JACKSON NGIRAINGAS,
Appellant,

v.

OBAKLECHOL KUNIWO NAKAMURA,
Appellee.

CIVIL APPEAL NO. 10-031
Civil Action No. 08-204

Supreme Court, Appellate Division
Republic of Palau

Decided: September 13, 2011[1]

[1] **Torts:** Defamation

Whether an allegedly defamatory statement is true or false is a question of fact.

[2] **Torts:** Defamation

Whether the evidence in the record is sufficient to support a finding of actual malice is a question of law.

[3] **Appeal and Error:** Standard of Review; **Torts:** Defamation

Judges must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of actual malice. In other words, we will engage in limited de novo review of the record to determine whether there is sufficient evidence to find

[1] The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

that a statement was made with actual malice.

[4] **Torts:** Defamation

To create liability for defamation there must be a false and defamatory statement concerning another, an unprivileged publication to a third party, fault amounting to at least negligence on the part of the publisher, and either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

[5] **Torts:** Defamation

When the subject of the statement is not a private person but a public figure, the requisite culpability is raised beyond the level of mere negligence. Instead, one who publishes a false and defamatory communication concerning a public official or public figure in regard to his conduct, fitness or role in that capacity is subject to liability, if, but only if, he knows that the statement is false and that it defames the other person or acts in reckless disregard of these matters.

[6] **Torts:** Defamation

Falsity of a statement in a defamation action must be proved by clear and convincing evidence.

[7] **Torts:** Defamation

Reckless disregard exists when there is a high degree of awareness of probable falseness of the statement or there are serious doubts as to its truth.

Counsel for Appellant: Salvador Remoket
Counsel for Appellee: Rachel A. Dimitruk

BEFORE: KATHLEEN M. SALII, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice; RICHARD H. BENSON, Part-Time Associate Justice.

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

PER CURIAM:

Appellant Jackson Ngiraingas appeals an August 4, 2010, Judgment and Decision, in which the trial court found him liable for defamation against Appellee Obaklechol Kuniwo Nakamura. Specifically, Ngiraingas claims that the trial court erred in finding that his statements were false and that they were made with actual malice. For the reasons that follow, we **AFFIRM** the trial court's Judgment and Decision.

I. BACKGROUND[2]

Appellee Obaklechol Kuniwo Nakamura ("Nakamura" or "Appellee") is the President and Chairman of the Board of Belau Transfer and Terminal Company ("BTTCO"). He has worked for BTTCO on and off since 1972. During that time, Nakamura has also served in various public offices, including two terms as President of the Republic from 1992 through 2000. He is also currently a member of the Peleliu State Legislature. Appellant Jackson Ngiraingas ("Ngiraingas" or "Appellant") is currently the Minister for Public Infrastructure, Industry and Commerce. Before his appointment to this position, he

[2] The following factual summary has been adapted from that set forth in the Trial Division's Decision. The parties do not dispute the court's basic factual findings.

was a businessman in Koror and Peleliu, an elected legislator in the Peleliu State Legislature, and a four-term Governor of Peleliu.

On November 21, 2007, Ngiraingas, a shareholder of BTTCO, sent the first of several letters to BTTCO, seeking information about BTTCO's financial and business dealings and the personal financial records of Nakamura. In a response dated March 8, 2008, BTTCO asked Ngiraingas to use the correct shareholder request form, informed him that any requested information concerning BTTCO had to be cleared by BTTCO's Board of Directors, and told him that his requests concerning Nakamura would not be honored. Several letters then followed between Ngiraingas and BTTCO in which Ngiraingas continued seeking the same materials and made additional requests; BTTCO reminded Ngiraingas to properly and completely fill out the shareholder request form.

Ngiraingas delivered to Nakamura and Joseph Kintol, as Secretary of BTTCO, a completed shareholder request form dated June 9, 2008. (Pl.'s Ex. 1.) In response to a question about the purpose of his request, Ngiraingas states:

> To find out if BTTCO or Nakamura's privately owned family businesses were ever used for money laundering during Kuniwo Nakamura's 8 years reign as President of the Republic of Palau. Allegations has [sic] surfaced that Kuniwo Nakamura received $3,000,000.00 from the Government of the Republic of China (Taiwan) as payment for his signature and support of Palau's diplomatic ties with Taiwan during the time he was President of Palau.

Id. Ngiraingas sent a copy of this letter to third parties, including Bernadette Carreon, a reporter for Palau Horizon Newspaper.

On June 10, 2008, Nakamura responded in writing to Ngiraingas, demanding that he cease his "libelous and slanderous actions unless you can provide evidence supporting your statements and questions" and warning Ngiraingas that he would sue him for defamation if Ngiraingas failed to provide evidence of his accusation that Nakamura had received a $3,000,000 bribe from Taiwan. (Pl.'s Ex. 2.)

