

TOSHIWO KELMAL
Appellant,

v.

OSCAR PAGE,
Appellee.

CIVIL APPEAL NO. 10-027
 Small Claims No. 10-024

Supreme Court, Appellate Division
 Republic of Palau

Decided: March 31, 2011¹

[1] **Courts:** Common Pleas Court;
Evidence: Small Claims Hearings

Small claims hearings are informal actions, the object being to dispense substantial justice promptly and inexpensively. To serve this purpose, parties are permitted to offer evidence through witnesses or documentation, and the court is not usually bound by procedural and evidentiary rules.

[2] **Constitutional Law:** Due Process

In general, the right to cross examine witnesses is an essential element of a fair trial. It is also a waivable right and one that may be limited (for myriad reasons) in the court's discretion.

[3] **Appeal and Error:** Basis for Appeal

Appellate court may refuse to entertain

¹ Upon review of the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

argument that trial court erred regarding certain ruling where appellant failed to express any disagreement or objection to the trial court regarding that ruling.

Counsel for Appellant: Clara Kalscheur
 Counsel for Appellee: Pro Se

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Court of Common Pleas, the Honorable HONORA E. REMENGESAU RUDIMCH, Senior Judge, presiding.

PER CURIAM:

Appellant, Toshiwo Kelmal, appeals the findings of fact and judgment issued by the Court of Common Pleas in favor of Appellee, Oscar Page. For the reasons stated below, we **AFFIRM**.

BACKGROUND

In June 2009, Kelmal drove his vehicle to Marcil's auto shop for engine repairs. Apparently, the employee at Marcil's who was charged with fixing Kelmal's car skipped town without informing Kelmal. In September, Jello Aguaras, who worked at Marcil's, contacted Kelmal and said that Kelmal must pick up his car by 4:30 p.m. that day or it would be junked because the shop is going out of business. Kelmal asked for time to line up another mechanic, but he was told that would not be possible. He was also informed that his car no longer had an engine. Aguaras then said that there was a buyer for the engineless car—appellee Oscar Page—if

Kelmal was willing to sell it for \$100. Feeling that he had no alternative, Kelmal signed the car over to Page and accepted the \$100 payment.

A few days later, Kelmal contacted the police regarding the incident at Marcil's. Coincidentally, Page, who had spent money fixing up the car, contacted Kelmal and asked that they meet at the police station to change the vehicle's registration. When the two men showed up at the police station, Kelmal informed an officer that the car was his. The officer confiscated the vehicle and returned it to Kelmal as the registered owner. Page then brought this small claims action seeking either return of the car or the value of repairs he made to the car.

The Court of Common Pleas held a hearing on March 29, 2010, and April 5, 2010. The parties proceeded pro se. Page told his story first and then called Jello Aguaras to testify. Aguaras explained his version of events, and the court asked several follow-up questions. The court then excused Aguaras and asked Kelmal to tell his story. The court asked several follow-up questions of Kelmal, and asked questions of Page in light of all the testimony. The court wrapped up the proceedings that day by asking the parties if there was anything else that they wanted the court to hear. The hearing was continued to April 5, 2010, so that the court could receive testimony from the police officer who initially determined that Kelmal should take possession of the car. After hearing from the officer, the court again permitted the parties to add any additional information they believed relevant, and thereafter took the matter under advisement.

In its written findings of fact and judgment, the Court of Common Pleas concluded that while the contract between the parties is voidable because Kelmal signed under duress, Page acted in good faith and is entitled to retain the benefit of the agreement. Upon consideration of the circumstances, the court awarded Page the vehicle, and noted that Kelmal may proceed in a separate action against the auto shop. Kelmal then filed this appeal.

STANDARD OF REVIEW

We review the Court of Common Pleas's conclusions of law under a de novo standard. *Chun v. Liang*, 14 ROP 121, 122 (2007) (citing *Cura v. Salvador*, 11 ROP 221, 222 (2004)). Factual findings are reviewed using the clearly erroneous standard. *Id.* The factual findings of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Id.*

DISCUSSION

Kelmal, now represented by counsel, raises one issue on appeal: he contends that his right to a fair trial was violated because he was denied the opportunity to cross-examine Jello Aguaras. Kelmal asserts that by failing to permit the cross-examination of Aguaras, the court's finding that Page was a bona fide purchaser is somehow in question. Therefore, according to Kelmal, the matter must be remanded to the Court of Common Pleas for a new hearing.

