IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

TECHUR RENGULBAI,
Appellant,
v.
CHILDREN OF ELIBOSANG EUNGEL, rep. by DEBORAH ELIBOSANG,
Appellees.

Cite as: 2019 Palau 40
Civil Appeal No. 19-005
Appeal from Civil Case No. 17-326

Decided: December 27, 2019

Counsel for Appellant .... Ebil Y. Matsutaro
Counsel for Appellees .... Kena N. Njoya

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
KATHERINE A. MARAMAN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION[1]

PER CURIAM:

[¶ 1] This case is about the validity of the will of Elibosang Eungel and the validity of Appellant's claim against the estate for representing the decedent in the Land Court. We are unable to find that the trial court's factual determinations—that decedent was of sound mind and that no agreement to compensate Appellant for his representation existed—were clearly erroneous. While we agree with Appellant that the trial court erred in failing to explicitly address his unjust enrichment claim, we affirm the trial

[1] Although Appellant requests oral argument, we find that argument is not necessary to resolving this appeal and decide the matter on the briefs pursuant to ROP R. App. P. 34(a).

court's denial of this claim on other grounds. Thus, for the reasons set forth below, we **AFFIRM** the judgment of the trial court.

BACKGROUND

[¶ 2] Following the death of Elibosang Eungel on April 4, 2015, at age 92, Techur Rengulbai, decedent's nephew, petitioned the court to appoint him administrator of decedent's estate. The children of Eungel objected, but Rengulbai was appointed temporary administrator. Thereafter, Rengulbai filed a notice that there was no known will and requested that all of decedent's assets be awarded to him. In the inventory of known liabilities, Rengulbai listed only a piece of Palauan money he said belonged to his cousin, Ellen Eungel.

[¶ 3] Several months later, decedent's children filed a document alleged to be Eungel's will, which was executed on October 17, 2013. Rengulbai contested the will, arguing that decedent lacked testamentary capacity, and filed a $50,000 claim against the estate, alleging he had an agreement with decedent that he would be compensated with either money or a piece of land for helping decedent with land claims. Even though the time for filing claims against the estate had passed, the trial court permitted Rengulbai to pursue his claim.

[¶ 4] At trial, both parties called lay witnesses who gave conflicting testimony regarding decedent's mental state around the time he signed the will. Rengulbai called one expert witness, Dr. Osarch, who never treated Eungel. She testified that she had reviewed Eungel's chart and read a nurse's note that stated Eungel was hallucinating while in the hospital, approximately one month after he executed the will. On cross-examination, Dr. Osarch admitted that hallucinations were a potential side effect of a medication that Eungel had been given that day.

[¶ 5] Rengulbai testified regarding the work he did to represent decedent in the Land Court but admitted that he had no written agreement of any kind with decedent. Rengulbai also testified that he held the title Rechebtang, which is the highest male title in the Ngesechemong Clan, and that he was in the process of being appointed as Wong, the highest male title in the Techubel Clan. Decedent had previously held the title of Wong, and was also a

member of Ngesechemong Clan. Rengulbai claimed that the two largest properties at issue in the Land Court cases were not Eungel's individual property but belonged to the Ngesechemong Clan, and that Eungel was supposed to transfer them to the Clan if they were awarded to him by the Land Court. Rengulbai testified that this plan was intended to ensure that a competing faction of the Clan could not successfully claim the properties.

[¶ 6] The trial court found that decedent was "of sound mind" when he signed his will and it would control the disposition of his property. *See* 25 ROP § 102. The trial court rejected Rengulbai's claim against the estate, finding that no oral agreement existed between him and decedent. Rengulbai now appeals.

STANDARD OF REVIEW

[¶ 7] The appellate review standard is:

> 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 (citations omitted). Under the clear error standard of review, "[t]he factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009). "Where there are several plausible interpretations of the evidence, the [trial court]'s choice between them shall be affirmed even if this Court might have arrived at a different result." *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015).

