IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ROMAN TMETUCHL FAMILY TRUST,
Appellant,
v.
CHILDREN OF NGIRAMENGLOI, rep. by GREGORIO NGIRAMENGLOI,
Appellees.

Cite as: 2024 Palau 16
Civil Appeal No. 23-022
Appeal from Civil Action No. 22-039

Decided: May 30, 2024

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... Sigfried B. Nakamura

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding
FRED M. ISAACS, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

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

OPINION[1]

PER CURIAM:

[¶ 1] The Roman Tmetuchl Family Trust ("the RTFT") or their tenants put up several structures on land which was later determined to belong to the Children of Ngiramengloi ("Children"). The RTFT now appeals the Trial Division's Judgment and Decision ordering the RTFT to vacate the land and awarding the Children damages for trespass. The RTFT maintains that Roman Tmetuchl reasonably believed that he owned the land when the hotel was built,

[1] The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

and the RTFT is therefore owed restitution for the improvements made to the land.

[¶ 2] Because the RTFT did not identify reversible error in the proceedings below and its arguments do little more than restate the evidence presented at trial, we **AFFIRM**.

BACKGROUND

[¶ 3] The Children filed suit below to have the RTFT vacate several lots in Cadastral Plat No. 119 N 00, which is located in Ked/Orkomel, Arai State, including Cadastral Lot No 119 N 10; Lot No. 119 N 11, and Lot No. 119 N 12 (hereinafter "the Lots"). The Lots include the land on which the Papago Hotel sits. The Children also seek injunctive relief enjoining the RTFT from interfering with their rights to use, own, and administer the property as well as for trespass, compensatory damages, costs, and fees. The RTFT filed a counterclaim seeking compensatory damages in the amount of the fair market value of the improvements made to the land, as well as costs and fees.

[¶ 4] On June 6, 1977, Ngiramengloi Hosea filed a claim for the Lots. Two of his children, Sisinio and Gregorio, subsequently filed claims for the Lots. On December 1, 1978, Ngirkiklang Tkoel Sambal executed a deed of transfer in favor of Roman Tmetuchl, the predecessor of the RTFT.

[¶ 5] Relying on this deed, Roman began construction for the Papago Hotel on the Lots as early as 1997, while claims for the Lots were still pending. Expenses for the construction and improvements were incurred by the land prior lessees, including Wallant International, and the RTFT has not received any revenue for the operation of Papago Hotel yet. In 2018, the Land Court issued its Adjudication and Determination, awarding the lots to the Children of Ngiramengloi. Final certificates of title were awarded to the Children in 2020.

[¶ 6] Trial took place on January 16-17, 2023. On May 15, 2023, the Trial Division entered judgment in favor of the Children, stating that the RTFT had to vacate the land within nine months of the judgment and awarding damages for trespass in the amount of $1,822,244.80, the amount equal to the total annual rent from 2018 to 2023. *See* Decision and Judgment, *Children of Ngiramengloi v. Roman Tmetuchl Family Trust*, Civ. Action No. 22-039 (Tr.

Div. May 15, 2023) [hereinafter "Trial Court Decision"]. The court denied the RTFT's counterclaims. Thereafter, the RTFT filed the instant appeal.

STANDARD OF REVIEW

[¶ 7] We review the trial court's findings of fact for clear error. *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4. "When reviewing findings of fact under the clear error standard, we view the record in the light most favorable to the Trial Division's judgment, and the factual determinations of the [trial] court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this court is left with a definite and firm conviction that a mistake has been made." *Imetuker v. Ked Clan*, 2019 Palau 30 ¶ 11 (internal quotation marks omitted).

[¶ 8] Because the RTFT's Opening Brief fails to state the standard of review, we also take this opportunity to reiterate the importance of appellants' obligation to identify with particularity the errors they believe were made below and the standard of review applicable to each purported error. *Salvador v. Renguul*, 2016 Palau 14 ¶ 8. "The Republic of Palau Rules of Appellate Procedure and the Court's case law impose both formal and substantive requirements for adequate appellate briefing." *Suzuky v. Gulibert*, 20 ROP 19, 21 (2012). Among these requirements, our Appellate Rules set out that the Opening Brief should contain both a statement of the issues presented for review set forth in separately numbered paragraphs, and, for each issue, a concise statement of the applicable standard of review. *See* ROP R. App. P. 28(a)(5);28(a)(7)(B). "Rule 28 is not a collection of useful suggestions. It is a Rule, and this Court expects compliance." *Blailes v. Bekebekmad*, 2018 Palau 5 ¶ 6, n. 1.

DISCUSSION

[¶ 9] There is no dispute that the Children own the Lots. The RTFT admitted that it had been in possession of the properties without legal authority or permission since 1999. The trial court ruled that the facts established at trial show that the RTFT had actual notice that the Lots were pending adjudication and there were other claimants on file. "[T]he general rule is that one who improves the property of another does so at his own peril, and only under certain exceptional circumstances will a mistaken improver be entitled to

restitution for the value of improvements." *Asanuma v. Golden Pacific Ventures, Ltd.*, 20 ROP 29, 34 (2012).

[¶ 10] One such exceptional circumstance is the one set forth in § 42(1) of the First Restatement of Restitution and applies to one who improves the land of another "in the mistaken belief that he . . . is the owner, . . . but [only] if his mistake was reasonable." Restatement (First) of Restitution § 42(1) (1937). We have determined that a mistake is not reasonable where an improver ignores, out of carelessness or willful ignorance, circumstances that should have put him on notice of someone else's ownership of the land. *See Salvador*, 2016 Palau at ¶ 17.

