In re Estate of Tmetuchl, 12 ROP 171 (Tr. Div. 2004)

In the Matter of the
ESTATE OF ROMAN TMETUCHL,
Decedent.

CIVIL ACTION NO. 00-103

Supreme Court, Trial Division
Republic of Palau

Decided: October 15, 2004

LARRY W. MILLER, Associate Justice:

This matter is before the Court following a hearing on the claim of Minami and Clara Ueki against the Estate. As was said at the hearing, the claimants' position is easily stated; explaining and assessing the ⊥172 Estate's defense to their claim, on the other hand, is somewhat more complicated.

The claim arises out of an agreement dated July 2, 1993, which stated that decedent Roman Tmetuchl would forgive certain enumerated debts owed by the Uekis in exchange for their relinquishing to decedent "all title and interest to the building known as Family Mart together with the real property upon which such building is situated along with the parking area adjacent thereto . . ." The agreement further provided that decedent would "give, bequeath or devise" to the Uekis or their sons "all right, title and interest to said property prior to his death." The Uekis say that they lived up to their part of the bargain, but that decedent, and now the Estate, did not. They say that they turned over the Family Mart building (and all of its contents) to decedent back in 1993, but that decedent neither transferred the property back to them during his lifetime, nor bequeathed it to them in his will. They accordingly seek specific performance of the agreement -- an order directing the Estate to re-transfer the property to them. And, because more than five years have passed since decedent's death, they seek restitution of the rental payments the Estate has received from that time until now.

The Estate's response to the claim requires several steps. First, the Estate contends that the 1993 agreement was ambiguous and that, properly interpreted with the use of extrinsic evidence, it actually imposed additional obligations on the Uekis regarding the area they were supposed to relinquish to decedent. Second, the Estate contends that, as thus interpreted, the Uekis breached the agreement shortly after its execution. As a result, the Estate argues, the agreement was ineffective and the Uekis are not entitled to return of the Family Mart building until their debts have either been fully repaid or fully recouped through the rental payments that it has been receiving from the building's tenants. The Court addresses each step in this argument below. It is fair to say at the outset, however, that each is factually and/or legally problematic.

The starting point of the Estate's argument is its assertion that the phrase "the real property upon which such building is situated" is ambiguous and that, with the aid of extrinsic

evidence, is best understood as referring not only to the land directly under the Family Mart building, but also to certain land behind the building. Both of these assertions are questionable, however.

First, the Court is not convinced that this language, when read in context, is truly ambiguous. Were this phrase standing alone, the Court could see the question arising as to whether it intended to denote the exact land under the building or the entire lot where the building was erected. But in the 1993 agreement, the phrase "the real property upon which such building is situated" is followed by the words "along with the parking area adjacent thereto." Those words appear to resolve any ambiguity on the question of what, if any, additional land was intended and make the Estate's interpretation doubtful. If the parties intended to signify the entire lot, they could have said so; the explicit inclusion of the parking area would be surplusage if one interpreted the preceding phrase to cover adjacent land in front and back of the building.

But even if there were an opening for the consideration of extrinsic evidence, the Court does not believe that it has been presented with any. The only evidence presented by the Estate in support of its interpretation is the fact that, in discussions between decedent and his wife, Perpetua ⊥173 Tmetuchl, that was their understanding. Agreeing with the Estate that the parol evidence rule is not implicated in the interpretation of ambiguously-worded agreements,[1] and even bypassing any hearsay problem by characterizing decedent's statements to Tua as an expression of his state of mind, the more fundamental problem is that "a party's private understanding of what a contract means is . . . immaterial." *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 48 n.7 (1999).[2] Absent some evidence that decedent's understanding was expressed to and shared by the Uekis prior to the execution of the agreement,[3] the Court is left with the words alone which, as stated above, do not support the Estate's interpretation.

The second prong of the Estate's argument is that the Uekis breached the agreement by failing to allow decedent to go ahead with plans to develop the area behind Family Mart. The principal problem here is that, as the Uekis' counsel contended, there really is no probative evidence on that score. There seems no question that something happened that prompted decedent to write a note on September 8, 1993, declaring the agreement to be "void" and of "no effect." But neither Tua or Joshua Tmetuchl had any personal knowledge of the alleged incident and whatever they learned from decedent or an unnamed supervisor, respectively, was inadmissible hearsay. Thus, although the Court understands the Estate's version of events -- that Minami was said to have called in the police to stop decedent's workers from doing or preparing

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[1] "[I]n the construction of an ambiguous or uncertain writing which is intended to state the entire agreement, preliminary negotiations between the parties may be considered in order to determine their meaning and intention and to ascertain in what sense the parties themselves used the ambiguous terms in the writing which sets forth their contract." 17A Am. Jur. 2d *Contracts* § 394 (2004).

