IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

JOHN T. SUGIYAMA d/b/a
SUGIYAMA TRADING COMPANY,
Appellant,
v.
SEUNG WON HAN, SUNGIN CHUNG, NGIRAITIB OLKERIIL,
and AMEI CHARLIE MCCREADY,
Appellees.

Cite as: 2020 Palau 16
Civil Appeal No. 19-015
(Civil Action No. 18-036)

Argued: May 13, 2020
Decided: July 14, 2020

Counsel for Appellant ..... Johnson Toribiong

Counsel for Appellees ..... Vameline R. Singeo

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice, presiding.

OPINION

DOLIN, Associate Justice:

[¶1] A basic principle of human commercial relationships is that one who receives and keeps goods must pay for them. Unable to convince the Trial Division to reject this basic proposition, Appellant John Sugiyama appeals to this Court seeking to retain the ten

vehicles he ordered from Appellee Seung Wong Han while paying nothing for the privilege. Finding no merit in Appellant's assignments of error, we **AFFIRM**.

FACTS

A.

[¶2] Sometime in April of 2017, Sugiyama ordered ten used Korean vehicles from Seung Won Han, an environmental engineer from Korea, promising and agreeing to pay for the vehicles within three months. Although Sugiyama did not speak Korean and Han's English was limited, the two were able to conclude their agreement through Changwoo Pak,[1] another Korean national and a friend of Sugiyama. The total cost of the vehicles was $174,590. Although the agreement itself was not in writing, there were emails and invoices that memorialized the outlines of the agreement.

[¶3] Sugiyama ordered specific vehicle models, including limousines and vans, via email on April 2, 2017, and although the invoice from Han gave Sugiyama the right to inspect the vehicles upon arrival, there were no provisions regarding Han's obligations to fix any defects that they were discovered to contain.

[¶4] The vehicles were shipped on April 17 and arrived in in Palau on May 9, 2017. After the vehicles arrived, and after they cleared Palau Customs, Sugiyama discovered that many of them had problems, including with their air conditioning, brakes, lights, and steering wheels. Instead of returning them, however, Sugiyama decided to keep and repair the vehicles in Palau. He bought parts and flew a mechanic from Korea to perform the work, which cost almost $38,000. It is not clear from the record whether Sugiyama ever attempted, prior to taking charge of the repairs, to have Han repair the vehicles. Nothing in the record before us indicates that he ever sought or received Han's promise to pay for the work that Sugiyama conducted.

[¶5] Under the terms of the purchase agreement, Sugiyama was to make an initial payment of $30,000 upon receiving the vehicles and remit the remaining balance after they were sold, but no later than three months after the vehicles' arrival in Palau.

[¶6] On June 16, 2017, after repeated demands from Han, Sugiyama finally tendered the initial $30,000 payment in three separate checks of $10,000 each. Han attempted to cash one of the checks, but it was not honored.[2] After some back and forth between the parties,

[1] While Pak was a defendant in the Trial Division, he apparently passed away prior to trial.

[2] Han testified that the first check "bounced" and he returned the other two checks in exchange for a promise to be paid in cash. *See* Findings of Fact and Conclusions of Law at 8 ¶ 8. In contrast, Sugiyama testified that once he discovered defects in the vehicles he put a stop payment on the check and demanded that Han return the other two checks, which Han did. We need not resolve the precise reason why the check wasn't honored as it doesn't change the bottom line—Sugiyama never paid Han for the vehicles.

Sugiyama told Han to direct all further questions and inquiries to Pak. Pak confirmed via email that Han should look to him for payment.

B.

[¶7] In order to resolve the impasse over payment to Han, Pak devised a plan to employ the vehicles in a rental business and use the income derived therefrom to pay Han—a plan to which Han agreed. In order to do so, Pak entered into a partnership agreement with a number of other individuals to form VIP Rent A Car Services (hereinafter VIP). Pak then asked Sugiyama to entrust the vehicles to VIP in exchange for 50% of the company's profits. Sugiyama agreed, but only released four out of ten vehicles to VIP.