On June 16, 2008, Ngiraingas responded in a letter reiterating the allegations about the purported bribe from Taiwan. The letter, directed at Nakamura, states that:

> [Y]ou manipulated certain individuals in Peleliu as well as the Peleliu State Legislature to occupy Obaklechol's seat in the Legislature. The only motive behind this arrangement was for you to be able to control the Legislature and to attempt to remove me as Governor so you can put someone in the Governor's office so your Ngedbus [sic] Island project with the Korean

investor can be expedited.[3]

(Pl.'s Ex. 3.) Ngiraingas provided this letter not just to Nakamura, but also to third parties including Bernadette Carreon.[4]

On July 7, 2008, Nakamura filed this action against Ngiraingas for defamation and intentional infliction of emotional distress. As to the defamation, Nakamura alleged that Ngiraingas had defamed him by publishing the accusations related to: (1) receipt of a $3,000,000 payment from Taiwan; (2) money laundering through BTTCO; (3) achieving status as a millionaire through graft and fraud while President of the Republic of Palau; and (4) manipulation to become Obaklechol and expedite the Ngedebus Island project to earn millions of dollars.

A four day trial was held from July 12 to July 15, 2010. At trial, Ngiraingas did not deny writing or publishing the letters. He contended, however, that each statement was true or, at least, that he subjectively believed that each statement was true when he wrote and published the letters. The pages that follow describe the evidence presented at trial as to each of the statements, except for the third because the trial court found that statement to be ambiguous and did not make any finding as to its truth or falsity,[5] and Ngiraingas does not appeal that finding.

The trial court found that most of the evidence was uncontested. *Nakamura v. Ngiraingas*, Civ. Act. No. 08-204, slip. op. at 2 (Aug. 4, 2010). Although Ngiraingas testified, he did not call anyone else, nor did he offer any documents to corroborate his testimony or his defense.

Statement #1

As to the statement regarding the $3,000,000 bribe, Ngiraingas testified that his suspicions were aroused in January 2008 when his wife brought to his attention a posting on the website Okedyulabeluu. Ngiraingas testified that people post to this website using aliases, and that a person with the alias "Boy from Ngetchab" ("Boy") first discussed his bitterness at Nakamura's

[3] The letter also contained another statement questioning how Nakamura managed to become a millionaire during his career as a public servant. Because the trial court found that statement to be ambiguous and did not make any finding as to its truth or falsity, Appellant does not raise it as an issue on appeal. Therefore, we find it unnecessary to include in this opinion the facts regarding that statement.

[4] In this second letter, Ngiraingas's "cc" list includes both the national legislative and judicial branches, along with the Peleliu State Legislature, Ambassadors, the Special Prosecutor, the Palau Bar Association, the Chamber of Commerce, and the Belau Tourism Association. The fact that it was circulated was admitted by written stipulation of the parties. *Nakamura v. Ngiraingas*, Civ. Act. No,. 08-204, slip. op. at 4 n.3 (Aug. 4, 2010).

[5] In its order on Ngiraingas's motion for summary judgment, the trial court found that the third statement, "Plaintiff, while President of Palau, used his office to enrich himself and his family or otherwise engaged in corrupt practices that resulted in an increase in his or his family wealth," was defamatory per se. However, the statement presented at trial differed from the one presented to the court at the summary judgment stage. In making its decision, the trial court used the statement presented at trial.

appointment to his chief title, Obaklechol.[6] According to Ngiraingas, the Boy felt that the title had been wrongfully taken from Ngetchab Clan. The Boy then stated that Nakamura had accepted a $3,000,000 bribe from Taiwan when he was president. When asked whether he did anything to confirm the veracity of the Boy's story, including posting online comments or questions to the Boy, Ngiraingas answered, "I wouldn't want to spend my time on that." He relied on the accuracy of the bribe allegation because the Boy seemed to know what was going on in the Obaklechol controversy. However, Ngiraingas said he did not know the identity of the Boy and failed to present proof of the website posting.

In response to the bribe allegation, Nakamura testified that the allegation was "totally fabricated, untrue, unfounded, baseless, and . . . nothing but character assassination."

Statement #2

As to the second statement concerning money laundering, Ngiraingas explained that if the bribe allegation was true, BTTCO was the logical place to launder that kind of money. According to Ngiraingas, the only way for him to confirm or deny the allegation that BTTCO had been used to launder money, including the $3,000,000 bribe, was to review BTTCO's financial information. BTTCO's failure to respond to his many letters requesting financial information raised his suspicions about the bribe and money laundering. Apart from these suspicions, Ngiraingas admitted he had no basis for his claim that Nakamura laundered money through BTTCO.

