Dalton v. Borja, 12 ROP 65 (2005)

MARGARITA BORJA DALTON,
Appellant,

v.

HUAN BORJA, ALAN SEID, and GLENN SEID,
Appellees.

HUAN BORJA,
Cross-Appellant,

v.

MARGARITA BORJA DALTON,
Cross-Appellee.

CIVIL APPEAL NO. 03-018
Civil Action No. 148-96

Supreme Court, Appellate Division
Republic of Palau

Argued: January 18, 2005
Decided: February 17, 2005

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Counsel for Dalton: Mark P. Doran

Counsel for Borja: William C. Bischoff

Counsel for Seids: William L. Ridpath

BEFORE: KATHLEEN M. SALII, Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem; ALEX R. MUNSON, Part-Time Associate Justice.

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

PER CURIAM:

Appellant Margarita Borja Dalton and Cross-Appellant Huan Borja are parties to a Land Use Agreement (LUA), which gives Dalton a 99-year lease to use and develop some of Borja's land. Borja sought to exercise his right to terminate the arrangement, a right Dalton disputed particularly since she had built a restaurant on part of the land and assigned another part to

Appellees Alan and Glenn Seid. The trial court found that Borja could terminate the LUA except as it pertained to the land on which Dalton's restaurant sits. The court also declared the assignment to the Seids void and ordered Dalton to reimburse them the $225,000 they paid her. Both Dalton and Borja appeal, and we affirm the judgment of the trial court in all respects.

BACKGROUND

This case revolves around a 1979 LUA, granting permission for Dalton to use and occupy several lots of land located in Ngerkebesang for a term of 99 years. The land once belonged to Borja's grandfather Jesus, and at the time the LUA was executed, it was believed that the land was owned by Jesus's children, most of whom signed the LUA. This Court later determined, however, that Jesus's son Emilio was the sole owner of the lands at issue, and, when Emilio died, his son Borja inherited the land and is therefore the only proper plaintiff for this action.
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The LUA applies to Tochi Daicho Lot Nos. 1598 and 1608 (Cadastral Lot 003 A 06), and Tochi Daicho Lot Nos. 1591, 1592, 1593, and 1599 (determined in a separate proceeding to be Cadastral Lot Nos. 027 A 15 and 027 A 04). Noting that Dalton sought to "construct, build on, and otherwise improve the land for tourism, hotel, and such other related business at no financial obligations to the owners," the LUA requires Dalton to pay to the landowners eight percent of the net income of all business on the land. The LUA allows Dalton to "use, occupy and enjoy the land for the stated purpose, free of unreasonable interference so long as same use and occupancy comply and conform with the law." And the agreement contains the following provision, the effect of which as a termination clause is disputed by the parties:

> In the event of a dispute arising out of this agreement or its interpretation and application so far as the interests of the owners are concerned the decision or the consensus of the majority of the owners shall govern.

Dalton testified at trial about the improvements she made on the land, including construction of the Image Restaurant. In 1995, Dalton assigned her use rights in various parcels of land to the Seids in exchange for $225,000. The assignment includes Lot 027 A 04 and part of Lot 027 A 15, both of which are specifically mentioned in the LUA. In addition, however, the assignment covers Lot Nos. 027 A 05, 027 A 07, 027 A 08, 027 A 09, and 027 A 10, collectively known as the "waterfront lots," which, although owned by Borja, are not explicitly included in the LUA.

In 1996, Borja's relatives, as original signatories of the LUA, initiated this lawsuit, asking "that the Land Use Agreement be declared void, canceled, breached, rescinded, forfeited and terminated" and that the assignment to the Seids be voided as well. Dalton counterclaimed, seeking to recover for costs she incurred acting in reliance on the LUA, and the Seids filed a crossclaim against Dalton, alleging that she fraudulently induced them to pay for an assignment when her right to use the land was questionable.