[¶8] Sometime in August of 2017, after Han had made several demands for payment, he finally received $20,000 from one of the owners of VIP. Han also wrote to Sugiyama instructing him to turn over the rest of the vehicles to VIP, but Sugiyama refused. Instead, claiming that VIP failed to make any payments to him from the rental of the vehicles, Sugiyama demanded that the four vehicles previously transferred to VIP be returned to him. VIP, in turn, refused this demand.

[¶9] After further unsuccessful attempts to have the vehicles returned, Sugiyama brought the instant case against the partners of VIP for return of the vehicles and damages. Han, along with the partners in VIP, filed a counterclaim against Sugiyama.

C.

[¶10] While the suit was pending, Sugiyama and Han began communicating, in what the Trial Division characterized as a settlement attempt. [3] *See* Findings of Fact and Conclusions of Law at 5. Three documents were generated as a result of these efforts. The first of these, drafted by Sugiyama, was titled "Acknowledgement of Payment of Purchase Price and Appointment of Agent," and dated February 2, 2019, and is hereinafter referred to as "Vehicle Release." It provides that: "in consideration for payments received from John T. Sugiyama . . . I hereby acknowledge that I have received in full the purchase price . . . [and] Sugiyama now has full and unencumbered ownership of the said motor vehicles." The stamp on the document indicates it was signed, by Han alone, on February 7.[4]

[¶11] Before he signed the Vehicle Release, Han sent Sugiyama the second document (hereinafter "the Offer"), which he drafted himself. Han told Sugiyama, through their intermediary, that if Sugiyama did not sign that document then the Vehicle Release was

[3] The parties utilized the help Jeong Yun Sik, another Korean national and long-time acquaintance of Sugiyama.

[4] The purpose of this document appears to be to help Sugiyama's argument vis-à-vis VIP. Since VIP could only lay claim to the vehicles if they still belonged to Han, an acknowledgment from Han that he has received full payment for the vehicles and transferred the entirety of his interest to Sugiyama would support Sugiyama's claim for the return of the vehicles.

not valid or enforceable. The Offer references the Vehicle Release and states that Sugiyama agrees to pay $30,000 for the eight vehicles, otherwise they must be returned to Han on such date and to such place as Han instructs. Sugiyama never signed the Offer and the date, which Han left blank, remained so. Instead, Sugiyama emailed Han a third document which in essence was a counteroffer. Under the terms of Sugiyama's February 8, 2019, email (hereinafter "the Counteroffer"), in place of the $30,000 that Han requested, Han was to receive $20,000, and in place of having the first payment be due within three days of the receipt of the Vehicle Release, it would not be due until ten days after "receipt of the Court Order releasing all 8-units of vehicles to Mr. Sugiyama."[5] After receiving the Counteroffer, Han told Sugiyama that because Sugiyama failed to fulfill the conditions set forth by Han the Vehicle Release was cancelled. Findings of Fact and Conclusions of Law at 5-7; 13-14.

[¶12] To this day, Sugiyama had not paid any money whatsoever for the vehicles.

D.

[¶13] At trial there was a dispute about the agreed upon price for the vehicles. The parties introduced two documents relevant to this question. Both documents are purported to be invoices from Han to Sugiyama and both are dated April 6, 2017. The first invoice was in the amount of $174,590 and the second was in the amount of $49,500. When queried about the discrepancy, the parties provided conflicting testimony. Sugiyama testified that the lower-price invoice reflected the discount that Han had agreed to when told that the vehicles suffered from various defects. In contrast, Han testified that the second invoice was a document prepared at Sugiyama's request for the purpose of minimizing the amount of import duty due. In resolving the disagreement, the Trial Division noted the existence of emails from Pak to Han indicating that Sugiyama asked for an alternate invoice in order to lower the amount of tax due, that both invoices were dated *before* the vehicles arrived in Palau, and that it was the invoice in the lower amount that was presented to the Bureau of Customs and Border Protection, also *before* the vehicles were released to Sugiyama. As a result of these factual findings, the Trial Division rejected Sugiyama's explanation for the existence of the alternative invoice, and credited Han's. *See* Findings of Fact and Conclusions of Law at 15-16.

