IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

SURANGEL AND SONS COMPANY, and BION BLUNT,
Appellants,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2023 Palau 22
Civil Appeal No. 23-008
Appeal from Civil Action No. 21-178

Decided: October 27, 2023

Counsel for Appellant Surangel and Sons	C. Quay Polloi
Counsel for Appellant Bion Blunt	Vameline Singeo
Counsel for Appellee	Laisani Tabuakuro, Assistant Attorney General

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding
FRED M. ISAACS, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION[1]

PER CURIAM:

[¶ 1] This appeal arises from forfeiture proceedings over a boat and other associated equipment used to illegally hunt green turtles. Appellant Surangel and Sons Company ("Surangel"), who sold the property subject to forfeiture, first argues that the Trial Division abused its discretion in dismissing Surangel's intervention because it had a security interest over and retained

[1] The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

legal title in the property; then submits that the Trial Division violated Surangel's due process rights in dismissing the intervention *sua sponte*.

[¶ 2] For the reasons set forth below, we **AFFIRM**.

BACKGROUND

[¶ 3] In 2019, Lavender Benge purchased a 23-foot boat hull, a boat trailer, an outboard motor, and other boat fittings (conjointly, "the property") from Surangel. Benge's husband, Appellant Bion Blunt, used the property to harvest turtles in violation of 24 PNC § 1281(b), for which he was charged and convicted. After the criminal proceedings, the Republic of Palau ("the ROP") instituted a civil forfeiture action over the property.[2]

[¶ 4] On October 18, 2021, Surangel filed a Motion to Intervene in the forfeiture action, arguing that an installment purchase agreement existed between Benge and Surangel, and that as a result, Surangel retained legal title and had a security interest in the property. Surangel submitted exhibits showing receipts and invoices addressed to Benge for the property, and a statement of Benge's account which showed that she had been making regular payments since the purchase in 2019. According to the trial court, Benge was still making payments as of February 3, 2023. Surangel claims that a written sales agreement was prepared but ultimately not signed.

[¶ 5] On November 17, 2021, the trial court granted the Motion to Intervene for good cause shown. Shortly thereafter, on December 6, 2021, the ROP filed an opposition to the Motion to Intervene, to which Surangel responded on December 21, 2021. The forfeiture hearing was held ten months later, on October 6 and 7, 2022. The day before the forfeiture hearing, Surangel filed a security interest with the Secured Transactions Office. During the hearing, the trial court dismissed Surangel as an intervenor because Surangel failed to present a sales agreement to the court. On February 3, 2023, the trial

[2] Under 17 PNC § 402(h) which defines "owner" for the purposes of the Forfeiture Act, "a spouse binds the person's spouse, by any act or omission." Appellants do not contest that Blunt's actions were binding over Benge's property. Accordingly, this issue is not before the Court.

court issued two orders: one denying the Motion for Reconsideration by Surangel and one granting forfeiture to the ROP.

STANDARD OF REVIEW

[¶ 6] A lower court's decision on a motion to intervene "is to be overturned only if it constitutes an abuse of discretion." *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, 22 ROP 30, 35 (2015). An abuse of discretion occurs when the [trial court's] decision is "arbitrary, capricious, or manifestly unreasonable, or because it stemmed from improper motive." *Esuroi Clan v. Roman Tmetuchl Family Trust*, 2019 Palau 31 ¶ 13 (internal citations omitted).

DISCUSSION

[¶ 7] Appellants claim that the trial court abused its discretion in dismissing Surangel's intervention because Surangel had a security interest over and retained legal title in the property; and erred in doing so *sua sponte*, after allowing intervention, without giving Surangel notice and an opportunity to be heard.

I. Interest in the Property

[¶ 8] An applicant may be permitted to intervene in an action when claiming an interest relating to the property or transaction which is the subject of the action, and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. ROP R. Civ. P. 24(a)(2).