Through summary judgment motions and evidence introduced at trial, the trial judge made the following determinations: that the LUA was valid at its inception; that the disputed

clause allowed a majority of the landowners to terminate the agreement; that Borja inherited that right with the land; that his termination of the agreement should not affect the land where the Image Restaurant is located, but that it should include that land across the street where there are barracks and an auto shop. With respect to the Seids's crossclaim, the trial judge found that the LUA did not confer on Dalton any rights in the waterfront lots and so her purported assignment of them to the Seids was void, and Dalton was ordered to repay the Seids their $225,000 principal plus interest of $143,698.71. Both Dalton and Borja appealed.

ANALYSIS

Factual findings of the lower court are reviewed using the clearly erroneous standard. *Temaungil v. Ulechong*, 9 ROP 31, 33 (2001). This Court employs the *de novo* standard in evaluating the lower court's conclusions of law, including the court's interpretation of a contract. *Palau Marine Indus. Corp. v. Pac. Call Inv., Ltd.*, 9 ROP 67, 70-71 (2002).

1. Validity of LUA

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Scattered throughout Borja's brief is the suggestion that the LUA was void at its inception. In support of this contention, Borja argues that the LUA was not negotiated because, in portions of Dalton's trial testimony, she admitted that she was unsure who wrote the numbers in the blanks in the LUA (representing the percentage of income to be paid as rent, the length of the agreement, and the number of years for which the LUA could be renewed).

But testimony at trial also establishes that John O. Ngiraked, who drafted the agreement, was acting on behalf of Dalton. That she herself is unfamiliar with the specifics of the negotiation process does not mean that, as Borja claims, "there was no real agreement." Moreover, many contracts are not formally negotiated but remain enforceable as a valid meeting of the minds. *See, e.g.*, 17A Am. Jur. 2d *Contracts* § 12 (2004) (discussing implied contracts where "terms are inferred from the conduct of the parties and the circumstances of the case, though not expressed in words"); *Standard Oil Co. of Cal. v. Perkins*, 347 F.2d 379, 383 n.5 (9th Cir. 1965) (defining adhesion contracts as "standard form printed contracts prepared by one party and submitted to the other on a 'take it or leave it' basis").

2. Contents of LUA

· Does the LUA include the "waterfront lots?"

Before the trial court, Dalton argued that, although the LUA did not specifically include the waterfront lots, the contract was expanded in subsequent discussions to apply to them. The trial court rejected this argument, concluding that even if the LUA was modified, a fact Borja disputed, such modification failed to comply with the Statute of Frauds. In response, Dalton urged the court to rely on the doctrine of part performance to enforce the oral modification.

The part performance doctrine allows the court to avoid fraud by enforcing an oral agreement if it would be unfair to allow one party to escape his performance responsibility under

an oral agreement after he allowed the other to perform in reliance on that agreement. 73 Am. Jur. 2d *Statute of Frauds* § 313 (2001). Ultimately, the trial court determined that Dalton failed to prove any of the three indicators of part performance: that she took possession of the waterfront lots, made valuable improvements to it, or paid all or part of the purchase price.

Dalton's main argument challenging this ruling is that the original signatories of the LUA understood it to include the waterfront lots. She relies on part of the LUA itself, which describes specific lots and then uses the phrase "together with adjacent lots." Although that phrase appears in the LUA, it is used as an introductory phrase for the next several Tochi Daicho lots it mentions:

> The owners herein of the land located in Koror, Palau District known as Ngeyus and more particularly described as lot 003 A 06, Tochi Daicho No. 1598 and 1608 in the attached Certificate of Title *together with adjacent lots*, Tochi Daicho Nos 1591, 1592, 1593, and 1599 hold fee simple title to same lots in joint tenancy.

(emphasis added). That phrase does not, as Dalton seems to imply, open the agreement to unnamed lots bordering on those specifically ⊥69 enumerated. It merely describes the last four Tochi Daicho lots as being adjacent to those already mentioned.

