Kamiishi v. Han Pa Construction Company, 4 ROP Intrm. 37 (1993)

KATSUO KAMIISHI and ASHIBI COMPANY,
Defendants/Appellants,

v.

HAN PA CONSTRUCTION COMPANY,
Plaintiff/Appellee.

CIVIL APPEAL NO. 23-90
Civil Action No. 297-89

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: November 30, 1993

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: Johnson Toribiong

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; JANET H. WEEKS, Part-Time Associate Justice

PER CURIAM:

Defendants/Appellants Katsuo Kamiishi and Ashibi Company (hereafter "Kamiishi") appeal the judgment of the Trial Division awarding $48,562.57 in quantum meruit to Plaintiff/Appellee Han Pa Construction Company for materials and labor costs incurred during the construction of the Ashibi Restaurant and Night Club in Ngerkebesang, Koror State. Kamiishi contends that the trial court erred in its finding that no contract had been formed between Kamiishi and Han Pa Construction Company, and in its dismissal of Kamiishi's counterclaim. For the reasons set forth below, we agree with Kamiishi and hereby reverse the judgment.

⊥38 BACKGROUND

The two key players in this dispute are Mr. Soon Ha, President and Acting General Manager of Han Pa Construction Company, and Mr. Katsuo Kamiishi, whom the parties describe as the "principal personality" of Ashibi Company, developer of the Ashibi Restaurant. In addition to his native Korean, Mr. Ha speaks English which is described as "passable" or "average." Kamiishi speaks Japanese only.

Ha and Kamiishi met on several occasions, without an interpreter, and agreed orally to several construction projects that the former was to perform for the Ashibi Restaurant. No

formal written contract, blueprints, diagrams, or specifications were drafted. Both parties, however, signed several written estimates. One such estimate lists the materials and labor cost, including profit and taxes, for five separate projects, and the "total project cost" of $94,000, to be paid in four scheduled installments.

Mr. Ha claims that he contracted to do construction work for which he would have grossed $130,618.42. He completed 12 of the 13 projects. As for the remaining project, Ha had completed 50% of the road retaining wall, 56% of the parking lot, and 76% of the driveway before Kamiishi ordered him to stop. Ha claims he was told to halt work because the price was too high and Kamiishi did not have any more money to pay him. Kamiishi states the reasons to be otherwise: improper operation of Kamiishi's equipment, inferior materials, poor workmanship, and failure to complete work ⊥39 as requested.

All together, Kamiishi made eleven payments for a total of $75,000 between October 22, 1988, and January 29 of the following year. Kamiishi filed a counterclaim to recover the cost of hiring another contractor and purchasing additional materials to correct and complete the project.

DISCUSSION

Kamiishi argues that the court erred in concluding that there was no contract and in disallowing his counterclaim for that reason. He also challenges the court's method of determining the award in quantum meruit.[1]

The trial court concluded that no contract had been formed between the parties:

> [I]t can hardly be said that there was that meeting of the minds which is the sine qua non of a legally enforceable contract. Contract law calls for an offer and an acceptance, which were doubtless present here, but when there can be no assurance that the offeror and offeree understood one another and agreed to the same thing, there can be no contract. The language barrier and the lack of documentation as to the intent of the parties render any finding about the parties' intentions essentially speculative.

Han Pa Construction Co. v. Kamiishi and Ashibi Co., Civ. Action No. 297-89, at 2.

The court's conclusion deals with one of the most fundamental areas of the law: contract formation. We believe that it erred in construing "meeting of the minds" as a contract requirement which ⊥40 is separate from offer and acceptance. The correct approach is to infer manifestation of mutual assent from the offer and acceptance, absent any mistake or ambiguity.

The treatment set forth in the Restatement (Second) of Contracts (1981) offers guidance in determining whether a contract has been formed. As a basic principle, "the formation of a

[1] In view of our holding today, we need not consider whether the trial court erred in its holding that the quality of work performed is not relevant to damages awarded under quantum meruit.

contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." Restatement, § 17. The key phrase in terms of the case at hand is "manifestation of mutual assent," which the Restatement equates with an "agreement." *Id.* § 3. The Restatement makes very clear that the word "agreement" does not imply mental agreement, which may or may not exist when parties manifest assent to a transaction. *Id.* § 3, cmt. a. What is required for manifestation of mutual assent is that "each party either make a promise or begin or render performance." *Id.* § 18. The manifestation may come in the form of written or spoken words or by acts or the failure to act. *Id.* § 20.

Williston, another widely recognized authority on contracts, makes it clear that a contract does not require a meeting of the minds:

> In some branches of the law, especially in the criminal law, a person's secret intent is important. In the formation of contracts it was long ago settled that secret intent was immaterial, only overt acts being considered in the determination of such mutual assent as that branch of the law requires. During the first half of the nineteenth century there were many expressions which seemed to indicate the contrary. Chief of these was the familiar cliche, still reechoing in judicial dicta, that a contract requires the "meeting of the minds" of the parties.

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Williston on Contracts, § 22 (3d. ed. 1957) (footnotes omitted). Williston also points out that the requisite assent is almost always manifested by means of offer and acceptance. *Id.* § 23.

Applying the foregoing principles to the case at bar, there can be no question that a contract was formed. The trial court found that there had been offer and acceptance, from which it should have inferred mutual assent. *Id.* The court erred in concluding that there was an additional requirement that there be a "meeting of the minds." As Williston points out, this is a mistaken notion. *Id.* § 22.

The "language barrier and the lack of documentation as to the intent of the parties" referred to by the court were of no legal consequence: First, the "language barrier" obviously did not prevent the parties from getting together without an interpreter on several occasions and reaching agreements as to various construction projects. Nor did it prevent them from jointly signing written estimates. Nor did it prevent Ha from completing 12 of the 13 agreed-upon projects, nor Kamiishi from making 11 payments for Ha's performance. Nor did it lead to a mistake or misunderstanding. *See* Restatement, *supra*, § 20.

Second, the court's emphasis on the "lack of documentation" in this case runs counter to the well-established principle that contracts may be formed by oral promises or the conduct of the parties. *Id.* § 19. In this case there were oral promises, signed written estimates, and performance on both sides. The court abdicated its role as trier of fact when it concluded that the ⊥42 language barrier and lack of documentation would make any finding regarding the intention of the parties speculative. It was incumbent upon the court to weigh the evidence--the respective testimony of Ha and Kamiishi, the written estimates, and the performances tendered by the two parties--to determine the terms of their contract. The court should have then reached the merits

of Kamiishi's counterclaim and made appropriate findings of fact.

CONCLUSION AND ORDER

The court erred in concluding that no contract had been formed between the parties. It was therefore error to award Ha damages in quantum meruit, and to refuse to consider Kamiishi's counterclaim. The judgment is hereby VACATED, and the case is REMANDED for further proceedings consistent with this Court's opinion. We leave to the sound discretion of the trial court to determine to what extent the case must be re-tried and to what extent it is sufficient to rule on the basis of the transcript of the first trial.