[2] "A party's subjective, undisclosed intent is immaterial to the interpretation of a contract, as under the objective law of contract interpretation, the court will give force and effect to the words of the contract without regard to what the parties thought it meant or what they intended for it to mean." *Contracts*, *supra*, § 347.

[3] *See Contracts* , *supra*, §394 (referring to "preliminary negotiations between the parties" and to "the conferences and correspondence between the parties pending the negotiation of the final agreement").

for construction in the area behind Family Mart -- there really is no proof that it ever happened.

Finally, whatever the facts might have borne out, the Court believes that the outcome the Estate proposes -- essentially, that the 1993 agreement be treated as rescinded and that the debts forgiven by that agreement (plus years of accrued interest) spring back into existence -- is unjustified. Even if the Estate were right that the Uekis had breached the agreement by failing to give decedent access to the land behind Family Mart, the time to have pressed that position was years ago, when the breach first occurred and certainly before decedent's death. "The right to rescind, abrogate or cancel a contract must be exercised promptly on discovery of the facts from which it arises, and it may be waived by unreasonable delay or by continuing to treat the contract as a subsisting obligation." *Contracts*, *supra*, § 572.[4] Here, the only ⊥174 prompt action taken by decedent was to write a note to himself declaring the agreement void, which he then placed in a file that even his wife did not discover until more than a year later. Tua then wrote a letter to Minami Ueki (although he denied ever receiving it) seeking a rescission of the agreement, but nothing ever followed from it: Although the letter stated that the property would be returned "[a]t the end of the month,"[5] decedent never returned possession or control of the property to the Uekis and the Estate has remained in possession up to this date. The Court appreciates that the reason decedent took no action in the past was that this was a family matter -- Clara Ueki was his daughter and Minami his son-in-law. But that cannot change the outcome; decedent having chosen not to take action at that time, it is simply too late for his Estate to now try to avoid the consequences of that choice.

For all of these reasons, the Court finds that the Uekis are entitled to possession of the Family Mart building (and the adjacent parking area) without further delay.

The Court also finds, and does not understand the Estate to contest, that the Uekis are also entitled to recover the rental payments received by the Estate or its proxies since decedent's death.[6] For the most part, that is a matter of adding the figures contained in the various exhibits prepared by the Estate. The only potential legal question that arose in this regard was whether the Uekis should also recover rent imputed to, but not actually paid by, Tua Tmetuchl for her use of part of the building as a dress shop and music school. Upon reflection, however, the Court believes that these imputed amounts should also be included in the judgment since they constitute rent that the Uekis could have collected had they been able to take possession of the

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[4] *Accord*, *Williston on Contracts* § 1460 (3d ed. 1970), at p.114: "Action must be taken within a reasonable time, and must be communicated to the other party. Nor may [the party seeking rescission] do anything that would be inconsistent with the title or ownership being in the vendor and still seek rescission."

[5] The timing of the letter is confusing. Although the text of the letter appears to look forward in time to the return of the property on December 31, 1994, the letter is dated January 5, 1995, and the notary and recordation information say that it was not signed or recorded until May 20, 1995.

[6] The Estate had previously sought and obtained an order from the Court preventing Minami from using self-help to regain possession of the building and maintaining the status quo pending the resolution of this claim. Order, October 8, 1993. The justification for that order, although not stated explicitly, was that any loss the Uekis were suffering as a result of the Estate's continued possession of the building was not irreparable could be awarded to them later. Now that the claim has been resolved in their favor, it is entirely appropriate that the Uekis recoup what the Estate has received as a result of its remaining in possession until now.

building in accordance with the agreement.

The Court believes that it is appropriate to enter partial judgment pursuant to ROP R. Civ. P. 54(b) on the Uekis' claim so that they need not await the closing of the Estate as whole. Their counsel is accordingly directed to submit a proposed partial judgment (including the recitals required by Rule 54(b)) at his earliest convenience. Counsel should share his proposal with the Estate's counsel so that the form of the judgment may be agreed upon. If there is no agreement, or if the Estate objects to any aspect of the proposed judgment, it should note any objections within three days of its submission to the Court.