GEORGE NGIRARSAOL, ERNEST TONY NGIRARSAOL, JEFF NGIRARSAOL, and KENNETH NGIRARSAOL EMERY,
Appellants,

v.

HANPA INDUSTRIAL DEVELOPMENT CORPORATION and SOON SEOB HA,
Appellee.

CIVIL APPEAL NO. 10-048
Civil Action No. 10-041

Supreme Court, Appellate Division
Republic of Palau

Decided: September12, 2011

[1] **Appeal and Error:** Clear Error

The trial court's finding of fact concerning whether a party has proven damages to a reasonable degree of certainty is reviewed under the clearly erroneous standard.

[2] **Contracts:** Unjust Enrichment

A person unjustly enriched at the expense of another is required to make restitution to the other.

[3] **Contracts:** Implied Contracts

The doctrine of quantum meruit permits restitution in the absence of an express contract.

[4] **Appeal and Error:** Remand

Remand is appropriate when the appellate court lacks sufficient information as to the trial court's factual findings or credibility determinations.

Counsel for Appellants: Carlos Hiros Salii
Counsel for Appellees: Clara Kalscheur

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice; and RICHARD H. BENSON, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

Appellants George Ngirarsaol, Ernest Tony Ngirarsaol, Jeff Ngirarsaol, and Kenneth Ngirarsaol seek review of the Trial Division's Judgment and Decision denying their request for back rent from Appellees Hanpa Industrial Development Corporatino and Soon Seob Ha.[1] For the following reasons, we remand this matter to the Trial Division for further proceedings.

BACKGROUND

This dispute is about whether Appellees owe Appellants back rent because Appellees used Appellants' property as support for a lean-to on Appellees' rented property. This appeal resolves whether the

[1] Appellants request oral argument. After reviewing the briefs and record, the Court finds this case appropriate for submission without oral argument. ROP R. App. P. 34(a) ("The Appellate Division on its own motion may order a case submitted on briefs without oral argument.").

trial court properly found that Appellants did not prove damages.

Appellants George Ngirarsaol, Ernest Tony Ngirarsaol, Jeff Ngirarsaol, and Kenneth Ngirarsaol Emery (collectively "Ngirarsaols") brought suit against Appellees Hanpa Industrial Development Corporation and Soon Seob Ha, President and part owner of Hanpa (collectively "Hanpa"). The Ngirarsaols claimed that Hanpa used part of the NCB without paying rent, interfering with the Ngirarsaols' full and peaceful use and enjoyment of the NCB. Their complaint sought back rent, interest, punitive damages, reasonable attorney fees, court costs, and an order evicting Hanpa from the property.

Following trial, the court made the following findings of fact. Techemding Clan owns Lot K-119. The children of George and Ikrebai Ngirarsaol have a lifetime use right of the residential portion of the common wall structure located on Lot K-119, as well as eleven feet along the northern lot boundary. Ngirarsaol Commercial Building ("NCB") is the structure on Lot K-119.

In 1987, Hanpa entered into a ten-year lease agreement with George Ngirarsaol to rent NCB. Hanpa agreed to pay Ngirarsaol $1,000 a month for the first five years and $1,200 a month for the last five years of the lease. Under the agreement, Hanpa could make improvements that would remain with NCB at the end of the lease.

Later in 1987, Hanpa was interested in expanding the use of the space. Because the property belonged to Techemding Clan, Ha approached R.E. Udui as representative of the clan. Ha thereafter entered into an agreement with R.E. Udui, where Udui would build an addition to the NCB that Hanpa could use during the NCB lease. That addition did not change the terms of the lease.

Ha and Ngirarsaol did not enter into a new lease agreement until 2000, when they entered into a five-year lease agreement. This agreement increased rent to $2,500 per month, and expanded the property covered by the lease. The lease provided that Ha promised to return the building in "the same condition and state of repair [as] when [Ha] took possession of the premises," permitting normal wear and tear. Ha provided a $5,000 security deposit. In October, 2005, they entered into a third lease agreement, maintaining the same rent but increasing the rental property. This lease included the same term regarding the condition of the property, permitting normal wear and tear, but Ha did not provide a new security deposit.

On June 13, 2007, Ha gave notice of his intent to move out of the premises in sixty days. Ha moved to property owned by Ingeaol Clan that shared a border with the Techemding Clan land. Ha built a lean-to on the property for additional storage space. The lean-to's roof was supported by the extension of the NCB. However, at the time of trial, Ha had built supports for the lean-to on his rental property.

