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

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**BROWNY SALVADOR and SAULUAI SALVADOR,**
*Appellants*,
**v.**
**MIKE RENGUUL,**
*Appellee*.

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Cite as: 2016 Palau 14
Civil Appeal No. 15-008
Appeal from Civil Action No. 13-048

Decided: June 16, 2016

Counsel for Appellants .....S. Nakamura
Counsel for Appellee .....J. Sengebau Senior

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
KATHLEEN M. SALII, Associate Justice
LOURDES F. MATERNE, Associate Justice

Appeal from the Trial Division, the Honorable R. Ashby Pate, Associate Justice, presiding.

## OPINION

PER CURIAM:[1]

[¶ 1] This appeal arises from an ejectment action brought by Appellee Mike Renguul against Appellants Browny and Sauluai Salvador. After a trial on the merits, the Trial Division entered judgment in favor of Renguul on his ejectment action, rejecting the Salvadors' argument that they must be awarded restitution if the ejectment action succeeds. The Salvadors appeal only the Trial Division's denial of their request[2] for restitution. Because

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[1] We determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

[2] Although the Trial Division purports to deny the Salvadors' "claim" for restitution, (Tr. Dec. at 1, 24), the record does not indicate that any claims were ever pleaded by the Salvadors while this action was pending before the Trial Division. The Salvadors' Answer does not contain any counterclaims

Appellants have not identified reversible error in the proceedings below, the judgment of the Trial Division is **AFFIRMED**.

## BACKGROUND

[¶ 2] In 2006, Appellants Browny and Sauluai Salvador constructed a home in Ngarchelong State. (Tr. Dec. at 2, 4.) On May 10, 2013, Appellee Mike Renguul filed an ejectment action against the Salvadors in the Trial Division, alleging that the land on which the home was constructed belongs to him. (Tr. Dec. at 6.) A trial was held, at which evidence was presented on two major issues: (1) whether the home indeed falls on Renguul's land, and (2) whether the Salvadors are entitled to restitution for the costs of building a house on the land.

[¶ 3] As to the first issue, the Trial Division rejected the Salvadors' primary defense, "that the land on which they built their home is actually Ngarchelong State land," (Tr. Dec. at 11), and found that the house falls on Renguul's property, (Tr. Dec. at 9-10). This finding is uncontested on appeal.

[¶ 4] As to the second issue, the propriety of awarding restitution, the Trial Division rejected the Salvadors' argument that they reasonably believed they owned the land on which they built their house. After surveying all of the information available to the Salvadors at the time they began construction, the Trial Division found that "this was not a reasonable mistake as to the ownership of the land, but rather, at best, exceptionally careless, and at worst, a classic instance of willful ignorance." (Tr. Dec. at 19.)

[¶ 5] The Trial Division also rejected the Salvadors' argument that the Renguul family's failure to alert them to their mistake before they completed construction on the house entitles them to restitution. Instead, the Trial Division found that, "[a]t all times during Defendants' construction of their home, legal title to the land rested solely in the hands of Plaintiff's father, Renguul Obeketang," (Tr. Dec. at 19), and that "Defendants presented no

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against Renguul as permitted under ROP R. Civ. P. 13(a)-(c), nor does the record indicate any later amendments under Rule 13(f) adding a counterclaim against Renguul. The significance of this omission will be discussed later in this opinion.

credible evidence at trial that Renguul Obeketang himself had any knowledge of their building activities," (Tr. Dec. at 20).

[¶ 6] Having rejected these two arguments, the Trial Division denied the Salvadors' request for restitution, which denial is the subject of the present appeal.

## STANDARD OF REVIEW

[¶ 7] A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. *See Remengesau v. ROP*, 18 ROP 113, 118 (2011); *Ngoriakl v. Gulibert*, 16 ROP 105, 106-07 (2008); *see also Pierce v. Underwood*, 487 U.S. 552, 557-58 (1988). Matters of law we decide *de novo*. *Uchelkumer Clan v. Sowei Clan*, 15 ROP 11, 13 (2008); *KSPLA v. Ngirmang*, 14 ROP 29, 31 (2006). We review findings of fact for clear error. *Urebau Clan v. Bukl Clan*, 21 ROP 47, 48 (2014). Under this standard, the factual determinations of the lower court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made. *Itolochang Lineage v. NSPLA*, 14 ROP 136, 138 (2007). Exercises of discretion are reviewed for abuse. *Remengesau*, 18 ROP at 118.

[¶ 8] Before turning to the two particular assignments of error discernible from Appellants' briefs in this case, it is worth reiterating generally the importance of appellants' identifying with particularity the errors they believe were made below and the standard of review applicable to each purported error. "As a general matter, the burden of demonstrating error on the part of a lower court is on the appellant." *Suzuky v. Gulibert*, 20 ROP 19, 22 (2012). Consequently, where there is a lack of "clarity and precision in the appellant's argument, this Court will not trawl the entire record for unspecified error." *Id.* (quotation marks omitted).