[¶14] Accordingly, the Trial Division held that Sugiyama was liable to Han for the purchase price of the vehicles, $174,590, plus interest of 9% per annum from the date of the judgment, which was June 11, 2019. Sugiyama appealed.[6]

[5] It is not entirely clear why the parties discussed only eight rather than all ten vehicles at this point. Fortunately, this issue is not relevant to our resolution of the case as the Trial Division awarded all ten to Sugiyama.

[6] With respect to Sugiyama's claims against VIP, the Trial Division held that Sugiyama owned all of the vehicles he ordered from Han, and ordered VIP to return all the vehicles to him. At the same time, the court

STANDARD OF REVIEW

[¶15] We review questions of law *de novo* and findings of fact for clear error. *Etpison v. Ngeruluobel Hamlet*, 2020 Palau 10 ¶ 16.

[¶16] "Generally, the interpretation or construction of contracts are matters of law for the court. Whether the contract is ambiguous to an extent that would permit extrinsic or parol evidence of the content of the contract is also a question of law." *Ngiratkel Etpison Co., Ltd. v. Rdialul*, 2 ROP Intrm. 211, 217 (1991) (citation omitted).

DISCUSSION

[¶17] On appeal, Sugiyama assigns three points of error. We address each of his contentions in turn.

A.

[¶18] First, Sugiyama claims that the Trial Division erred when it held that the Vehicle Release was conditioned on Sugiyama signing the Offer. According to Sugiyama, the Vehicle Release was a contract for the settlement of the dispute between Han and Sugiyama over the payments due for the delivered vehicles. Sugiyama contends that the Vehicle Release speaks for itself and because it "makes no reference to any other document, is self-integrated, and not subject to any terms or conditions in order for it to take effect," the parol evidence rule bars the court from looking outside the four corners of the document. Although "a settlement agreement is a contract that is interpreted according to general principals of contract law," *ROP v. Terekiu Clan*, 21 ROP 21, 25 (2014) (quoting *Omega Engineering, Inc, v. Omega, S.A.*, 432 F.3d 437, 443 (2d Cir. 2005)), we disagree that the parol evidence rule precluded the Trial Division from receiving Han's oral testimony regarding the validity of the Vehicle Release.

[¶19] The parol evidence rule is a famously difficult concept. *See* James B. Thayer, A Preliminary Treatise on Evidence at Common Law 390 (1898) ("Few things are darker than this, or fuller of subtle difficulties."). But whatever the difficulties one might encounter in applying the parol evidence rule to *interpreting* a contract, it is well established that it is of no relevance when the question goes to the *formation* of the contract.

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found that Sugiyama had not proven damages against VIP because there was no evidence that the car rental business ever made any money, so Sugiyama's agreed-upon 50% of the receipts was zero dollars.

While all of the parties in the Trial Division remain formal parties to this appeal, Sugiyama's assignments of error relate only to the dispute between Sugiyama and Han.

[¶20] It is true that courts may not admit evidence outside the "four corners" of a contract which is on its face absolute to show that the contract was in fact conditional. *See Ngiratkel Etpison Co., Ltd. v. Rdialul*, 2 ROP Intrm. 211, 222 (1991) ("Parol evidence may not be introduced to alter or vary a complete, unambiguous sales agreement."). But the application of the parol evidence rule always requires that the court has already determined that there exists a contract to interpret; it does not preclude the court from entertaining evidence that there was never a meeting of the minds necessary to create a binding contract in the first place. *See, e.g., Local Motion, Inc. v. Niescher*, 105 F.3d 1278, 1280 (9th Cir. 1997) (holding that "the parol evidence rule only applies when the court is interpreting a contract that is enforceable," so a party's attempt to use it to exclude evidence that there was "no meeting of the minds . . . has no merit"); *Glazer v. Lehman Bros.*, 394 F.3d 444, 458 (6th Cir. 2005) ("The parol evidence rule did not prohibit a party from proving that a written agreement (as opposed to a provision in that agreement) was not intended or understood by either party to be binding upon them.").

