

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

TEMMY SHMULL,
Appellant,
v.
HANPA INDUSTRIAL DEVELOPMENT CORPORATION,
Appellee.

Cite as: 2019 Palau 27
Civil Appeal No. 18-046
Appeal from Civil Action No. 03-163

Decided: August 8, 2019

Counsel for Appellant Siegfried B. Nakamura
Counsel for Appellee William L. Ridpath

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
 JOHN K. RECHUCHER, Associate Justice,
 KATHERINE A. MARAMAN, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] As this Court noted in the prior appeal in this case, the underlying dispute concerned a number of contracts between the parties. *See Shmull v. Hanpa Indus. Dev. Corp.*, 21 ROP 35, 36 (2014).² What remains is a dispute regarding the Trial Division’s determination on damages on each party’s breaches. In the previous appeal, this Court affirmed the Trial Division’s decision regarding the following damages:

¹ Although Appellant requested oral argument in his reply brief, we resolve this matter on the briefs pursuant to ROP R. APP. P. 34(a).

² In the first appeal in this matter, the Civil Action No. is incorrectly listed in the caption as 03-384. The correct Civil Action No. is 03-163.

- “Both parties agree that the trial court properly found that Shmull owed Hanpa the remaining \$4,456.18, with an additional \$11,480.34 in interest, and \$222.81 in late fees” for the first floor contract. *Id.* at 37.
- Shmull’s outstanding balance on the second floor contract is \$22,500.00. *Id.* This award included an additional \$63,716.70 in interest and \$1,125.00 in late fees. *See* Findings and Decision 22–23 (Nov. 2, 2012).
- Upheld the Trial Division’s finding that Shmull did not owe pre-judgment interest to Hanpa for the first and second floor extension costs. *Shmull*, 21 ROP at 39–40.
- The Trial Division did not err in finding Hanpa liable for liquidated damages with respect to the first floor’s completion. *Id.* at 41.
- The Trial Division did not err in finding that there was no contract for the third floor construction or in accepting Shmull’s valuation of the work at \$40,369.82. *Id.* at 42–43.

[¶ 2] Neither party appealed the Trial Division’s determination that Hanpa owed Shmull \$51,659.91 in cost-to-repair damages for damage caused by Hanpa’s failure to paint the building’s exterior. *See* Findings and Decision 20 (Nov. 2, 2012) (hereinafter “Decision”).

[¶ 3] Several question related to other damages, however, were remanded to the Trial Division. This Court remanded to the Trial Division the following tasks:

- Because of a calculation error, recalculate the first and second floor extension costs based on Appellant’s method, which should lead to a total of \$44,296.56 owed by Shmull. *See Shmull*, 21 ROP at 39 n.4.
- Because of an error in the liquidated damages calculation for Hanpa’s delay in the first floor’s completion, recalculate that liquidated damages amount to show the proper calculation equaling \$37,200.00 in liquidated damages. *Id.* at 41.

- Include in total damages \$1,000.00 owed by Shmull to Hanpa for paving the parking lot and installing window grills. *Id.* at 42.
- Clarify decision regarding pre-judgment interest against Hanpa. *Id.* at 43.
- Decide the issue of whether Shmull should be awarded up to \$26,000.00 in damages for alleged defective and omitted work. *Id.* at 43–44.

[¶ 4] On remand, the Trial Division recalculated the first and second floor extension costs and the liquidated damages for the delay in the first floor’s completion. It further rewrote its finding that Shmull be awarded \$3,609.45 in pre-judgment interest accrued from May 8, 2003 to November 2, 2012 “for the damages resulting from poor paint job as[]well as repair costs.” Further Findings and Decision on Remand 2 (July 30, 2018) (hereinafter “Decision on Remand”). It also determined that Hanpa was required to construct the first and second floors according to the specifications and drawing submitted, and because it omitted an archway, sinks, counters, cabinets, and broom closets from the second floor, it owed Shmull \$26,000.00 for the omitted work. *Id.*

[¶ 5] The parties now appeal a number of the Trial Division’s findings on remand. Shmull asserts that the Trial Division erred in omitting a pre-judgment interest award on the liquidated damages calculation for delay in the first floor’s completion and failed to properly calculate pre-judgment interest with respect to the poor paint job. It further contends that the Trial Division erred in stating in its conclusion that Hanpa was to be awarded pre-judgment interest.

[¶ 6] On appeal, Hanpa seeks clarification on the total damages owed to it by Shmull because the Trial Division recited a new and unexplained total in its Decision on Remand. Shmull contends that Hanpa has not filed its own appeal contesting the Trial Division’s damages award to Hanpa, claiming that the new total should stand. Hanpa challenges Shmull’s suggestion that pre-judgment interest should be awarded on the liquidated damages calculation for delay in the first floor’s completion, seeking further remand for the Trial Division to address the issue as it did not do so on remand.

[¶ 7] The Court now **AFFIRMS** in part and **REMANDS** in part the Trial Division's decision and judgment.

BACKGROUND

[¶ 8] The history underlying the current appeal is thoroughly described in the preceding appeal and in the underlying Trial Division's initial Findings and Decision from November 2, 2012. Accordingly, this Court will only address background facts as necessary in its analysis.

STANDARD OF REVIEW

[¶ 9] This Court has previously and succinctly explained the appellate review standards as follows:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. Matters of law we decide de novo. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted).

