ROP v. Reklai, 11 ROP 18 (2003)

REPUBLIC OF PALAU,
Appellant,

v.

PHILLIP REKLAI, d/b/a PRA Computer Sales and Services,

Appellee.

CIVIL APPEAL NO. 03-011
Civil Action No. 01-250

Supreme Court, Appellate Division
Republic of Palau

Argued: July 21, 2003
Decided: October 16, 2003
⊥19
Counsel for Appellant: Frederick Reynolds and Michael Fineman

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEX R. MUNSON, Part-Time Associate Justice; ROSE MARY SKEBONG, ⊥20 Associate Justice Pro Tem.

Appeal from Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

SKEBONG, Justice:

BACKGROUND

On August 11, 2000, Appellant Republic of Palau ("the Republic") submitted a Request for Proposal ("RFP") that sought bids for Apple computers and computer peripherals. Specifically included in the RFP was the requirement that the selected bidder be an authorized Apple dealer or distributor. The RFP garnered three bids. Computers Plus, a Palauan Corporation, and M.E.I. Marketing, a Guam Corporation, submitted proposals priced at $80,999.33 and $94,780.00, respectively. On September 11, 2000, Appellee Phillip Reklai, d/b/a PRA Computer Sales and Services ("PRA"), made two offers: one for $106,888.88 and another, which included various unsolicited upgrades, for $117,888.88. Reklai's proposal included a cover letter signed by him identifying PRA as an "Authorized Dealer of: Apple" and a "legal holder of Apple Mac Reseller for [the] Republic of Palau."

The Republic accepted Reklai's first offer and awarded the contract to PRA on November

17, 2000. The Republic paid Reklai the contract amount and received the computers. On March 30, 2001, Computers Plus submitted a protest in which it claimed that Reklai, although a party to a reseller agreement with MiTech,[1] purchased the computers from The Procurement Company, an Apple reseller based in Bakersfield, California, and the vendor with which Computers Plus did business.

On October 2, 2001, the Republic brought suit against Reklai for fraud, restitution/disgorgement of profits, and breach of contract. Each cause of action was based on the Republic's understanding that Reklai was an authorized dealer of Apple for the computers it delivered when in fact it was not. Cross motions for summary judgment were filed. In resolving the cross-motions, the trial court found that the Republic met its burden of proof on all elements of the breach and fraud claims except damages. As to damages the Trial Division found that the theory advanced by the Republic, that it lost privileges and services associated with Apple reseller authorization, was unsupported by the evidence. Accordingly, the court granted Reklai's motion and denied the Republic's motion.

DISCUSSION

At the very crux of this case is the appropriate way to resolve factual issues on cross-motions for summary judgment. After setting forth the standard of review, we first address the Trial Division's approach to considering the cross-motions. We then discuss the material facts about which a genuine issue remains on each of the three causes of action pleaded by the Republic. Last, we address the appropriate measure of damages for these claims.

Standard of Review

We review the trial court's entry of ⊥21 summary judgment *de novo*, employing the same standards that govern the trial court and giving no deference to the trial court's findings of fact. *Akiwo v. ROP*, 6 ROP Intrm. 105, 106 (1997). A motion for summary judgment should only be granted when the pleadings, affidavits, and other papers show that no genuine issue of material fact 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). Affidavits of the moving party are to be strictly construed, and those of the opposing party liberally construed. Where the affidavits of the parties are diametrically opposed, and it is apparent that both cannot be true, the credibility of the parties is a question for the trier of fact, and the motion should be denied. *Estate of Olkeriil v. Akiwo*, 4 ROP Intrm. 43, 51 (1993). Identical standards apply where there are cross-motions for summary judgment. *Rechelulk,* 2 ROP Intrm. at 282.

Application of the Summary Judgment Standard

[1]It appears from the record that M.E.I. Marketing is an umbrella corporation that represents numerous other companies of which MiTech is one.

Initially, we address the Trial Division's description of its power to decide facts at summary judgment. In reaching its decision the court noted that

> Notwithstanding the cross-motions, it would have been theoretically possible–drawing all inferences in favor of Reklai on the Republic's motion and drawing all inferences in favor of the Republic on Reklai's motion–to deny both motions and set the case for trial. But since the Court is the trier of fact in any event, it saw no purpose in doing so.

(Tr. Div. Dec. and Judgment at 1 n.2.) Despite the fact that the Trial Division is the factfinder at trial, it must adhere to the summary judgment standard that requires it to view all inferences in favor of the non-movant. "[T]he fact that both parties simultaneously are arguing that there is no genuine issue of fact does not establish that trial is unnecessary." *Rechelulk,* 2 ROP Intrm. at 282 (internal quotes and citation omitted). Accordingly, in a case where the court is called on to decide cross-motions for summary judgment, it must first draw inferences in favor of the plaintiff/non-movant and then draw inferences in favor of the defendant/non-movant to determine whether genuine issues of material fact exist and to decide which motion to grant, if either.

