

FSM SUPREME COURT TRIAL DIVISION

JOANNES IWO, ROSELINA IWO,	)	CIVIL ACTION NO. 2011-1002
ROSALINDA IWO, JOHN JR. IWO, JAMES	)	
IWO, JEANETTE IWO, JOANNE IWO, JANE	)	
IWO, and JOSEPH IWO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
STATE OF CHUUK and CHUUK PUBLIC	)	
UTILITY CORPORATION,	)	
	)	
Defendants.	)	
	)	

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

Beauleen Carl-Worswick  
Associate Justice

Trial: July 20-21, 2016  
Submitted: August 16, 2016  
Decided: October 6, 2016

APPEARANCES:

For the Plaintiffs:	Salomon M. Saimon, Esq. Directing Attorney Micronesia Legal Services Corporation P.O. Box 129 Kolonja, Pohnpei FM 96941
For the Defendant: (State of Chuuk)	Sabino S. Asor, Esq. Attorney General Office of the Chuuk Attorney General P.O. Box 1050 Weno, Chuuk FM 96942
For the Defendant: (CPUC)	Kasio Mida, Jr., Esq. Ramp & Mida Law Firm P.O. Box 1480 Kolonja, Pohnpei FM 96941

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HEADNOTES

Property – Public Lands

By law, public land cannot be subdivided for homesteading or development unless public roads

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were laid out or established insuring public access to each new lot or parcel. Iwo v. Chuuk, 20 FSM R. 652, 654 (Chk. 2016).

Property – Public Lands; Transition of Authority

Under Secretarial Order 2969, Amendment No. 1, Trust Territory public lands in Chuuk were conveyed to the Chartered Truk District Government, and the Chuuk state government is the legal successor to the Truk district government. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Property – Easements; Property – Land Registration

By statute, a certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and the certificate is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A "right of way" over land is a thing such as a road, or footpath, or utility easement. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Property – Easements; Property – Land Registration

Any rights of way there may be over the land in question need not be stated in the certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Property – Easements; Property – Land Registration

A certificate of title's failure to mention the roadway or government right of way cannot extinguish the government's ownership of the roadway right of way. That right remained vested in the state government. When the government owned a right of way across the land that predated the current owners' ownership of the land, that right of way existed on the land when the land was homesteaded and thus still existed after a later buyer bought part of that homestead lot. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Property – Easements; Property – Land Registration

The certificate of title statute does not exempt mineral rights if they are not mentioned. Iwo v. Chuuk, 20 FSM R. 652, 655 n.1 (Chk. 2016).

Property – Land Registration

Since a seller cannot sell more than he owns, when a purchaser bought land with a roadway right of way across it, that right of way remained even though the right of way was not mentioned in the later issued certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

Property – Easements; Property – Land Registration; Torts – Trespass

The government owners and users of a right of way across land are not liable for the landowners' neighbors' alleged encroachment on the land. Any remedy for that alleged encroachment, the landowners must seek from their neighbors. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

This case was tried on July 20-21, 2016. Plaintiff Jane Iwo, Senior Land Commissioner KM Mailo, Dino Aliven, and Larry Goulard were called as witnesses. The transcript of Soichy Inos's testimony at a previous trial was admitted by stipulation. Defendant State of Chuuk filed its written

closing argument on August 9, 2016, and the plaintiffs filed theirs on August 16, 2016. Defendant Chuuk Public Utility Corporation ("CPUC") did not file any. The case was then considered submitted to the court for its decision.

Based on the witnesses' testimony and the evidence admitted, the court makes the following

FINDINGS OF FACT.

The land now owned by the plaintiffs ("the Iwos") was originally part of a homestead lot ("Neawo #2") in Neawo Village, Moen Island, Truk District (now Neauo, Weno, Chuuk). This was part of the Southfield (filled land) area, public land that was opened up for homesteading. By law, public land could not be subdivided for homesteading or development unless public roads were laid out or established insuring public access to each new lot or parcel. 67 TTC 151.

In 1959, Tosi Wkwk (Luke) applied for homestead land. His application was approved in April, 1960.

On May 12, 1971, the Trust Territory government issued Tosi Wkwk a certificate of compliance with the homestead requirements for "Lot No. 2 located in Neawo Village" and noted that homestead permit contained reservations for "[a]ll public roads, right of way, easements, mineral rights, and uses essential to the public welfare."

On October 16, 1972, the Trust Territory government granted to "Tosi Wkwk (Luk)", by quitclaim deed, Lot No. 60002 (the former Neawo #2), an area of 2380 square meters, "but reserving therefrom: all mineral and petroleum rights whatsoever; [and] all existing roadways, easements, and rights of way."

Later, Joannes Iwo purchased part of Lot No. 60002 from Tosi Luke for \$400. In 1985, in Trust Territory High Court Civil Action No. 32-77, Johannes Iwo v. Tosi Luke and Istor Billimon, Joannes Iwo agreed to the boundaries of his purchased property which was described as including what was referred to as "the unofficial roadway that presently exists" and because of that, Joannes Iwo did not have to pay Tosi Luke the remaining balance due of \$100. *Id.* Order of Dismissal at 2-3 (Aug. 21, 1985).