In response to this allegation, Nakamura called Ruperto Calma, an independent auditor, who testified to auditing BTTCO's finances annually since the late 1980s. Calma noted not a single indication of "unusual"[7] activity during that time.

Statement #4

Finally, as to Ngiraingas's fourth statement regarding Nakamura's ascendancy to Obaklechol and his involvement in the Ngedebus project, Ngiraingas believed his assertions were true. He testified that as Governor, he "knew everything that went on in Peleliu on a daily basis." As to Nakamura's appointment as Obaklechol, Ngiraingas

[6] Obaklechol Ichiro Blesam died in late 2007. Ngetpak Clan appointed Nakamura to take Blesam's place in October 2007. Nakamura held a blengur in November, and the Peleliu State Legislature seated Nakamura as Obaklechol in December 2007. Ngetchab Clan contested that appointment and instead appointed Francisco Louis Obaklechol. In an opinion filed on April 10, 2009, the Appellate Division affirmed the trial court's decision that "Obaklechol was not appointed by Ngiraibeachel or any other representative of Ngetchab Clan, but by the members of Ngetpak Clan." *Louis v. Nakamura*, Civ. App. No. 08-035 at 2 (citing *Blesam v. Tamakong*, Civ. Act. No. 52-81 (Tr. Div. 1984) and *Tamakong v. Blesam*, 1 ROP 578 (1989)). Ngiraingas stated that he was not aware of the court case or its appeal. Ngiraingas maintains that the losing litigant, Francisco Louis, is the rightful Obaklechol.

[7] Mr. Calma testified that "unusual" included anything that happened outside the normal course of business of a company. Unusual activity could reflect money laundering, embezzling and other fraudulent financial acts occurring within a company.

claimed that Louch Keibo Ridep told him that Nakamura invited people to his birthday party. Once there, people realized that it was not a birthday party after all, but a blengur to celebrate Nakamura appointment as Obaklechol. According to Ngiraingas, Ridep told him that Okada Ongklungel gathered the Ngaraibesachel at that time, told them that the ourrot had nominated Nakamura, and asked the chiefs to accept the ourrot's appointment. The Chiefs accepted the appointment at that time. Ngiraingas was not in attendance at the party. Ngiraingas called no witnesses, not even his alleged informant Ridep, to confirm his version of the story.

In response to the allegation that he had manipulated Peleliuans and the Peleliu State Legislature for the Obaklechol seat, Nakamura called Ongklungel[8] to testify as to the validity of his appointment as Obaklechol. Ongklungel attended both Ichiro Blesam's debes and the blengur for Nakamura. He stated that although Ridep was at the meeting, which occurred at the debes, Ridep did not attend the blengur. Ongklungel testified that on October 21, 2007, Nakamura was properly installed as Obaklechol after the ourrot of Ngetpak Clan appointed him Obaklechol at the debes of his predecessor Ichiro Blesam. The klobak of Ngerchol Hamlet, the Ngaraibesachel, accepted him that same day, and Nakamura held a well-attended blengur over a month later on November 24, 2007. To Ongklungel's knowledge, Nakamura never tried to bribe or trick his way into the Obaklechol position. Nakamura also called Donald Haruo, a Peleliu State legislator, who testified that the Credentials Committee of the Legislature reviewed and accepted Nakamura's credentials.[9] Nakamura was then installed as Obaklechol in the Peleliu State Legislature by resolution on December 14, 2007.[10] (Pl.'s Ex. 5.) Haruo knew of no fraud, bribery or other manipulation to seat Nakamura as Obaklechol in the Legislature.

For his information on Ngedebus, Ngiraingas relied upon an agreement signed in June 2006 by Nakamura, Temmy Shmull,[11] and the four Chiefs of Ngerdelolk Hamlet in Peleliu. (*See* Pl's Exs. 15 and 16.) The agreement gave Nakamura and Shmull a five-year exclusive right to market Ngedebus to potential investors. (Pl's Ex. 16.) In return, Nakamura and Shmull agreed to pay the Chiefs a signing fee and annual fees. *Id.* Ngiraingas was not aware that said agreement was rescinded in December of 2006 at the Chiefs' request. (*See* Pl's Exs. 17B and 18.)

On the other hand, Ngiraingas was aware that the Ngerdelolk Chiefs had signed a

[8] Since 1987, Ongklungel has held the chief title Ngirakidel, which is the second-ranking chief title after Obaklechol in Ngerchol Hamlet, Peleliu.

[9] The Credentials Committee received one complaint, filed by Yusim Blesam on behalf of Francisco Louis. The Committee certified Nakamura as Obaklechol based on the Supreme Court's trial decision, *Blesam v. Tamakong*, Civ. Act. No. 52-81 (Tr. Div. 1984), and appellate opinion, *Tamakong v. Blesam*, 1 ROP Intrm. 578 (1989).