In further support of her position, Dalton argues that it would be unreasonable for the original parties to allow her use of some, but not all, of the land formerly owed by Jesus. She explains that the original signatories knew of her plans to develop the waterfront lots and no one objected. Circumstantial evidence of the landowners' subjective intent, however, is irrelevant where, as here, the plain language of the contract is unambiguous, particularly as to the subject matter of the contract. *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 48 n.7 (1999).

Dalton also claims that her reliance on the alleged modification, demonstrated by her assignment of the waterfront lots to the Seids, constitutes part performance and so the trial court should have enforced the oral modification. But courts consistently hold that part performance sufficient to warrant enforcing an oral agreement includes taking possession, tendering payment, or making improvements, *Powers v. Hastings*, 612 P.2d 371, 375 (Wash. 1980), none of which Dalton claims to have done.

- Does the LUA include a termination provision that can be exercised by the landowner?

The trial court held that the provision in the LUA quoted above was intended by the original signatories to allow for termination of the agreement by a majority of the landowners. The import of that clause was not altered, the trial court found, merely because there turned out to be only one landowner, Emilio. Nor was there evidence to suggest that the power to terminate the agreement did not pass to Borja when he inherited the land. Accordingly, the trial court decided that Borja, as the only landowner, had the power to terminate the LUA.

In reaching these conclusions, the trial judge recounted Dalton's seemingly inconsistent

statements about the termination provision, comparing her deposition testimony, wherein she seemed to suggest that only the original signatories could exercise the termination provision, with her response to the summary judgment motion, wherein she asserted that the "provision was never intended to allow anyone to terminate" the LUA. At trial, Dalton testified that she was not involved in drafting the LUA and was therefore unsure of the meaning of the provision, but responded with "I guess" when asked if she agreed with her deposition testimony on this point.

In addition to evaluating Dalton's position about the termination agreement, the trial court heard testimony from Ngiraked, who drafted the LUA. In reviewing his testimony, the trial court commented that he "appeared to be crafting his answers so as to favor [Dalton]," but that he ultimately admitted that the provision allowed a majority of the landowners to terminate the LUA.

Finally, the trial court reflected on a 1986 document signed by many of the family members who signed the LUA that, relying on the termination clause, purported to cancel the LUA. The document was never executed, but the trial court looked to it as some evidence of the original signatories' intent. Adding the 1986 document to the testimony about the meaning of the provision, the trial court determined that the preponderance of the evidence supported the conclusion that the provision allowed termination by the ⊥70 landowners.

Dalton suggests that the trial court erred in finding the LUA terminable. Dalton claims that the facts and circumstances surrounding the creation of the LUA indicate that the provision in question was merely a mechanism for resolving disputes among the landowners. In support of this argument, Dalton recalls Ngiraked's trial testimony about the confusion among the signatories regarding the particulars of group ownership and his statements that the termination clause was added to the LUA for the protection of the investors, namely Dalton, so that one disgruntled landowner could not unilaterally dissolve the agreement. Accordingly, Dalton asserts, the clause was intended not to give the landowners power to terminate the agreement but to protect the investors from squabbles among the owners.

This testimony from Ngiraked, however, is not inconsistent with the trial court's opinion and certainly does not demonstrate that the court clearly erred. Whatever the reason for including the clause in the agreement -- whether to give the landowners power or to encourage them to resolve disputes or to protect investors from rogue family members -- the effect of the clause, as Ngiraked acknowledged during his testimony, was to allow a majority of the landowners to terminate the agreement.

