

FILED ^{CK}

2022 NOV -7 AM 8:36

SUPREME COURT
OF THE
REPUBLIC OF PALAU

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

ISLAND PARADISE RESORT CLUB,
Appellant,
v.
NGARAMETAL ASSOCIATION,
Appellee.

Cite as 2022 Palau 23
Civil Appeal No. 22-010
Appeal from Civil Action No. 16-053

Decided: November 07, 2022

Counsel for Appellant Johnson Toribiong
Counsel for Appellee James W. Kennedy

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

BENNARDO, Associate Justice:

Opinion

[¶ 1] This appeal originates from a long and contentious line of litigation involving Defendant/Appellant, Island Paradise Resort Club

(IPRC), and Plaintiff/Appellee Ngarametal Association. The Trial Division ultimately granted summary judgment on Ngarametal Association's breach of contract claim. The five issues raised in this appeal concern the amount of damages and the award of attorneys' fees. Based on the record before us, we **AFFIRM** the judgment of the Trial Division.

FACTUAL BACKGROUND

[¶ 2] The case originates from a September 2010 fire that migrated from IPRC's property and burned down a building belonging to Ngarametal Association on an adjoining piece of property. The parties' initial agreement to resolve the situation is referred to by the parties as the 2015 Contract. This agreement was later replaced by a settlement agreement known as the 2017 Contract. Additional background may be found in our earlier opinion, *Island Paradise Resort Club v. Ngarametal Ass'n*, 2020 Palau 27 ¶¶ 2-11.

[¶ 3] On remand from that opinion, the Trial Division determined that the 2017 Contract is the controlling agreement between the parties. The 2017 Contract stated that IPRC was to build a two-story building for Ngarametal Association and Ngarametal Association was to acquire the appropriate permits to move the project forward. Furthermore, IPRC agreed to make a \$10,000 payment by January 30, 2017, a \$25,000 payment by February 8, 2017, and a \$100,000 payment upon finishing the building or no more than ten months from receiving the permits. IPRC admitted to not making any payments under the contract—in effect breaching the 2017 Contract within seven days of its signing on January 23, 2017.

[¶ 4] The parties filed cross-motions from summary judgment. Upon hearing and considering those motions, the Trial Division granted Ngarametal Association's motion for partial summary judgment, found IPRC in breach of the 2017 Contract, and ordered damages and attorneys' fees in Ngarametal Association's favor. The total award in favor of Ngarametal Association was \$2,328,428.71 with an annual interest rate of 9%. IPRC timely filed this appeal of the amount of damages and attorneys' fees.

STANDARD OF REVIEW

[¶ 5] Much of this appeal requires us to review the trial court's discretionary decisions, including its decisions regarding equitable estoppel and attorneys' fees. Such matters are reviewed for an abuse of discretion. *See, e.g., Obichang v. Etpison*, 2021 Palau 26 ¶ 6 (equitable doctrines); *Western Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011) (attorneys' fees). "An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment." *Ngeremlengui State Pub. Lands Auth. v. Telungalk Ra Melilt*, 18 ROP 80, 83 (2011).

[¶ 6] The remaining issue involves the review of evidence submitted to the Trial Division and its decisions based on that evidence. "Trial court findings of fact are reviewed under a clearly erroneous standard... [a] lower court's conclusions of law are reviewed *de novo*." *Palau Marine Indus. Corp. v. Seid*, 9 ROP 173, 175 (2002).

DISCUSSION

I.

[¶ 7] IPRC's first issue relates to the Trial Division's finding that IPRC did make payments of \$10,000 and \$25,000 to Ngarametal Association under the 2017 Contract. IPRC argues that the payments were made, and therefore these amounts should not be part of the damage award. To support this argument, IPRC points to an affidavit stating that the checks were written and paid. IPRC further argues that Ngarametal Association's failure to disprove that the checks were paid is an admission of payment.

[¶ 8] In its order, the Trial Division pointed to contradictory evidence in the record that indicated that IPRC had made no payments under the 2017 Contract. Thus, this ruling was a determination by the Trial Division between competing evidence. As we've stated many times before, our function on appeal is not to reweigh competing pieces of evidence. *See, e.g., Ngerutelchii Clan v. Ngaremlengui State Pub. Lands Auth.*, 2022

Palau 9 ¶ 2. While the affidavit supports IPRC's argument that the \$35,000 was already paid, other evidence supports the Trial Division's finding that the \$35,000 was not paid. We detect no clear error in the Trial Division's selection among evidence. Moreover, contrary to IPRC's argument, Ngarametal Association's evidentiary showing (or lack thereof) does not translate into an admission in IPRC's favor. Simply put, that is not how admissions work. While the Trial Division was free to draw inferences based on the evidence, it determined that such an inference was not appropriate given the totality of the evidence before it.

II.

[¶ 9] IPRC's second, third, and fourth appellate arguments are related. The general argument is that various components of the damage award should be reduced by the amount incurred over the 818 days that Ngarametal Association denied the validity of the 2017 Contract. IPRC claims that Ngarametal Association's denial of the 2017 Contract resulted in protracted litigation to prove its validity and that damages should not run during that period.

[¶ 10] Specifically, IPRC seeks the following reductions. First, it argues that it should not pay interest on its \$100,000 obligation during the 818-day period. Second, it argues that it should not pay for lost rent during the 818-day period. Third, it argues that it should not pay costs and attorneys' fees for any of the litigation related to the validity of the 2017 Contract.

