


IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED 

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

**CHIANG SHUI LANG, and in his capacity as representative of
TIAN XIAO-HONG, CHENG FENG-YING, YEH CHIA-YUAN,
LIU YUNG-HO, CHIEN JEN-YUAN, CHIANG JEN-AN, MA
SHU FEN, LIU CHIN-CHING and CHENG KUO-SHIANG,**
Appellants,

v.

**CHIU HUNG-CHAO, HSAIO YU YEH, CHIU SHAO WEI, and
SEA PASSION CORPORATION,**
Appellees.

CHIANG SHUI LANG,
Appellant,

v.

CHIU HUNG-CHAO and SEA PASSION CORPORATION,
Appellees.

Cite as: 2023 Palau 13
Civil Appeals No. 20-003 & 22-012
Appeal from Civil Actions No. 18-098 & 17-222

Decided: April 28, 2023

Counsel for Appellant Johnson Toribiong
Counsel for Appellee Kassi Berg, Rachel A. Dimitruk

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding
KATHERINE A. MARAMAN, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] These appeals arise from a Sea Passion Corporation stock purchase agreement and the two resulting breach of contract actions brought by Appellant Chiang Shui-Lang (“Chiang”). Chiang first sued Appellee Chiu Hung-Chao (“Chiu”) for breach of contract and unjust enrichment. Chiang then brought a second suit against former shareholders of Sea Passion Corporation, obtained default judgments against these shareholders, and sought to collect on that judgment by attaching shares of Sea Passion Corporation that Chiu and his family had previously purchased.

[¶ 2] Because we find that there was no breach of contract and that Chiu and his family properly purchased the shares, we **AFFIRM**.

BACKGROUND

[¶ 3] Sea Passion Corporation is a domestic corporation of the Republic of Palau which owns and operates the Sea Passion Hotel in Malakal, Koror. Around 2012, Sea Passion Corporation was heavily indebted to certain benefactors and creditors, and its shareholders agreed to take decisive action to clear the debt. The underlying basis of both appeals is a July 19, 2012 shareholder stock sale contract (“Contract”) in which Chiu purchased 40% of the shares of Sea Passion Corporation. The Contract identifies the Buyer, “Party A” as Appellee Chiu and the Seller, “Party B”, as “Sea Passion Corporation.” Appellant Chiang, President of Sea Passion Corporation at the time, signed the Contract under the signature block “Sea Passion Corporation.”

[¶ 4] The Contract required the Buyer, Appellee Chiu, to make three payments totaling USD \$2,933,333.00 to Sea Passion Corporation’s bank account at the Bank of Hawaii. The Contract’s critical provisions state the following:

¹ The panel heard oral argument in CA/APP 20-003. The parties did not request oral argument in CA/APP 22-012. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

(1) After both Party A and Party B duly execute the Agreement in the presence of the Attorney-at-Law, Party A shall pay to Party B US\$933,333 (including NT\$2 million which has already been paid).

(2) After execution of the Agreement, both parties shall prepare all required documents, certificates, certificates [sic.] and shall duly complete the notarial authentication procedures in the Republic of Palau. Party B shall immediately ready the required documents, data, and complete the hand-over procedures with Party A. After completion of the hand-over procedures, Party A shall pay Party B US\$1 million within fourteen days.

(3) The required documents which have been duly completed ... shall be submitted to the Foreign Investment Commission ... After Party B receives the official documents(s) from the Foreign Investment Commission of the Republic of Palau, hands them over to Party A and after Party A completes the checking and verification procedures, Party A shall pay Party B US\$1 million within fourteen days. All aforementioned payments shall be made through the earmarked account, i.e.:

...

Name of Bank: Bank of Hawaii

Account Name: Sea Passion Corporation

Account #: 0037-101605

Branch name & No.: #37

[¶ 5] Appellant Chiang filed two different suits in which he argued that Sea Passion Corporation and its shareholders failed to make the proper payments required under the Contract.

I. CA/APP 22-012

[¶ 6] On June 26, 2017, Chiang filed suit against Chiu and Sea Passion Corporation for breach of contract, liquidated damages, and fraudulent conversion in Civil Action 17-222. Chiang argued that Chiu had not properly

made the three payments required by the 2012 Contract. During trial, Chiang then conceded that the payments had been made to the Sea Passion Corporation's Bank of Hawaii account, but that the payments were only partially released to him personally.

