

FSM SUPREME COURT APPELLATE DIVISION

WILLIAM ALLEN,)
)
 Appellant,)
)
 vs.)
)
 WINFRED ALLEN and KOSRAE LAND)
 COMMISSION,)
)
 Appellees.)
 _____)

APPEAL CASE NO. K4-2008

OPINION

Argued: December 17, 2009
Decided: January 21, 2010

BEFORE:

Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

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For the Appellee: J.D. Lee, Esq.
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HEADNOTES

Appellate Review – Standard of Review – Civil Cases; Civil Procedure – Summary Judgment – Grounds

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Allen v. Allen, 17 FSM Intrm. 35, 39 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Civil Procedure – Summary Judgment – Procedure

When the trial court granted summary judgment on statute of limitations grounds, the appellate court will, when considering the question of issues of material fact, consider only to those facts needed

to determine whether the statute of limitations has run, and not whether the Land Commission process was improper or whether the 1986 determination should be vacated or whether the Land Commission should have ruled in the appellant's, instead of the appellee's, favor. Allen v. Allen, 17 FSM Intrm. 35, 39 (App. 2010).

Statutes of Limitation

A statute of limitation establishes a time limit for suing in a civil case, based on the date when the claim accrued. The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh. Allen v. Allen, 17 FSM Intrm. 35, 39 (App. 2010).

Statutes of Limitation

A statute of limitation will bar the maintenance of a cause of action, no matter how meritorious the claim, when it is brought too long after the cause of action arose. Allen v. Allen, 17 FSM Intrm. 35, 39 (App. 2010).

Statutes of Limitation – Accrual of Action

A cause of action arises or accrues when the right to bring suit on a claim is complete; that is, when the plaintiff could have first maintained the action to a successful conclusion. Allen v. Allen, 17 FSM Intrm. 35, 39 (App. 2010).

Statutes of Limitation – Accrual of Action

A cause of action does not accrue for the purposes of a statute of limitations until all elements are present, including damages. Allen v. Allen, 17 FSM Intrm. 35, 39 (App. 2010).

Statutes of Limitation

Under Kosrae law, a six-year statute of limitation applies to all civil suits not covered by the twenty-year statute of limitation (actions on a judgment or for recovery of land or an interest in land) or by the two-year statutes of limitation (actions for assault and battery, false imprisonment, defamation, against the police for wrongful acts or omissions, medical malpractice, injury or death caused by wrongful act, by a depositor against a bank for a forged or altered check, and wrongful death or an action by or against an estate). Allen v. Allen, 17 FSM Intrm. 35, 39 (App. 2010).

Statutes of Limitation

When none of a plaintiff's causes of action are covered by the two-year statutes of limitation and when a complaint against the Land Commission cannot be a claim for the recovery of land from the Land Commission because the Land Commission does not own an interest in the claimed land, any negligence or due process claim against the Land Commission is subject to a six-year limitations period and will be time-barred and dismissed when the Land Commission actions or omissions are all over six years old. Allen v. Allen, 17 FSM Intrm. 35, 39-40 (App. 2010).

Civil Procedure – Parties; Property – Land Commission or Land Court

A suit against the Land Commission (or successor institution) cannot end with a land title transferred to a successful plaintiff. Only a successful suit against the current titleholder, a necessary and indispensable party to any suit over title, could result in the transfer of the land title to the successful plaintiff although a successful suit against a Land Commission might result in a money damages award. Allen v. Allen, 17 FSM Intrm. 35, 40 (App. 2010).

Statutes of Limitation – Accrual of Action

When a plaintiff's claims against the Land Commission are all based on either allegations that he had not received notice of the 1983 and 1984 Land Commission hearings or on the allegation that the

Land Commission failed to serve him the February 1986 determination of ownership, his cause of action accrued in February 1986 (or within a reasonable time thereafter to allow for the service he alleges was required) and any claims about lack of notice for the earlier hearings also accrued then because that is when the last element of his several causes of action – damages – occurred. Up until then he could not allege that he had suffered any damages because no one had yet been determined the owner of the parcel. Allen v. Allen, 17 FSM Intrm. 35, 40 (App. 2010).

Statutes of Limitation – Accrual of Action

Although service of a determination of ownership was a necessary condition precedent to start the statutory 120-day time period within which a Land Commission determination can be appealed, this does not have a bearing on a plaintiff's cause of action when he asserts that he was never a party in the Land Commission proceedings and he was not served notice of the hearing or of the determination of ownership since the plaintiff could have sued the named owner anytime after February 25, 1986 determination of ownership, or at the latest, after the March 4, 1986 service on the family representative, because all of the elements of his alleged causes of action were present by then. Allen v. Allen, 17 FSM Intrm. 35, 40 (App. 2010).

