

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

**TEREKIEU CLAN, rep. by OUDELCHAD BRENDA N.
RENGIIL and AUGUSTA RENGIL,**
Appellant,
v.
BERENGIEI MASAMI,
Appellee.

Cite as: 2025 Palau 5
Civil Appeal No. 24-026
Appeal from Civil Action No. 21-024

Decided: March 19, 2025

Counsel for Appellant	Raynold B. Oilouch
Counsel for Appellee	William L. Ridpath

BEFORE: OLDIAIS NGIRAIKELAU, Associate Justice, presiding
FRED M. ISAACS, Associate Justice
DANIEL R. FOLEY, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This is the second appeal in a case involving a residential lease dispute that resulted from an incomplete lease agreement. We consider whether the trial court erred when it determined that Appellee Berengiei Masami did not materially breach the lease agreement she entered into with Appellant Terekieu Clan and when it did not consider whether Masami trespassed.¹

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

[¶ 2] For the reasons set forth below, we **AFFIRM**.

BACKGROUND

[¶ 3] In *Terekieu Clan v. Masami*, 2024 Palau 6, we vacated and remanded the trial court’s decision because the court failed to settle facts and clearly state its determination. There, the court granted Masami’s request for a judgment declaring that the Clan breached the covenant of peaceful enjoyment provided for in their residential lease agreement. The Clan and Masami entered into that lease agreement as part of a stipulated judgment after attending mediation. Their lease agreement states that the boundaries of the leased premises are “shown in the attached map labeled Exhibit A,” but no such map is attached.

[¶ 4] The parties agreed to create a map after surveying the land to determine what part of the lot would be included in the leased premises. Before completing the survey, Brenda, one of the Clan’s representatives, allowed her son-in-law to clean and clear land on the property. Brenda’s daughter and son-in-law sought to build an apartment complex on the open area between the house and the roadway. An argument ensued and Masami filed suit.

[¶ 5] In its initial decision, the trial court noted that the lease “refers to the disputed area as part of the lease” and concluded that “both parties were relying on the mistaken belief that the entire area, including the disputed area, is 900 square meters.” *Seid v. Terekieu Clan*, Civil Action No. 21-024, at 3 (Tr. Div. Apr. 19, 2022). The court then ruled in favor of Masami, “verif[ying] that the disputed area is part of the Lease” and ordering the Clan “to cease breaches to the covenant of peaceful enjoyment of the land.” *Id.* at 4.

[¶ 6] The Clan presented several issues on appeal, each relying on the assumption that the trial court awarded Masami the entire lot. Masami countered that the court did not award her the entire lot but conceded that a remand might be necessary to determine the boundaries of the leased premises. We remanded for clarification and for additional factfinding.

[¶ 7] In its decision on remand, the trial court determined that the lease agreement is fully enforceable, that the textual description applies when determining the leased premises, and that Masami did not materially breach the lease agreement. The Clan appeals this determination.

STANDARD OF REVIEW

[¶ 8] We review matters of law de novo, findings of fact for clear error, and exercises of discretion for abuse of that discretion. *Obechou Lineage v. Ngeruangel Lineage of Mochouang Clan*, 2024 Palau 2 ¶ 5. The trial court’s “interpretation of a contract is a matter of law, which we review de novo.” *Anastacio v. Eriich*, 2016 Palau 17 ¶ 8. However, when that interpretation “includes review of factual extrinsic evidence, the findings of fact are reviewed for clear error, and the principles of law applied to those facts are reviewed de novo.” *Id.*

DISCUSSION

[¶ 9] The first issue is whether the trial court erred when it determined that Masami did not materially breach the lease agreement. The second issue is whether the trial court erred when it did not consider whether Masami trespassed and continues to trespass on portions of the lot that are not part of the now-determined leased premises. We consider these issues in turn.

I. Material Breach of the Lease Agreement

[¶ 10] On remand, both parties conceded before the trial court that the lease agreement contains a sufficient description of the leased premises, and is, thus, valid and enforceable. However, the parties disagreed on which description governs—the textual description or the acreage of 900 square meters. As a threshold issue, the trial court found that the parties subjectively understood the leased premises was less than the entirety of the lot. The court then concluded that the textual description governs the lease agreement and it objectively describes the leased premises with sufficient specificity.

