

Nakatani v. Nishizono, 2 ROP Intrm. 52 (1990)
NORIYOSHI NAKATANI and NAKATANI CONSTRUCTION COMPANY,
Respondent,

v.

MASAO NISHIZONO and SEIBU DEVELOPMENT CORPORATION,
Appellants,

and

REPUBLIC OF PALAU,
Additional Defendant/Appellant,

and

PACIFICA DEVELOPMENT CORP., a Palau Corporation,
Respondent.

MASAO NISHIZONO a/k/a KWON BOO SIK CONSTRUCTION COMPANY,
Appellant,

v.

ROMAN TMETUHL, MELWERT TMETUHL, and NORIYOSHI NAKATANI,
Respondents,

and

153 **REPUBLIC OF PALAU,**
Appellant,

and

PACIFICA DEVELOPMENT CORP., a Palau Corporation,
Respondent.

CIVIL APPEAL NO. 5-86
Civil Action No. 25-85 consolidated with Civil Action No. 73-85

Supreme Court, Appellate Division
Republic of Palau

Nakatani v. Nishizono, 2 ROP Intrm. 52 (1990)

Decision and order

Decided: 1990

BEFORE: FREDERICK J. O'BRIEN, Part-Time Associate Justice; ROBERT A. HEFNER, Part-Time Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appellants Masao Nishizono and Seibu Development Corporation petition for a rehearing pursuant to Rule 40 of the Rules of Appellate Procedure.

On petition for rehearing it appears that the Court said more than necessary to decide the question presented on appeal and thereby caused the parties to speculate about this Court's views on matters never passed upon by the Trial Division. *See, e.g., In Re Badger Mountain Irrigation District*, 885 F.2d 606 (9th Cir. 1989), as amended, Nos. 87-4406 and 87-4422, slip op. at 14157 (Dec. 6, 1989) (1989 U.S. App. LEXIS 13775). Accordingly, the language appearing in Section B, p. 13, lines 1 - 5 of the Opinion is deleted.

Further, the Court notes the following: That appellants argue, first, that \$400,000 was in fact paid to Roman Tmetuchl and, second, that Tmetuchl accepted these payments on behalf of Pacifica Development Corporation.

The Court in its decision of January 8, 1990, considered and disposed of the issue concerning the purported payment of \$400,000 L54 to Roman Tmetuchl. Appellants argue for the first time in their petition for rehearing that the \$400,000 not only was received by Tmetuchl but also that it should have been credited to Pacifica Development Corporation, and so offset against the sum awarded Pacifica Development in the judgment. This new and novel argument was neither made in appellant's brief nor offered at oral argument and, therefore, it cannot now be raised. *See, e.g., People of the Territory of Guam v. Okada*, 694 F.2d 565, 570 (9th Cir. 1982).

Appellants' petition for rehearing is DENIED.