[¶ 11] To support its arguments, IPRC relies on the doctrine of equitable estoppel. The Trial Division rejected this argument. In the Trial Division's view, IPRC remained liable to Ngarametal Association during that time and could have saved damages from compounding simply by fulfilling its obligation under the 2017 Contract at any time. Thus, the Trial Division determined that equity did not favor excluding any period of time from the calculation of damages, costs, and attorneys' fees.

[¶ 12] As stated *supra* ¶ 5, such an equitable determination is discretionary by the lower court. While IPRC argues that the Trial Division's denial of equitable estoppel was incorrect, it fails to show that

the Trial Division abused its discretion. While we are sympathetic to IPRC's contention that the litigation could have been resolved earlier if Ngarametal Association had taken different actions, we are also mindful of the Trial Division's observation that the litigation would have been entirely unnecessary had IPRC fulfilled its obligations under the agreement.¹

III.

[¶ 13] The final issue on appeal relates to the Trial Division's award of attorneys' fees in Ngarametal Association's favor. IPRC raises multiple argument against the attorney's fees, the first of which is essentially a repeat of the equitable estoppel argument made above: that it should not pay any of Ngarametal Association's attorneys' fees during the period in which Ngarametal Association was pressing the (ultimately losing) argument that the 2017 Contract did not supplant the 2015 Contract. In its appellate brief, Ngarametal Association pointed us to multiple decisions from other jurisdictions finding that attorneys' fees attributable to losing arguments need not be carved out of an otherwise reasonable award of attorneys' fees. *See, e.g., Downey Cares v. Downey Cmty. Dev. Comm'n*, 242 Cal. Rptr. 272, 280 (Cal. Ct. App. 1987) ("Where a lawsuit consists of related claims, and the plaintiff has won substantial relief, a trial court has discretion to award all or substantially all of the plaintiff's fees even if the court did not adopt each contention raised."). This approach is sensible. Otherwise, for example, if an attorney makes an objection at trial and the court overrules it, the time the attorney spent making the objection would need to be deducted from a later award of attorneys' fees. That is not the usual approach. While here the scope of the prevailing party's failed argument is larger, the approach should be the same. Here, the Trial Division was in the best position to determine that the attorneys' fees

¹ We note a discrepancy between the amount awarded in the Trial Division's January 2022 Order and its May 2022 Judgment. While the Order calculates 50 months of lost rent to be \$701,290.57 in consequential damages, the Judgment calculates 54 months of lost rent to be \$631,800.00. This discrepancy is in IPRC's favor. While Ngarametal Association observed the discrepancy in its appellate brief, it did not appeal the damage award and has not asked us to remedy it. Thus, we take no action with regard to this discrepancy.

stemming from Ngarametal Association's arguments over the validity of the 2017 Contract should not be excluded, and we perceive no abuse of discretion in that determination.

[¶ 14] Second, IPRC appears to attempt an argument based on Ngarametal Association's attorney's employment by the Koror State Legislature. However, references to this issue appear in only two places in IPRC's brief: in one of the issues presented for review and in its summary of the Trial Division's judgment. Appellant's Opening Brief at 2, 15 (observing that Ngarametal Association's "counsel did not mention the fact that he was then employed by the Koror State Legislature (KSL) as its legal counsel and in that capacity he was assigned to represent Appellee in this case due to their traditional relationship").

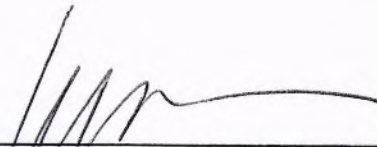
[¶ 15] Ngarametal Association's attorney's employment with Koror State Legislature is not mentioned anywhere in the body of IPRC's brief—the part that contains IPRC's arguments. We could speculate that IPRC contends that attorneys' fees should not be recoverable when an attorney is employed by a third party or perhaps when an attorney is employed by a governmental entity. Whatever argument IPRC had in mind, it did not actually make it and it certainly did not support it with reference to any legal authorities. We won't make the argument for it. *E.g.*, *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010).

[¶ 16] Somewhat similarly, IPRC contends that sanctions under ROP Rules of Civil Procedure 11 may be appropriate against Ngarametal Association for frivolously denying the validity of the 2017 Contract during the first trial; however, IPRC stops short of actually asking us to impose such sanctions. In any event, this is not an appeal of the first trial. That appeal was resolved two years ago. *See supra* ¶ 2. This is an appeal of the Trial Division's order following summary judgment. Moreover, any request for sanctions under Rule 11 should necessarily first be directed to the Trial Division, not to the Appellate Division, and we see nothing in the record to suggest that such a request was made here.

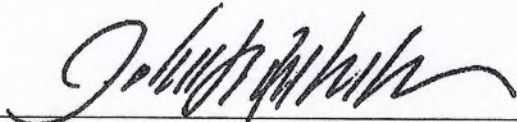
CONCLUSION

[¶ 17] For the reasons above, all of IPRC's appellate arguments fail and we **AFFIRM** the awards of damages, costs, and fees in the Trial Division's Judgment.

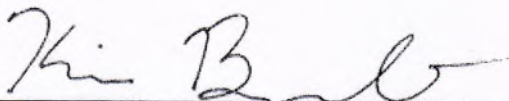
SO ORDERED, this 7th day of November, 2022.



OLDAIS NGIRAIKELAU
Chief Justice



JOHN K. RECHUCHER
Associate Justice



KEVIN BENNARDO
Associate Justice