[¶ 9] The instant appeal exemplifies the confusion that results from a failure to clearly and precisely identify the particular errors for which review is sought and the standard of review applicable to each. After reciting,

apparently pro forma,[3] the standards of review applicable to conclusions of law, findings of fact, and exercises of discretion, Appellants' Opening Brief presents two broad, seemingly overlapping categories of argument for reversing the Trial Division's denial of their request for restitution: (1) "The Trial Court committed a reversible error when it determined that Appellants Browny and Sauluai Salvadors' mistaken belief as to the proper boundaries of the subject land was not reasonable"; and (2) "The Trial Court committed a reversible error when it denied restitution to Appellants Browny and Sauluai Salvador." (Opening Br. at 3, 8.) The contents of the brief amount to a recitation of the evidence presented at trial, a verbatim restatement of the legal standard applied by the Trial Division, and a request that this Court reach a different ultimate conclusion on the merits. This approach essentially invites the Appellate Division to first re-decide the case and only then work backward from the new result to find some error that must have caused the Trial Division to reach a different result.

[¶ 10] Such a strategy fundamentally misunderstands the role of an appellate court. Our function is to review judgments of the Trial Division for discrete, identifiable, and particular errors; it is not to decide what the outcome should have been based on the evidence presented at trial. "This Court does not reweigh the evidence below, and whether we would reach the same conclusion upon hearing the evidence for the first time is unimportant." *Estate of Remed v. Ucheliou Clan*, 17 ROP 255, 264 (2010).

[¶ 11] As we have remarked on numerous occasions, "an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the [trial court] weighed the evidence incorrectly borders on frivolous." *KSPLA v. Tmetbab Clan*, 19 ROP 152, 155 (2012). It is unsurprising, then, that appellants are uniformly unsuccessful when they do no more than "present a general challenge to the Trial Division's conclusion . . . ." *Suzuky*, 20 ROP at 21; *id.* at 23 (making short shrift of an appeal that "lacks a clear specification of the factual and legal errors

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[3] At no point after the Standard of Review section is the standard of review on appeal mentioned in Appellants' briefs, nor do they attempt in their arguments to demonstrate how the proper standard of review applies to their assignments of error.

asserted"). If such a strategy were sufficient to upset a final decision on the merits, trial judgments would be no more than rest stops on the road to ultimate resolution by the Appellate Division. That is not the function of the Appellate Division. Trial courts decide cases. Appellate courts correct discrete, identifiable errors.

## DISCUSSION

[¶ 12] Both parties on appeal agree that the Salvadors' entitlement to restitution is governed by the legal principles set forth in *Giraked v. Estate of Rechucher*, 12 ROP 133, 139-40 (2005), and reaffirmed in *Asanuma v. Golden Pacific Ventures, Ltd.*, 20 ROP 29, 33-34 (2012). Under this standard, "the general rule is that one who improves the property of another does so at his own peril, and only under certain exceptional circumstances will a mistaken improver be entitled to restitution for the value of improvements." *Asanuma*, 20 ROP at 34. Appellants' assignments of error in this appeal involve two such exceptional circumstances.

[¶ 13] The first is set forth in § 42(1) of the First Restatement of Restitution and applies to one who improves the land of another "in the mistaken belief that he . . . is the owner, . . . but [only] if his mistake was reasonable." Restatement (First) of Restitution § 42(1) (1937). It should be noted that § 42(1) is not, strictly speaking, an "exception" to the general rule, as it expressly recognizes that the mistaken improver "is not thereby entitled to restitution from the owner." *Id.* Rather, § 42(1) places conditions on the owner's entitlement to relief from the mistaken improver. *Id.* ("[I]f [the improver's] mistake was reasonable, the owner is entitled to obtain judgment in an equitable proceeding or in an action of trespass or other action for the mesne profits only on condition that he makes restitution . . . ."). In other words, in cases covered by § 42(1), the mistaken improver has no restitution claim against the landowner, but can insist that judgment on a claim brought by the landowner be conditioned on the landowner's making restitution.

[¶ 14] The second—and only true—exception is set forth in § 42 cmt. b, which provides that "[t]he rule stated in this Section is not applicable to . . . one who, having notice of the error and of the work being done, stands by and does not use care to prevent the error from continuing. In [such] cases he is subject to liability for the reasonable value of the services, irrespective of

the value to him." Restatement (First) of Restitution § 42 cmt. b (citing § 40); *see also id.* at § 40(c).