Dalton also urges this court to consider the LUA as a whole, giving force to all provisions. She argues that the trial court's finding that the LUA is terminable renders meaningless the provision granting her the right to lawfully use the land free from "unreasonable interference." This argument, however, evidences a narrow reading of the term "unreasonable interference," equating it only with termination of the arrangement. But the LUA itself does not mandate that conclusion, and neither does the ordinary meaning and usage of "unreasonable interference." *Watanabe v. Nelson*, 4 ROP Intrm. 169, 170 (1994) ("[W]hen interpreting agreements . . . courts give words their ordinary and plain meaning unless all parties have clearly

intended otherwise."). The prohibition against "unreasonable interference" could be read to include harassment in various degrees of severity, not merely termination of the LUA. *See, e.g.*, Restatement (Second) of Prop.: Landlord and Tenant § 6.1 cmt. e & Reporter's Note 4 (1977)[1] (citing as examples of unreasonable interference deprivation of use of parking space or small portion of property, boisterous guests on nearby property, and blocking access to the entryway of the property). Thus, the trial court's finding that the LUA is terminable does not render the "unreasonable interference" clause superfluous.

· If the LUA is terminable, is it void as illusory?

Borja asserts that the LUA is void because the provision allowing the landowners to terminate the agreement at will rendered it illusory and nonbinding. This position, however, is contrary to the principles of law set forth in the Restatement (Second) of Property. Leases that are terminable at the will of only one of the parties are valid contractual relationships and are not void as illusory. Restatement (Second) of Prop.: Landlord and Tenant § 1.6 cmt. g (1977) ("Such a lease is an estate for years ⊥71 determinable if the power to terminate it at the will of one of the parties is engrafted on what would otherwise be an estate for years."); *see also Myers v. E. Ohio Gas Co.*, 364 N.E.2d 1369, 1372-73 (Ohio 1977) (upholding as a valid agreement a lease that specified that it was terminable at the will of only one of the parties); *Peoples Park & Amusement Ass'n v. Anrooney*, 93 P.2d 362, 364 (Wash. 1939) ("[A] lease for a definite term which contains a provision for its termination before the expiration of the term fixed at the option of either of the parties is not invalid although it gives the lessor or the lessee alone the right to terminate the lease.").

3. Borja's Termination of LUA

· Did the trial court have jurisdiction to allow Borja to terminate the LUA?[2]

Dalton discusses the trial court's jurisdiction to order the equitable relief of rescission, and she argues that monetary damages are available and appropriate for resolving contract disputes. Citing the Restatement (Second) of Contracts, Dalton also asserts that the trial court lacked jurisdiction to allow Borja to rescind the contract because ordering rescission as a remedy requires that one party breached the contract and that both parties be restored to the status quo. Dalton maintains that the trial court should not have allowed the contract to be rescinded because she did not breach the agreement and because no effort was made to restore her to the status quo.

In raising these arguments, Dalton appears to misconstrue the nature of the trial court's

[1]In the absence of controlling Palauan law, "[t]he rules of the common law, as expressed in the restatements of the law approved by the American Law Institute . . . shall be the rules of decision in the courts of the Republic." 1 PNC § 303.

[2]Dalton's argument heading mentions subject matter jurisdiction, but the text of the argument has little to do with subject matter jurisdiction. And, to be sure, the judiciary has jurisdiction to hear all matters "in law and equity," Palau Const. art. X, § 5, which this Court has construed to include any matters which traditionally require judicial resolution. *Gibbons v. Seventh Koror State Legislature*, 11 ROP 97, 104 (2004). Dalton does not seem to intend to suggest that this contractual dispute was not a proper matter to bring in the Trial Division, rather that the court did not have equity jurisdiction.

order and the principles governing legal and equitable remedies for contract disputes. The trial court did not order rescission as a remedy for any breach Dalton committed. Instead the court merely interpreted the contract as it was drafted to allow Borja to terminate the agreement. Nothing in the interpretation of the underlying contract violates the well-standing principles of legal and equitable remedies.

- Should Borja have been allowed to terminate the entire LUA, including the land on which the Image Restaurant sits?