[¶21] Indeed, for almost two centuries, courts across common law jurisdictions have uniformly held that "the parol evidence rule does not prevent the introduction of parol evidence indicating that the written instrument was not to become effective as an instrument, until a prior condition or event had occurred." *Saliba v. Arthur Fulmer Charlotte, Inc.*, 270 A.2d 656, 659 (Md. 1970). *See also Morgan Stanley High Yield Sec., Inc. v. Seven Circle Gaming Corp.*, 269 F. Supp. 2d 206, 216 (S.D.N.Y. 2003); *Washington Tent & Awning Co. v. 818 Ranch, Inc.*, 248 A.2d 126, 127 (D.C. 1968); *Cosper v. Hancock*, 430 P.2d 80, 81 (Colo. 1967); *Hicks v. Bush*, 180 N.E.2d 425, 427 (N.Y. 1962); *Lewis v. Mears*, 297 F.2d 101, 104 (3d Cir. 1961); *Smilow v. Dickerson*, 54 A.2d 883, 886 (Pa. 1947); *Walter Pratt & Co. v. G. W. Chaffin & Co.*, 48 S.E. 768, 769 (N.C. 1904); *Moore v. Farmers' Mut. Ins. Ass'n*, 33 S.E. 65, 66–69 (Ga. 1899); *Wilson v. Powers*, 131 Mass. 539, 539-40 (1881); *Holmes v. Crossett*, 33 Vt. 116, 117-19 (1860).[7]

[¶22] The Trial Division found that "Han made it clear to Sugiyama that [the Vehicle Release] shall be valid and binding only if Sugiyama also signed [the Offer] and paid Han $30,000 within the time periods stated." Findings of Fact and Conclusions of Law at 13. In other words, the Vehicle Release to Sugiyama "was not to become effective as an instrument, until a prior condition or event [*i.e.*, Sugiyama's acceptance of the Offer] had occurred." *Saliba*, 270 A.2d at 659. The execution of the Offer and the remittance of payments on the schedule established in that document were conditions precedent to making the Vehicle Release operative. Because Sugiyama neither executed the Offer nor made payments under it, the Trial Division held that the Vehicle Release agreement "never became operative, and that its obligation never commenced." *Wilson*, 131 Mass. at 539.

[7] Cases from non-American common law jurisdictions have reached the same result. *See, e.g., Scook v Premier Building Solutions Pty Ltd*, [2003] WASCA 263 ¶26 (W. Australia Sup. Ct.); *McKenna v. F.B. McNamee & Co.*, 15 SCR 311, 316 (Canada 1888); *Pym v. Campbell*, 119 Eng. Rep. 903 (Q.B. 1856).

[¶23] Understandably, Sugiyama disagrees with this interpretation of events. He claims that he never received the Offer and, to the contrary, that he sent the Counteroffer together with the Vehicle Release to Han via a Korean-speaking intermediary. *See* Trial Tr. p. 184, l. 19 – p. 186, l. 17; p. 217, l. 17 – p. 220, l. 26. To put it another way, according to Sugiyama, there was no condition precedent to the Vehicle Release becoming operational, and Han agreed to sign that document on the basis of promises contained in the Counteroffer (which according to Sugiyama was not a "counteroffer" at all, but the one and only offer). *See id.*

[¶24] Whether or not a condition precedent to the formation of the contract existed is a question of fact. *See Lee Washington, Inc. v. Washington Motor Truck Transp. Emp. Health & Welfare Tr.*, 310 A.2d 604, 606 (D.C. 1973) ("[E]xistence of . . . a condition precedent and whether it has been met are questions of fact."). Under any standard of review, and certainly under the deferential clear error standard, *see Etpison*, 2020 Palau 10 at ¶ 16, we find no fault in Trial Division's factual determination.