[10] The highest chiefs of every hamlet in Peleliu each hold a seat in the Peleliu State Legislature. Haruo holds a seat as Renguul, the highest chief title from his hamlet. Haruo was also the chairman of the Credentials Committee.

[11] Temmy Shmull was Nakamura's Special Assistant when Nakamura was Vice-President and was Chief of Staff when Nakamura became President.

subsequent, and conflicting, document with a Korean man named Kim Sung-Ho, whereby the Chiefs granted a 50-year lease to Sung-Ho, and sought an advance of $70,000 to enable the Chiefs "to discharge prior obligations to former Leaseholder." (Pl's Ex. 19.) When confronted with the letter, Ngiraingas said that he just "read the surface" of the agreement with Sung-Ho, but never closely reviewed it because the Chiefs–and not Nakamura–had the letter. Such testimony is belied by specific references to the Chiefs' agreement with Sung-Ho in Ngiraingas's May 30 letter to the Special Prosecutor. (Pl's Ex. 26.) Further, the agreement never mentions Shmull or Nakamura and is clearly a lease of Ngedebus to Sung-Ho, rescinding all prior agreements concerning the development of Ngedebus. Ngiraingas had also been informed that in December 2006, Shmull had called a meeting at the Peleliu dock to tell people that the Ngedebus project had been terminated. Shmull distributed $20 to the meeting attendees.

Ngiraingas testified that Soon Seob Ha, a Korean businessman in Palau, told him that he (Ha) was working to develop Ngedebus with Shmull and Nakamura. Ngiraingas said that Ha called him to have lunch with Shmull and Santos Olikong (a chief of Ngerdelolk) to discuss development of Ngedebus.

Ngiraingas further testified that he had received a copy of Sung-Ho's Foreign Investment Board ("FIB") application, and that he believed Nakamura was "behind it." He conceded that he only looked at blueprints and never reviewed the text of the application to determine whether Nakamura was involved. Indeed, Nakamura's name is never mentioned in the FIB application. Ngiraingas testified that he called the FIB and spoke to Encely Ngiraiwet, who told him that the only person to call about Sung-Ho's application was Nakamura because he had called to tell her that he supported the application.

Ngiraingas admits to a longstanding feud with Nakamura. According to Ngiraingas, ever since 1995, when Nakamura allegedly had Ngiraingas removed as Speaker of the Peleliu Legislature, Nakamura has opposed him at every turn, including most recently when Ngiraingas was Governor of Peleliu. Ngiraingas deems Nakamura's presidency "a failure" because Nakamura did not use the Compact of Free Association funds to develop proper infrastructure and sustainable economy in Palau. Ngiraingas believes that Palau's current economic straights are due to Nakamura's missteps and even misdeeds when he was president. Again, at trial, Ngiraingas did not call a single witness or present any documents to corroborate his story.

Nakamura rebutted Ngiraingas's testimony concerning the Ngedebus project. Haruo, who also testified as to Nakamura's appointment to Obaklechol, also testified regarding Ngedebus. Haruo explained that the Peleliu State Legislature has no say over Ngedebus Island because it is owned by Ngerdelolk Hamlet, and the chiefs of that Hamlet administer it. He conceded that the Legislature did have some authority to regulate the activities on Ngedebus and its surrounding waters, but that the Legislature had not exercised that authority. Nakamura has been a voting member of the state Legislature since December 14, 2007.

Nakamura called Shmull to discuss Nakamura's involvement with Ngedebus. Shmull explained that although they had reached an agreement in June 2006 with the Ngerdelolk Chiefs to clear and then market Ngedebus, the Chiefs approached them six months later and asked to terminate the agreement. Shmull and Nakamura signed the termination agreement and had no further dealings with the development of Ngedebus. Neither Shmull nor Nakamura had any meetings with representatives of the Peleliu State Legislature to negotiate an agreement concerning Ngedebus. Shmull considered Ngedebus "private land" wholly controlled by the Chiefs of Ngerdelolk Hamlet. Shmull did not have lunch with Ha or Olikong to discuss any other project on Ngedebus. In fact, Shmull and Ha are in longstanding litigation over Shmull's house. Shmull brought suit in 2001, and has had no dealings with Ha since that time. Shmull had no knowledge of or involvement in the Ngerdelolk Chief's agreement with Sung-Ho or the attendant FIB application.

In December 2006, Shmull traveled to Peleliu after the termination to meet the approximately sixty Peleliuans with whom he had earlier contracted to assist him and Nakamura in clearing the island. Because it was nearing Christmas, and because he and Nakamura felt that they owed the potential workers compensation, Shmull gave $20 to each worker who had signed up to clear the island as a "token of appreciation for their commitment to work for us." Although this meeting occurred at around the same time as the gubernatorial elections and Ngiraingas was running for Governor, there was no indication that Shmull was stumping for any of Ngiraingas's opponents at that time, or that the money was somehow tied to the election.

