

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

BARRETT RIDEP,
Appellant/Cross-Appellee,
v.
ANGAUR STATE GOVERNMENT,
Appellee/Cross-Appellant.

Cite as: 2019 Palau 26
Civil Appeal No. 18-031
Appeal from Civil Action No. 15-079

Decided: August 7, 2019

Counsel for Appellant/Cross-Appellee Siegfried B. Nakamura
Counsel for Appellee/Cross-Appellant Vameline Singeo

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice,
presiding.

OPINION¹

PER CURIAM:

[¶ 1] In this appeal, both parties challenge the damage award issued by the Trial Division for Appellee’s trespass on Appellant’s land. Following a hearing, the Trial Division granted Appellant \$21,918.00 in damages. Appellant contends that the Trial Division erred by failing to award him attorney’s fees and failing to base the damage award on the increased costs and potential lost profits resulting from the delayed construction of a commercial building on the property. Appellee contends that the Trial

¹ Although Appellant requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

Division correctly based its damages award on the fair rental value of the land, but erred in calculating that amount.

[¶ 2] For the reasons set forth below, we **AFFIRM in part, REVERSE in part, and REMAND** to the Trial Division with instructions.

BACKGROUND

[¶ 3] Appellant has a fifty-year commercial lease with Koror State Public Lands Authority for a 562-square-meter parcel of land on Malakal Island (“the Lease”). The Lease states that Appellant “shall pay the KSPLA an annual rental payment of One Thousand Six Hundred Eighty-Six and 00/100 Dollars (\$1,686.00) which is Three dollars and 00/100 (\$3.00) per square meter” on the land. Pl. Ex. 9 (emphasis omitted). Appellee had been using the dock on the property to occasionally moor one of its boats and has kept a derelict old boat, the Yamato, sitting outside the water on the property.

[¶ 4] Following a series of unsuccessful correspondence, in which Appellant informed Appellee that it needed to remove the Yamato from the property and cease its use of the dock, Appellant filed suit for trespass seeking damages, attorney’s fees, and declaratory and injunctive relief. On March 18, 2016, the Trial Division granted Appellant partial summary judgment on the issue of trespass and set a hearing for damages.

[¶ 5] At the hearing, placed into evidence were two construction contracts for the construction of a two-story multipurpose building on the property. The first contract was dated March 16, 2015, and the agreed-upon price was \$385,000.00. The second contract, entered into after the removal of the Yamato from the property, had several additional terms and a new-agreed upon price of \$492,000.00. Appellant also presented expert testimony regarding the potential rental value of the proposed building during the 2015 year. Based on this, Appellant sought “\$110,677.37 for the difference in construction costs plus pecuniary loss or[,] in the alterative[,] \$126,895.00 for the difference in construction costs plus loss of profits.” Damages Order 2.

[¶ 6] The Trial Division denied this measure of damages, noting that “[c]onstruction costs on [a] contract that has not commenced or loss of possible profits for future tenants on [a] building yet to be built are too

speculative and not [a] reliable basis for an award of damages in an action for trespass.” *Id.* Instead, the Trial Division based its award on “the fair rental value” of the property from March 18, 2016 to April 24, 2016—the time Appellant was dispossessed of it. To calculate this amount, the Trial Division relied on the \$3.00-per-square-meter valuation of the property in the Lease and came to an ultimate damage award of \$21,918.00. Appellant’s request for attorney’s fees was denied without discussion.

STANDARD OF REVIEW

[¶ 7] We review the Trial Division’s findings of fact for clear error and its conclusions of law *de novo*. *Gibbons v. Koror State Gov't*, 2019 Palau 10 ¶ 6. “The Trial Division’s findings of fact concerning compensatory damages are reviewed for clear error. 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.” *Ngarbechesis Klobak v. Ueki*, 2018 Palau 17 ¶ 9 (internal quotation marks and citations omitted).

[¶ 8] The award of attorney’s fees is a matter of discretion left to trier of fact. “Thus, the standard of review on appeal is whether the trial court abused its discretion.” *W. Caroline Trading Co. v. Kloulechad*, 15 ROP 127, 128 (2008). “Under the abuse of discretion standard, a Trial Division’s decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive.” *Ngarbechesis Klobak*, 2018 Palau 17 ¶ 8 (quoting *W. Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011)).

DISCUSSION

[¶ 9] Appellant challenges the Trial Division’s calculation of damages and its denial of his request for attorney’s fees. Appellee cross-appeals, challenging only the calculation of damages.

I. Trespass Damage Award

[¶ 10] There are several ways in which a factfinder can calculate compensatory damages for trespass. Typically, a person who is prevented from using their land by the trespass of another is entitled to compensatory

damages for “the value of the use during the period of detention or prevention.” *See* Restatement (Second) of Torts § 931(a). This is the “fair market value” of the land. Relying on the lease between Appellant and KSPLA, the Trial Division determined that Appellant was dispossessed of his property from March 18, 2015 to April 24, 2016, and that the fair market value of the land was “\$3.00 per square meters for the approximately 562 square meters property.” Damages Order 2. Consequently, the Trial Division awarded Appellant \$21,918.