[¶ 9] We have set no precise formula for determining whether a potential intervenor meets the requirements for intervention under Rule 24. In fact,

> the analysis is holistic, flexible, and highly fact-specific. Broadly speaking, a court determines whether an outside entity should intervene in or join an existing lawsuit by striking a balance between allowing the original parties to a lawsuit to conduct and conclude their own lawsuit and allowing others to join a lawsuit in the interest of the speedy and economical

> resolution of a controversy without rendering the lawsuit fruitlessly complex or unending; whether to order intervention or joinder turns on judgment calls and fact assessments.

59 Am. Jur. 2d *Parties* § 156 (2023).

[¶ 10] Surangel argues its interest in the property is twofold: first, because Surangel has a security interest over the property, and alternatively, because Surangel has a claim of legal ownership under an installment purchase agreement.

A. Security Interest Over the Property

[¶ 11] The Secure Transactions Act defines a security interest as "a property right in collateral that secures performance of an obligation." 11 PNC § 1903(nn). In our case, Surangel submits that it secured Benge's performance of the payment by creating a security interest over the property.

[¶ 12] A security interest is not enforceable against the debtor unless it has attached to the collateral. Under the Palau National Code, three requirements must be met: (1) value has been given by the secured party to the debtor, (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party, and (3) one of three conditions is met. 11 PNC § 1919. These three conditions are that (A) the debtor has signed a security agreement that provides a description of the collateral, or (B) the collateral is in the possession of the secured party pursuant to the debtor's security agreement, or (C) the collateral is a deposit account and the secured party has control.

[¶ 13] Because neither (B) nor (C) apply to this case, the only way a security interest could attach to the collateral is through Lavender Benge's signature on an adequately described security agreement. Surangel admitted that no such security agreement was signed.

[¶ 14] Nevertheless, Surangel contends that the lack of security agreement is not fatal to its claim, as under the Secured Transactions Act, "[a] security agreement may be found in multiple records when read together." 11 PNC § 1916 (b). Surangel points to several exhibits that purportedly show the existence of the security agreement, consisting of store receipts, invoices

detailing the property purchased by Benge and corresponding prices, as well as a statement from Benge's store account enumerating the periodical payments made from Benge to Surangel between 2019 and 2022.

[¶ 15] A security agreement "creates or provides for a security interest." 11 PNC § 1903(mm). "When interpreting agreements . . . courts give words their ordinary and plain meaning unless all parties have clearly intended otherwise." *Tomomi v. Nelson*, 4 ROP Intrm. 169, 170 (1994). We have applied this rule once in the context of security interests. In *Pac. Call Inv. v. Palau Marine Indus. Corp.*, 15 ROP 50, 52 (2008), a promissory note stated that it was "secured by all the assets" of the appellee. We found that this "security language" was sufficient to manifest the parties' intent to create a security interest. *Id.* While we do not dispute that a security agreement may be found in several records "read together," these records must still contain sufficiently explicit language. In other words, the parties' intent to create a security interest cannot be illusory or implied from the circumstances.

[¶ 16] While we can easily surmise from the exhibits that a sale did occur between Surangel and Benge, there is no "security language" that suggests the parties intended to create a security interest. We cannot conjure such intent without misrepresenting the plain and ordinary meaning of the contract. This is heightened by the fact that Surangel, a sophisticated business entity which regularly enters into security agreements, should have known the statutory requirements to create a security interest. In addition, even if we were to assume the parties did intend to create a security interest, Surangel did not bring forward enough evidence to show that the security interest attached under 11 PNC § 1919(3)(A).[3]

[3] The ROP raises 17 PNC § 702 which states "a purported interest that is not in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against bona fide purchaser for value shall not be recognised as an interest against the Republic of Palau in an action pursuant to this chapter." Assuming *arguendo* that Surangel had a security interest, such interest would constitute a purchase-money security interest in consumer goods, which is perfected automatically upon attachment. 11 PNC § 1924. Therefore, 17 PNC § 702 would not apply because the statute does not require recordation or reflection in public records.