Nakamura testified consistent with Shmull, adding that Nakamura had no dealings with Ha concerning Ngedebus. In fact, Nakamura stated he never had business dealings with Ha. Further, Nakamura points out that Ngedebus was owned by Ngerdelolk Hamlet, and not Peleliu State, so manipulating his way into the Peleliu State Legislature would have little effect on the development of Ngedebus.

To further rebut Ngiraingas's claims at trial, Nakamura called Loretta Shmull to counter Ngiraingas's testimony that in 1995, she cried in his office and told him that her brother, Temmy Shmull, had given her a petition removing Ngiraingas as Speaker and ordered her to sign it. On the contrary, Loretta testified that her brother Temmy had never given her a resolution to unseat Ngiraingas, that Temmy had never ordered her to sign any resolution, and that she had no memory of ever crying in Ngiraingas's office.

Finally, Nakamura called Ngiraiwet to counter Ngiraingas's testimony that Ngiraiwet told Ngiraingas that Nakamura called her in support of Sung-Ho's FIB application for a license to develop Ngedebus Island. Ngiraiwet testified that she handled the FIB application of five Korean men to develop Ngedebus, and that Nakamura never called her in support of that application which was approved by the FIB in May 2007. Further, Ngiraiwet testified that she never told Ngiraingas that Nakamura supported the five Korean men's FIB application regarding Ngedebus.

Trial Court's Judgment and Decision

Following the trial, the trial court issued a Judgment and Decision in favor of Nakamura. The trial court found Ngiraingas liable for defamation. Specifically, the three statements that the trial court found to be untrue and defamatory concerned the allegations of: (1) money laundering, (2) the $3,000,000 bribe, and (3) manipulating Peleliuans and the Peleliu Legislature for the Obaklechol seat to then facilitate the development of the Ngedebus project. Further, the trial court concluded that Ngiraingas acted with actual malice in publishing the three defamatory statements.

II. STANDARDS OF REVIEW

Decisional law in Palau is silent as to the standards of review of a trial court's finding as to the truth or falsity of an allegedly defamatory statement and the sufficiency of evidence in the record to support a finding of actual malice. Therefore, it is appropriate for us to consult the Restatements of Law and the common law of the United States for guidance on these matters. 1 PNC § 303.

[1] Whether an allegedly defamatory statement is true or false is a question of fact. Restatement (Second) of Torts § 617 (1977); *id.* at § 617 cmt. a ("the question of whether the defamatory imputations are true . . . is ordinarily for the jury"). This Court reviews the lower court's findings of fact for clear error. *Nakamura v. Uchelbang Clan*, 15 ROP 55, 57 (2008). The trial court's determinations of fact will not be overturned unless no reasonable trier of fact could have reached the same conclusion. *Id.*

As to the element of actual malice, greater discussion of the standard of review is warranted. Defamation cases in the United States implicate the First Amendment of the Constitution of the United States, which reads, in part: "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. Const. amend. I. Palau has a similar constitutional provision to that of the First Amendment. Palau's provision states, "The government shall take no action to deny or impair the freedom of expression or press." ROP Const. art. IV, § 1. As we have yet to interpret this constitutional provision in the context of a defamation action, we adopt the law and reasoning of the United States to guide our decision-making. *See* 1 PNC § 303; *Yano v. Kadoi*, 3 ROP Intrm. 174, 181 n.1 (Palau courts may look to U.S. case law for guidance, especially those cases interpreting identical or similar constitutional provisions).

Despite a literal reading of the First Amendment, the Supreme Court of the United States has delineated certain categories of speech that are not afforded the protection of the First Amendment. Libelous speech is among these categories. *See Beauharnais v. Illinois*, 72 S. Ct. 725, 730-31 (1952). In cases concerning unprotected areas of speech, "the Court has regularly conducted an independent review of the record both to be sure that the speech in question actually falls within the unprotected category and to confine the perimeters of any unprotected category within acceptably narrow limits in an effort to ensure that protected expression will not be inhibited." *Bose Corp. v. Consumers Union of U.S., Inc.*, 104 S. Ct. 1949, 1962 (1984). Such independent review is extended to a trial court's finding of actual malice in defamation actions. *Id.* at 1963. The purpose of such

review is to "preserve the precious liberties established and ordained by the Constitution." *Id.* at 1965.

[2, 3] Whether the evidence in the record is sufficient to support a finding of actual malice (i.e. that defendant acted with reckless disregard for the truth) is a question of law. *Id.* "Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of 'actual malice.'" *Id.* In other words, we will engage in limited de novo review of the record to determine whether there is sufficient evidence to find that a statement was made with actual malice. *See id.* at 1959-1965 (acknowledging the traditional deference accorded to the jury's credibility determinations, while also insuring the Court's protection of certain liberties provided by the Constitution).