[¶ 7] On September 13, 2018, the Trial Division granted summary judgment to Chiu on the ground that Chiang failed to prove the elements of a breach of contract claim. *See* Orders on Cross-Mot. for Summ. J. (Tr. Div. Sept. 13, 2018). The Trial Division noted that the parties disagree on the identity of the seller in the Agreement: Chiang argues that he was the seller in the contract, acting on behalf of ten shareholders of the company, including himself. On the other hand, Chiu states that Chiang only entered the contract representatively on behalf of Sea Passion Corporation. The Trial Division also found that Chiang did not bring forward sufficient evidence that he was supposed to receive the funds personally. The parties then stipulated to dismiss the remaining counts (fraudulent conversion, abuse of power and breach of fiduciary duty, and unjust enrichment). On June 16, 2022, the Trial Division entered its final judgment agreeing with the stipulation and dismissed the remaining counts without prejudice.

[¶ 8] On July 13, 2022, Chiang filed CA/APP 22-012 to appeal the September 13, 2018 Order, arguing that the Trial Division misread the contract, and that while the first payment was paid in full, the second payment was paid only in part and that the third and final payment was never paid.

II. CA/APP 20-003

[¶ 9] On July 10, 2018, Chiang in his name and in "his capacity as representative" of prior shareholders of Sea Passion Corporation (Tian Xiao-Hong, Cheng Feng-Ying, Yeh Chia-Yuan, Liu Yung-Ho, Chien Jen-Yuan, Chiang Jen-An, Ma Shu Fen, Liu Chin-Ching and Cheng Kuo-Shiang) filed a breach of contract action against other former shareholders of Sea Passion Corporation (Wang Yung Chen, Yang Kuo Hung, Wang Chin Tsai, Chang Pi Chu, Tsai Hsin Ching, We Chin Te and Chou Chu Sheng, collectively referred to as the "Absent Shareholders") in Civil Action 18-098. Chiang argued that the Absent Shareholders failed to repay him in accordance with the 2012 Contract. The Absent Shareholders, who are all Taiwanese citizens, all failed

to appear, and the Trial Division filed default judgments against them. Chiang filed for writs of execution against the Absent Shareholders, stating that their only property in Palau were their shares of Sea Passion. On May 7, 2019, the Trial Division granted the writs, allowing the Absent Shareholders' stock to be seized and auctioned off to satisfy the judgment.

[¶ 10] However, between 2014 and 2017, Chiu's wife, Hsaio Yu Yeh ("Hsaio") and his son, Chiu Shao Wei ("Wei") purchased the shares of Sea Passion Corporation from the Absent Shareholders. Collectively, Chiu, Yeh and Wei ("Intervenors") filed a Motion for Intervention on May 21, 2019, stating that they were the current owners the shares. Intervenors provided purchasing agreements testifying of the sale. The Trial Division issued a restraining order to stop the auctioning of the shares on June 3, 2019. In a Motion to Deny Intervention and Sever Sea Passion Corporation as an Intervenor, as well as a Motion to Quash the Temporary Restraining Order and Enforce the Writ, Chiang argued that the sale was invalid because the sale was not notarized; because it failed to follow Foreign Investment Board regulations; and because it failed to obtain the approval of the Corporate Register. Chiang also argued that his interest, as judgment creditor, takes precedence over a purchaser who failed to record his interest. On January 29, 2020, the Trial Division denied the motions, declaring that Intervenors do own the shares. The Trial Division specifically stated that it would not issue an opinion on the total share of stock that Intervenors own, or on any transactions between Chiang and Intervenors, as those issues are the subject of Civil Action 17-222 (CA/APP 22-012).

[¶ 11] On March 30, 2020, Chiang filed CA/APP 20-003 against Intervenors Chao, Yeh, Wei, and Sea Passion Corporation, appealing the January 29, 2020 Order.

STANDARD OF REVIEW

[¶ 12] We review the trial court's entry of summary judgment *de novo*. *Republic of Palau v. Reklai*, 11 ROP 18, 21 (2003). A motion for summary judgment should only be granted when the pleadings, affidavits, and other papers show that no genuine issue of material act remains, and the moving party is entitled to judgment as a matter of law. ROP R. Civ. P. 56(c).

Additionally, the court must view all evidence and inferences in the light most favorable to the nonmoving party. *Rechelulk v. Tmilchol*, 2 ROP Intrm. 277, 281 (1991)

[¶ 13] Whether to entertain claims for declaratory relief is “committed to the sound discretion of the trial court.” *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001). As a result, we review the decision to grant declaratory relief for an abuse of discretion. *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 6.

DISCUSSION

I. CA/APP 22-012

[¶ 14] Chiang concedes that Chiu made all three payments, as required by the Contract, to the Bank of Hawaii account. Chiang argues that the contract provides that the Bank of Hawaii account was to be the “conduit” for transmitting payments to Chiang. In other words, Chiang maintains that under the Contract, the payments had to be disbursed to him personally. To support this argument, Chiang points to a sentence in the Contract which provides that “all aforementioned payments shall be made through the earmarked account.”

