

IN THE SUPREME COURT OF GUAM

KISHORE HEMLANI and GURVINDER SINGH SOBTI

Plaintiffs-Appellants

vs.

**THEODORE S. NELSON, GLORIA B.L. NELSON,
GLENN R. NELSON, RHONDA T. NELSON, GWENDOLYN M.
TAIMANGLO and THEODORE D. NELSON**

Defendants-Appellees

OPINION

Filed: June 9, 2000

Supreme Court Case No. CVA99-032

Superior Court Case No. CV1721-94

Cite as: 2000 Guam 20

Appeal from the Superior Court of Guam

Argued and submitted on March 8, 2000

Hagåtña, Guam

Appearing for the Plaintiffs-Appellants:

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Appearing for the Defendants-Appellees:

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BEFORE:BEFORE: BENJAMIN J.F. CRUZ, BEFORE: BENJAMIN J.F. CRUZ, Chief Justice, PETER C. SIGU
and JUNE S. MAIR, Justice *Pro Tempore*

MAIR, J.:

[1] Plaintiffs-Appellants Plaintiffs-Appellants Kishore Hemlani and Gurvinder Singh Sobti appeal the trPlain
judgment judgment in favor of Defendants-Appellees Theodore S. Nelson, Gloria B.L. Nelso judgment in favo
Nelson, Nelson, Rhonda T. Nelson, Gwendolyn M. Taimanglo and Theodore D. Nelson. For reasons which
follow, the trial court s judgment is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In In this In this case we decide whether lessors of real property In this case we decide whether lessors of re
prior prior to signing the lease, one of prior to signing the lease, one of the lessors acquires the undivided fee simple
did not join in the lease.

[3] Plai Plaintiffs-A Plaintiffs-Appellants Plaintiffs-Appellants (collectively Hemlani) desired to incorpora
Hagåtña, Hagåtña, Guam Hagåtña, Guam into a devel opment they had been contemplating. Hagåtña, Guam into a dev
Appellees Appellees (hereinafter Nelsons), and on or about August 31, 1992, the parties signed a ninety-nine
year year lease, which Hemlani drafted, for year lease, which Hemlani drafted, for Lot 1419, Hagåtña. The Nelsons
month, month, with the first sixty months, or month, with the first sixty months, or \$72,000, paid in month, with the

Title. Lessor warrants that it is lawfully seized of Lessor warrants that it is lawfully seized of the above L
in in fee in fee simple; that the same is free and clear of in fee simple; that the same is free and clear of all en
record; and that it has good right to lease said property.

Hemlani Hemlani included a reference to Certi Hemlani included a reference to Certif Hemlani included a refe
property. This Certificate of Title property. This Certificate of Title indicated that property. This Certificate of T
Hill held undivided interests in the property.

[4] Ms. Hill was not a signatory on the lease. She had passed away in 1991. She died intestate, leaving four heirs, James D. Hill, Sr., William Peter McNeely, and Elena Florence Thomley. The heirs quitclaimed their interest to (Ted) Nelson, who recorded the quitclaim deeds. To probate of Ms. Hill s interest at the Superior Court on October 19, 1991, years after Hemlani and the Nelsons signed the lease for Lot 1419, Ms. Hill s interest was solely to Ted. Hemlani did not include the heirs in the lease agreement, and they were not party to it.

[5] Hemlani was unable to develop the property, allegedly because when they discovered Ms. Hill s interest on the when they caused Hemlani to file a complaint for breach of contract and breach of warranty caused Hemlani to file a complaint on November 23, 1994. Bench trial yielded judgment for the Nelsons on both causes of action. *Hemlani v. Nelson*, CV1721-94 (Super. Ct. Guam Feb. 22, 1999).

[6] Hemlani appeals the judgment, asserting that it was a breach of the lease agreement s warranty provisions. Hemlani argues that Ms. Hill s undivided interest was a not a mere encumbrance exception to the lessor s warranty against encumbrances. Instead, Hemlani contends that Ms. Hill s undivided interest was a defect in record title causing a breach of covenant of *seisin*. We agree that Ms. Hill s undivided interest in Lot 1419 is not a mere encumbrance. We do not agree that Ms. Hill s interest constituted a breach of the covenant of *seisin*. The judgment of the trial court is affirmed.

