

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

ISLAND PARADISE RESORT CLUB,
Appellant,
v.
JOHN C. GIBBONS,
Appellee.

Cite as: 2020 Palau 3
Civil Appeal No. 18-055
Appeal from Civil Action No. 17-229

Argued: February 7, 2020
Decided: February 20, 2020

Counsel for Appellant	Vameline Singeo
Counsel for Appellee	Tamara Hutzler

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice, presiding.

OPINION

DOLIN, Associate Justice:

[¶ 1] Island Paradise Resort Club appeals from the trial court’s judgment that it owes John C. Gibbons a large sum of money based on two separate debt settlement agreements. The corporation contends that it is not bound by the agreements because it did not authorize its President to enter into the agreements on its behalf. For the reasons set forth below, we **AFFIRM**.

FACTS

[¶ 2] The relevant facts are undisputed. John C. Gibbons holds a lease from Koror State Public Lands Authority (“KSPLA”) for a parcel of land in Medalaii Hamlet. In 2008, Wang Chih Heng (“Wang”) approached Gibbons with a proposal to construct a hotel on the lot. The parties entered into an agreement whereby, in exchange for permission to build the hotel, Wang would make the lease payments to KSPLA (for which Gibbons is liable under the terms of his own lease) and additionally pay Gibbons \$50,000 a year.

[¶ 3] After the Island Paradise Resort Club (“IPRC”) was constructed, payments were made to Gibbons in installments, either in cash or by checks drawn on IPRC’s corporate bank account.¹ The checks were signed either by Wang or by IPRC Administrative Officer Rebecca Timarong (also known as “Chev Ling Woon Timarong”). Gibbons was notified by hotel staff when a payment was ready and would pick up the payment at the hotel.

[¶ 4] At some point, the payments to Gibbons ceased. Understandably upset by this turn of events, Gibbons complained to IPRC but was told that no payments could be made due to a decline in the hotel’s business. Nonetheless, he was assured that payments would resume (and the arrears would be paid) once the hotel’s business improved. By late 2015, Gibbons was owed \$192,000.

[¶ 5] On November 30, 2015, Gibbons and then President of IPRC Wang entered into a “Payment Agreement” (hereinafter, “the 2015 Agreement”) by which Wang acknowledged the outstanding debt and agreed to pay the arrears through a specific installment plan. The draft agreement referred to both Wang and IPRC as contracting parties. However, prior to signing, Wang struck out all references to IPRC in the draft. In other words, the final version of the 2015 Agreement states that it is entered into between Gibbons and Wang “on behalf of himself.” As before, payments under the 2015 Agreement were made by checks drawn on IPRC’s bank account.

¹ The hotel is operated by Island Resort Club Co., Ltd., which was incorporated under the laws of Palau in 2011 and has its principal place of business here. We follow the parties in referring interchangeably to the hotel and to the corporation as “IPRC.”

[¶ 6] Regrettably, the resolution of the dispute was short-lived, and by mid-2016, Gibbons again stopped receiving payments. In response, on July 25, 2017, Gibbons filed suit against Wang and IPRC, alleging breach of the 2015 Agreement. In Paragraph 3 of his Complaint, Gibbons alleged that IPRC “is a duly registered corporation engaged in business in the Republic of Palau represented by its President defendant Wang.” The Defendants filed a single joint Answer to the Complaint, generally admitting the allegations (including those made in ¶ 3 of the Complaint), but denying the claimed amount owed and asserting two affirmative defenses—that Gibbons failed to state a claim upon which relief can be granted and that the suit is barred by the doctrine of estoppel.

[¶ 7] On November 27, 2017, on the eve of trial, the parties entered into another agreement (hereinafter, “the 2017 Agreement”). This new agreement acknowledged the 2015 Agreement and set a new schedule to pay off the outstanding debt pursuant to a specific payment schedule. The 2017 Agreement was negotiated and signed with the advice and in the presence of Lalii Chin Sakuma, who was retained as counsel by IPRC, and this time was signed “on behalf of [Wang] and Island Paradise Resort Club of which he is the President.”

[¶ 8] As the old adage goes, history repeats itself, and this case proved to be no exception. Once again, after receiving several payments under the 2017 Agreement, Gibbons stopped receiving further remittances.