Statutes of Limitation

When the plaintiff's causes of action arose or accrued in 1986 since, assuming he proved his case, he could have sued successfully for the recovery of the land then, and since no fraud is alleged or apparent, the plaintiff had twenty years within which to seek recovery of the land. Since that time period expired in 2006, the plaintiff's February 2007 complaint is thus time-barred. Allen v. Allen, 17 FSM Intrm. 35, 40-41 (App. 2010).

Property – Registered Land

A 1986 determination of ownership in the Land Commission's records constituted notice to the world that the named owner owned the land, and that if any potential purchaser of the land had sought to buy it from the plaintiff, the purchaser would be charged with notice that named owner, and not the plaintiff, owned the parcel. Allen v. Allen, 17 FSM Intrm. 35, 41 (App. 2010).

* * * *

COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This appeal is from the Kosrae State Court's May 14, 2008 Order Granting Summary Judgment; Order of Dismissal, Allen v. Allen, 15 FSM Intrm. 613 (Kos. S. Ct. Tr. 2008), which dismissed William Allen's suit over title to land against his brother Winfred Allen and against the Kosrae Land Commission on statute of limitations grounds. We affirm. Our reasons follow.

I. BACKGROUND

This case involves title to land known as Koasr or Parcel No. 032-T-01. William and Winfred Allen are brothers. Each claims title to Koasr as a bequest from their father, Allen Mackwelung. Winfred claims Koasr under a will dated February 20, 1977. William claims Koasr and five other parcels under a will dated July 27, 1977. Mackwelung authorized John Allen, another son, to be his representative before the Land Commission and land registration teams concerning Mackwelung's rights to all these various parcels, including Koasr. Land Commission hearings on these six parcels were held in 1982, 1983, and 1984. (Mackwelung died before the hearings.) On February 25, 1986, the Land Commission issued a determination of ownership for Parcel 032-T-01, naming Winfred Allen as the fee

simple owner. John Allen, as the family representative, was served notice of the determination of ownership on March 4, 1986. William Allen was issued certificates of title to Mackwelung's five other parcels on August 29, 2005.

On February 14, 2007, William Allen filed in the Kosrae State Court a complaint against his brother Winfred Allen and against the Kosrae Land Commission for a declaratory judgment and for title to Parcel No. 32-T-01. He alleged that 1) the Land Commission was negligent by failing to provide him adequate notice and opportunity to be heard as an interested party on parcel 032-T-01; 2) the Land Commission denied him due process under the Kosrae Constitution Article II, section 1(b)(3), and under the FSM Constitution Article IV, section 3, for issuing a determination of ownership after failing to provide him adequate notice and opportunity to be heard; 3) the Land Commission violated the Kosrae Code by failing to give him proper notice and an opportunity to be heard; 4) the Land Commission violated the Kosrae Code by failing to serve the Determination of Ownership on him; and 5) that the Land Commission had a conflict of interest because a Land Registration Team team member during the adjudication process was a concurring Commissioner on the 1986 Parcel No. 032-T-01 Determination of Ownership. William did not allege that fraud was involved.

Both Winfred's answer and the Land Commission's answer included the affirmative defense that William had failed to state a claim for which relief could be granted. The trial court ordered the parties to brief that affirmative defense. Winfred filed a summary judgment motion that addressed this affirmative defense. The Land Commission filed a memorandum asserting that the statute of limitations barred William's lawsuit and later filed a joinder to Winfred's summary judgment motion.

The trial court granted summary judgment and held that William's negligence, due process, and statutory violation claims against the Land Commission fell within the six-year statute of limitations; that those claims had accrued in February 1986; and that because more than six years has passed since those claims accrued, those claims were time-barred. Allen, 15 FSM Intrm. at 619-20. The trial court also ruled that the time period for the twenty-year statute of limitations for actions for the recovery of land began running when the cause of action accrued in February 1986 and that since William had filed his complaint in February 2007, over twenty years afterwards, any claims to recover Koasr from Winfred Allen were also time-barred. *Id.* at 620. It further held that the running of the statute of limitations had not been tolled; that the 120-days-after-service time period for filing an appeal of the determination of ownership was not the starting point because a "statute of limitations is an independent bar to an action, separate from any opportunity to appeal that might be granted by a statute." *Id.*

II. ISSUES PRESENTED AND STANDARD OF REVIEW

William Allen contends that the trial court erred 1) when it held that there was no genuine issue of material fact; 2) when it dismissed the case based on statute of limitations doctrine; 3) when it failed to find that the Kosrae Land Commission had not followed the statutory requirements for land determinations; and 4) when it held that the service of the Parcel 032-T-01 determination of ownership on John Allen was proper.