III. DISCUSSION

Although Appellant sets forth only one question presented on appeal, the body of Appellant's opening brief reveals two arguments. First, Appellant argues that the trial court erred in finding that Appellant's statements were untrue. Second, Appellant contends that the trial court erred in finding that Appellant acted with reckless disregard for the truth when he broadcast the defamatory statements.

A. Legal Standard for Tort of Defamation.

[4, 5] Palau has no civil statute regarding tortious defamation. In the absence of a local defamation statute, the Court seeks guidance from the Restatements of Law. 1 PNC § 303. To create liability for defamation there must be:

> (a) a false and defamatory statement concerning another;
> (b) an unprivileged publication to a third party;
> (c) fault amounting to at least negligence on the part of the publisher; and
> (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Restatement (Second) of Torts § 558.

However, when the subject of the statement is not a private person but a "public official" or a "public figure," the requisite culpability is raised beyond the level of mere negligence as referenced in subsection (c) above:

> One who publishes a false and defamatory communication concerning a public official or public figure in regard to his conduct, fitness or role in that capacity is subject to liability, if, but only if, he (a) knows that the statement is false and that it defames the other person, or (b) acts in reckless disregard of these matters.

Restatement (Second) of Torts § 558.

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Id. § 580A.

B. The Trial Court Did Not Commit Clear Error in Finding that Appellant Ngiraingas's Statements About Appellee Nakamura Were False.

[6] The Court has yet to articulate the standard for proving falsity of a statement in a defamation case. Although the Court would ordinarily consult the Restatement of Law for guidance on this point of law, 1 PNC § 303, the Restatement is also silent on the standard. *See* Restatement (Second) of Torts § 581A cmt. b (stating that until the Supreme Court of the United States further elucidates this standard, the American Law Institute does not set forth "the extent to which the burden of proof as to the truth or falsity is now shifted to the plaintiff"). Instead, the Court will look to the common law of the United States. *See* 1 PNC § 303. We adopt the view of the majority of U.S. jurisdictions (both state and federal) that falsity of a statement in a defamation action must be proved by clear and convincing evidence. *See DiBella v. Hopkins*, 403 F.3d 102, 115 (2d Cir. 2005) (providing a detailed discussion of the standards of proving falsity in various U.S. jurisdictions and ultimately adopting the majority view of the clear and convincing standard). Although the trial court did not set forth an evidentiary standard for the element of falsity, as a matter of law, the evidence in the record supports that the falsity of Ngiraingas's statements was established by clear and convincing evidence.[12]

As to the first statement, the trial court found that Ngiraingas failed to counter the documentary and testimonial evidence presented by Nakamura that he had never received a $3,000,000 payment from Taiwan. First, Nakamura denied receiving such a bribe, and Shmull supported his denial. Second, although this purported bribe was, according to Ngiraingas, laundered through BTTCO, an independent auditor of BTTCO found no support for this claim. In contrast, Ngiraingas submitted no documents, no newspaper articles, and no live testimony to support his contention and counter Nakamura's unequivocal assertion under oath that he took no such bribe. Instead, the entire support for Ngiraingas's statement came from an unsubstantiated post on an unrestricted website, posted by an anonymous person with a bias against Nakamura.[13] Given the

[12] We agree with the trial court that most of the evidence is uncontroverted. For the few items that Ngiraingas disputed through his testimony, we find that Nakamura overcame Ngiraingas's assertions by Nakamura's testimony, which was supported by strong corroborating evidence.

[13] By the time of the post, Nakamura, as Obaklechol of Ngetpak Clan, was in litigation

evidence, the trial court reasonably concluded that the allegation of the $3,000,000 bribe was false.

As to the second statement concerning money laundering, Nakamura denied the allegations. His assertion was supported by BTTCO's longtime independent auditor who noted no unusual activity in BTTCO's finances during the relevant period of time. Ngiraingas concluded that Nakamura used BTTCO to launder the alleged $3,000,000 bribe based on Nakamura's and BTTCO's refusal to respond to his document requests. However, BTTCO repeatedly explained that Ngiraingas needed to use the proper shareholder request form, that his request needed the approval of BTTCO's Board of Directors, and that it could not divulge Nakamura's personal financial information. BTTCO's reasons for refusing Ngiraingas's document requests are fully rational and supported. In contrast, Ngiraingas presented no evidence to support his allegation of money laundering beyond his unsupported speculations. Thus, it was not clearly erroneous for the trial court to credit Nakamura's clear and convincing evidence over Ngiraingas's speculative allegations.