On April 17, 1990, the Land Commission, based on Civil Action No. 32-77, issued a determination of ownership in fee simple for "Lot 60002 known as Southfield #2 part located in Neauo Village, Moen Island" to "Joannes Iwo, Rosalina and their children." On October 25, 1993, the Land Commission issued a certificate of title to "Joannes, Rosalina Iwo and their children" as owners in fee simple of land in "Neauo, Weno Municipality" now designated as Parcel No. 61565, with an area of 727 square meters. Neither the determination of ownership nor the certificate of title mentioned any rights of way or roadways.

In 1988, sewer pipes were laid under the roadway. In 1995, water pipes were installed under the current roadway. Joannes Iwo sought compensation from the state for this roadwork, but was denied. According to the recent survey map done by Dino Aliven and filed with the Land Commission of what was once Lot No. 60002 (admitted as Plaintiffs' Exhibit I), the current coral road runs along the eastern edge of Lot 61565 so that there is little or no land east of the road that is part of Lot 61565, the plaintiffs' land. The bulk of (3/4-3/4) Lot 61565 lies west of the coral road. The plaintiffs did not prove that the water and sewer pipes are anywhere other than under the current coral roadway. There is one power pole on Lot No. 61565, right next to the edge of the road on the western side of the road. It may, or may not, be within the roadway right of way.

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The ownership of, and responsibility for, certain public utilities, water, sewer, and electricity, originally held by the State of Chuuk, were transferred to the Chuuk Public Utility Corporation, after CPUC was created in the 1990s.

A tin roof fence has been built along the western edge of the road, allegedly by the plaintiffs' neighbors to the west, the owners of Lot 61567 (also part of the original Neauvo #2 or Lot No. 60002), who the Iwos allege have encroached on their land. Because of this, the Iwos have been unable to use their Neauvo land (Lot 61565) anymore, either to grow crops or provide housing. The Iwos also allege that their neighbor to the east has encroached on their land up to the coral road, but there is little or no land in Lot 61565 east of the road.

The Iwos also have some land in Iras, Weno, but not enough to accommodate the needs of all of the growing number of Iwo family members.

Based on these findings the court makes the following

CONCLUSIONS OF LAW.

Since under Secretarial Order 2969 (Dec. 28, 1974), the Trust Territory government's interests in public lands were transferred to the respective Trust Territory districts, the Trust Territory public land interests on Weno were transferred to the Truk District government. Secretarial Order 2969, Amendment No. 1 (Dec. 20, 1978) specifically provided that Trust Territory public lands in Chuuk were to be conveyed to the Chartered Truk District Government. The Chuuk state government is the legal successor to the Truk district government.

By statute, a certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and the certificate is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008); Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007); In re Engichy, 11 FSM R. 520, 530 (Chk. 2003); UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 n.2 (Chk. 2003). A "right of way" over land is a thing such as a road, or footpath, or utility easement. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014). "A 'right of way' is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through." *Id.*

The statute is specific that "the following . . . need not be stated in the certificate [of title]: (a) Any rights of way there may be over the land in question." 67 TTC 117. (In 2004, 67 TTC 117 was repealed and replaced by Chuuk State Law No. 7-04-06, § 19(1), which identically states that "the following . . . need not be stated in the certificate [of title]: (a) Any rights of way there may be over the land in question.")

Thus, the certificate of title's failure to mention the roadway or government right of way cannot extinguish the government's ownership of the roadway right of way.<sup>1</sup> That right remained vested in the state government. It owns a right of way across Lot 61565 that predates the Iwos' ownership of Lot 61565. That right of way existed on the land when Tosi Luke homesteaded it and when Joannes Iwo bought part of the homestead lot.

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<sup>1</sup> It may, however, have extinguished any government claim to mineral or petroleum rights, which the Trust Territory government had reserved in its quitclaim deed, since the certificate of title statute does not exempt mineral rights if they are not mentioned. None of those rights, however, are at issue here.

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Since a seller cannot sell more than he owns, what Joannes Iwo bought was land with a roadway right of way across it. See Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998) (buyer acquires no better title than his seller); see also George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006) (person may only transfer such title to land as that person lawfully possesses). Because the roadway was on the part of Luke's homestead lot that Joannes Iwo bought, Joannes Iwo, as part of the parties' settlement in Trust Territory High Court Civil Action No. 32-77, did not have to pay the seller the remaining \$100 balance due. Iwo v. Luke, Order of Dismissal at 2-3 (Aug. 21, 1985).

The Iwos therefore did not prove that the current coral road and public utilities are located anywhere other than within the government right of way. The Iwos therefore have failed to prove that the defendants have trespassed or are trespassing on their land.

Fortunately for the Iwos, that right of way runs along the eastern edge of their land, leaving the largest part of Lot 61565 intact to the west. The Iwos assert that their land is unusable because their neighbors have encroached on it and built a fence along the roadway. Neither defendant is liable for the Iwos' neighbors' alleged encroachment on Lot 61565. Any remedy for that alleged encroachment, the Iwos must seek from their neighbors.

CONCLUSION

Accordingly, the clerk shall enter judgment for the defendants.

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