[¶ 15] To prove a breach of contract the non-breaching party must prove the existence of a contract, performance by the plaintiff, failure of performance by a defendant, and consequential damages. *Republic of Palau v. Reklai*, 11 ROP 18 (2003).

[¶ 16] Contract interpretation involves utilizing the ordinary and plain meaning of the words used unless all parties have clearly intended otherwise. *Airai State v. Republic of Palau*, 10 ROP 29, 32-33 (2002). “Under the objective law of contract interpretation, the court will give force and effect to the words of a contract without regard to what the parties thought it meant or what they intended for it to mean.” *In re Estate of Tmetuchl*, 12 ROP 171, 173 n.2 (Tr. Div. 2004). As a result, “if the language of a contract is clear and unambiguous, then there is no room for a court to weigh what is reasonable or likely to have been intended.” *Yalap v. Umetaro*, 16 ROP 126, 127 (2009).

[¶ 17] In this case, it appears clear that the language of the Contract merely required payments to the account. Nowhere does the language of the

Contract support Chiang's theory that these payments had to be personally disbursed to him. Where the language of the Contract is clear and unambiguous, we decline to look further than the four corners of the Contract.

[¶ 18] Similarly, we do not give credence to Chiang's argument that Sea Passion Corporation is the alter ego of Chiu, and that they both should be held jointly liable to Chiang for plotting to fraudulently withhold the payments. The alter-ego doctrine allows a court to impose liability on a shareholder for a corporation's misdeeds (or "pierce the corporate veil"), after finding that shareholders disregard corporate formalities to such an extent that the corporation and shareholders become alter egos of each other. *See* 18 C.J.S. Corporations § 23. Chiang states that Chiu, through his dominant stock ownership, blocked the payments due to Chiang under the Contract, but does not present any evidence supporting this theory aside from evidence that Chiu became a corporate signatory on the Bank of Hawaii account on September 12, 2012. As the Trial Division already remarked upon, the Contract was executed in July 2012 and all payments were made by September 6, 2012. Chiu rightfully became a signatory on the Bank of Hawaii account after he became chairman and president of Sea Passion Corporation. There is no evidence of fraud, nor is there any reason to apply the alter-ego doctrine to this situation.

[¶ 19] The Trial Division provided a thorough analysis of the Contract and the documents introduced by the parties. Even viewing the evidence and all inferences in his favor, Chiang failed to bring sufficient evidence that a breach of contract or fraud occurred. Therefore, the Trial Division did not err in granting the motion for summary judgment.

II. CA/APP 20-003

[¶ 20] Chiang contends that the Intervenors' acquisition of Sea Passion Corporation shares was invalid. Chiang raises two arguments: 1) that two of the stock transfers violated certain provisions of the Foreign Investment Act and associated corporate regulations, and 2) that the PNC's section on attachments and writs of executions, 14 PNC § 2101, governs this situation and Chiang has a priority interest on the shares as a lien holder.

A. Validity of the Stock Purchase

[¶ 21] Chiang first maintains that the Absent Shareholders still own the stocks because the sale to the Intervenors was invalid due to its failure to meet certain procedural requirements. Several provisions in the Foreign Investment Act and associated regulations are at issue. First, the Foreign Investment Act provides that for transfer of shares for over 5% or greater, the grantee must obtain the prior written consent of the Foreign Investment Board (“FIB”). *See* 28 PNC § 106 (b)(6). Second, the FIB Regulations prescribe that every corporation with a Foreign Investment Act Certificate must submit an annual report. *See* Foreign Investment Act Regs, Section 15. Third, the Corporate Regulations issued by the Registrar of Corporations require that every joint-stock company keep a book registering the names of all shareholders and file annual exhibits. *See* Corporate Regs., Chapter 1, Part 3.1, 5.4.

[¶ 22] Chiang also argues that the terms of Sea Passion Corporation’s Foreign Investment Approval Certificate (“FIAC”) were not followed. However, the language cited only applies where “a Palauan shareholder transfer shares to a non-Palauan,” which is clearly inapplicable to this case. We reject this argument outright.

[¶ 23] “The first step in statutory interpretation is to look at the plain language of a statute. . . . [I]f statutory language is clear and unambiguous, the courts should not look beyond the plain language of the statute and should enforce the statute as written.” *Lin v. Republic of Palau*, 13 ROP 55, 58 (2006). Nothing in the language of the Foreign Investment Act or the cited regulations suggest that a sale which violates their terms is invalid.

[¶ 24] On the contrary, the Act sets out specific consequences for its violation: the modification, suspension or revocation of the FIAC. 28 PNC § 112(a). This procedure occurs first through the FIB, who must “satisfy itself that there are sufficient grounds to proceed against the grantee, communicate the grounds for the proposed action to the grantee, and afford him an adequate opportunity to present his case” before referring the case to the Office of the Attorney General. *Id.* § 112. Similarly, the Corporate Regulations allow for the dissolution of any corporation for failure to file

their annual report for a period of two years. *See* Corporate Regs., Chapter 1, Part 6.2.