Finally, as to the fourth statement concerning Nakamura's manipulation for his chiefly title to further his interests in the Ngedebus project, Nakamura testified that he was properly appointed by the ourrot of Ngetpak, properly accepted by Ngaraibesachel, properly vetted by the Legislature, and properly seated in the Legislature. Nakamura's account is supported by the testimony of Ongklungel and Haruo. Further, Nakamura's appointment to Obaklechol was confirmed by the Peleliu State Legislature and the courts. To counter this evidence, Ngiraingas presented only his own testimony that he had heard Nakamura tricked Peleliuans to come to his birthday party, which turned out to be a blengur to celebrate his appointment to Obaklechol. Ngiraingas relied on the word of Ridep, whom he did not call to corroborate his story and who did not even attend the blengur. Accordingly, it was not clear error for the trial court to credit Nakamura's clear and convincing evidence over Ngiraingas's evidence.

As to the Ngedebus project, Nakamura testified that in June 2006, he entered into a contract with Shmull and the Chiefs of Ngerdelolk to clean and then market Ngedebus, but the Chiefs terminated the contract six months later. After signing the termination agreement in December 2006, Nakamura had no dealings with anyone concerning Ngedebus. His testimony is corroborated by the testimony of Shmull, as well as the written and signed agreement and termination, and subsequent agreement signed by Sung-Ho and the Ngerdelolk Chiefs. Ngiraingas countered that he believed Nakamura was working in conjunction with a developer from Korea who entered into an agreement on Ngedebus with the same Ngerdelolk Chiefs. Ngiraingas based his belief on documents that he never fully read and conversations that no one else corroborates, and at least one person–Ngiraiwet–directly contradicts. Based on the clear and convincing evidence presented at trial, it was reasonable for the trial court to conclude that the allegation as to

with Francisco Louis who claimed Obaklechol as a title from Ngetchab Clan. The Boy identified himself as being from Ngetchab Clan.

Nakamura's manipulation to attain his chiefly title to benefit the Ngedebus project was false.

As a matter of law, the trial court's conclusion that Ngiraingas's statements were false was established by clear and convincing evidence. As to the three statements that the trial court found to be false, Nakamura presented witness testimony and documentary evidence to support his position that the statements were false. In contrast, Ngiraingas did not corroborate his allegations with testimony from any other witness or other reliable evidence apart from his own unsupported speculations. Moreover, each of Ngiraingas's allegations was discounted by Nakamura's admissible evidence. As shown in the Background section above and upon examination of the entire transcript, Nakamura's documentary and testimonial evidence overwhelmingly outweighed Ngiraingas's evidence, which relied primarily on hearsay as to each statement. The trial court, having observed the demeanor of the parties and witnesses and having heard all the evidence, was in the best position to decide whose testimony was credible. The trial court's factual findings that the statements were false "are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion." *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994). Given the evidence in the record, it was reasonable for the court to discredit Ngiraingas's testimony, and we are not in a position to overturn the trial court's conclusion that Ngiraingas's statements were false.

C. The Trial Court Properly Concluded that Appellant Ngiraingas Acted With Reckless Disregard for the Truth When He Broadcast the Defamatory Statements About Appellee Nakamura.

[7] Because the trial court found that Ngiraingas subjectively believed his statements to be true when he made them, the issue here is whether he acted with reckless disregard for the truth of the statements. *See* Restatement (Second) of Torts § 580A. Reckless disregard exists when there is a high degree of awareness of probable falseness of the statement or there are serious doubts as to its truth. *Id.* at § 580A cmt. d. Reckless disregard is not measured by whether a reasonable, prudent person would have published the statement without more investigation. *Id.* In determining whether the defendant acted with reckless disregard as to truth or falsity, the availability of sufficient time and opportunity to investigate the truth of the statement may have some relevance. *Id.* However, "failure to investigate does not in itself establish bad faith, unless the defendant had a high degree of awareness of probable falsity." 50 Am. Jur. 2d Libel and Slander § 38 (citing *St. Amant v. Thompson*, 88 S. Ct. 1323 (1968)). In cases involving the reporting of a third party's allegations, reckless disregard "may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his or her reports." *Id.* at § 40 (citing *St. Amant*, 88 S. Ct. 1323). Nakamura must set forth, by clear and convincing proof, sufficient evidence for the court to find that Ngiraingas acted with reckless disregard as to the truth and defamatory nature of the statements. *See* Restatement (Second) of Torts at § 580A cmt. f.

On appeal, Ngiraingas contends that "it is irrelevant that the three statements were untrue. The test is whether Appellant knew the statements were untrue or acted with high degree of awareness of their falsity and published them with malice. . . . The records show that Appellant believed the statements were true . . . ." However, Ngiraingas's belief that the statements were true will not insulate him from liability if the statements were not made in good faith. According to *St. Amant v. Thompson*, one may act with reckless disregard for the truth or falsity of a statement by publishing the statement despite an actual, but irrational, belief that the statement is true:

> The defendant in a defamation action brought by a public official cannot . . . automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.

