

Chun v. Liang, 14 ROP 121 (2007)
SUN XIU CHUN,
Appellant,

v.

MENG QING LIANG,
Appellee.

CIVIL APPEAL NO. 06-018
Small Claims Case No. 06-029

Supreme Court, Appellate Division
Republic of Palau

Decided: June 13, 2007¹

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Counsel for Appellant: Rachel A. Dimitruk and Garth Backe

Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

Appeal from the Court of Common Pleas, the Honorable HONORA REMENGESAU
RUDIMCH, Senior Judge, presiding.

MILLER, Justice:

Appellant Sun Xiu Chun appeals the judgment of the Court of Common Pleas awarding her \$1,200, less the amount paid for a final judgment amount of \$464. Chun appeals, arguing that she had an enforceable contract between herself and Appellee Meng Qing Liang for \$3,000. Having considered the arguments of the parties, we reverse the judgment of the Court of Common Pleas.

BACKGROUND

Neither party disputes that on June 4, 2004, Liang borrowed \$1,200 from Chun. Since then, he has paid back a total of \$736, leaving an outstanding debt of \$464 on the original loan. Chun also claims that Liang owes her \$1,800 for drink commissions she earned while employed as a waitress at Red Dragon Restaurant. The restaurant was owned by Friend Taima, but Chun claims that Liang was her manager and personally promised to pay the drink commissions. As evidence, Chun submitted a contract written and signed by Liang in Chinese dated October 31,

¹Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral arguments pursuant to ROP R. App. P. 34(a).

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2004. The contract, in its entirety, translates as “Now, I own Ms. Sun Xiuchun \$3,000.00 (USD). Three Thousand USD.” Liang testified that he did not work for the restaurant and a mutual friend owed her the \$1,800, but he conceded that he promised to pay the \$1,800 for their friend.

The Court of Common Pleas found no evidence that Liang worked as a manager at the restaurant and that his work permit says he is employed by Ellen Mikel, who has no business relations with Taima. The Court of Common Pleas ruled that the drink commissions should be recovered from her former employer and not Liang. Judgment was granted for Chun in the amount of \$1,200, less the amount paid for a final amount of \$464. Chun appeals, arguing that the Court of Common Pleas erred by not enforcing the contract between Chun and Liang.

STANDARD OF REVIEW

This Court employs the de novo standard in evaluating the conclusions of law of the Court of Common Pleas. *Cura v. Salvador*, 11 ROP 221, 222 (2004). Factual findings are reviewed using the clearly erroneous standard. *Id.* Under this standard, the findings of the lower court will only be set aside if they lack evidentiary support in the record such that no reasonable trier of fact **L123** could have reached that conclusion. *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 46 (2006). The lower court’s interpretation of a contract is reviewed de novo. *Palau Marine Indus. Corp. v. Pac. Call Invs., Ltd.*, 9 ROP 67 (2002).

DISCUSSION

As a preliminary matter, Chun claims that the Court of Common Pleas erred by considering extrinsic evidence outside of the contract, specifically the testimony at the hearing and the work permit. “Evidence is admissible to prove whether or not there is consideration for a promise, even though the parties have reduced their agreement to writing which appears to be a completely integrated agreement.” RESTATEMENT (SECOND) OF CONTRACTS § 218 (2) (1981). The two sentence contract does not include any statement of consideration. “Where a written agreement requires consideration and none is stated in the writing . . . evidence is admissible to show that there was consideration and what it was.” *Id.* at cmt. d. The Court of Common Pleas properly heard testimony and considered extrinsic evidence about the consideration for the contract.

As a basic principle, “the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange, and a consideration.” *PPLA v. Tmiu Clan*, 8 ROP Intrm. 326, 328 (2001) (quoting the RESTATEMENT (SECOND) OF CONTRACTS § 17 (1981)). When determining whether an agreement is an enforceable contract, courts do not normally inquire into the adequacy of consideration, particularly when one or both of the values exchanged are uncertain or difficult to measure. *PPLA*, 8 ROP Intrm. at 328. Instead, Courts only review whether the consideration is legally sufficient. *Airai State v. ROP*, 10 ROP 29, 33 (2002).

To constitute consideration, a performance or a returned promise must be sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.

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RESTATEMENT (SECOND) OF CONTRACTS § 71 (1981). As long as a party received something of value, the contract is not void for lack of consideration. *Airai State*, 10 ROP at 33.

Consideration may move to a third person. “The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.” RESTATEMENT (SECOND) OF CONTRACTS § 71 (4) (1981). “It matters not from whom the consideration moves or to whom it goes.” *Id.* at cmt e.

Most importantly to this case, the discharge of a preexisting debt owed by a third person is legal consideration for the promise of another to pay such a debt. 17A AM. JUR. 2d *Contracts* § 144 (2004).² This principle is embodied by a contract from 1831 in *Fowler v. MacDonald*, 9 F. Cas. 620 (C.C.D.C. 1833). In a single sentence contract, William Duncan agreed that four days later he would pay C.S. Fowler fifty dollars. That same day, S. MacDonald wrote directly below that “I will pay the above at maturity” and then dated and signed it. The **L124** Court held that MacDonald’s agreement to pay the debt of another was an original undertaking and sufficient legal consideration. *Id.*; see also *In re Burchell*, 4 F. 406, 408 (D.C.N.Y. 1880).

The contract contains no statement of consideration nor any explanation of why Liang promised to pay \$3,000 to Chun. At the hearing, Liang testified that he agreed to pay the money to Chun as a favor to a third party, an unnamed mutual friend who had returned to China. Liang testified that Chun was worried their friend would not pay her the \$1,800 and to calm her nerves he agreed to pay the money because he trusted the friend to pay. Liang promised to discharge a preexisting debt owed by a third person, thus establishing legal consideration for the contract. Liang promised to pay \$3,000 and he should be bound to that promise. Even if the obligation to pay the drink commissions originally fell on some other person or persons, it does not affect the enforceability of the contract between Chun and Liang. The Court of Common Pleas therefore erred by not enforcing that contract.

CONCLUSION

As Liang and Chun had a valid and enforceable contract, the Court of Common Pleas erred by not enforcing that contract. Accordingly, the judgment of the Court of Common Pleas is reversed and the case is remanded for entry of a new judgment in the amount of \$2,264.

²Similarly, a comprehensive release of claims and resulting dismissal of lawsuits constitutes legally sufficient consideration. See *Airai State v. ROP*, 10 ROP 29, 33-34 (2002).