[1, 2] It is true that, in general, the right to cross examine witnesses is "an essential element of a fair trial." 81 Am. Jur. 2d

Witnesses § 771. It is also a waivable right, *id.* § 774, and one that may be limited (for myriad reasons) in the court’s discretion. The purposes underlying formal direct- and cross-examination of witnesses at trial, however, are often muted in small claims matters. Small claims hearings are informal actions, “the object being to dispense substantial justice promptly and inexpensively.” *See* ROP Small Claims R. 11. To serve this purpose, parties are permitted to offer evidence through witnesses or documentation, and the court is not usually bound by procedural and evidentiary rules. *Id.*

Here, the court instructed the pro se parties at the outset of the hearing:

The way this hearing is going to proceed is Mr. Page will first explain to the Court why he’s asking this amount he’s claiming . . . from Mr. Kelmal. If he wants to present any witnesses he may do so. And then after Mr. Page then Mr. Kelmal can go ahead and present why he’s not agreeing to this amount. Okay. And you can just present your case to the Court and if the Court has any questions I will ask.

As noted, Page explained his position to the court first, and called Aguaras as his only witness. Kelmal later explained his position and introduced documentary evidence. During the hearing, the court asked dozens of questions, and permitted the parties to comment along the way.

[3] The record reveals that at no point did

Kelmal indicate that he wished to question Aguaras, or that he believed Aguaras had additional information relevant to this case. And, at no point did the court exclude any evidence or testimony proposed by a party—in fact, the parties were repeatedly asked if there was any more information that they wished the court to consider. Importantly, Kelmal never expressed any disagreement with the court’s instructions. Appellate courts generally decline to entertain issues raised for the first time on appeal, and we see no reason to vary from this practice under the circumstances. *See Kotaro v. Ngirchchol*, 11 ROP 235, 237 (2004) (“We have repeatedly stated the general rule that parties cannot seek review of alleged errors of the trial court when they made no objection to the Court’s actions at the time.”) (citing *In re Rengiil*, 8 ROP Intrm. 118 (2000)); *Arugay v. Wolff*, 5 ROP Intrm. 239, 246 (1996) (noting that appellate courts will not entertain claims on appeal when the litigant remained silent and denied the trial court the opportunity, if necessary, to correct any error).² Indeed, it is not possible to conclude that Kelmal was denied a fair hearing on the grounds asserted when he was permitted to present all the evidence he believed necessary and apparently agreed with the lower court’s handling of the case (except for the judgment).

Kelmal’s reliance on *Koror State Public Lands Authority v. Meriang Clan*, 6 ROP Intrm. 10 (1996), is misplaced. At issue in *Meriang Clan* was a determination of the Land Claims Hearing Office (“LCHO”) awarding certain lands to Meriang Clan based on, among other things, the Clan’s witness’s

² In previous cases, we have recognized limited exceptions to the waiver rule, none of which are applicable here. *See, e.g., Kotaro*, 11 ROP at 237.

testimony. KSPLA appealed that determination to the Trial Division, and moved for a de novo trial because substantial portions of the witness's testimony before the LCHO were lost. The Trial Division denied the motion for a de novo trial. The Appellate Division reversed that decision, concluding that because the record was incomplete, KSPLA should have been permitted to cross-examine the Clan's witness in order for the court to determine whether the LCHO's determination was supported by the evidence. Here, however, there is no comparable situation—nothing in the record indicates that the court denied Kelmal the opportunity to present evidence during the hearing, and the evidence presented to the lower court is available for appellate review. Without more, Kelmal's arguments on appeal must be rejected.

CONCLUSION

For the reasons stated, the judgment of the Court of Common Pleas is **AFFIRMED**.