PROCEDURAL HISTORY

[¶ 9] At trial, Gibbons called Timarong, who testified as to the amount due on the outstanding debt based on a document she had prepared and shared with Gibbons in 2015. Gibbons also called Attorney Sakuma, who confirmed that she was retained by IPRC in 2017 in regards to the dispute with Gibbons and participated in the drafting of the 2017 Agreement. Gibbons took the stand and testified to the sequence of events recounted above.

[¶ 10] Defendants did not dispute the factual history of the various agreements or even the amount that remained owed under them. In fact, Defendant Wang, as far as it appears from the record, offered no defense at

all.² Defendant IPRC, on the other hand, argued that it incurred no obligation under any of the agreements because Wang, though serving as the President of the corporation, was not authorized by the corporate board to singlehandedly enter into any contracts, including the 2015 and 2017 settlement agreements. To support this contention, IPRC relied on Timarong, who testified that she “keep[s] copies” of IPRC’s business records and that there is no “corporate resolution or board action [] authoriz[ing] [] Wang to act on behalf of the corporation [and] [t]o tie the corporation into debt or settlement negotiations.” Trial Tr. 61. On cross-examination, however, Timarong testified that she is not the secretary or treasurer of IPRC, the secretary/treasurer being based in Taiwan, and that she keeps only “whatever records somebody gives [her] to keep [in Palau] for the corporation.” She further admitted that she has “no right” to inspect the corporate records held by the secretary or treasurer, and that she does not attend IPRC board meetings. *Id.* at 74-75. Finally, Timarong also testified that although she witnessed the signing of the 2015 Agreement, she was not intimately involved with the dispute until 2017.

[¶ 11] Defendant IPRC also introduced, over Gibbons’s objection, the corporate bylaws into evidence. Relying on these documents, IPRC argued that in order for Wang to have authority to bind the corporation to any contract, the corporate board had to pass a formal resolution conferring such authority, and noted the absence from the record of any such resolution.

[¶ 12] The Trial Division handed down its opinion and judgment on November 30, 2018. Noting that there is “no dispute that the Defendants did owe Plaintiff money and that the parties entered into two separate agreements,” the Trial Division proceeded to reject the only argument proffered by IPRC—that it “is not bound by the agreements because it did not authorize [] Wang to enter into the agreements on its behalf.” The Trial Division’s rejection of IPRC’s argument was predicated on the court’s conclusions that (1) IPRC had tacitly agreed to be bound by the 2015 Agreement when it made payments pursuant to that agreement; (2) aside from Wang and IPRC’s “counsel raising the argument during trial, no

² In fact, Wang did not appear for trial despite the matter being rescheduled several times to accommodate the parties’ schedules.

evidence was presented to show that [] Wang was not authorized to enter into the agreements”; and (3) the 2017 Agreement on its face “reflects that [] Wang executed [it] . . . on behalf of [] IPRC.” Findings of Fact and Conclusions of Law at 5-6 & n.4. In light of its ultimate conclusion “that the two agreements are valid and binding on both [Wang and IPRC],” *id.* at 6, the Trial Division entered judgment against Wang and IPRC in the amount of \$271,828.93.³

[¶ 13] This timely appeal followed.⁴ Wang eventually retained new counsel, and we granted his motion to voluntarily dismiss his appeal. Thus, the only issue before us is whether IPRC is bound by its President’s signature on the settlement agreements.

STANDARD OF REVIEW

[¶ 14] We review the trial court’s findings of fact for clear error, *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4, and mixed questions of law and fact *de novo*, *Ngiralmaw v. ROP*, 16 ROP 167, 169 (2009). “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 omitted).

DISCUSSION

[¶ 15] As an initial matter, unlike the Trial Division, we decline to opine on the import of Wang’s signature on the 2015 Agreement insofar as it concerns IPRC. We need not decide this issue because the 2015 Agreement came to an end and was subsumed by the 2017 Agreement. Indeed, on November 29, 2017, after being advised that the parties reached a settlement embodied in the 2017 Agreement, the Trial Division entered an order resetting the trial date to 2018, “should the parties fail to fulfill the settlement

³ Wang and IPRC did not submit any opposition to Gibbons’s accounting, and the *amount* of the judgment is not at issue on appeal.