[¶25] First, the question of who received what email attachment when turns largely on whose testimony is more believable. The Trial Division explicitly stated that it found Han's testimony credible in this regard, *see* Findings of Fact and Conclusions of Law at 14, and absent extraordinary circumstances, we will not disturb credibility determinations on appeal. *See, e.g.*, *Xiao v. ROP*, 2020 Palau 4 ¶ 12, n.4; *Ngirasechedui v. Whipps*, 9 ROP 45, 47 (2001).

[¶26] Another point militates against the conclusion that the Vehicle Release was an operational agreement. "As a basic principle, the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange, and a consideration." *Chun v. Liang*, 14 ROP 121, 123 (2007) (quotation marks omitted). This is such a core principle that "[e]vidence is admissible to prove whether or not there is consideration for a promise, even though the parties have reduced their agreement to writing which appears to be a completely integrated agreement." *Id.* (quoting Restatement (Second) of Contracts § 218(2) (1981)). Thus, in order to prove that the Vehicle Release was in fact a "contract," Sugiyama needed to prove that he provided consideration in exchange for Han's agreement to waive his claim to the original purchase price. The Trial Division, however, found that: "[n]ot a single word, phrase, or sentence [of the Vehicle Release] benefits Han," and questioned why Han would "sign such a document . . . without imposing some conditions that would, at the very least, guarantee him a fraction" of the original price of the vehicles. Findings of Fact and Conclusions of Law at 13. Sugiyama attempts to dispute that by arguing that his February 8, 2019, email (*i.e.*, the Counteroffer) was the consideration for Han's promise. The Trial Division was presented with evidence of time-stamped emails, and on that basis concluded that the email from Sugiyama to Han was not a recitation of

consideration as Sugiyama contends,[8] but rather a *counter*-offer to Han's Offer. *See id.* at 13-14. Nothing Sugiyama pointed to on appeal leaves us with "with a definite and firm conviction" that the Trial Division misinterpreted the evidence. *See Rechelulk v. Tmilchol*, 6 ROP Intrm. 1, 2 (1996).

[¶27] "It is axiomatic that a counteroffer is simply an offer that operates also as a rejection of a previous offer. . ." *Bourque v. F.D.I.C.*, 42 F.3d 704, 710 (1st Cir. 1994) (citing Restatement (Second) of Contracts § 39 (1981)). Because the Trial Division found as a matter of fact that the Vehicle Release was conditioned on Sugiyama accepting the Offer, it follows that by sending the Counteroffer, Sugiyama prevented the condition precedent from occurring and the Vehicle Release from becoming binding and operational.

B.

[¶28] Appellant's next assignment of error is that the Trial Division erred in awarding Han the full amount he was owed under the contract "without regards for Appellee Han's termination of his sales contract with Appellant and his assignment [of] the same motor vehicles to a third party."[9] Appellant's claim that Han terminated the parties' oral contract is based on his November 2017 letter, in which he stated:

> I have received no cash and no money at all, so I have to conclude we have no agreement any longer for you to purchase any cars from me. Since these cars are already in Palau I have decided to entrust them to VIP Rental Car Service in the hope I can recover the investment I originally made with you.

[¶29] To the extent that we can make sense out of Sugiyama's argument, it appears to be that Han's email indicated that the contract was cancelled and therefore no money is owed to him. This argument, however, is contradicted by Sugiyama's own position at trial. There, Sugiyama argued that from the day the vehicles were delivered to Palau he has been the true owner of the vehicles. In support of this argument, he presented a bill of lading which indicated that Sugiyama was the consignee of the vehicles. The Trial Division agreed with Sugiyama's argument and held that the bill of lading proved that Sugiyama was the owner of the vehicles, and on that basis ordered VIP to return the vehicles to

[8] Ironically, were we to accept Sugiyama's argument that his email promising the payment of $20,000 was consideration for Han's promises in the Vehicle Release, it would necessarily follow that the Release was *not* an integrated document and therefore the parol evidence rule would once again have no application. *See* Restatement (Second) of Contracts § 213 (stating that parol evidence rule applies only to *integrated* agreements) (emphasis added).

