OWENS OTEI, et al.,
Appellants,
v.
DIRRAKELAU BECHES SMANDERANG, et al.,
Appellees.

Cite as: 2018 Palau 4
Civil Appeal No. 17-012
Appeal from Civil Action No. 15-020

Decided: May 21, 2018

Counsel for Appellants …….. .....Johnson Toribiong, Esq.
Counsel for Appellees.....J. Roman Bedor

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen Salii, Associate Justice, presiding.

OPINION

PER CURIAM[1]:

[¶ 1] This appeal involves the right to rebuild a house on a parcel of land located in Kayangel State. Appellants appeal from the Trial Court's Decision and Judgment, rendered on September 19, 2017, in which the Court affirmed Appellants' right to build on the land in question, but denied their request for compensatory damages. Appellants argue that this refusal to award damages constituted legal error. However, as explained below, Appellants have failed to meet their burden of establishing error by the Trial Court. Accordingly, we affirm the judgment below.

[1] Although Appellants request oral argument, the Court determines pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

BACKGROUND

[¶ 2] Appellants (Plaintiffs below) are the grown children of the late Uodelchad Leleng Otei, and Appellees (Defendants below) are the surviving siblings of Leleng Otei. Leleng and two of her sisters (Appellees Dirrakelau and Omtilou) each maintained a family dwelling on land called Delboche*l*, identified as Cadastral Lot No. 024 G 01. Lelang died in December 2012.

[¶ 3] In November 2013, Super Typhoon Hayan destroyed Leleng's house, and also damaged the homes of Dirrakelau and Omtilou. After the typhoon, the national government enacted the Super Typhoon Disaster Relief Program, which provided funds for people affected by the storm to rebuild or refurbish damaged property. This program allocated 22 pre-fabricated houses to those homeowners in Kayangel whose homes had been destroyed by the typhoon—Owens Otei was selected to receive one of these houses in order to replace Leleng's house. The cost of each pre-fabricated house, together with labor, was estimated to be between $80,000 and $90,000.

[¶ 4] When Owens attempted to start construction on the replacement house, Appellees objected, claiming that the proposed house would be too close to the existing houses. Appellees also opposed the proposed construction because they thought Appellants displayed a lack of respect towards their elders in simply arranging to build without first asking Spis Ngiralbong (male chief titleholder of Milong Clan and brother of Leleng) or the rest of Leleng's siblings. On February 26, 2014, Appellees issued a document, "Tekoi El Kirel A Usbechel A Chutem," to stop any construction on Delbochel, claiming that they, as strong senior members of the lineage, had not consented to the construction.

[¶ 5] In response, Spis Ngiralbong informed Appellees that he had given his consent for Appellants to rebuild the family home that was destroyed by the typhoon. Appellees still protested, so Spis Ngiralbong suggested that the new house could instead be built on a different tract of land known as Milong (Cadastral Lot No. 2G-185). However, Appellee Dave Tedil Beches refused to let the construction crew perform any work on this alternate site as well.

[¶ 6] On October 23, 2014, Spis Ngiralbong signed a written use right formally giving consent for Owens to build the replacement house on

Milong. Despite this consent, construction did not resume because the construction company did not want to get involved in the ongoing family dispute (even though Appellants' lawyer had promised to indemnify the company for any potential liability). The replacement house was never built, and government funds are no longer available as part of the Super Typhoon Disaster Relief Program.

[¶ 7] Appellants filed suit on February 6, 2015, seeking, *inter alia*, a declaration that they had the legal right to rebuild their mother's home on either Delbochel or Milong, as well as an award of $90,000 in compensatory damages (representing the value of a prefabricated house under the Super Typhoon Disaster Relief Program). The Trial Court entered the requested declaratory relief, finding that the October 2014 use right remained in effect.