However, since the trial court granted summary judgment on the ground that William Allen's lawsuit was barred by the statute of limitations, our review of this appeal is limited to whether the trial court ruling on that point is correct. If we were to conclude that it was not, we would then remand the matter to the Kosrae State Court for its consideration of whether the merits of William's claim against Winfred warranted a Kosrae State Court order that the Land Court (the Land Commission's successor) conduct a new hearing on Parcel 032-T-01.

We apply the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, we view the facts in the light most favorable to the party against whom judgment was entered and we determine *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Berman v. College of Micronesia-FSM, 15 FSM Intrm. 582, 590 (App. 2008); Albert v. George, 15 FSM Intrm. 574, 579 (App. 2008); Allen v. Kosrae, 15 FSM Intrm. 18, 21 (App. 2007). In this appeal, the question of issues of material fact applies only to those facts needed to determine whether the statute of limitations has run, and not whether the Land Commission process was improper and the 1986 determination should be vacated or whether the Land Commission should have ruled in William's, instead of Winfred's, favor.

V. ANALYSIS

A. Statutes of Limitation; Date of Accrual

A statute of limitation establishes

a time limit for suing in a civil case, based on the date when the claim accrued The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh.

BLACK'S LAW DICTIONARY 1422 (7th ed. 1999). A statute of limitation will bar the maintenance of a cause of action, no matter how meritorious the claim, when it is brought too long after the cause of action arose. *E.g.*, Chipuelong v. Chuuk, 6 FSM Intrm. 188, 194 (Chk. S. Ct. Tr. 1993) (a claim for an interest in land is barred if it could have been made over twenty years before it was actually made). A cause of action arises or accrues when the right to bring suit on a claim is complete; that is, when the plaintiff could have first maintained the action to a successful conclusion. Kosrae v. Skilling, 11 FSM Intrm. 311, 315 (App. 2003); Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 489 n.1 (App. 1996); Waguk v. Kosrae Island Credit Union, 6 FSM Intrm. 14, 17 (App. 1993). "A cause of action does not accrue for the purposes of a statute of limitations until all elements are present, including damages" 51 AM. JUR. 2D *Limitation of Actions* § 151, at 548-49 (rev. ed. 2000).

A. Six-year Statute of Limitations for the Land Commission

We first address whether the statute of limitations had run for claims against the Land Commission. William Allen contends that the six-year statute of limitations should not have been applied to any of his claims because his suit is for the recovery of an interest in land and that therefore the twenty-year statute of limitations must apply.

Under Kosrae law, a six-year statute of limitation, Kos. S.C. § 6.2506, applies to all civil suits not covered by the twenty-year statute of limitation, Kos. S.C. § 6.2503 (actions on a judgment or for recovery of land or an interest in land), or by the two-year statutes of limitation, Kos. S.C. § 6.2504 (actions for assault and battery, false imprisonment, defamation, against the police for wrongful acts or omissions, medical malpractice, injury or death caused by wrongful act, by a depositor against a bank for a forged or altered check, and wrongful death); Kos. S.C. § 6.2505 (action by or against an estate). None of William's causes of action are covered by the two-year statutes of limitation. And since a complaint against the Land Commission cannot be a claim for the recovery of land from the Land Commission because the Land Commission does not own an interest in the claimed land, any negligence or due process claim against the Land Commission is subject to a six-year limitations period and will be time-barred and dismissed when the Land Commission actions or omissions are all over six

years old. See Dereas v. Eas, 14 FSM Intrm. 446, 456 n.5 (Chk. S. Ct. Tr. 2006); see also Skilling v. Kosrae State Land Comm'n, 13 FSM Intrm. 16, 19 (Kos. S. Ct. Tr. 2004) (complaint against the Land Commission cannot assert a claim for the recovery of an interest in land when the Land Commission does not own an interest in the land; twenty-year statute of limitation for recovery of an interest in land does not apply to due process and violation of statute claims against the Land Commission; these have a six-year limitation period).