[¶ 11] Appellant asserts that, rather than calculating the damages based on the fair market value of the property, the Trial Division should have calculated the damages based on the increase in cost between the first construction contract and the second construction contract, as well as the potential profits he could have gotten from renting space in the building. This would result in a damage award of \$182,677.37. There is some support for Appellant’s argument, in that a person is entitled to compensation for “other harm of which the detention [of the land] is the legal cause.” Restatement (Second) of Torts § 931(b). This can include loss of profits from a specific sale or ready market. *Id.* § 931 cmt. e. However, these damages must be proven “with reasonable certainty.” *Palau Pub. Lands Auth. v. Emesiochel*, 22 ROP 126, 134 (2015). While some uncertainty as to the precise amount of damages will not bar recovery, a reasonable basis for computing damages requires “something more than outright speculation, but less than precise or mathematical certainty.” *Id.* at 135 (internal quotation marks omitted).

[¶ 12] Here, the Trial Division concluded that the damages requested by Appellant were too speculative. Certainly, the potential rental value of a property that has not been constructed yet—and would not have been complete and ready for renters during the time in question even without Appellee’s trespass—is too speculative to support an award for damages. *See* Restatement (Second) of Torts § 912 cmt. d. While it might have been possible to support an award of damages from the difference between the two construction contracts, whether Appellee’s trespass was the cause of the increased cost and the certainty surrounding the damages that resulted are factual questions that we review for clear error. Because construction had not yet begun, we cannot say that no reasonable trier of fact could have come to the conclusion that the asserted harm is speculative. Therefore, the Trial

Division did not err by basing its damage calculation on the fair market value of the property, rather than the construction contracts or potential lost profits.

[¶ 13] Having concluded that the Trial Division appropriately relied on the fair market value of the property, we turn now to Appellee's contention that the Trial Division correctly based its damage calculation on the KSPLA lease, but incorrectly calculated the damages. We agree. The Lease contains a specific provision valuing the land at \$3.00 per square meter for the 562-square-meter property. This results in an annual rental value of \$1,686 and a daily rental value of \$4.62 (\$1,686 divided by 365). The Trial Division determined that the property was dispossessed from March 18, 2015 to April 24, 2016, a total of 404 days. Therefore, the total damages resulting from Appellee's trespass is \$1,866.48 (\$4.62 multiplied by 404).²

[¶ 14] Appellant attempts to argue that the Trial Division reached its \$21,918 damage award by "appl[ying] the \$1,686 yearly annual rent as a monthly valuation of the Property, then multipl[ying] it by the number of months that the Yamato boat was left sitting on the Property." Appellant Response Br. 5. However, there is no factual support for concluding that the monthly rental value of the property is the rent that Appellant pays yearly. We conclude that this is a mathematical error by the Trial Division and remand this issue for a proper damage calculation, as described above.

II. Attorney's Fees

[¶ 15] On appeal, Appellant asserts that the Trial Division erred by summarily denying his request for attorney's fees and court costs. Specifically, Appellant contends that the issue of attorney's fees must be remanded back to the Trial Division because its order failed to address the issue.

[¶ 16] "Absent a statute or contract to the contrary, each party is responsible for his own attorney fees." *W. Caroline Trading Co. v. Kloulechad*, 15 ROP 127, 128–29 (2008). Appellant has failed to cite any statutory provision in support of an award for attorney's fees and there is no contract upon which he can rely. This Court has found no legal support for

² Appellee calculates the total damage amount as \$1,714.02. However, Appellee incorrectly calculated the dispossession time as 371 days, rather than 404 days.

awarding attorney's fees and court costs in a case like this. *See* Restatement (Second) of Torts § 914 (“The damages in a tort action do not ordinarily include compensation for attorney fees or other expenses of the litigation.”).

[¶ 17] Appellant cites *W. Caroline Trading Co. v. Meteolechol*, 14 ROP 58 (2007), to support his argument that the issue of attorney's fees must be remanded because we cannot tell whether the Trial Court considered the issue. However, *W. Carolina Trading Co.*, is a collection case in which the issue of attorney's fees was not discussed by the court, despite WCTC having “a contractual right to an award of reasonable attorney's fees.” *Id.* at 61. As such, it is not applicable to the type of tort case at issue here. Therefore, the Trial Division did not abuse its discretion by denying the request without further explanation.

CONCLUSION

[¶ 18] We **AFFIRM** the Trial Division's denial of attorney's fees. We **REVERSE** the award of damages in the amount of \$21,918 and **REMAND** to the Trial Division with instructions to recalculate the damage award based on an annual rental value of \$3.00 per square meter, as outlined above.