[¶ 8] However, the Trial Court refused to award Appellants their requested monetary damages because it concluded that

> The preponderance of the evidence does not establish that it was Defendants who actually caused Plaintiffs to miss out on having a replacement house built under the National Government's Typhoon Relief Program. The evidence presented at trial shows that Spis Ngiralbong initially gave an oral use right to Plaintiffs; this oral consent was withdrawn when Defendants voiced an objection, which they have a right to do as strong and senior members of Delbochel Lineage. Spis Ngiralbong, in his capacity as chief, delayed giving any final approval to Plaintiffs while there were meetings and discussions going on in an attempt to reach a compromise. Such delay is a reasonable exercise of his authority.
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> Plaintiffs did not receive a written use right until October 23, 2014, at which point any funds in the Relief Program were exhausted. However, the delay in getting a written use right was not caused by Defendants, which may have justified granting monetary damages to Plaintiffs; rather, the delay in obtaining the written use right was a direct result of

> Spis Ngiralbong, exercising his authority [trying to] reach a consensus among the lineage members.

[¶ 9] In other words, the Trial Court concluded that Appellees, in objecting to the proposed construction, had not done anything unlawful, and accordingly denied Appellants' request for compensatory damages. This failure to award damages is the primary issue involved in the current appeal.

STANDARD OF REVIEW

[¶ 10] A lower court's findings of fact concerning damages are reviewed for clear error. *Palau Marine Indus. Corp. v. Seid*, 11 ROP 79, 81 (2004). Under the clear error standard, findings will be reversed only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Imeong v. Yobech*, 17 ROP 210, 215 (2010). A trial court's decision to entertain a claim for declaratory relief is reviewed for abuse of discretion. *Whipps v. Idesmang*, 2017 Palau 24 ¶ 7. Conclusions of law are reviewed *de novo*. *ROP v. Terekiu Clan*, 21 ROP 21, 23 (2014).

DISCUSSION

[¶ 11] Appellants argue that "the Decision and Judgment of the [Trial Court] in not awarding damages [was] not supported by the manifest weight of the evidence and [was] contrary to the applicable law," and "Appellants proved their damages before the Court and are therefore entitled to recover compensatory and punitive damages."

[¶ 12] The fatal flaw in Appellants' argument is that they do not base their alleged entitlement to compensatory damages under any specific cause of action that would entitle them to monetary relief. Instead, Appellants simply point to the damages they have suffered (i.e. loss of a pre-fabricated house valued between $80,000 and $90,000), and argue that this loss means they are entitled to damages from Appellees.

[¶ 13] However, a request for damages does not constitute a cause of action; rather, damages are a remedy for an illegal wrong. *Howell Petroleum Corp. v. Leben Oil Corp*., 976 F.2d 614, 622 (10th Cir. 1992). Proper causes of action contain two distinct and separate elements—a right belonging to the plaintiff, and a violation of that right by some wrongful act or omission by the defendant. *See* 1 AM. JUR. 2d *Actions* § 45 (2016). In this case, Appellants may have satisfied the first element, but have clearly not satisfied the second.

[¶ 14] Furthermore, the proper exercise of a lawful right cannot form the basis of a claim, even if the act results in damage to another. One may use any lawful means to accomplish a lawful purpose, and cannot be held liable for resulting damage to another. *See id*. §§ 47, 49 ("an injured party cannot obtain a remedy unless there is a corresponding wrong for which a remedy is necessary"; "The law affords no remedy for damages resulting from an act which does not amount to a legal wrong.").

[¶ 15] The only legal authority Appellants cite to support their claim for damages is *NECO v. Rdialul*, 2 ROP Intrm. 211, 220 (1991), which references § 352 of the Restatement (Second) of Contracts for the principle that "it is a well-established concept that an award for damages is proper to the extent that they can be proven with a reasonable degree of certainty." However, Appellants have not argued on the basis of contract law, so reference to the Restatement (Second) of Contracts is misplaced. Furthermore, this same Restatement section includes, as one of the elements of a valid claim to damages (specifically for lost profits), a *wrongful* act by the defendant that caused the loss of profits. Again, Appellants have failed to identify a wrongful act by Appellees.[2]

[2] In their "Prayer for Relief," Appellants make a passing reference to an alleged tort committed by Appellees ("For the reasons set forth above, the Decision of the Trial Court to decline to award Appellants damages *in tort* for the injuries caused by Appellees should be REVERSED . . ."") (emphasis added). However, Appellants do not identify which tort Appellees allegedly committed, nor do they lay out the elements of this unspecified tort. Therefore, Appellants have not brought a proper cause of action based on tort law.