B. Legal Title Under an Implied-in-fact Contract

[¶ 17] Surangel then argues that it retained a legal interest in the property until Benge finished making the installment payments. Surangel submits that under 17 PNC § 702(h), an "owner" means a person who is not a secured party and who has an interest in property, whether legal or equitable. Under 17 PNC § 705(b)(2), "[n]o property shall be forfeited under this chapter to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner." In other words, because Surangel had a legal interest in the property and no knowledge or consent of the criminal act committed by Blunt, the property could not be forfeited.

[¶ 18] We first note that Surangel barely developed this argument in its Opening Brief. "It is not the Court's duty to interpret . . . broad, sweeping arguments, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply." *Idid Clan v. Demei*, 17 ROP 221, 229 n.3 (2010). We choose to address this argument as it was argued in detail below, but emphasize that it should have been properly developed in appellate briefing.

[¶ 19] Surangel contends that it had an implied-in-fact contract with Benge. "[A]n agreement 'implied in fact' [is] founded upon a meeting of the minds, which although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding." *See Loitang v. Jesus*, 5 ROP Intrm. 216, 218 (1996) (citing *Baltimore & Ohio R.R. v. United States*, 261 U.S. 592, 260 (1923)). This contract implied that Surangel retained legal title over the property, while Benge obtained equitable title. Indeed, "a purchaser in possession holds equitable title and is entitled to legal title as soon as the purchase price has been paid." *Mark's Body Shop v. Iyar*, 17 ROP 115, 118 (2010).

[¶ 20] We first observe that Surangel asks us, once again, to infer an implied term within a contract, without presenting evidence that the parties intended to create such a term. Moreover, this fails to take into account 11 PNC § 1904, which states that the Chapter on Secured Transactions:

> shall apply without regard to the form of an agreement or the terminology used in an agreement, and whether ownership of the collateral is held by the secured party or the debtor. The retention of title by a seller of goods has no effect other than the taking of a security interest in the goods.

[¶ 21] Assuming *arguendo* that an implied contract exists between Surangel and Benge and that it did provide for retention of title, this section of the PNC states only that by retaining title, a seller of goods effectively takes a security interest in the goods. Our aforementioned analysis, however, shows that the security interest did not attach. Therefore, Surangel did not retain title in the property; and even if it did, any security interest created from the retention of title did not properly attach.

II. Due Process

[¶ 22] Surangel argues that the trial court violated its right to due process by revisiting its decision to allow intervention without notice or an opportunity to be heard. We find no such violation on the facts on this case.

[¶ 23] The extent to which a lower court possesses inherent authority to reconsider its prior orders is a question of law. Therefore, we review such rulings of the trial court *de novo*. *In re Idelui*, 17 ROP 300, 302 (2010). "[A] trial court's decision to reconsider a previous decision is ordinarily reviewed on appeal for abuse of discretion." *Id.* at 303. Under ROP R. Civ. P. 54,

> any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

[¶ 24] We have created one slight deviation from Rule 54 when we held that a trial court cannot revisit a partial summary judgment ruling without giving the parties notice and an opportunity to be heard. *Airai State Pub. Lands Auth. v. Aimeliik State Gov't*, 11 ROP 39, 42 (2003). We emphasized that the

partial summary judgment ruling was final in the context of the trial and resolved certain issues; as a result, the appellant was entitled to rely on that determination in preparing its case for trial. *Id.* at 41.

[¶ 25] An interlocutory order granting intervention such as the one below lacks the finality of the partial summary judgment in *Airai State*. Rule 54 entitles the trial court to revise any non-final order that adjudicates fewer than all the claims. Accordingly, the trial court did not err in reconsidering a non-final order *sua sponte*, and Surangel's due process rights were not violated.

CONCLUSION

[¶ 26] We **AFFIRM** the Trial Division's judgment.