Borja objects to the trial court's resolution of Dalton's counterclaim, arguing that the court erred in allowing Dalton to retain control of the land on which the Image Restaurant sits. In making this ruling, the trial court analyzed Dalton's assertion that, if Borja is allowed to terminate the LUA, he should also have to reimburse her for her expenses in developing the land. The court noted that Borja's termination of the LUA in its entirety would force Dalton to forfeit her investment in the Image Restaurant. Recognizing that forfeitures are disfavored as a general rule of contract law and citing to the principle that courts may construe contracts to avoid forfeiture of vested rights, the trial court held that Borja could exercise his rights under the termination provision of the LUA but not ⊥72 to the extent that it would require Dalton to forfeit her investment. Accordingly, the trial court ordered the LUA to continue in effect with respect to the land on which the Image Restaurant sits.

Borja challenges the result reached by the trial court and makes numerous statements of disagreement throughout his brief. Borja asserts that, as the landowner, he should be allowed to terminate the LUA in its entirety. He claims that Dalton's counterclaim requested monetary relief and so the trial court should not have awarded her land. Borja contends that the trial court effectively granted Dalton adverse possession rights. He also maintains that specific performance is an inappropriate remedy, and he argues that the court should not read the termination clause, designed to benefit the landowner, to disadvantage him by making him lose land.

Despite Borja's various protestations, we uphold the trial court's resolution of this matter. We recognize that this case presented a tough decision for the trial court. After finding that the LUA allows the landowner to terminate the agreement, the trial court was faced with the question of what to do with Dalton's restaurant. If the LUA was terminated completely, then Dalton would lose any right to use, possess, or further develop her investment. Such forfeiture seems extreme and contrary to the oft-cited notion that forfeitures are strongly disfavored by courts. *State v. Berklund*, 704 P.2d 59, 62 (Mont. 1985); *Marcam Mortgage Corp. v. Black*, 686 P.2d 575, 580 (Wyo. 1984); *see also ROP v. M/V Aesarea*, 1 ROP Intrm. 429, 432-33 (1988) (referencing forfeitures in the context of statutory interpretation as "harsh and oppressive"). Although parties are entitled to draft a contract that provides for forfeiture upon the occurrence of some events, courts will enforce the strict and literal meaning of such a provision. *Branker v. Bowman*, 156 P.2d 898, 901 (Ariz. 1945). If an interpretation of the contract that does not involve a forfeiture can reasonably be found, it will generally be adopted. 17A Am. Jur. 2d *Contracts* § 545 (2004) ("[A]n interpretation which does not involve a forfeiture is favored."); *see also ROP v. Toribiong*, 2 ROP Intrm. 43, 48 (1990) (commenting that "[c]onditions to

contracts are not favored in the common law because they have the effect of creative forfeitures"); *M/V Aesarea*, 1 ROP Intrm. at 433 (noting that when construing statutes, "[c]ourts will not search for a construction to bring about a forfeiture, nor will a constrained construction be indulged in to create a forfeiture"). Accordingly, the trial court acted properly, we believe, by not requiring Dalton to forfeit her investment.

Dalton's counterclaim sought monetary compensation for her investment, but the LUA expressly provides that Dalton wishes to develop the land "at no financial obligations to the owners." And so after concluding that Dalton should not forfeit her investment, the trial court opted to award her continued possession of the land rather than monetary damages. Although Borja claims that this was an erroneous application of specific performance or adverse possession, neither of those doctrines is implicated. Instead, the trial court looked to the provision of the LUA stating that the investment to the land was to be at no financial obligation to the landowners. Additionally, although contracts are generally rescinded as a whole, they can be severed for purposes of rescission if circumstances so require to yield a just result. *Simmons v. Cal. Inst. of Tech.*, 209 P.2d 581, 588 (Cal. 1949). Although the LUA did not specify that the agreement could be severed in situations like this, the trial court's decision to sever the agreement for purposes of termination frankly seems like a very clever ⊥73 solution to ensure a just result. By requiring that the LUA continue in effect with respect to the land around the Image Restaurant, the trial court enforced the LUA and contract law to the greatest extent possible—the landowner was allowed to terminate the agreement and yet did not suffer any financial obligation for Dalton's development of the land, and Dalton was not required to forfeit her investment.

