Ngirausui v. Nishizono, 1 ROP Intrm. 330 (1986)

GREGORIO NGIRAUSUI AND G & N CONSTRUCTION COMPANY,
Plaintiffs/Appellees

v.

MASAO NISHIZONO, KISHIMOTO SEIBU DEVELOPMENT CORPORATION, and JOHN DOE I THROUGH X,
Defendants/Appellants.

CIVIL APPEAL NO. 8-85
Civil Action No. 156-85

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: May 7, 1986

Counsel for Appellees: John K. Rechucher
Counsel for Appellants: Raymond C. Wagner

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice; and ROBERT W. GIBSON, Associate Justice.

NAKAMURA, Justice:

On January 16, 1983, defendant Masao Nishizono, through co-defendant Seibu Development Corporation (SDC), entered into an oral agreement with Palau Development Corporation (PDC), to perform certain construction work at the Grace Hotel, Airai State, Palau. Plaintiffs Gregorio Ngirausui and G&N Construction Company worked on the basic structure of the building under a subcontract with PDC. Due to delays in labor payments from Nishizono, PDC and plaintiff Ngirausui in December 1983 refused to continue working on the construction project. In December, 1983, defendant Kishimoto entered into a new oral agreement with plaintiff Ngirausui and his company regarding the remaining and unfinished construction work of Grace Hotel. The trial court found that the original terms of the agreement were not in dispute, as defendants had agreed to compensate plaintiff $100,000.00, of which $49,662.31 has already been paid. After making this new agreement, the plaintiffs resumed working on the unfinished portion of the Grace Hotel and the project was completed at the end of April, 1984.

⊥331 The single dispositive issue on appeal concerns whether the trial court erred, in its findings of fact, that there was insufficient evidence to support defendants' claim that they are entitled to deduct from the plaintiffs' contracted-to amount of compensation for expenditures for

additional laborers hired by defendants. Plaintiff Ngirausui was informed approximately three weeks after recommencing construction by defendant Kishimoto that he and his company were behind in schedule and that the defendants would supply additional labor to supplement plaintiff's work force. Defendants contend that the cost of supplying this additional labor should be taken out of the amount of compensation that plaintiffs are scheduled to receive under the contract.

The trial court concluded that:

> It is clear that plaintiff [Ngirausui] did not agree to these additional terms imposed by defendant [Kishimoto], nor was plaintiff [Ngirausui] informed of additional labor hired by defendant [Kishimoto] in February and March, 1984. The oral agreement between plaintiff [Ngirausui] and defendant [Kishimoto] did not call for time of the essence, and defendant [Kishimoto] failed to prove any substantial delays in completion to allow an offset for the additional labor it recruited without plaintiff's permission.

Defendants appeal this finding.

14 PNC § 604(b) states that:

> The findings of fact of the Trial Division of the high court or the Supreme Court in cases tried by it shall not be set aside by the Appellate Division of that court unless clearly erroneous, but in all other cases the Appellate or reviewing court may review the facts as well as the law.

The trial court considered testimony that there was no subsequent agreement after December, 1983, that authorized the defendants to deduct any additional workers' salary from the plaintiffs' agreed-to contractual amount. Plaintiff Ngirausui further testified that he was not properly consulted about the hiring of additional workers to complete the project, and when defendant Kishimoto told him "they were going to deduct my ⊥332 money to pay additional workers [I said] no". It is reasonable to conclude that the trial court considered these factual findings, and did not err in rendering its judgment.

The judgment of the trial court is AFFIRMED.

Each party shall pay its own costs. Appellees' Motion requesting award of damages and costs is hereby denied.