88 S. Ct. at 1326.

In the present case, the trial court found that Ngiraingas subjectively believed his statements to be true when he made them. Thus, to determine that Ngiraingas acted with reckless disregard, the trial court had to find that there were obvious doubts as to the truth of the statements. In other words, the trial court had to find that the statements were not made in good faith. Upon review of the record, the Court finds that there is sufficient evidence to support the finding that Ngiraingas acted with reckless disregard as to each of the three statements because he failed to investigate the allegations or even consider conflicting information immediately before him, and he relied on the unverified word of individuals biased against Nakamura or ignorant of all the facts.[14]

There were obvious reasons to doubt the veracity of Ngiraingas's informants or the accuracy of their reports. Ngiraingas's statements about the $3,000,000 bribe and money laundering were based on an unsubstantiated tip on an open-access website, posted by an anonymous person with a clear bias against Nakamura. Although Ngiraingas claims he was confident in the veracity of the information from the Boy because of his familiarity with the Obaklechol controversy, Ngiraingas did not know the Boy's identity

[14] The trial court used the "clear and convincing evidence" standard in concluding that Ngiraingas acted with actual malice in making the statements. *See Nakamura v. Ngiraingas*, Civ. Act. No. 08-204, slip. op. at 17 n.25 (Aug. 4, 2010).

and had never before received reliable information from him. Further, given that both Taiwan and Palau are small, close-knit communities, each with an active free press, it is difficult to imagine how an alleged $3,000,000 bribe and the laundering of that money could have evaded the news headlines.

As to the statement that Nakamura manipulated Peleliuans and the Peleliu State Legislature to gain the title of Obaklechol to then further the Ngedebus project, Ngiraingas based his allegations on his own misinformation and a conversation he had with Ridep. When Ngiraingas learned of Nakamura's "birthday party," which turned out to be his blengur, he concluded that Nakamura had somehow manipulated his way into gaining his chiefly title. Although Ngiraingas claimed that Ridep informed him of the blengur, there were reasons to doubt the veracity of Ridep's story because he did not even attend the blengur. As Governor of Peleliu, Ngiraingas claims to have knowledge of everything that was happening in Peleliu at the relevant times. Accordingly, he should have known that the Peleliu State Legislature has little control over the Chiefs of Ngerdelolk, and therefore any attempt by Nakamura to manipulate the Legislature for the Obaklechol title would do little to advance his alleged plans for Ngedebus.

Aside from the many reasons to doubt the veracity of his informants and the accuracy of their reports, Ngiraingas also failed to conduct any investigation, which would have immediately alerted him to whether his suspicions were true. Again, Ngiraingas neither communicated with the Boy nor conducted any other investigation to corroborate the website allegation of the $3,000,000 bribe. Indeed, when asked whether he did anything to confirm the veracity of the Boy's story, including posting online comments or questions to the Boy, Ngiraingas answered, "I wouldn't want to spend my time on that."

As to the Ngedebus project, Ngiraingas entirely fabricated the story that Nakamura remained involved in the project, despite evidence to the contrary. Ngiraingas did not read more carefully the revised agreement with the Chiefs of Ngerdelolk, which stated that Sung-Ho was the developer and not once mentioned Nakamura or Shmull. Ngiraingas also did not carefully read the FIB Application, which also made no mention of Nakamura or Shmull. Further, Ngiraingas did not consider the information that Shmull paid Peleliuans because the Ngedebus project had ended in December 2006. Likewise, with little investigation, Ngiraingas would have uncovered, by speaking with his own cousin Ongklungel, that the decision to appoint Nakamura Obaklechol was reached at the debes and not the blengur. Finally, Ngiraingas also failed to discover and read the Court's trial decision and appellate opinion concerning the Obaklechol title.

"Although failure to investigate will not alone support a finding of actual malice, the purposeful avoidance of the truth is in a different category." *Connaughton*, 109 S. Ct. at 2698 (internal citation omitted). Ngiraingas failed to look beyond his assumptions and suspicions, and was content to rely on unverified information from biased sources. Even when the true facts and supporting documentary evidence were readily available to him, he simply failed to do any investigation. "[I]t is likely that

[Ngiraingas's] inaction was a product of a deliberate decision not to acquire knowledge of facts that might confirm the probable falsity of [his] charges." *Id.* His purposeful and deliberate avoidance of the truth and his complete fabrication of at least one of his defamatory statements is the essence of reckless disregard. Accordingly, there is clear and convincing evidence in the record to support the trial court's finding that Ngiraingas acted with reckless disregard for the truth of the defamatory statements he made about Nakamura.

IV. CONCLUSION

For the reasons set forth above, the trial court's Judgment and Decision are hereby **AFFIRMED**.