Borja argues that the trial court created a new contract for the parties in fashioning its remedy. Borja's legal position is sound because regardless of how much courts abhor forfeitures, a court may not create a new agreement for the parties to replace the one they signed or to take effect after the forfeiture. *McPherson v. J.E. Sirrine & Co.*, 33 S.E.2d 501, 510 (S.C. 1945). But it does not appear that trial court intended to draft a new contract or change the terms of the LUA. In ruling that Dalton could keep a portion of the land, the trial court noted that

> the termination should be deemed to exclude the area where defendant has constructed the Image Restaurant, which shall remain subject to the agreement to the extent of allowing defendant to remain there, but requiring her to *share her profits with plaintiff should it ever become profitable.*

(emphasis added) (footnote omitted). This does not track exactly the language of the LUA, which requires Dalton to pay, at regular intervals, 8% of the net income of all the business on the land, but it has the same meaning. *See Webster's Third New Int'l Dictionary* 1811 (1981) (defining "profit" as "net income"). Nothing in the record suggests that the trial court intended to alter the details of the parties' agreement, and the language of the order seems to merely restate the terms of the LUA, albeit using different terminology.

Lastly, Borja challenges the trial court's partial judgment in favor of Dalton on factual grounds, arguing that she lacked sufficient evidence to establish any investment in the land, to

show that it was she who invested, and to prove that it was reasonable to make such investment. The trial court's opinions do not make many specific factual findings about the nature or extent of Dalton's investment, other than to reference her construction of the Image Restaurant, workers' housing, and her own home. And implicit in the court's decision to rule in Dalton's favor is the notion that she made an investment in the land that she should be allowed to retain. Borja offers little to contradict those findings, and certainly not enough to establish that they are clearly erroneous, which requires that the findings of the lower court be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002).

- Should Dalton have been allowed to keep the land on which the barracks and auto shop sit?

The trial court determined that although Dalton was to retain the land where the Image Restaurant sits, along with workers' housing and her own home, Borja was entitled to terminate the LUA insofar as it concerned the land across the street, which included barracks and an auto shop.

In segregating the land on which the barracks and auto shop sit, the trial judge ⊥74 relied on three factors. First, Dalton's amended counterclaim, seeking damages for costs incurred in reliance on the LUA, mentioned only the Image Restaurant and not the buildings across the street. Second, the trial court found that the buildings "cannot credibly be claimed by her to have been part of her efforts 'to construct, build on, and otherwise, improve the land for tourism, hotel, and . . . other related business' within the meaning of the [LUA]." And finally, the court noted that the land including the barracks and auto shop, unlike that surrounding the restaurant, was part of the land Dalton assigned to the Seids. Accordingly, the trial court held that the barracks and auto shop were not investments built in reliance on the LUA and therefore Dalton was not entitled to retain that land when Borja terminated the LUA.

Dalton argues that the trial court erred in reaching this conclusion because "an auto shop is obviously a developmental use, and the barracks or housing for employees, who work on the developed premises, should also be considered as development directly related to the intended development under the [LUA]." Dalton cites to her trial testimony where she explained that she had a mechanic in the auto body shop for one year but that he was no longer there and that the little house across the street from the restaurant was for the staff. The few lines of trial testimony are insufficient to overturn the trial court's finding as clearly erroneous, particularly given the thorough explanation the trial judge offered in support of his decision, relying on Dalton's counterclaim and her assignment of the land at issue. Dalton's conclusory statement that the auto shop is obviously developmental and that the barracks are related to the development are insufficient to support a finding of clear error.

4. Assignment to Seids

- Should Dalton have been entitled to receive restitution from Borja for the failed assignment to the Seids?

Dalton relies on Rule 54(c) of the Rules of Civil Procedure to argue that she was entitled to additional relief in the trial court. Rule 54(c) provides, in pertinent part, that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings." ROP R. Civ. P. 54(c).