[¶ 11] However, § 42(1) "is not applicable to . . . one who, having notice of the error and of the work being done, stands by and does not use care to prevent the error from continuing. In [such] cases he is subject to liability for the reasonable value of the services, irrespective of the value to him." Restatement (First) of Restitution § 42 cmt. b (citing § 40); *see also id.* at § 40(c). In other words, the Restatement "places the initial burden on a landowner to alert an improver of his mistaken belief of ownership." *Giraked v. Estate of Rechucher*, 12 ROP 133, 140 (2005). Thus, if an owner knows of another's construction activities on his property but takes no steps to correct the improver's mistaken belief of ownership, then the improver is entitled to restitution. *Id.*

[¶ 12] The RTFT maintains that the Children failed to object to the construction of the hotel, and because of this failure, the RTFT made a reasonable mistake in relying on the deed of transfer. The RTFT further argues that the Children are now estopped from claiming damages and injunctive relief, and that the award of damages to the Children unjustly enriches them.[2]

[2] The Opening Brief contains additional arguments we decline to address. First, the Court need not address the merits of RTFT's assertion that Ngiramengloi failed to record the transfer of land, since this was not raised below. *See, e.g.*, *Kumer Clan v. Koror State Pub. Lands Auth.*, 20 ROP 102, 105 (2013) ("Generally, arguments not raised in the Land Court proceedings are deemed waived on appeal."). Second, the brief raises waiver, the statute of limitations, and the doctrines of laches and unclean hands in its statement of the issues presented, but fails entirely to address them in the body of the brief. Accordingly, we do not review these issues. *See Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270, 272 (2013) ("We do not review legal issues that the parties have not developed through proper briefing."); *Gibbons v. Seventh Koror State*

By arguing as such, the RTFT essentially asks us to reverse the trial court's factual finding that Roman was aware of the various competing claims to the land when he started constructing on the Lots.

[¶ 13] During trial, Sisinio Ngiramengloi testified that he was aware that his father claimed the lands and others had also filed claims, including Roman. He further stated that he talked with Oswei Tmetuchl, one of Roman's children, on the construction site in 1990. Sisinio told Oswei that this was Ngiramengloi's land and to stop the construction. Mlib Tmetuchl, a member of the RTFT and Roman's son, further testified that the RTFT was aware of Esuroi Clan's claim to the land as a man from the clan tried to stop the construction. The court also heard testimony that Roman purchased a house next to Papago Hotel for Barbina, a child of Ngiramengloi who was married to a man who worked for Roman. The trial court inferred from this testimony that "people in Airai knew that there were several claims to the lands, that Tmetuchl was informed that there were pending claims and that the claims would be determined at a later adjudication." Trial Court Decision at 5. The trial court then concluded, "[the RTFT] was not mistaken as to the property it cleared for purposes of constructing a hotel as part of a business investment. Rather, [the RTFT] took the position that there was an earlier deed and they relied on that deed as a basis for their claim to the land. There was no mistake." *Id.* at 6.

[¶ 14] We have continually stated that we will not "reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Takeo v. Kingzio*, 2021 Palau 25 ¶ 6. The trial court properly considered the RTFT's argument that Oswei was not in any ownership or managerial position and that his conversation with Sisinio did not amount to notice, but noted several facts that should have put Roman and the RTFT on notice of the various competing claims to the land. We are not "left with a definite and firm conviction that an error has been made" such that we would overturn the trial court's factual findings. *Imetuker*, 2019 Palau at ¶ 11. Accordingly, we cannot give credence

Legislature, 13 ROP 156, 164 (2006) (noting that Appellate Division "need not even consider [an] issue" if appellant has "fail[ed] to adequately brief the issue").

to the RTFT's claim that its mistake was reasonable, nor that it is entitled to restitution.

[¶ 15] For the same reason, the Children cannot be estopped from claiming damages by their putative inaction. Equitable estoppel "precludes a person from denying or asserting anything to the contrary of that which has . . . been established as the truth by his own . . . representations." *Carlos v. Carlos*, 19 ROP 53, 59 (2012). The evidence does not show that the Children stood by while Roman improved the lots. They maintained their claims to the land from 1977, when their father first filed the claim, to 2018, when the Land Court issued its Adjudication and Determination. The doctrine of estoppel is inapplicable here.

[¶ 16] We also see no error with the trial court's award of damages to the Children or the trial court's denial of the RTFT's claim for unjust enrichment. For the RTFT to prevail on a claim for unjust enrichment, the RTFT must show that the Children were 1) enriched; 2) at the expense of the RTFT; and 3) "that the circumstances were such that in equity and good conscience the [Children] should return the money to the [RTFT]." *ROP v. Reklai*,11 ROP 18, 22 (2003). In addition, this Court in *Asanuma* specifically rejected the interpretation of "improver" as one who "caused the improvement", not one who actually improved the property. 20 ROP at 34 (2012). Where the evidence does not show that the party himself expended labor or resources to improve the lot, neither law nor equity nor justice demand that he be reimbursed for any benefit conferred on the actual landowner. *Id.* The RTFT's claim for unjust enrichment fails because the RTFT did not spend any money on the construction on and improvements to the Land itself. Instead, such expenses were incurred by prior lessees. The trial court did not err in finding that the RTFT was not entitled to restitution on an unjust enrichment theory. The Children are entitled to the amount equal to the annual rent of the Lots from 2018 to 2023.

CONCLUSION

[¶ 17] We **AFFIRM** the Trial Division's judgment.