[¶ 11] The trial court did not err in making this determination. To be valid and enforceable, a lease agreement “must contain the following essential terms: 1) the names of the parties; 2) a description of the demised realty; 3) a statement of the term of the lease; and 4) the rent or other consideration.” *Max v. Airai State Pub. Lands Auth.*, 18 ROP 155, 157 (Tr. Div. 2011). When interpreting a lease, “a recitation of acreage or other area is treated by courts as . . . merely an estimation . . . of the amount of acreage conveyed” and the “designated quantity of land . . . is the least reliable of all descriptive particulars

and the last to be resorted to.” *Ngerkebai Clan v. Ngeremlemgui State Pub. Lands Auth.*, 2018 Palau 16 ¶ 10 n.2. The lease agreement between Masami and the Clan satisfies these legal requirements.

[¶ 12] The court further determined that Masami did not materially breach the lease agreement. The Clan argues that the court erred in making this determination because Masami materially breached the lease agreement by occupying parts of the lot beyond the leased premises. As the court explained, however, the lease agreement only governs the leased premises and any actions occurring thereon. Masami’s actions on the land outside the leased premises do not affect, and are not relevant to, Masami’s obligations under the lease agreement. Thus, the Clan failed to establish that Masami materially breached the lease agreement.

II. Trespass

[¶ 13] In its decision on remand, the trial court explained that while Masami did not materially breach the lease agreement, she might have trespassed. The court added that the Clan may initiate a separate claim for trespass and noted that no such claim was properly asserted in this matter. The court did not err in making this determination because the Clan failed to establish that it had a right to possession when the alleged trespass occurred.

[¶ 14] To properly assert a trespass claim, a party must show “a present right to possession.” *Iyar v. Masami*, 9 ROP 255 (Tr. Div. 2001). “The elements of trespass to real property are possession of the property by the plaintiff when the alleged trespass was committed, an unauthorized entry by the defendant, and damage to the plaintiff from the trespass.” *Secharmidal v. Ngiraikelau*, 2019 Palau 35 n.8. The action of trespass is rooted in one’s exclusive right to possess real property. *See Anastacio v. Palau Pub. Utils. Corp.*, 18 ROP 22, 25 (Tr. Div. 2011). Therefore, a trespass is a continuing wrong, and “[s]uit to end trespass can be brought at any time while the wrong continues.” *Id.* at 28.

[¶ 15] On remand, Masami discussed material breach in her supplemental briefing and conceded that the continued use of any property beyond the leased premises could constitute trespass. The Clan responded by arguing that Masami’s prior and continued use of the lot violates the lease agreement. The Clan mentioned trespass only one time, in closing, by stating that “Masami’s

rights under the Lease Agreement had been terminated and that her continued occupation on Lot 064 B 04 constitute trespass.” This blanket conclusory statement refers to the entire lot and not to those areas beyond the boundaries of the since-determined leased premises. On appeal, the Clan points to a trespass claim in a 2021 filing and argues that Masami continues to use unleased portions of the lot even after the trial court issued its recent decision.

[¶ 16] Again, the first element of trespass is “possession of the property by the plaintiff *when* the alleged trespass was committed.” *Secharmidal*, 2019 Palau 35 n.8 (*emphasis* added). This element looks to the timing of the intrusion. At the time the Clan filed its 2021 trespass claim and during the pendency of this case until the decision on remand issued in 2024, the area that remained in the Clan’s possession was unclear under the terms of the lease. As such, Masami could not have been in trespass until the court issued the recent decision that is now on appeal. Therefore, to properly assert a trespass claim, the Clan must file suit now that the boundaries of the leased premises have been determined and state before the trial court exactly how Masami is trespassing. The court can then settle any relevant facts and determine whether Masami’s use or occupancy of certain property constitutes trespass.

CONCLUSION

[¶ 17] For the foregoing reasons, we **AFFIRM** the Trial Division’s decision.