Airai State v. ROP, 10 ROP 29 (2002)

AIRAI STATE,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CIVIL APPEAL NO. 01-63
Civil Action No. 00-217

Supreme Court, Appellate Division
Republic of Palau

Argued: September 9, 2002
Decided: November 20, 2002
⊥30
Counsel for Appellant: John K. Rechucher

Counsel for Appellee: David C. Perrin

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MICHELSEN, Justice:

The State of Airai ("Airai") filed suit against the Republic of Palau ("the Republic") to enforce a section of a 1994 agreement that provided that the Republic was to pay Airai ten percent of the operation revenue of the Palau International Airport. The Republic moved for partial summary judgment, contending that a later settlement agreement signed by Airai and the Republic in 1995 superseded the 1994 Agreement for all purposes. The Trial Division granted the Republic's motion. The parties thereafter stipulated to a dismissal of remaining claims, and Airai appealed from the judgment. We affirm because the 1995 Agreement is not ambiguous, is a full settlement of all claims, and supersedes all previous agreements.

I. Standard of Review

Appeals of summary judgments are subject to *de novo* review. *Dalton v. Borja*, 8 ROP Intrm. 302, 303 (2001). We will therefore apply the same standard utilized by the Trial Division in this case. Summary judgment shall be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law." ROP R. Civ. P. 56(c).

"In reviewing a motion for summary ⊥31 judgment, all doubts must be resolved against the movant, and the motion must be denied if the non-movant identifies some evidence in the record demonstrating a genuine factual dispute on a material issue." *Dilubech Clan v. Ngeremlengui State*, 8 ROP Intrm. 106, 108 (2000) (citing *Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 43, 51 (1993)).

II. Facts

Because this appeal concerns the grant of summary judgment, we accept the statement of facts as presented by Airai, the nonmoving party below. Unless otherwise stated, the factual assertions and quotations in this section are from Airai's brief.

Litigation over the airport began with eminent domain proceedings filed by the Trust Territory government in 1979. Disputes later arose concerning whether Airai or the national government was the proper successor to the Trust Territory's interest. "In March 1983, [the] Republic of Palau and [Airai] entered into an agreement ('1983 Agreement') wherein the [state committed itself] to build and operate an airport terminal and its related facilities." Airai thereafter subcontracted its responsibilities to Seibu Development Corporation ("Seibu") "controlled by Roman Tmetuchl (the then Governor of Airai State) and Masao Nishizono . . . . Nishizono was to design, fund, construct, and operate the air terminal . . . ." The project soon was stalled with "delays and disputes between Nishizono and Tmetuchl and various subcontractors," and a host of lawsuits ensued.[1] As the litigation continued, the terminal opened in late 1985.

Meanwhile, two independent studies of the terminal's condition were conducted: a 1985 report by Japan Airport Consultants and a 1986 report by Johnsrud & Ferrer. "Those studies concluded that the airport terminal was improperly conceived, poorly designed, and the eventual construction was shoddy; . . . the facility was unsound and unsafe . . . ." More specifically, "lateral structural integrity was lacking (beams were not welded to columns), no fire protection system [was in place, and there was] inadequate fire-proofing; and . . . the overall planning was criticized–baggage handling, air conditioning, and no room for expansion." As a result of these problems, the assessors recommended that a completely new terminal be constructed, and in the interim minimal improvements be made until that new terminal could be completed.

Based upon the professional reports, the national government demanded corrective action, but "neither Airai State nor its subcontractor (Tmetuchl/Nishizono for Seibu) [was] willing or able to properly correct the defects and hazardous conditions of the terminal."