DISCUSSION

I. The trial court's finding that decedent had the testamentary capacity to execute his will is not clearly erroneous.

[¶ 8] The trial court's factual finding that decedent possessed the requisite mental capacity to execute his will is not clearly erroneous. In order to make a will an individual must be of "sound mind." 25 PNC §102. The statute does not define that phrase. We look to the Black's Law Dictionary entry for "sound mind," which refers us to the definition of "testamentary capacity."[2] "Testamentary capacity" is defined as:

> The mental ability that a person must have to prepare a valid will. This capacity is often described as the ability to recognize the natural objects of one's bounty, the nature and extent of one's estate, and the fact that one is making a plan to dispose of the estate after death.

Capacity, Black's Law Dictionary (11th Ed. 2019).

[¶ 9] The parties' witnesses presented conflicting testimony, and the trial court explicitly found the testimony of Belinda Mobel to be "credible." Mobel was a paralegal at Micronesian Legal Services who helped draft the will, and she "testified that decedent appeared to be alert with a clear mind when he signed the will." She also testified that he requested specific corrections be made to the document, including the spelling of one of his children's names and the total number of his children; handwritten corrections can be seen on the copy of the will in the trial court record. This illustrates that decedent was aware of the natural objects of his bounty and that he had the mental capacity to carefully review the will.

[¶ 10] Appellant objects because the evidence showed that Mobel only knew the decedent briefly, in contrast to his witnesses. That does not mean she could not have made an accurate observation regarding his mental state. Appellant's brief also fails to acknowledge that Appellee presented other

[2] While it appears that some jurisdictions distinguish between the mental capacity of a "sound mind" and "testamentary capacity," *see* 79 Am. Jur. 2d *Wills* § 61, we have not yet addressed whether to recognize such a distinction in Palau. We need not do so today, as resolution of the issue is unnecessary given the trial court's credibility determinations.

witnesses who testified about decedent's mental state who had also known him for many years. Appellant cannot simply rely on his own witnesses' testimony and ignore that of Appellees' witnesses in making his argument that the trial court's interpretation of the facts was clearly erroneous. *See Ngarameketii/Rubekul Kldeu v. Koror State Pub. Lands Auth.*, 2016 Palau 19 ¶ 10 ("an appeal that merely restates the facts in the light most favorable to the appellant and contends that the [lower court] weighed the evidence incorrectly borders on frivolous."). The trial court's decision to credit Mobel's testimony is precisely the sort of credibility determination that is squarely within the province of the trial court. *See Eklbai*, 22 ROP at 141.

[¶ 11] Appellant's primary argument on this assignment of error revolves around the testimony of his expert witness, Dr. Osarch. Specifically, Appellant takes issue with the trial court's finding that "decedent's chart indicate[s] that he was administered a drug that can induce hallucinations." Yet this fact was conceded by Dr. Osarch, who acknowledged on cross-examination that hallucinations are a possible side effect of the drug Zopiclone. The fact that Dr. Osarch did not recall or testify about this fact on direct examination but was prompted by a document from the British National Health Service during cross-examination does not somehow render her acknowledgment of this fact unclear, as Appellant appears to contend. Appellant also argues that the trial court should not have concluded that the drug may have caused the hallucinations because Dr. Osarch testified that the drug's effects would "usually" last about four to six hours. Usually means that something generally happens,[3] not that something happens all of the time, and there was nothing in the record to support Appellant's assertion that decedent could not possibly have been under the influence of Zopiclone eight hours after having taken it.

[¶ 12] The trial court did not find that Zopiclone must have been the sole cause of decedent's hallucinations. Instead, it found that the drug was a possible cause, and noted that "these hallucinations occurred a month after decedent executed his will [when] he was hospitalized and heavily medicated." The trial court clearly did not feel that the hallucinations were especially significant to a determination of decedent's mental capacity a

[3] Oxford University Press, Lexico.com (2019), at https://www.lexico.com/en/definition/usually.

month earlier when he was not in the hospital, particularly given the credible evidence that he was of sound mind at the time the will was executed. We find that the trial court's findings were not clearly erroneous and affirm its acceptance of decedent's will.