II. ANALYSIS

[7] We have jurisdiction over the appeal of a final judgment of the Superior Court We have jurisdiction over the appeal of a final judgment of the Superior Court. Title 7 GCA, §§ 3107 and 3108.

[8] A trial court's application of law is reviewed *de novo*. *Coffey v. Gov't of Guam*, 1997, 1997 WL 14, ¶ 6. A trial court's findings of fact shall not be set aside if they are not erroneous. *Yang v. Hong*, 1998 Guam 9, ¶ 4.

A. Ms. Hill's undivided interest in Lot 1419 was not an encumbrance of record

[9] Under its application of law, the trial court concluded that the interest designated on the Certificate of Title, designated on the Certificate of Title, was an encumbrance of record. The court's finding that Ms. Hill's interest did not constitute a breach of the lease agreement. We disagree.

[10] The parties failed to provide the court with a copy of the Certificate of Title. Nevertheless, it is undisputed that Ms. Hill had an interest designated on the Certificate of Title. We begin our analysis by analyzing that interest.

[11] Under Guam law, ownership of real property includes common, partnership, or community property interest. Title 21 GCA § 1214. Under Guam's Land Title Registration Law, [i]n all cases where persons are tenants in common to an estate in registered land, such persons may receive one

¹ The Plaintiffs-Appellants sought our review of the trial court's findings of fact concerning whether Ms. Hill's interest may have been subject to other outstanding claims at probate. However, as the record shows a copy of Certificate of Title No. 90588, and as neither party has provided a copy of Certificate of Title No. 90588, and as neither party has provided a copy of Certificate of Title No. 90588, and as neither party has provided a copy of Certificate of Title No. 90588, we take the facts as they have been adjudicated or as they have been stipulated. See *Yang v. Hong*, 1998 Guam 9 (Feb. 22, 1999) and *In the Matter of the Estate of Margaret Hill*, PR0175-94 (Super. Ct. Guam July 5, 1996).

entirety,entirety, or each may receive a separate certificate for his undividedentirety, or each may receive a separate
 (1994).(1994). As Ms. Hill s interest was designated with the other owners(1994). As Ms. Hill s interest was des
 ofof Title, we can concludeof Title, we can conclude that her interest was an undivided interestof Title, we can c
 1419.

[12] HavingHaving concludeHaving concluded that MsHaving concluded that Ms. Hill held an undivided int
 next determine the estate she possessed. The Land Title Registration Law provides:

NoNo mortgage, lien, charge,No mortgage, lien, charge, or lesser estate than fee simpleNo mortgage, lien,
 thethe fee simple to the same land is first registered. It shall not be an othe fee simple to the same lan
 bringingbringing land under this Law, that the estate or interest ofbringing land under this Law, that the es
 anyany outstanding lesser estate, mortgage, lien,any outstanding lesser estate, mortgage, lien, or charge; bu
 mortgage,mortgage, lien, or charge shall be noted upon the certificate of titlemortgage, lien, or charge shall
 thereof,theof, and the title or interest thereof, and the title or interest certified thereof, and the ti
 mortgages, liens, and charges as are so noted, except as herein provided

TitleTitle 21 GCA § 29107, (1994). AsTitle 21 GCA § 29107, (1994). As there were no outstanding lesser estates
 1419,1419, all interests noted on the 1419, all interests noted on the Certificat1419, all interests noted on the C
 Ms. Hill s undivided interest as tenant in common, therefore, was in a fee simple estate.

[13] ByBy contrast,By contrast, Guam law provides that an encumbrance includes taxes, assessments,By cont
 liensliens upon real property. liens upon real property. Titleliens upon real property. Title 21 GCA § 4211, (19
 sectionsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from Ca
 authorityauthority applying section 1114 defines an encumbrance as any right to, or interest in, land which
 maymay subsist in another to the diminution of its value, but consistent with the pmay subsist in another to the
EvansEvans v. Fraught, 231 C, 231 Cal, 231 Cal. App. 2d 698, 706, 42 Cal. Rptr. 133, 137 (Cal. Dist. Ct. App
 (citations(citations omitted). Additionally, an encumbranc(citations omitted). Additionally, an encumbrance is
 oror impairs [a propertor impairs [a property sor impairs [a property s] use or impedes its transfer. *Id.* The
 statutestatute is inclusive. *1119 Delaware v. Continental Land Title Co.*, 16 Cal. App. 4th, 16 Cal. App. 4th 992