⁴ The lower court retained jurisdiction over Gibbons’s motions to enforce, and IPRC’s motions to stay, the judgment. The trial court’s deft handling of these motions is not at issue on appeal.

terms.” In other words, by the time the trial took place, the Trial Division had only one relevant question before it—whether the parties did or did not “fulfill the settlement terms” of the 2017 Agreement. We thus turn to the effect of the 2017 Agreement.⁵

[¶ 16] Appellant argues that the trial court erred in its factual determination that “no evidence was presented to show that [] Wang was not authorized to enter into the agreements” on IPRC’s behalf. Findings of Fact and Conclusions of Law at 6. Appellant further argues, more generally, that the court erred in determining, as a matter of law, that IPRC is bound by the two agreements.⁶

[¶ 17] After carefully reviewing the record, we affirm the trial court’s judgment without adopting its precise reasoning. *See Sechardmidal v. Ngiraikelau*, 2019 Palau 35 ¶ 11 (“We may affirm the trial court’s decision on any basis apparent in the record.” (internal quotation marks omitted)). We conclude that the record before the trial court demonstrates that Wang had apparent authority to sign the 2017 Agreement on IPRC’s behalf, and the

⁵ Appellee contends that we should dismiss Appellant’s opening brief for failure to conform to the Rules of Appellate Procedure. Appellee notes that Appellant failed to append the two cases it cites in the argument section and contends that these cases are not “contained in the Palau Supreme Court Library.” *See* ROP R. App. P. 28(f). However, contrary to Appellee’s assertion, both cases are available on Westlaw, which is freely accessible to the public at the law library. We also cannot conclude that Appellant’s admittedly scanty citations to the record necessitate the extreme measure of dismissing its brief.

⁶ We reject Appellee’s contention that IPRC admitted Wang’s authority to bind the corporation. Although IPRC admitted in its Answer that it “is a duly registered corporation engaged in business in the Republic of Palau represented by its President defendant Wang,” the mere fact that a corporation may be represented in some affairs by a particular individual does not *ipso facto* mean that that individual has *actual* authority to act for and bind the corporation in all matters. *See* 19 C.J.S. *Corporations* § 675 (recognizing cases where an “officer or agent [of a corporation] acts without actual authority, or in excess of his or her actual authority”). Furthermore, although IPRC did not deny that “Wang, on behalf of IPRC, agreed to pay Gibbons an annual fee of \$50,000,” Compl. ¶ 8, the Complaint also alleges that “Wang fell into arrears on those payments” and that “Wang entered into” the payment agreement with Gibbons, *id.* ¶¶ 9-10 (emphasis added). IPRC’s admissions to the Complaint’s ambiguous allegations do not foreclose it from contending that it is not bound by the agreements.

meager evidence proffered by IPRC was insufficient, as a matter of law, to call this apparent authority into question.

[¶ 18] The doctrine of apparent authority provides that a principal may be bound by the actions of its putative agent if the corporation’s “statements, conduct, lack of ordinary care, or other manifestation of [its] consent . . . justif[y] [third parties] in believing that the agent is acting within his or her authority.” *Ngirachemoi v. Ingais*, 12 ROP 127, 130 (2005) (quoting 3 Am. Jur. 2d *Agency* § 76 (2002)). “The purpose of the apparent authority doctrine is to protect innocent third persons dealing in good faith with corporate officials where a corporation has taken such action or inaction as to justify belief that the official has acted with authority.” 18B Am. Jur. 2d *Corporations* § 1295. We are of opinion that whatever actual authority Wang may or may not have had, he had apparent authority to act on behalf of IPRC. In other words, IPRC’s actions justified Gibbons in believing that when Wang signed the 2017 Agreement, he was signing on behalf of IPRC.

[¶ 19] It is undisputed that the 2017 Agreement was negotiated by and signed in the presence of an attorney retained by IPRC to represent its interests. If, in fact, Wang had no authority to act on behalf of IPRC, a competent attorney would have objected to the language in the agreement that stated that it was being signed “on behalf of [Wang] and Island Paradise Resort Club of which he is the President.”⁷ To the extent that Wang was not actually authorized to act on behalf of IPRC, the fact that IPRC’s attorney permitted him to sign a document with language to the contrary is conduct justifying a belief in Wang’s authority to bind the corporation.