[9] The sum total of Appellant's argument is that: "[t]he termination of the sales contract between Appellee Han and Appellant Sugiyama should militate against assessing liability of Appellant Sugiyama for the full purchase price of these vehicles," but he cites no supporting law or further reason for this assertion, except for repeating the argument that the Vehicle Release states that Han was paid, which we have already concluded is without merit.

Sugiyama. However, this conclusion (which Sugiyama does not dispute), undermines Sugiyama's contention that Han "cancelled" the contract.

[¶30] "[W]here the contract is completely performed [it] is no longer in reality subject to cancellation." *Markwood v. Olson Mfg. Co.*, 289 N.W. 830, 832 (Minn. 1940). Han's obligation under the original contract was to deliver vehicles to Sugiyama. That obligation was fully performed and therefore, whatever Han may have said in his email (whether because of frustration, poor command of English,[10] or for any other reason), he was no longer in any position to "cancel" the contract. *Id.* Nor did Sugiyama actually treat Han's letter as a cancellation, because he never attempted to return the vehicles to Han. Instead, Sugiyama retains the vehicles to this day. There was therefore no reason for the Trial Division to take into account "Appellee Han's termination of his sales contract with Appellant and his assignment [of] the same motor vehicles to a third party" when calculating the amount of money owed to Han.

[¶31] This section of Appellant's brief contains three additional one or two sentence paragraphs that do not appear to relate to this assignment of error; Appellee points out that it "is not readily clear as to what the Appellant is arguing the Trial Court erred in." It is not incumbent on this Court to make Appellant's arguments for him. As this Court has repeatedly held, "appellate courts generally should not address legal issues that the parties have not developed through proper briefing." *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 50 (2006). Indeed, "[t]his Court cannot be expected to sift through poorly articulated legal arguments in search of a grain of merit." *Kebekol v. KSPLA*, 22 ROP 74, 78 (2015). All that said, we will attempt to very briefly address two of Appellants assertions. First, although Appellant is factually correct that the parties' documents attempting to settle the matter only mention eight vehicles, Appellant was awarded all ten by the Trial Division, so whatever the reason those two vehicles were not discussed, that is no reason for an offset of the money Sugiyama owes Han. Second, while Sugiyama notes that he spent money repairing the vehicles, he does not address the Trial Division's finding that those costs should not offset his liability where the vehicles were used and no warranties were requested or provided. Accordingly, we find Appellant's second assignment of error to be without merit.

C.

[¶32] Appellant's final argument "reminds us of the legal definition of *chutzpah*: *chutzpah* is a young man, convicted of murdering his parents, who argues for mercy on the ground that he is an orphan." *Fallbrook Hosp. Corp. v. N.L.R.B.*, 785 F.3d 729, 733 (D.C. Cir.

[10] Given Han's limited command of English, the phrase "we have no agreement any longer" is, more likely than not, an acknowledgment of Sugiyama's breach of his obligation to remit payment for the vehicles, rather than a statement that Han is terminating their agreement even though Sugiyama has paid nothing.

2015) (quoting *Harbor Ins. Co. v. Schnabel Found.*, 946 F.2d 930, 937 n.5 (D.C. Cir. 1991)).

[¶33] Sugiyama argued that "[t]he trial court erred as a matter of public policy for awarding compensation to Appellant Han without regards for the legal effect of his use of a fake commercial invoice to defraud the government on the import tax for these vehicles." In making this argument, Sugiyama impliedly concedes that he perjured himself at trial when he testified that the $49,500 invoice was not a "fake commercial invoice," but rather reflected an agreed-upon discount for the defective vehicles. To be sure, Sugiyama's testimony on this point was never believable, as it is squarely contradicted by the dates on both invoices and by the fact that Sugiyama used the lower figure invoice to clear the vehicles through Customs *before* he had a chance to inspect them and discover the defects.[11] Still, it takes considerable gall to argue to an appellate court that the reason you should prevail on appeal is that the trial court did not fully appreciate the scope of your deceit.