[¶ 25] In the absence of binding Palauan precedent, Chiang heavily relies on U.S. caselaw to support the argument that the sale was invalid. While Palau courts may look to U.S. case law for guidance, we do not find such comparison persuasive where our statutes crucially differ from the United States. *See Yano v. Kadoi*, 3 ROP Intrm. 174, 181 n.1 (1992). Several of the cases presented occurred in jurisdictions where a statute specifically invalidated the stock transfer where it did not meet certain procedural requirements.² Thus, we do not find U.S. case law persuasive here.

[¶ 26] Therefore, we find no legitimate reason to vitiate the stock transfer for its failure to meet procedural requirements without a statutory mandate to that end.

B. Priority interest

[¶ 27] Chiang contends that as a judgment creditor, he has a lien over the Absent Shareholders' property which takes priority over the Intervenor's interest. The Trial Division dismissed this argument under the theory that the Secured Transactions Act ("the STA") governs this situation, and that the Act provides that a security interest has priority over the rights of a lien holder unless a notice of the rights of the lien holder is filed in accordance with this Act. 11 PNC § 1932. Chiang maintains that his failure to record his lien as prescribed by the STA does not matter, as he properly recorded his lien with the Foreign Investment Board and the Corporate Registrar.

[¶ 28] First, we clarify that the Intervenor does not have a security interest in the shares. The STA defines a security interest as "a property right in collateral that secures performance of an obligation." 11 PNC § 1903(m). Nothing in the record supports that the Intervenor created such a security interest when they purchased the shares. They acquired the shares through a valid sale and the shares are now their personal property. As a result, 1 PNC

² *See e.g., Muckle v. Fitts*, 5 F. Supp. 41, 46-47 (S.D. Ala. 1933); *Man v. Boykin*, 60 S.E. 17, 18 (S.C. 1908); *Stroud v. Henderson*, 21 S.W.2d 871, 872 (Ark. 1929). The remaining cases are similarly inapposite.

§ 1932, which provides that a security interest prevails over the rights of a lien holder, does not apply.

[¶ 29] Second, while the STA does apply to the interest of a lien holder in collateral, 11 PNC § 1904(5), Chiang has not proved that he has a lien over the property. Under 14 PNC § 2103, a court may issue a writ of execution against the personal property of the party against whom the judgment has been rendered. One clear requirement of this provision is that the asset in question must be the “personal property of the party against whom the judgment has been rendered.” As we have previously described,

once a writ of execution is issued, the proper proceedings for claimants to the property subject to execution is by supplemental proceedings. *Once title to the asset is determined to be in the judgment debtor*, the provisions of 14 PNC sec. 2103 can be implemented and the sale pursuant to 14 PNC sec. 2104 may proceed.

Sugiyama v. Etpison, 3 ROP Intrm. 247, 250 (1992).

[¶ 30] In this case, the shares were transferred from 2014 to 2017, before the Trial Division issued the default judgments in May 2019. The shares were not the property of the Absent Shareholders anymore. Additionally, Chiang had actual notice of the transfer: through discovery in Civil Action 17-222, Intervenors disclosed to Chiang that they had purchased the stock.³

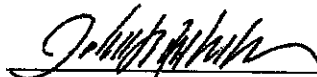
[¶ 31] Thus, while we disagree with the Trial Division’s reasoning on the application of the STA, we find that the Intervenors properly own the shares and the Trial Division did not abuse its discretion in granting declaratory relief. We have considered Chiang’s remaining arguments and find them to be insufficiently developed and wholly without merit.

³ Specifically, Intervenors attached a response to interrogatories in which they informed Chiang of their claim on the stocks. Chiang argues that this notice falls short of appropriate notice, because actual notice can only exist through “an actual recorded fact.” Actual notice is notice expressly and actually given, it does not require specific formalities to be met. *See, e.g.*, 58 Am. Jur. 2d Notice § 4 (2015) (defining actual notice as “notice expressly and actually given”); Black’s Law Dictionary 1227 (10th ed.2014) (defining actual notice as “[n]otice given directly to, or received personally by, a party”). We reject the argument that the notice given was insufficient.

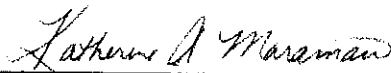
CONCLUSION

[¶ 32] We **AFFIRM** the Trial Division's orders in both appeals.

SO ORDERED, this 28th day of April, 2023.



JOHN K. RECHUCHER
Associate Justice, presiding



KATHERINE A. MARAMAN
Associate Justice



KEVIN BENNARDO
Associate Justice