II. While Appellant's unjust enrichment argument was not specifically addressed by the trial court, we uphold the court's rejection of his claim against the estate.

[¶ 13] Appellant's $50,000 claim against the estate was based on two arguments: that he had an agreement with decedent that he would be compensated for his efforts toward winning decedent title to lands and that he should recover under a theory of unjust enrichment. Appellant does not challenge the trial court's finding that no agreement existed. Instead, he argues that the trial court "neglected to address Appellant's argument regarding unjust enrichment."[4] We agree.

[¶ 14] Nowhere in the trial court's Findings of Fact and Decision do the words "unjust enrichment" appear. The determination that no explicit agreement existed between Appellant and decedent does not automatically mean that Appellees were not unjustly enriched by Appellant's efforts. Because "[m]eaningful appellate review requires a lower court to clearly articulate both its findings of fact and its conclusions of law," the trial court should have addressed Appellant's unjust enrichment claim. *Shmull v. Hanpa Indus. Dev. Corp.*, 21 ROP 35 (2014) (*citing Smanderang v. Elias*, 9 ROP 123 (2002)). Its failure to do so was error.

[¶ 15] The law is clear, however, that "an appellate court is not limited, in affirming a judgment, to grounds raised by the parties, or grounds relied upon by the court below." *Ngetelkou Lineage v. Orakiblai Clan*, 17 ROP 88, 93 (2010) (*quoting* 5 Am. Jur. 2d *Appellate Review* § 829 (2001)). "An appellate

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[4] This section of Appellant's brief mentions the Palauan money and requests that it be "returned" to him "[i]n the interest of equity and restitution" (even though he claims it actually belongs to a third party). Because neither of Appellant's assignments of error specifically address the Palauan money, and Appellant failed to explain or cite any authority as to why it should be awarded to him, we deem Appellant to have waived any right he may have had to contest this decision. *See*, *e.g.*, *Suzuky v. Gulibert*, 20 ROP 19, 22 (2012) (discussing the burden on appellants to "demonstrat[e] error on the part of a lower court"); *Idid Clan v. Demei*, 17 ROP 221, 229 n.3 (2010) ("It is not the Court's duty to interpret . . . broad, sweeping argument").

court may affirm or reverse a decision of a trial court even though the reasoning differs." *Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219, 222 (1992). Indeed, we have held that we "should affirm a trial court judgment when justice has been done." *Id. See also Helvering v. Gowran*, 302 U.S. 238, 245, 58 S.Ct. 154, 158 (1937) ("In the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason."). As we will explain, we believe that justice has been done here and affirm the trial court's judgment despite its failure to address Appellant's unjust enrichment claim.

A. No reasonable trial court could have found that Appellant met his burden to prove the amount of restitution to which he was entitled.

[¶ 16] Unjust enrichment is an equitable theory that requires a party that receives a benefit from another to compensate the other under circumstances where it would be unjust for them to keep the benefit without such compensation. *See*, *e.g.*, *Isechal v. Umerang Clan*, 18 ROP 136, 148 (2011) (*citing ROP v. Reklai*, 11 ROP 18, 22 (2003)). As we noted in *Isechal*: "a person who has been unjustly enriched at the expense of another is required to make restitution to the other." *Id.* at 148 (quoting Restatement of Restitution § 1 (1937)). The measure of restitution is normally "the amount of enrichment received." *Id.* (*quoting* Restatement § 1 cmt. a).