1872, 1872, Bridget Fay died intestate, 1872, Bridget Fay died intestate, leaving four 1872, Bridget Fay died intestate including the defendant, Thomas J. Fay. *Id.* In 1880, Bridget's husband William and one of their sons, sons, Jeremiah G. Fay, conveyed their interests to Maria sons, Jeremiah G. Fay, conveyed their interests to Maria Maria Kate Fay conveyed the Maria Kate Fay conveyed the whole Maria Kate Fay conveyed the whole transaction, conveyed this interest to the plaintiff, Jordan. *Id.* at 266, 33 P. at 95.

[24] Jordan Jordan brought suit claiming ownership of Jordan brought suit claiming ownership of the property in The The court agreed, The court agreed, holding that, as to the 3/4 undivided interest that Maria Kate The court agreed her her husband, her husband, she had taken the entire interest notwithstanding the fact that the estate was set settled, settled, nor property distributed. *Id.* at 266, 33 P. at 96. As to the 1/4 undivided interest, under California California law of the California law of the time, the California law of the time, the rule in intestate succession community property without administration. *Id.* at 267, 33 P. at 96. The court held that William Fay Fay was vested in all of Bridget Fay's 1/4 undivided interest in the property Fay was vested in all of Bridget Fay's subsequent conveyance to Maria Kate Fay was of the entire 1/4 undivided interest. *Id.* at 266, 33 P. at 97. Jordan was, therefore, vested of the entire parcel in fee simple absolute. *Id.*

[25] Applying Applying *Lathrop Lathrop v. Kellogg* and *Jordan v. Fay* to the facts of this case, at Ms. to the fact her her heirs became immediately vested of her her heirs became immediately vested of her 1/7 undivided her heirs became the the statutory scheme for intestate succession. Upon quitting their interest in favor of Ted, he became vested vested of their estate. Ted's estate vested of their estate. Ted's estate vested of their estate. Ted's estate simple. simple. As the record indicates that the quitclaim simple. As the record indicates that the quitclaim deeds to the signing of the lease, Ted's undivided 2/7 interest combined with the remaining interests to vest the Lessors in all 7/7 undivided interests in fee simple in Lot 1419.

[29] Like *PanPangilinan*, title vests immediately in Ms. Hill's heirs subject to probate of the title vesting interests. In *Pangilinan*, after probate Rosalia Palting, after probate Rosalia Palting Guerrero to take any interest in the estate of Paul D. Palting. to take any interest in the estate of Paul application of the law of wills and intestacy, Rosalia Palting Guerrero and Marilyn application of the law devisees or intestate takers who succeeded to Paul D. Palting's estate. devisees or intestate takers who succeeded to Hill's intestate heirs were apparently vested of her 1/7 interest; otherwise, Ted Nelson would Hill have succeeded to their 1/7 undivided interest in the lease property. They have succeeded to their 1/7 undivided Rosalia Palting Guerrero and Rosalia Palting Guerrero and Marilyn Palting d succession and were not vested, Ms. Hill's heirs were takers under intestate succession.

[30] Under the same rationale, the *Lathrop v. Kellogg* successors in interest successors in interest established ownership sufficient to challenge established ownership holding of *Jordan v. Fay*, the surviving spouse's conveyance, the surviving spouse's conveyance of his was a conveyance of the entire 1/4 undivided interest, which he took from his wife by intestate succession. In *Lathrop v. Kellogg*, *Jordan v. Lathrop v. Kellogg*, *Jordan v. Fay*, and *Pangilinan v. Palting*, the respective interests vested immediately upon death of the decedent, and their respective interests vested immediately either as an heir under rules of intestate succession or as a devisee under a will. either as an heir under a comparison say no more than the rule that an heir takes so long as a comparison say no more by intestate succession. Likewise, Appellant Ted Nelson by intestate succession. Likewise, Appellant Ted Nelson heirs.