[¶ 15] Two basic challenges to the Trial Division's judgment are discernible in the Salvadors' appeal. The first is a challenge to the factual finding that the Salvadors lacked a reasonable belief that they owned the land on which they built their house; this goes to the quasi-exception under § 42(1). The second challenge, though less clear, is to the Trial Division's findings that neither Renguul Obeketang nor Mike Renguul knew of, or consented to, the Salvadors' construction and that the knowledge of Mike Renguul's siblings is irrelevant, which relate to the exception under § 42 cmt. b. Each challenge is discussed in turn below.

## I. The Trial Division did not commit clear error when it found Appellants lacked a reasonable belief that they owned the land at issue.

[¶ 16] The Salvadors argued to the Trial Division that, even if they built their house on Renguul's land, they did so under the mistaken belief that they owned the land. They further argued that this mistake was reasonable. Had the Trial Court credited both these assertions, Renguul's entitlement to relief would have been conditioned upon his paying restitution to the Salvadors. *See* Restatement (First) of Restitution § 42(1) (1937). However, after considering the documentary evidence and the testimony presented at trial, the Trial Division found that any belief the Salvadors may have had regarding their ownership of the land was, at best, unreasonable and, at worst, insincere.

[¶ 17] The Trial Division noted several facts that should have put the Salvadors on notice of the need for further inquiry regarding the boundaries of their land and found that their decision to ignore these facts constituted "carelessness or, worse, willful ignorance . . . in which one simply hopes that by ignoring an unpleasant or simply unknown fact one might be able to avoid its consequences." (*See* Tr. Dec. at 15-17.) It acknowledged that there was some evidence supporting the Salvadors' position, (*see, e.g.*, Tr. Dec. at 19 (noting, *inter alia*, several "off-the-cuff, unofficial statements by BLS surveyors who were in the area doing other work")), but ultimately found this evidence unpersuasive in light of the "lots ha[ving] already been accurately

plotted on searchable and publicly recorded documents at the time [the Salvadors] decided to build their home," (*id.*).

[¶ 18] As noted above, Appellants' arguments on appeal do little more than restate the evidence presented at trial and ask this Court to reach a different conclusion. (*See, e.g.*, Opening Br. at 6 ("Appellants submit that the Salvadors' reliance upon the knowledge they acquired at the time . . . did constitute a reasonable mistake.").) This is not a sufficient basis to reverse the Trial Division's judgment. Indeed, in order to affirm the judgment, we need not reject the Salvadors' contention that they "presented sufficient evidence to show that their mistake was reasonable." (Reply Br. at 2.) It suffices to note that in this case—as in all but the rarest cases—both sides presented conflicting evidence to support their respective positions. As we have recognized time and again, where there is evidence to support more than one conclusion, a trial court's choice between plausible viewpoints cannot be clearly erroneous. *See, e.g.*, *Sungino v. Benhart*, 20 ROP 215, 217 (2013) ("[O]n appeal we will not reweigh evidence, nor will we consider a decision clear error where admissible evidence supports competing versions of the facts."); *see also Estate of Remed v. Ucheliou Clan*, 17 ROP 255, 264 (2010) ("Each of these arguments was made by the [appellant] below, and the trial court rejected them. Where there are two competing version[s] of the facts, each supported by admissible evidence, the court's choice between them cannot be clear error. This Court does not reweigh the evidence below, and whether we would reach the same conclusion upon hearing the evidence for the first time is unimportant." (internal citation omitted)).

## II. The Salvadors have not identified any other, reversible error in the Trial Division's denial of their request for restitution.

[¶ 19] Appellants' briefs on appeal also recite various facts presented at trial regarding Mike Renguul's siblings—specifically, facts tending to suggest they knew of the Salvadors' construction and its location. (*See* Opening Br. at 5-6.) The Trial Division found this evidence to be irrelevant, concluding that, "[a]t all times during Defendants' construction of their home, legal title to the land rested solely in the hands of Plaintiff's father, Renguul Obeketang . . . ." (Tr. Dec. at 19.)

[¶ 20] With respect to the only two individuals who held a potentially relevant interest in the land, the Trial Division found insufficient evidence to show they actually knew of, or consented to, the Salvadors' construction. (*See, e.g.*, Tr. Dec. at 20 ("Defendants presented no credible evidence at trial that Renguul Obeketang himself had any knowledge of their building activities . . . ."); *id.* at 23 n.6 ("Defendants have trespassed and built structures without the consent or actual knowledge of either Plaintiff or his predecessor in interest . . . .").) Appellants appear to challenge several aspects of this conclusion. These challenges are discussed in turn below.

### A. The unavailability of sufficient evidence is not a basis for reversal unless it can be attributed to some error on the part of the trial court.