We are somewhat puzzled by the tendency of litigants, who, when they claim title to land held by another, name the Land Commission as a defendant. A suit against the Land Commission (or successor institution) cannot end with a land title transferred to a successful plaintiff. Only a successful suit against the current titleholder, a necessary and indispensable party to any suit over title, could result in the transfer of the land title to the successful plaintiff. A successful suit against a Land Commission might result in a money damages award. (But William Allen does not seek money damages.)

Nevertheless, since William's claims against the Land Commission are all based on either allegations that he had not received notice of the 1983 and 1984 Land Commission hearings or on the allegation that the Land Commission failed to serve him the February 1986 determination of ownership, William's cause of action accrued in February 1986 (or within a reasonable time thereafter to allow for the service William alleges was required). Any claims about lack of notice for the earlier hearings also accrued then. That is when the last element of William's several causes of action – damages – occurred. Up until then he could not allege that he had suffered any damages because no one had yet been determined the owner of Parcel 032-T-01.

There being no genuine issue of material fact that William's claim against the Land Commission arose or accrued in 1986, we therefore affirm the dismissal of all claims against the Kosrae Land Commission (or its successor) on the ground that the six-year limitations period to sue the Land Commission had expired.

B. *Twenty-year Statute of Limitations against Winfred Allen*

William asserts that absent the service of notice of the 1986 determination of ownership upon him personally the statute of limitations cannot start to run and that therefore his action is not time-barred. He asserts that as soon as he became aware in 2007 that Winfred was issued a certificate of title for Parcel No. 032-T-01, he filed his complaint.

Service of a determination of ownership was a necessary condition precedent to start the statutory 120-day time period within which a Land Commission determination can be appealed. Heirs of Obet v. Heirs of Wakap, 15 FSM Intrm. 141, 144 (Kos. S. Ct. Tr. 2007); cf. Sigrah v. Heirs of Nena, 13 FSM Intrm. 192, 195 (Kos. S. Ct. Tr. 2005) (sixty-day period after service of a Land Court [Land Commission's successor] determination to appeal); Melander v. Heirs of Tilfas, 13 FSM Intrm. 25, 27 (Kos. S. Ct. Tr. 2004) (same). We, however, cannot see what bearing this would have on William's cause of action. William asserts that he "was never a party [in the Land Commission Parcel 032-T-01 proceedings], nor was he served notice of the hearing as well as the determination of ownership." Appellant's Br. at 12-13.

William could have sued Winfred anytime after February 25, 1986 determination of ownership, or at the latest, after the March 4, 1986 service on John Allen, because all of the elements of his alleged causes of action were present by then. All of the alleged actions or omissions of either Winfred Allen or the Land Commission had occurred and had allegedly caused him damages – the determination that someone else, Winfred Allen, owned Parcel No. 032-T-01 (Kosrae). William Allen's causes of action

therefore arose or accrued in 1986 since, assuming he proved his case, he could have sued successfully for the recovery of Koasr then. Since no fraud is alleged or apparent, William Allen had twenty years within which to seek recovery of Koasr. That time period expired in 2006. William Allen's February 2007 complaint is thus time-barred.

Furthermore, we note, although we do not rest our decision on this point, that the 1986 determination of ownership in the Land Commission's records constituted notice to the world that Winfred Allen owned Koasr, and that if any potential purchaser of Koasr had sought to buy Koasr from William Allen, the purchaser would be charged with notice that Winfred, not William, Allen owned Parcel No. 032-T-01. See Mori v. Haruo, 15 FSM Intrm. 468, 473 (Chk. S. Ct. App. 2008) (buyer is not a bona fide purchaser for value without notice where she executes a purchase agreement with an individual seller when an earlier Land Commission determination of ownership was notice to the world, and thus to her, of the lineage's interest in the property).

IV. CONCLUSION

Accordingly, the trial court decision is affirmed.

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FSM SUPREME COURT TRIAL DIVISION

VALERIO NAKAMURA and TOROPIO NAKAMURA,)	CIVIL ACTION NO. 2007-1009
)	
Plaintiffs,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA)	
TELECOMMUNICATIONS CORPORATION,)	
)	
Defendant/Third-Party Plaintiff,)	
)	
vs.)	
)	
STATE OF CHUUK,)	
)	
Third-Party Defendant.)	
)	

ORDER AND MEMORANDUM GRANTING IN PART RULE 41(b) MOTION TO DISMISS

Ready E. Johnny
Associate Justice

Trial: September 29-30, October 1, 2009, January 6-7, 2010
Decided: January 25, 2010