Ha wrote a letter to Ngirarsaol asking for a final review of the premises on September 12, 2007. Ngirarsaol responded that major repairs were needed, and on January 29, 2008, wrote a letter stating that Hanpa owed two years' rent for the wall, in addition to the cost of lost or broken items from the rental property. Ha responded only

to Ngirarsaol's statements about the lost or broken items, offering to pay $940.00. His letter to the Ngirarsaols did not acknowledge the wall rental. Ngirarsaol's requests for the wall rental–at $500 per month–continued. At trial, the Ngirarsaols' position was that the $500 figure corresponded to the property Hanpa stored under the lean to and the value of the use of the wall. They sought a total of $29,000 in back rent and damages to NCB beyond the usual wear and tear permitted in the leases.

Based on those facts, the court made the following conclusions. As to the back rent, the court first concluded that there was no question that the NCB and the addition to the NCB are within the Ngirarsaols' right of use on Techemding Clan's land. Next, the court concluded that Hanpa's lean-to did encroach on the Ngirarsaols' property, but that the Ngirarsaols did not prove that they were owed back rent for Hanpa's use of the wall. The court acknowledged that it may award monetary damages for diminution in value, require restoration of damaged property or land, or order compensation for diminution in the value of the land or lost of the land's use for specific purpose. 1 Am. Jur. 2d Adjoining Landowners § 77. But it did not award damages because the Ngirarsaols did not show that the lean-to constituted a nuisance or damaged or diminished the value of the wall or any part of the NCB. Further, the Ngirarsaols provided no legal authority supporting the general proposition that a landowner is owed rent where his or her neighbor shared a wall to no one's detriment.

Turning to damages to the NCB, the court measured whether there was normal wear and tear to the premises over the course of the twenty-year period of time Hanpa rented the property. The court held that Ha conceded that the damage to the premises was beyond normal wear and tear when he offered to pay $940.00 for a portion of the items that Ngirarsaol listed as lost or broken. And it accepted Hanpa's amount of damages over the Ngirarsaols' proffered damages of $21,172.90 because the Ngirarsaols did not provide the court with evidence to rebut the amount of damages Hanpa presented.

In the end, the Trial Division awarded the Ngirarsaols $940.00 for damages incurred to the property beyond normal wear and tear, awarding no pre-judgment interest, but permitting post-judgment interest at the rate of 9%. The Trial Division also concluded that Hanpa's lean-to may not use the NCB wall for support, and that the lean-to must be moved if it is supported at all by the NCB addition wall. However, the court held that Ngirarsaols' did not prove damages, denying the request for back rent. The Ngirarsaols appealed this decision only as to the back rent.

STANDARD OF REVIEW

[1] We review the trial court's conclusions of law de novo. *Wong v. Obichang*, 16 ROP 209, 212 (2009). The trial court's finding of fact concerning whether a party has proven damages to a reasonable degree of certainty is reviewed under the clearly erroneous standard. *Palau Marine Indus. Corp. v. Seid*, 11 ROP 79, 81 (2004). Under this standard, the findings of the lower court will only be set aside if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Roberts v. Ha*, 13 ROP 67, 70 (2006).

DISCUSSION

The Ngirarsaols present one issue on appeal: whether the Trial Division erred in concluding that they are not entitled to the $29,000 in back rent they seek. The Ngirarsaols assert that the Trial Division erred in denying back rent, which they are entitled to under the theory of quantum meruit.

[2, 3] The Ngirarsaols presented the quantum meruit argument in its pre-trial and post-trial briefs. "A person who has been unjustly enriched at the expense of another is required to make restitution to the other." *See* Restatement (First) Restitution § 1 (1937). The doctrine of quantum meruit permits restitution in the absence of an express contract. *ROP v. Reklai*, 11 ROP 18 (2003); *State of Truk v. Aten*, 8 TTR 631 (1988).

[4] Despite the Ngirarsaols' arguments at trial, the Trial Division did not discuss the quantum meruit theory of recovery, focusing instead on whether they proved damages. It appears that the Trial Division rejected this argument, but the record before us does not indicate why. Remand is appropriate where the Appellate Court lacks "sufficient information as to the trial court's factual findings or credibility determinations." *Beouch v. Sasao*, 16 ROP 116, 119 (2009). As the record does not contain factual findings relating to quantum meruit recovery of back rent, we remand this matter so the Trial Division may clarify its holding.

CONCLUSION

The Ngirarsaols have not shown that the Trial Division erred in denying their request for back rent. However, as the Trial Division did not state its reasons for denying back rent, we **REMAND** this issue to the Trial Division for further proceedings consistent with this Opinion.