[¶ 21] First, Appellants appear to defend their failure of proof by noting that certain key witnesses below were unavailable to provide the needed evidence:

> Appellants submit that testimony from two crucial people involved in this case could not be presented: that of Renguul Obeketang (who had passed away by the time the case was filed) and Plaintiff Mike Renguul (who was bedridden during trial and could not be called to testify). These limitations occurred through no fault of Appellants, and are simply the circumstances of this case.

(Opening Br. at 6 (internal citations omitted).)

[¶ 22] The Court is of course sympathetic to such circumstances. But on appeal from a trial judgment, it is not enough to identify a limitation below and show that it is not attributable to the appellant. To succeed in overturning a trial judgment, an appellant must identify *error* below and show that it *is* attributable to the trial court. For example, if Appellants were able to show that they requested a continuance or some other vehicle to allow them to present the testimony of Mike Renguul, and that such request was denied by the Trial Division, they could now argue on appeal that such denial was an abuse of discretion. But no such showing has been made and the unavailability of evidence is not a basis for appeal unless it is attributable to some error of the trial court.

**B. Any potential ownership interest held by Mike Renguul's siblings is not a basis for reversal because Appellants never asserted claims against them.**

[¶ 23] Appellants also contend the Trial Division erred when it concluded that "[a]t all times during Defendants' construction of their home, legal title to the land rested solely in the hands of Plaintiff's father, Renguul Obeketang . . . ." (Tr. Dec. at 19.) Specifically, they argue that "the Trial Court failed or otherwise neglected to find . . . that upon Renguul Obeketang's death, on November 21, 2006, which occurred while Browny and Sauluai Salvador were building their home, all of the Renguul siblings, as Obeketang's children, immediately inherited at least a partial interest in the[] land." (Opening Br. at 7.)

[¶ 24] Assuming *arguendo* that Mike Renguul's siblings did hold some temporary ownership interest in the land at issue in 2006[4] and that the trial court's statement regarding title remaining with Renguul Obeketang was incorrect, the question remains what salience this has for the present appeal. It does not appear to have any effect on the Salvadors' restitution claim against Mike Renguul, as the exception mentioned above to the general rule regarding mistaken improvers only imposes liability on the particular owner "who, having notice of the error and of the work being done, stands by and does not use care to prevent the error from continuing." Restatement (First) of Restitution § 42 cmt. b. Accordingly, to the extent the prior ownership of Mike Renguul's siblings is intended to save the Salvadors' restitution claim against Mike Renguul, it fails and is not a basis for appeal.

[¶ 25] Thus, unless the prior ownership of Renguul's siblings had some other relevance to the action below, any error in the Trial Division's conclusion on this front was necessarily harmless. What alternative relevance it might have depends on exactly what claims were being asserted below by

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[4] It is far from obvious this assumption is correct, as the legal authority cited by Appellants actually suggests that the 2011 closing of Renguul Obeketang's estate constituted a post hoc determination that ownership had vested solely in Mike Renguul upon his father's death. *See Tengadik v. King*, 17 ROP 35, 39 (2009) ("It is common for a determination of who 'immediately' inherited a decedent's property to come long after the decedent's death.").

the Salvadors and against whom those claims were being asserted.[5] To determine this, we look to the pleadings below, as the pleadings define the scope of the issues to be decided by the Trial Division. Unfortunately, the pleadings are of little help, because the Salvadors do not appear to have pleaded *any* claims against *anyone*. The answer contains no counterclaims against Mike Renguul and there is no third-party complaint filed by the Salvadors against any of Mike Renguul's siblings.[6] Accordingly, we have no basis to conclude that the Salvadors presented any claims under which the prior ownership of Mike Renguul's siblings might be relevant, and we are not going to scour the record searching for such a claim. It is Appellants' burden to show that any error on this front warrants reversal and they have failed to do so. Indeed, in light of their failure in the court below to plead *any* claims for relief from *anybody*, we are particularly disinclined to go searching for errors on the part of the trial court in refusing to grant relief.

## CONCLUSION

[¶ 26] Appellants essentially request that this Court reweigh the evidence below and decide the case anew, a function well beyond the proper scope of appellate review. Having failed to identify any particular error in the Trial Division's judgment, their appeal must fail. The judgment of the Trial Division is accordingly **AFFIRMED**.

**SO ORDERED**, this 16th day of June, 2016.

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[5] For example, different facts would need to be proven in (a) a restitution claim against the estate of Renguul Obeketang, (b) a restitution claim against one of Mike Renguul's siblings, and (c) a restitution claim against Mike Renguul.

[6] Of course, the Salvadors' failure to assert such claims in their pleadings does not mean the Trial Division could not grant them relief, so long as the issue of such relief was "tried by express or implied consent of the parties." ROP R. Civ. P. 15(b). It does, however, mean that determining what claims were at issue below requires trawling the entire record for issues tried by express or implied consent of the parties, an expedition well beyond the task of any appellate court.