[¶34] The behavior of all parties on this issue is appalling. It appears that by presenting the fake invoice to the Bureau of Customs and Border Protection Sugiyama violated 17 PNC § 3702(b), which makes any "willful act or omission whereby the Republic shall or may be deprived of any lawful taxes accruing upon goods embraced or referred to in an invoice," a felony. Further, because the Trial Division found, as a factual matter, that "the $49,500 [invoice] was created *solely* to minimize the import tax and inspection cost that had to be paid," Findings of Fact and Conclusions of Law at 16 (emphasis added), it necessarily must have concluded that Sugiyama's testimony on this point was false. By testifying falsely, Sugiyama appears to have committed another felony. *See* 17 PNC § 4201 (criminalizing perjury). It is unclear whether Sugiyama's attorney knew that his client was testifying falsely (though it seems to us that given the sequence in which the false invoice was issued and used, a reasonable person would have understood that the veracity of Sugiyama's testimony is highly questionable); if so, it would mean that he was suborning perjury in violation of Rule 3.3 of the ABA Model Rules of Professional Conduct, which prohibits at attorney from "offer[ing] evidence that the lawyer knows to be false."

[¶35] Han, of course, didn't cover himself in glory either. By providing Sugiyama with a false invoice, he may well be guilty of violating 17 PNC § 3702(b) as well. *See* 17 PNC §§ 222(b)(3), 223(a)(2). Although Han's counsel attempted to excuse her client's conduct by highlighting the fact that he is not experienced in commercial transactions or Palauan customs, we do not believe that one needs to be an experienced businessman to know that

[11] At oral argument Sugiyama's counsel confirmed that the vehicles were cleared through Customs before Sugiyama had any opportunity to inspect them or note any defects therein.

tax avoidance is wrong, nor that Korean customs on this score are materially different from Palauan ones.

[¶36] It would be an understatement to say that we are shocked and disappointed by this behavior. Because there is a significant possibility that criminal conduct took place, we will refer this matter to the Offices of the Attorney General and Special Prosecutor to take such action as those Offices deem necessary.

D.

[¶37] Finally, the issue of damages needs to be briefly addressed. In ordering Sugiyama to pay the entire $174,590 to Han, the Trial Division failed to take into account the $20,000 Han had previously received from VIP. It is a basic principle of contract law that:

> Contract damages are ordinarily based on the injured party's expectation interest and are intended to give him the benefit of his bargain by awarding him a sum of money that will, to the extent possible, put him in as good a position as he would have been had the contract been performed.

Palau Marine Indus. Corp. v. Seid, 9 ROP 173, 177 (2002) (quoting Restatement (Second) of Contracts § 347, cmt. a.). Thus, Han would normally be entitled to no more than the original bargained for purchase price of $174,590. However, under the Trial Division's judgment, Han would receive that amount on top of the $20,000 already received.

[¶38] Normally, such an error would require us to modify the award of damages accordingly. Nevertheless, we decline to do so in this case because, by failing to present the argument at trial or raise it in his opening brief on appeal, Sugiyama has forfeited the argument. *See Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) ("No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue."); *Anderson v. Kim*, 2018 Palau 23 ¶ 4 (noting that the issues presented in an appellant's opening brief govern the scope of the appeal). We therefore leave the Trial Division's judgment undisturbed on this point. Nonetheless, we highlight this error for the benefit of future litigants.

CONCLUSION

[¶39] At the end of the day, Sugiyama argues that he should be allowed to enjoy the entire benefit of his bargain keeping all of the vehicles he ordered from Han but without incurring any cost or obligation for the privilege. Because this position runs counter to the fundamental tenets of contract law and basic principles of commercial interactions, we, like the Trial Division, reject it. Accordingly, the judgment of the Trial Division is **AFFIRMED**. The Clerk of Courts is respectfully **DIRECTED** to serve this opinion on

the Offices of Attorney General and Special Prosecutor for such actions as those Offices deem necessary.