Although Dalton's brief is less than entirely clear on this point, her attorney explained during oral argument that the trial court should have awarded Dalton damages, not only for the Image Restaurant, but for other losses she suffered by relying on the LUA. Dalton maintains that she should be reimbursed for the failed assignment to the Seids because, not only does she have to return the $225,000 they paid her, but she also will not be receiving the additional $2.9 million they promised in exchange for the assignment. Her attorney also mentioned during oral argument that she took out a mortgage loan on the land and now has a judgment against her for that as well.

This argument is misguided insofar as it misconstrues the trial court's decision. The trial court did not find that either Dalton or Borja had breached the agreement, entitling the other to damages. Instead the trial court interpreted the contract *as written* to allow Borja to terminate the arrangement, which he chose to do. In allowing Dalton to retain the land where the Image Restaurant sits, the court found that she had invested, in reliance on the LUA, and should not be required to ⊥75 forfeit that investment. Her decision to assign land to the Seids -- including land to which her title was questionable -- cannot be said to be a similar investment. Neither can the loan she took out on the land -- again knowing that, per the terms of the LUA, the landowners could terminate the agreement -- be said to be an investment. True, she acted in reliance on the LUA, but given the termination provision, she did so at her own peril except to the extent that she sought to "construct, build on, and otherwise improve the land for tourism, hotel, and such other related business" as suggested by the agreement itself. Dalton offers no persuasive authority that she should also be reimbursed for alleged damages suffered as a result of the now-void assignment or the mortgage loan she received.

- Did the trial court properly calculate the prejudgment interest Dalton owes to the Seids?

After concluding that the LUA had been properly terminated by Borja and that Dalton had no interest in the waterfront lots to assign to the Seids, the trial court awarded the Seids $225,000 as reimbursement for the money they paid to Dalton. The court also awarded the Seids prejudgment interest, calculated, over Dalton's objection, from the date each partial payment was made.

In her opening brief, Dalton identifies as one of the issues presented on appeal "from what date should the Seids receive 'interest' payments if their 'assignment' remains ineffective?" She fails, however, to address that argument anywhere else in her brief, and the Seids suggest that she has therefore waived it. We agree.

Rule 28 of the Rules of Appellate Procedure specifies that the body of all briefs shall

contain the party's argument. ROP R. App. P. 28(a)(8). Relying on a similar provision in the Federal Rules of Appellate Procedure, United States courts have held that identifying an issue in the "issues raised" section of a brief but omitting any discussion of that issue in the "argument" section renders that issue waived. *Martinez-Serrano v. I.N.S.*, 94 F.3d 1256, 1259 (9th Cir. 1996) ("Issues raised in a brief that are not supported by argument are deemed abandoned."); *Abercrombie v. City of Catoosa*, 896 F.2d 1228, 1231 (10th Cir. 1990). In a similar vein, this Court has held that merely mentioning a claim in a complaint but failing to advance any argument on that claim, does not preserve that issue. *Badureang Clan v. Ngirchorachel*, 6 ROP Intrm. 225, 226 n.1 (1997). Here, too, by failing to set forth any argument about the interest calculation, Dalton has waived that issue.

CONCLUSION

We affirm the trial court in all respects, upholding its decision that the LUA was valid at its inception; that it did not encompass the waterfront lots; that it included a termination provision, but that it should continue in effect with respect to the land on which Dalton's investment sits. Moreover, we agree with the trial court's resolution of the Seids' counterclaim.

At oral argument, both parties declared this result the worst possible outcome to the dispute—Borja because he must maintain a contractual relationship with Dalton, and Dalton because the land that she is entitled to use is not large enough to satisfy the judgments against her. It is the parties themselves, however, and the language of the LUA that mandated this result. The trial court correctly interpreted the LUA and properly applied principles of contract law to resolve ⊥76 the parties' disagreement. That neither is satisfied reflects only upon the terms of the contract.