[¶ 17] The only evidence Appellant presented to meet his burden of proof regarding the amount of unjust enrichment decedent received—and thus the appropriate amount of restitution for the trial court to award him—was his Exhibit 13. This document, and Appellant's testimony thereon, outlines the number of hours Appellant spent on five Land Court cases, multiplied by what he believed to be the value of his time.[5] Yet Appellant's time cannot be an appropriate measure of restitution. The basic principle of unjust enrichment is that the court should consider the amount the other party is enriched, not the amount of effort the claimant expended in conferring the benefit. To conclude otherwise could lead to grossly inequitable results. In this case it could result in decedent's estate being forced to pay Appellant far

[5] Even accepting this document at face value, these calculations result in a total amount of $19,618.60, which is less than half of Appellant's claim against the estate.

more in restitution than the lands were actually worth. Appellant provided no evidence of the value of any of the lands at issue.

[¶ 18] Even if the value of the properties was clearly established, however, there is also the matter of the extent to which Appellant's involvement was responsible for the land being awarded to decedent. For example, Appellant's own evidence showed that two other individuals, Omtei Ringang, deceased by the time of trial, and Millan Isack, who testified, were also involved in the investigation and litigation. In two of the cases, the court's opinions state that Omtei Ringang—not Appellant—was representing Eungel,[6] although Appellant's name is listed on the mediation forms. Appellant cannot have unjustly enriched decedent by the full value of the properties when other people also assisted in winning decedent title to them. Yet Appellant presented no evidence that would have allowed the trial court to determine how much his individual actions contributed to the awards.

[¶ 19] We are mindful that it is the trial court that is in the best position to resolve factual disputes such as the proper amount of restitution. Remanding this case simply because the trial court's written decision failed to address unjust enrichment would be an empty exercise. No trial court could find that Appellant met his burden on the claim. Appellant failed to introduce any evidence of either the value of the properties or the extent to which he contributed to decedent getting title to them, so the trial court could not determine an appropriate amount of restitution. Allowing the Appellant to introduce new evidence on remand would unfairly disadvantage Appellee by giving Appellant a "second bite at the apple." We agree with the United States Court of Appeals for the Third Circuit that "remand should not be ordered when 'two bites of the apple' would be given to a litigant who, under circumstances such as those at bar, has neglected to produce evidence to support a desired finding and has, therefore, failed to carry its requisite burden as to a particular issue." *E.E.O.C. v. Westinghouse Elec. Corp.*, 925 F.2d 619, 631 (3rd Cir. 1991). *See also U.S. v. Archer*, 671 F.3d 149, 168 (2nd Cir. 2011) (holding that "[t]he consensus among our sister circuits is that generally where [a party] knew of its obligation to present evidence and

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[6] As the trial court noted, it was undisputed that Eungel gave Ringang a power of attorney to represent him in the Land Court, and that he did not grant such a power of attorney to Appellant.

failed to do so, it may not enter new evidence on remand."); *U.S. v. Brown*, 247 F. App'x 992, 994 (10th Cir. 2007) (remanding a case for the district court to remedy its error in failing to make explicit findings regarding the appropriate amount of restitution, but declining to allow the government to supplement the record on remand).

B. Appellant should not be awarded restitution where, by his own admission, he comes before the Court with unclean hands.

[¶ 20] Even assuming, for the sake of argument, that Appellant proved all elements of his unjust enrichment claim, he should nevertheless be denied equitable relief under the doctrine of "unclean hands." "Recovery in restitution to which an innocent claimant would be entitled may be limited or denied because of the claimant's inequitable conduct in the transaction that is the source of the asserted liability." Restatement (Third) of Restitution and Unjust Enrichment § 63 (2011). "The idea is that a person who engages in inequitable conduct may forfeit the right to a judicial determination of what 'equity and good conscience' require of the other party." *Id.* Unclean hands can be raised *sua sponte* because its purpose is to protect the integrity of the judicial process. *See Olmstead v. United States*, 277 U.S. 438, 485, 48 S.Ct. 564, 575 (1928) (Brandeis, J., concurring) ("the objection that the plaintiff comes with unclean hands will be taken by the court itself. It will be taken despite the wish to the contrary of all the parties to the litigation. The court protects itself."); *Karpenko v. Leendertz*, 619 F.3d 259, 265 (3d Cir. 2010) ("The doctrine [of unclean hands] may be raised *sua sponte*.").