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[1] *Nakatani v. Nishizono*, Civil Action Nos. 5-86, 25-85, & 73-85; *Marushin v. Nishizono*, Civil Action No. 38-85; *Shigemitsu v. Nishizono & Seibu Dev. Corp.*, Civil Action Nos. 174-84, 13-85, & 58-85; *Tmetuchl v. Seibu Dev. Corp.*, Civil Action No. 391-87A; *Ngiraikelau v. Nishizono*, Civil Action No. 143-88; *Republic of Palau v. Seibu Dev. Corp.*, Civil Action No. 172-93; *Seibu Dev. Corp. v. Republic of Palau*, Civil Action No. 190-93; *Seibu Dev. Corp. v. Airai State*, Civil Action No. 176-93; *People of Airai v. State of Airai*, Civil Action No. 65-95.

In 1994, the Republic and Airai executed an agreement which recited it was "a compromise and settlement of certain claims, differences and causes of action." The 1983 ⊥32 Agreement was expressly declared of "no further force and effect." All legal or equitable rights in the buildings and other facilities, including personal property, were transferred to the Republic, but Airai State reserved the right to assert title to the real estate upon which the airport is located. Furthermore, the agreement provided:

> Unless and until such time as the Court determines that Airai has no rights to real property at the Airport arising by virtue of an alleged quitclaim deed a copy of which is attached hereto as Exhibit "A" the Republic will pay the Airai State Government a sum equivalent to ten percent (10%) of the total revenues received by the Republic from Airport operations (including landing fees, parking fees, and rental income from leases of commercial space on the Airport premises).

In 1995, a third agreement between the two governments was executed, which for the first time included the other litigants as signatories. In contrast to the 1994 Agreement, which recited it was "a compromise and settlement of certain claims, differences and causes of action," this latter Agreement was meant "as a compromise and settlement of all litigation, claims, differences and causes of action between the Parties concerning Seibu, the Palau International Airport, and the property currently known as the Airai View Hotel." The 1995 Agreement further recited that "the Parties believe that a comprehensive settlement presents the most effective means of resolving all of the remaining disputes" and that "[e]ach Party releases and forever discharges . . . the Republic or its constituent entities from all claims and causes of action arising out of or relating in any way to the Airport." The Agreement's integration clause stated that the Agreement "represents and contains the sole and entire understanding and agreement between the parties and supersedes all prior understandings and agreements between the Parties with respect to the subject matter of this Agreement."

Five years later, in November 2000, Airai filed a complaint seeking enforcement, through specific performance, of that portion of the earlier 1994 Agreement that required the Republic to pay it ten percent of the revenue obtained from Airport operations. Airai thereafter moved for partial summary judgment without disclosing to the Court the existence of the 1995 Agreement. The Court granted Airai's motion. Soon thereafter, counsel for the Republic became aware of the 1995 Agreement, and moved for an order vacating the partial summary judgment in Airai's favor.[2] The Republic thereafter asserted that because the 1995 Agreement superseded the earlier 1994 Agreement, summary judgment should be entered for the Republic. The Trial Division granted the Republic's motion, and this appeal followed.

III. Discussion

Contract interpretation involves utilizing the "ordinary and plain meaning" of the words

[2]In its brief the Republic explains that "the lack of institutional memory which results from the constant rotation of attorneys through the Office of the Attorney General prevented the Republic from immediately asserting the 1995 Agreement in response to the complaint."

used "unless all parties have clearly ⊥33 intended otherwise." *Watanabe v. Nelson*, 4 ROP Intrm. 169, 170 (1994). The "mental impressions of a party to an agreement do not control" a court's analysis of what a contract means. *Winterthur Swiss Ins. Co. v. Socio Micronesia, Inc.*, 8 ROP Intrm. 169, 172 (2000). "It is clear [that] the interpretation of an unambiguous contract is for the Court, and that a party's private understanding of what a contract means is . . . immaterial." *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 48 n.7 (1999).

The wording of the 1995 Agreement can only have one possible meaning–that Airai "release[d] and forever discharge[d] the Republic . . . from *all claims . . . relating in any way to the Airport*" (emphasis added). This intent was later reemphasized by language expressly precluding Airai from asserting any claims against the Republic arising from "the Republic's use and occupation of any portion of the Airport." Therefore, Airai's contention that the Trial Division erred in not holding a trial to determine the parties' intent is meritless.