Breach of Contract/Fraud/Restitution

At summary judgment and again on appeal Reklai argues that the Republic failed to produce evidence that PRA's procurement of the computers through MiTech, the company with which it had a reseller agreement, was material to the Republic's decision to award the contract to PRA. For a party to defeat a properly supported motion for summary judgment made against it based on the absence of an essential element on which the nonmoving party will bear the burden of proof at trial, the nonmoving party must offer evidence to dispute the facts advanced by the movant and show that there is a genuine issue of material fact to be resolved by the factfinder. *See Nat'l Assoc. of Gov't Employees v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 712 (5th Cir. 1994). We believe that the Republic met that ⊥22 burden in this case. The materiality of PRA's status underlies each of the causes of action pleaded by the Republic and is supported by the original RFP and the affidavit of Millan Isack, in which he recounts conversations that he alleges convinced him to award the contract to PRA.

To prove a breach of contract the non-breaching party, here, the Republic, must prove the existence of a contract, performance by the plaintiff, failure of performance by a defendant, and consequential damages. *W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992). Genuine issues of material fact exist for two of the four elements in this cause of action. On the third element, defendant's failure of performance, the core of the Republic's argument is that Reklai represented that PRA would procure the computers through the same company with which it had a reseller agreement, a fact Reklai contests. The fourth element regarding consequential damages was also disputed and will be discussed below.

Similarly, there were genuine issues pertaining to the Republic's fraud claim.

> To prove a case of fraud, a plaintiff must prove that the defendant (i) made a fraudulent misrepresentation of fact, opinion, or law, (ii) with the purpose of inducing the plaintiff to act upon the representation, (iii) that the plaintiff justifiably relied on the representation, and (iv) was damaged as a result of that reliance.

Arbedul v. Isimang, 7 ROP Intrm. 200, 201 (1999) (citing Restatement (Second) of Torts § 525). Here, the Republic and Reklai disputed each of the elements. Reklai denied that he misrepresented his status. He also denied that he intended to induce the Republic to act on the misrepresentation or that the Republic did in fact rely on the alleged misrepresentation. Finally, Reklai asserted that any damages suffered by the Republic were not the result of his representations.

The Republic also brought a claim of restitution on the theory of disgorgement of profits, a species of unjust enrichment. Unjust enrichment occurs where a person receives a benefit and the retention of the benefit is unjust. Restatement of Restitution § 1 (1937). "To prevail on a claim for unjust enrichment the plaintiff need only show that the defendant was enriched at plaintiff's expense, and that the circumstances were such that in equity and good conscience the defendant should return the money to the plaintiff." *Blusal Meats, Inc. v. United States*, 638 F. Supp. 824, 831 (S.D.N.Y. 1986) (citing *Reprosystem, B.V. v. SCM Corp*., 727 F. 2d 257, 263 (2d Cir.(1984)); *see also United States v. Davis*, 666 F. Supp 641, 644 (S.D.N.Y. 1987); *Songbird Jet Ltd. v. Amax, Inc*. 581 F. Supp. 912, 926 (S.D.N.Y. 1984). If Reklai attempted to secure the contract by convincing the Republic that he intended to procure the computers though MiTech, but he then acquired them through The Procurement Store, he could be found to have profited unjustly.

Damages

The Trial Division's resolution of this case consisted of finding a failure of proof as to the element of damages. In doing so, it applied the definition of damages contained in *Palau Marine Industries Corp. v. Seid*, 9 ROP 173, 177 (2002) ("'Contract damages are ordinarily based on the injured party's expectation interest and are intended to give ⊥23 him the benefit of his bargain.'") (quoting Restatement (Second) of Contracts § 347 cmt. a). The *Seid* measure of damages is not the only measure of damages available on which a plaintiff could submit proof, however. *Seid* was a case regarding exclusively contract damages and the definition was limited to a claimant's expectation interest. In the instant case, in addition to its contract theory, the Republic also pleaded actions in fraud and unjust enrichment. Those causes of action, as do appropriate contract cases, take other interests into consideration when measuring damages. *See* Restatement (Second) of Contracts § 344 (1981) (recognizing restitution interest); Restatement of Restitution §§ 1 cmt. a, 8 (1937). Thus, on remand we direct that the Trial Division consider the full range of interests contemplated when awarding damages and not rely solely on the *Seid* expectation formula.

CONCLUSION

The trial court's sole responsibility at summary judgment is to determine whether genuine issues of material fact exist and whether the movant is entitled to judgment as a matter of law. It is not to make factual determinations where facts remain in dispute. Because it is evident from our review of the record that several issues of material fact remain to be decided, the Trial Division's grant of summary judgment in favor of Reklai is reversed and the case remanded with instructions to set the case for trial.