[¶ 21] At trial, Appellant testified that the two largest properties he helped claim for decedent did not actually belong to decedent at all – they belonged to Ngesechemong Clan.[7] Appellant testified that he claimed decedent owned them in fee simple in order to ensure that a rival faction of the Clan would not be able to assert its claim to the lands. Appellant also testified that decedent agreed to transfer title to the Clan after he was awarded the lands, but this never took place. Appellant testified as follows:

[7] We make no determination regarding the accuracy of Appellant's assertion. We accept Appellant's testimony solely for the purpose of determining whether he could be entitled to equitable relief in this case. The properties that Appellant said belonged to the Clan were Cadastral Lot No. 93 N 01 and the lot described in Exhibit 10.

> Q: Okay . . . you say this land belongs to Ngesechemong?
>
> A: Yes.
>
> Q: Explain to the Court why – you appeared in Court for this land, why is it under Elibosang Eungel's name?
>
> A: Because during the claim of the land and Elibosang and I talked because these are the land that belong to the clan but things there's a sort of dispute between other people and ourself, I told him to put on his name so we agree not putting under Ngesechemong of Techubel because we try to prevent other people to come in and claim after.
>
> Q: Who's the other people?
>
> A: Billy Kuartei's family which they're claiming themselves that they are Wong from Techubel.
>
> ***
>
> Q: So you were discussing with the deceased Mr. Elibosang Eungel was what?
>
> A: To put that property under his name so they will not claim the land that is belong to Techubel and then our discussion is so if we're lucky to win this land then after that we – you transfer them to Ngesechemong and we both agreed because he knows the situation.

The plan appears to have succeeded, because Appellant also testified that the Kuartei family withdrew their claim on one of the properties during mediation, after he claimed the land in decedent's name.[8]

[¶ 22] The Restatement of Restitution and Unjust Enrichment lists several examples in which restitution was denied when a party was seeking it in relation to a transfer of property that was originally intended to conceal assets from another person entitled to claim them. *E.g.*, § 31, Illustration 14 (court could hold that an oral trust intended to conceal assets from tax authorities was unenforceable). In *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S.

[8] In fact, all of the properties in Appellant's Exhibits 6-10 were claimed at the mediation stage by both Appellant, representing decedent, and an individual named Billy G. Kuartei, representing an Adolph Kuartei, deceased, who allegedly bore the Wong title. In each case, the mediation record shows that Billy withdrew his claim.

240, 247, 54 S. Ct. 146, 148 (1933), the United States Supreme Court upheld the denial of injunctive relief to the holder of five patents, where the evidence showed that it had acted to suppress evidence of a related patent's invalidity in a prior case. The *Keystone* Court noted that the court in the prior case might have reached a different result if the patent holder had not corrupted a potential witness, who agreed to conceal evidence. *Id.* at 246, 54 S. Ct. at 148. The Court acknowledged that the doctrine of unclean hands generally applies only where "some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation." *Id.* at 245, 54 S. Ct. at 147. It found such a connection because the five patents at issue were closely related to the one in the prior case, and because the decision in the prior case was used to support plaintiff's claim for relief. Similarly, in this case Appellant's claim of unjust enrichment is based on the Land Court's decisions in prior cases. Yet Appellant freely admits that he acted to mislead the court in those cases in order to ensure that another person's claim was unsuccessful. Permitting Appellant[9] to profit from this by obtaining restitution is an inequity we cannot condone.

CONCLUSION

[¶ 23] For all of the foregoing reasons, we **AFFIRM** the Trial Division's judgment.

[9] Of course, Appellant's claim is that decedent was part of the agreement as well. We need not, and do not, decide whether this is so. Our concern here is not with the conduct of the decedent but with the integrity of the judiciary, which is served by refusing to proactively grant restitution to a party whose claim to it is based on an assertion that he mislead another court.