[¶ 20] Furthermore, throughout his interactions with IPRC when it came to any matters of consequence, Gibbons always dealt with Wang. It was Wang who approached Gibbons with the initial proposal to build a hotel on the property Gibbons leased from KSPLA, but it was IPRC that actually operated the resort. It was Wang who negotiated the 2015 and 2017 payment agreements, but it was IPRC that issued checks drawn on its corporate account in satisfaction of these agreements. And, of course, it is undisputed

⁷ We, of course, do not suggest that Attorney Sakuma was incompetent. Quite the contrary, it is precisely because we assume that she competently represented IPRC that we conclude her failure to object to the quoted language is significant.

that at all relevant times Wang was the President of IPRC. Although Gibbons may have been on notice that something was amiss in terms of Wang's authority in 2015 when Wang deleted all references to IPRC from the 2015 Agreement, such qualms would not have carried over to the 2017 Agreement. Not only was the latter agreement explicitly signed on behalf of both Wang and IPRC, but IPRC also made payments from its corporate coffers in satisfaction of the agreement. Wang's apparent authority to bind IPRC is further supported by the fact of IPRC directing Timarong, who is IPRC's corporate employee, to provide Gibbons with an accounting of outstanding payments in 2015. It was therefore entirely reasonable for Gibbons to have relied on IPRC's conduct indicating that Wang was authorized to enter into the 2017 Agreement.

[¶ 21] To refute this evidence of Wang's apparent authority, IPRC offered Timarong's testimony and its corporate bylaws. But both sources are equivocal at best. Although Timarong testified that there is no "corporate resolution or board action [] authoriz[ing] [] Wang to act on behalf of the corporation [and] [t]o tie the corporation into debt or settlement negotiations," Trial Tr. 61, she also admitted that she has no access to any corporate documents save for the ones that the Board sees fit to give her, and therefore is simply *not aware of* any board resolution, *see* Trial Tr. 74-75. Regarding the bylaws, the section relied on by the Appellant provides that a corporate officer's authority to enter into contracts or debt agreements "may be *general* or confined to specific instances." By-Laws of Island Paradise Resort Club Co., Ltd. (Exh. B to Appellant's Opening Br.) at 8 (emphasis added). In other words, nothing on the face of the bylaws indicates that Wang necessarily needed a specific board resolution to enter into either of the payment agreements. In short, Appellant functionally provided little to no evidence to actually contest Wang's apparent authority. What is more, it is unclear how this limited evidence goes to the key question of whether *Gibbons was justified*, based on IPRC's conduct described above, in believing that Wang was authorized to bind the corporation.

[¶ 22] Finally, in the alternative, even if Wang had neither actual nor apparent authority to bind IPRC when the 2017 Agreement was signed, by making payments pursuant to that agreement (much like it did in the wake of the 2015 Agreement), the IPRC ratified, or agreed to be bound by, the

contract. “Even in the absence of either actual or apparent authority, the officer’s action on behalf of the corporation will be effective if ratified by the corporation.” 2 Close Corps. and LLCs: Law and Practice § 8:5 (Rev. 3d ed.). “As a general rule, [r]atification is defined as the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account[.]” *Il Giardino, LLC v. Belle Haven Land Co.*, 757 A.2d 1103, 1120 (Conn. 2000) (alteration in original) (internal quotation marks omitted). “[V]oluntar[y] performance or payment on a previously unauthorized contract . . . is presumptive proof of ratification[.]” *Associated Mgmt. Servs., Inc. v. Ruff*, 2018 MT 182, ¶ 41, 392 Mont. 139, 157, 424 P.3d 571, 588. At the very least then, even if we were to conclude that in signing the 2017 Agreement Wang acted without any authority, the fact remains that IPRC, while fully aware of the history between all of the parties (including prior litigation and settlement agreements) voluntarily performed under that 2017 Agreement by making payments pursuant to it. Accordingly, we would hold that whatever Wang’s scope of authority to act on IPRC’s behalf, IPRC through its own actions ratified the 2017 settlement agreement and is thus bound by it.⁸

CONCLUSION

[¶ 23] The judgment appealed from is **AFFIRMED**.

⁸ We have considered all other arguments raised by both parties and find that they either lack merit or need not be addressed given our resolution of this matter.