For this reason we also reject Airai's argument that the Court erred in denying its motion to file a supplementary reply to include former Governor Obichang's affidavit explaining his understanding of the intent of the parties. "Because the unambiguous terms of the contract are presumed to embody the intent of the parties, submission of questions of interpretation to the trier of fact is unnecessary." *Gibbons v. ROP*, 1 ROP Intrm. 634, 644 (1989). The affidavit was irrelevant and was properly excluded.

Airai also asserts that in order to supersede the terms of the 1994 Agreement, the 1995 Agreement should have specifically stated that liability under the former contract was precluded. We believe the 1995 Agreement so provides. It contains a merger clause stating that the contract "represents and contains the sole and entire understanding and agreement between the Parties and supersedes all prior understandings and agreements between the Parties with respect to the subject matter of this Agreement." There is no contrary language in the Agreement suggesting that something other than a fully integrated agreement was meant. *See, e.g.*, *Betaco, Inc. v. Cessna Aircraft Co.*, 32 F.3d 1126, 1133-34 (7th Cir. 1994) (finding that a merger provision in a contract was "strong evidence that the parties intended and agreed for the signed contract to be the complete embodiment of their agreement" because language was "simple and straightforward," and "not buried in fine print"). Accordingly, the Trial Division correctly concluded that the 1995 Agreement was the full embodiment of the parties' negotiated resolution of their disputes.

Airai argues that to the extent that the 1995 Agreement is construed to be a waiver of its right to receive a percentage of the operational fees, it is not supported by consideration. We first note that, in the usual context, the Court does not attempt to determine the adequacy of the consideration supporting a contract. *PPLA v. Tmiu Clan*, 8 ROP Intrm. 326, 328-29 (2001) (discussing both this usual rule and the closer scrutiny required in Return-of-Public-Lands cases conducted pursuant to Palau Const. art. XIII, § 10). Rather, the Court only reviews whether the consideration is legally sufficient. *Nadel v. Play-by-Play Toys & Novelties, Inc.*, 208 F.3d 368, 374 (2d Cir. 2000) (citing *Apfel v. Prudential-Bache Sec., Inc.*, 616 N.E.2d 1095 (N.Y. 1993)) (stating that as long as a party received something of value, the contract is not void for lack of consideration). In this case, legally sufficient consideration is present. Airai was able to

substitute an ⊥34 agreement that settled "certain claims, differences and causes of action" concerning the airport with a "settlement of all litigation, claims, differences and causes of action between the Parties."

More specifically, in the 1995 Agreement the Republic agreed to pay $1.4 million for the benefit of the creditors of Seibu, which led to the dismissal of, among other cases, Civil Action Nos. 65-95 and 176-93, cases where Airai was a defendant in litigation seeking millions of dollars in damages. The more comprehensive release found in the 1995 Agreement, and the resulting dismissals of lawsuits where Airai was a Defendant, constituted legally sufficient consideration. *In re Windel*, 653 F.2d 328, 332 n.4 (8th Cir. 1981) (holding that relinquishment of a reasonably litigable issue is legally sufficient consideration).

Airai also suggests that the language in the 1995 Agreement by which it "reaffirmed" the 1994 Agreement should be read as a retention of its right to a percentage of airport revenue. Paragraph 3 of that agreement provided:

> Airai State hereby reaffirms the Agreement dated April 1, 1994, pursuant to which Airai State relinquished any and all rights to operate any aspect to the Airport (the 'April 1994 Settlement'). Airai State hereby acknowledges that any rights it has, or in the future acquires, with respect to Airport operations[,] whether or not being currently conducted, have been transferred to the Republic.

It should be noted that it was Airai, not the Republic, that "reaffirmed" a certain part of the 1994 Agreement. A reaffirmation by Airai that it has relinquished airport operations to the Republic cannot be construed to be a reaffirmation by the Republic to pay Airai a percentage of operational revenue.

IV. Conclusion

Because summary judgment was properly entered for the Republic, we affirm the judgment.