[¶ 10] “The Trial Division's findings of fact concerning compensatory damages are reviewed for clear error.” *Ngarbechesis Klobak v. Ueki*, 2018 Palau 17 ¶ 9 (citing *Otei v. Smanderang*, 2018 Palau 4 ¶ 10). “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.” *Id.*

ANALYSIS

[¶ 11] It appears that the Trial Division has committed clear error with respect to its calculation of pre-judgment interest for the damages resulting from the poor paint job and repairs. In his opening brief, Shmull calculates an amount for pre-judgment interest with respect to these damages based on a 9% rate, which the Trial Division explained in its Findings of Fact and Decision would apply. *See* Decision 21 (“Court will set prejudgment interest

at 9% which is the statutory percentage rate for post-judgment.”) (citing 14 PNC § 2001). When calculated to apply from May 8, 2003 to November 2, 2012, the date of the initial judgment, Shmull claims that the pre-judgment interest award on the liquidated damages for the paint work to be \$44,195.06. *See* Shmull Opening Br. 6–7 (full calculation outlined). In its response brief, Hanpa asserts that “[Shmull]’s calculation on this matter accordingly appears to be correct, assuming applicability of a 9% rate.” Hanpa Response Br. 3–4. It further asserts that, on remand, “the [Trial Division] has made clear its intention to award pre-judgment interest for the specified period of time for the cost of remedying the paint work.” *Id.* at 3. This Court concludes that the Trial Division erred in calculating pre-judgment interest on the liquidated damages award and finds that the calculation conducted by Shmull and asserted as correct by Hanpa is indeed a proper calculation. We therefore narrowly remand this issue so the trial court can perform a new calculation using the formula drawn out by Shmull.

[¶ 12] Shmull next asserts that the Trial Division erred by failing to include pre-judgment interest on the \$37,200.00 liquidated damages award for Hanpa’s delay in the construction of the first floor. In the first appeal, we remanded the issue of pre-judgment interest relating to the poor paint job and the liquidated damages. *Shmull*, 21 ROP at 43–44. On remand, the Trial Division granted pre-judgment interest for the poor paint job, but did not discuss pre-judgment interest relating to liquidated damages. *See* Decision on Remand 2. Shmull contends that we can calculate the proper amount ourselves relying on a 9% interest rate.³ We decline to do so. It is the province of the Trial Division to decide in the first instance whether pre-judgment interest is appropriate. Because the Trial Division did not discuss any findings of fact or conclusions of law relating to pre-judgment interest for liquidated damages, it is impossible for this Court to meaningfully review this issue. Therefore, we again remand the issue of pre-judgment interest on liquidated damages to the Trial Division for further clarification.

³ Specifically, Shmull argues that pre-judgment interest should be awarded from July 7, 1998 until November 2, 2012, a total of 5,232 days. Nine percent of the \$37,200.00 liquidated damages award is \$3,348. Dividing \$3,348 by 365 results in a daily interest rate of \$9.17. This would result in a total pre-judgment interest award of \$47,977.44 (\$9.17 multiplied by 5,232). Shmull Reply Br. 5–6.

[¶ 13] We next address the Trial Division’s statement that Hanpa should receive pre-judgment interest on the damages award from Shmull. In its initial Decision, the Trial Division found that Shmull did not owe pre-judgment interest to Hanpa for the first and second floor extension costs. This finding was upheld on appeal and is consequently “binding on both the lower court on remand and the court of appeals on subsequent appeals.” *Rengulbai v. Klai Clan*, 22 ROP 56 (2015). We conclude the Trial Division committed scrivener’s error and reaffirm that Hanpa is not entitled to pre-judgment interest.

[¶ 14] The Trial Division stated that the total damages award Shmull owes to Hanpa was \$158,500.77. Decision on Remand 2. We conclude that the Trial Division correctly recalculated the cost of the second and third floor extensions, but committed mathematical error in reaching its ultimate damages award amount. For clarity, the damages against Shmull that currently stand are as follows:

- First floor contract breach: \$4,456.18 with an additional \$11,480.34 in interest, and \$222.81 in late fees (totaling \$16,159.33)
- Second floor contract breach: \$22,500.00 with additional \$63,716.70 in interest and \$1,125.00 in late fees (totaling \$87,341.70)
- Value of work on third floor: \$40,369.82
- Second and Third floor extension costs: \$44,296.56
- \$1,000.00 owed by Shmull to Hanpa for paving the parking lot

Total damages against Shmull: \$189,167.41

These are not in question in this appeal.

[¶ 15] As discussed above, the Trial Division must determine on remand whether to award pre-judgment interest on the \$37,200.00 liquidated damages award for Hanpa’s delay in the first floor’s completion. Therefore, we cannot provide the finalized damages award Hanpa owes to Shmull.

Nonetheless, the damages against Hanpa that currently stand and are not in question in this appeal follow:

- Cost-to-repair damages for damage caused by Hanpa's failure to paint the building's exterior: \$51,659.91
- Following remand, there should be a firm \$44,195.06 for pre-judgment interest damages on the paint job
- Liquidated damages calculation for Hanpa's delay in the first floor's completion: \$37,200.00
- Damages for omitted work: \$26,000.00

Total damages against Hanpa before remand: \$159,054.97

CONCLUSION

[¶ 16] For the foregoing reasons, we **AFFIRM** the Trial Division's decision and judgment granting Shmull pre-judgment interest for the poor paint job. We **REMAND** to the Trial Division for a recalculation of the damages on the following narrow issues: (1) a new calculation of the pre-judgment interest damages for the poor paint job, as outlined above and (2) the sum of the pre-judgment interest award Hanpa owes Shmull for the liquidated damages.