[31] The conclusion that the Nelsons were vested The conclusion that the Nelsons were vested of years necessarily means that there was neither a breach of the covenant of *seisin* to convey. Powell explains breaches of the covenant of *seisin*:

Since the covenant guarantees that the grantor is *seised* of the land conveyed, if that estate shoof the land conveyed, if that estate physicophysical premises, a breach will have occurred. The same is true if ownersh lacking in any appurtenance to the basic estate conveyed. lacking in any estate is subject to an encumbrance or servitude is not a breach of the covenestate is subject to : SuSuch interests do not affect the basic *seisin* of the grantor. In effect, this princi of the grantor. In recognizes that a person recognizes that a person may be *seised* of an estate r it may be. &

POWELL, POWELL ON REAL PROPERTY § 81A.06[2][a][iii], at 81A-116.

[32] Hemlani argues that, at conveyance, the Lessors didHemlani argues that, at conveyance, the Lessors because there was a *possibility* that a competing claimant would bring at that a competing claimant v argue that his possession was disturbed. Therefore, to prove argue that his possession was distur were not *seised* of a ninety-nine-year tenancy of years because Ms. Hill s estate in the were not *seised* of a nine sstill subject to divestment through probate, and such state of title left the propertstill subject to divestmen appurtenance to the estate of years.

[33] Analysis here begins by discussing Ms. Hill s interestAnalysis here begins by discussing Ms. Hill s toto Ted Nelson. By statute to Ted Nelson. By statute, to Ted Nelson. By statute, Ms. Hill s heirs took her 1/ simple immediately upon her death, subject to competing simple immediately upon hidden heirs, mortgagees, prior hidden heirs, mortgagees, prior transferees, and other third hidden heirs, more 1/7 undivided interest in the property. In the case 1/7 undivided interest in the property. In the case of a hidden heirs would have would be fee simple subject to open.heirs would have would be fee simple subject to open. would have fee simple subject to an encumbrance. In the case of prior tr would have fee simple subject to the type of grant, the known heirs would take, if the type of grant, the known heirs would take, if at all, either case of other third party claimants, the known heirs would take fee simple subject to third case of other third claims. Thus, the heirs interests were either some future claims. Thus, the heirs interests were either some fee simple subject to open, or fee simple subject to an encumbrance *unless* Ms. Hill Ms. Hill hMs. Hill had

conveyance taking the property out of what would be, at her death, her intestate estate.

[34] It follows that, upon quitting their interests, Ted Nelson took title to the heirs. It follows that, to possible competing claims. However, as there were no competing claims, the court has found that, upon application of the rules of intestate succession, the heirs took an entire 1/7 undivided interest. Therefore, after the probate court's judgment, the heirs succeeded in interest to the intestate heirs.

[35] It is of no consequence that the Lessors did not conclusively determine whether or not they were vested in fee simple or not vested at all. The dispositive instrument took the heirs' interest prior to conveyance of the tenancy at years to the probate court's judgment that the 1/7 undivided interest was taken by the heirs. He took what the heirs had taken under intestacy.

[36] Hemlani testified that he was unable to develop the property into a profitable investment. The ability to incorporate the property into his plan of development and mortgage it must be the appropriate use of the property. However, again, Ms. Hill in fact had no interest in the property. Ms. Hill's heirs took title by intestacy; Ted Nelson acquired their interests prior to lease execution; and, Ted Nelson acquired 7/7 undivided interests in the ninety-nine percent of the property and all appurtenances to the leasehold. Under Hemlani's interpretation of an estate until either recordation of an interest or entry of probate judgment. However, it would mean that no conveyance of an estate could be made until the probate court's judgment. This rule is patently erroneous and would have transferors rely on the issuance of a certificate of title to effect a transfer.

is to give evidence of chain of title.

III. CONCLUSION

[37] The Nelsons had fee simple title to the estate of years they purported to convey. The Nelsons had fee simple title to the estate of years they purported to convey. They did not breach any of these covenants of right to convey. Not breaching any of these covenants of right to convey. Accordingly, the judgment of the trial court is **AFFIRMED**.

PETER C. SIGUENZA
Associate Justice

JUNE S. MAIR
Justice Pro Tempore

BENJAMIN J. F. CRUZ
Chief Justice