff in Civil Action 09-284 or 09-204, and nowhere in Civil Action 09-288 (in which she was a defendant and counter-claimant) did Juanita allege trespass or damages stemming from the uprooting of her plants.

Although most of the trial testimony focused on the damages incurred by Juanita, ultimately the land was owned by Mariano. It was his legal interest that was violated when Yousuf, and vicariously Flavian, trespassed and uprooted the taro. Although Juanita cultivated the crops, Mariano's ownership of the land carries with it a presumption of ownership of the crops. *See State v. Bailey*, 152 S.W.3d 890, 892 (Mo. App. W.D. 2005); 21A Am. Jur. 2d *Crops* § 8 (2008). That presumption survives when the owner's spouse is the primary farmer on the land. Indeed, courts may hold the owner criminally liable for illegally cultivated crops, even if his spouse does most of the farming. *Bailey*, 152 S.W.3d at 892 (holding that a husband could not disavow crops cultivated by his wife on the land); 21A Am. Jur. 2d Crops § 10. By the same logic, the owner of the land may claim damages arising from the interference with crops grown on his land.

In the body of its decision, the Trial Division stated that Juanita suffered the injury and stated that Defendants were "liable to Juanita Carlos." But the judgment, which is

the primary source of our review, the court correctly awarded damages to Mariano, the Plaintiff in Civil Action 09-284 and the owner of the land. Given the evidence presented by Juanita and Mariano, the Trial Division's award of $157 to Mariano was not error.

C. Damages Awarded for Tree Removal

Flavian also contends that it was clear error for the court to award $1000 to Mariano for tree removal because some of the trees to be removed from the property may have been planted before Yousuf began farming. Yousuf testified that he planted fifteen or sixteen trees that survived. Mariano testified that it would cost him about $800 to $1200 to remove twenty offending trees from his property. Neither Flavian nor any other defendant presented evidence disputing Mariano's sworn testimony. The court determined that Flavian and the Yangilmaus were jointly and severally liable for the cost of the tree removal.

A majority of the trees that must be removed were planted by Yousuf. It was, thus, not unreasonable for the court to assess $1000 in damages for tree removal. Even if some of the trees were planted prior to Yousuf's trespass, Mariano must still undertake more elaborate removal procedures in order to extricate the offending trees planted by Yousuf. As he testified, the noni trees in particular, due to their extensive root system, will require extra effort to remove.

Flavian suggests that the court was required to determine each Defendant's liability for particular trees and to assess the cost for the removal of each tree. Such a determination was not necessary. The fixed cost of equipment and the combined cost of labor would be difficult, if not impossible, to disaggregate among trees and between

Defendants. Flavian cites no authority whatsoever to support his claim that the court was required to perform such an apportionment of damages. Thus, it was reasonable for the Trial Division to hold Flavian and the Yangilmaus jointly and severally liable for the removal of the trees and to award $1000 to Mariano for their extirpation. *See Roman Tmetuchl Family Trust*, 8 ROP Interm. at 318.

D. Role of the 1962 Echang Land Settlement Agreement

The Yangilmaus' only argument on appeal is that the trial court ignored the Settlement Agreement, which they claim gave them use rights to portions of Lot 1590. In response, Mariano contends that the Yangilmaus are barred, by res judicata, equitable estoppel, or waiver, from claiming an interest in Lot 1590.

Whether res judicata is applicable turns on Civil Action No. 354-93, the quiet title action in which the Trial Division determined that Mariano had legal title to Lot 1590 and that Florentine did not have "exclusive ownership" to any portion of Lot 1590. This purportedly preclusive action did not hold that Florentine had no use right to Lot 1590, and, indeed, suggests to the contrary that portions of Lot 1590 are be subject to the Settlement Act's use rights.

Res judicata generally bars a subsequent claim that concerns "any issue actually litigated and determined" by an earlier final judgment between the same parties. Restatement (2d) of Judgments § 17 (1992). It may apply even if the issue was not actually litigated, but merely ought to have been litigated. *Ngerketiit Lineage v. Tmetuchl*, 8 ROP 122, 123 (2000) (holding that a claim that "could have, and should have, been raised" in earlier proceedings is barred in later proceedings). Claim

preclusion applies with equal force to a party's privies. *Estate of Tmetuchl v. Siksei*, 14 ROP 129, 131 (2007). The Trial Division found that the issue of use rights should have been raised in the earlier litigation and, thus, res judicata barred their assertion in this action.

A prerequisite to a proper res judicata defense is that an issue was or ought to have been litigated and decided in favor of the party invoking res judicata. Restatement (2d) of Judgments § 17. Civil Action 354-93 was lengthy, contentious, and crowded. Use rights were at issue only prior to the first of three appeals. The only judgment from that case concerning use rights actually favored the Yangilmaus: the Trial Division found, and we affirmed in the first appeal, that certain Echang residents have use rights to the land. *See Heirs of Drairoro*, 7 ROP Intrm. at 168. Upon remand, the only issue was legal title, *id.*, and the post-remand litigation appears to have focused almost exclusively on ascertaining legal title. Title is distinct from use rights and other servitudes. Title is the "formal legal right of ownership of property." *Black's Law Dictionary* 1485 (6th ed. 1990). However, legal title is not exclusive with other property interests in land. "Rights and obligations that run with the land . . . create land-use arrangements that remain intact despite changes in ownership." Restatement (3d) of Property: Servitudes § 1.1 (1998); *see also Heirs of Drairoro*, 7 ROP Intrm. at 168. Thus, while there may be some other reason that the Yangilmaus' use rights have extinguished, the determination that Mariano has legal title did not do so. This is not a case in which the Yangilmaus ought to have further litigated their use rights. *See Ngerketiit Lineage v. Tmetuchl*, 8 ROP at 123.

Based on similar logic, Mariano's argument for equitable estoppel must fail. Equitable estoppel "precludes a person from denying or asserting anything to the contrary of that which has . . . been established as the truth by his own . . . representations." *Kerradel v. Besebes*, 8 ROP Interm. 104, 105 (2000) (quotation omitted). Mariano contends that Florentine's concession during interrogatories in Civil Action 354-93, that he had "no interest" in the land, bars him from now claiming a use right. But the context of the interrogatories, which arose during the post-remand portion of the litigation, makes clear that equitable estoppel is inapplicable. The use rights had already been affirmed; the only issue before the court was legal title. We are loath to find, in such a situation, that Florentine's statement that he had "no interest" in the land relinquished any use right whatsoever that he may have been entitled to under the earlier judgment in the very same case. Thus, Florentine's "concession" does not bar him from asserting a use right.

Finally, Mariano posits that the issue of Settlement Act use rights was not properly before the trial court below and is therefore waived. *See, e.g., Tulop v. Palau Election Comm'n*, 12 ROP 100, 106 (2005). This is simply incorrect. In both their pretrial statement and during closing arguments, the Yangilmaus invoked their use rights to the land. Further, the Trial Division considered the issue explicitly.

IV. CONCLUSION

For the foregoing reasons, we **AFFIRM** the Trial Division as to its judgment against Flavian. Because the Trial Division erred in its determination that the judgment in Civil Action 354-93 precludes the Yangilmaus' claim to a use right to portions of Lot 1590, we **REVERSE** the judgment against the Yangilmaus and **REMAND** for

proceedings consistent with this Opinion. We further **DENY** Mariano's request for legal fees from the Yangilmaus for filing a frivolous appeal.

LOURDES F. MATERNE
Associate Justice

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