[¶ 16] Looking back to Appellants' original complaint before the Trial Court, they appear to base their claim for relief on Appellees' alleged violation of customary law. According to Appellants, "[u]nder Palauan traditional law and custom, [Appellees] have no authority to revoke the right of the [Appellants] to rebuild their mother's family-dwelling house on its original site as confirmed by Spis Ngiralbong Beches." Pls.' Compl. ¶ 27. However, the Trial Court found that it was not Appellees who had revoked Appellants' use right. Instead, Spis Ngiralbong had temporarily withdrawn his oral consent in an attempt to reach consensus among the clan members. When this attempt failed, Spis Ngiralbong officially granted a written use right to Appellants. This determination is a reasonable conclusion based on the evidence presented at trial, and is therefore not clearly erroneous. *See, e.g.*, *Rechucher v. Ngermeriil*, 9 ROP 206, 211 (2002) ("where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous.").

[¶ 17] In their complaint, Appellants also allege that "As a result of [Appellees'] wrongful actions in disregard of Palauan traditional law and custom, which prevented [Appellants] from acquiring a replacement of their family dwelling house they have suffered substantial damages[.]" Pls.' Compl. ¶ 29. However, the Trial Court specifically found that Appellees had not violated any customary law. According to the Trial Court, Appellees, as strong senior members of Delbochel Lineage, had the right to approach Spis Ngiralbong with their opposition regarding the proposed construction. *See* ¶ 8, *supra*.

[¶ 18] If Appellants wish to challenge this conclusion—that under customary law, senior strong clan members such as Appellees are allowed to protest the oral grant of a use right by the chief—then they must introduce evidence to undermine the trial Court's statement of customary law. However, Appellants cite no legal authority except *Ngoriakl v. Rechucher*, 20 ROP 91 (2013), for the general proposition that a chief has the authority to grant a use right without first consulting or getting the approval of the clan's ourrot. Even though this may be true as a general matter, in this case Spis Ngiralbong chose to take the ourrot's objections into consideration and decided to postpone granting the use right, in hopes of reaching an amicable resolution among all parties.

[¶ 19] Appellants fail to mention *Beouch v. Sasao*, 20 ROP 41 (2013), or the four requirements for a custom to be considered traditional law (the custom is engaged voluntarily; the custom is practiced uniformly; the custom is followed as law; the custom has been practiced for a sufficient period of time to be deemed binding), even though they base their claim for relief on Appellees' supposed violation of customary law.

[¶ 20] Therefore, we must deny the current appeal because Appellants have failed to adequately develop or substantiate their argument that the Trial Court incorrectly determined customary law on this matter. Such disposition is in keeping with the Court's recent decisions in *Riumd v. Mobel*[3] and *Obak v. Ngirturong*[4], where the parties similarly failed to meet their burden of showing legal error on the part of the Trial Division.

CONCLUSION

[¶ 21] For forgoing reasons, the judgment of the Trial Division is **AFFIRMED**.

SO ORDERED, this 21st day of May, 2018.

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[3] "[Appellant] does not develop any argument showing that the Trial Division determined custom in violation of *Beouch*. Even if the Trial Division erred under *Beouch*, it is [Appellant]'s burden to identify that error and provide legal authority in support of reversal. [Appellant has failed to meet this burden." *Riumd v. Mobel*, 2017 Palau 4 ¶ 38.

[4] "If customary legal questions are not properly briefed by the parties then we will not decide them. . . . Since none of the customary law issues argued by the parties have been properly briefed, we hold that the parties have generally failed to meet their burden of showing legal error on the part of the Trial Division, and we will not disturb its customary law holdings." *Obak v. Ngirturong*, 2017 Palau 11 ¶¶ 13-15.