

Yalap v. Umetaro, 16 ROP 126 (2009)
OLSINGCH YALAP,
Appellant,

v.

HERMANA UMETARO,
Appellee.

CIVIL APPEAL NO. 08-034
Civil Action 07-165

Supreme Court, Appellate Division
Republic of Palau

Decided: February 9, 2009

Counsel for Appellant: Clara Kalscheur
Counsel for Appellee: Oldiais Ngirakelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII presiding.

PER CURIAM:

Currently before the Court is an appeal of the Trial Division's decision of April 15, 2008, granting costs and attorney's fees to Hermana Umetaro ("Mrs. Umetaro" or "Appellee") and the order of April 30, 2008, ordering a specific monetary award. The suit was brought by Olsingch Yalap ("Mr. Yalap" or "Appellee") for damages due to the faulty construction of his home by Umetaro & Sons Company. Umetaro & Sons Company was owned by Appellee's late husband, Steve Umetaro; after his death, part ownership transferred to Appellee.

On March 10, 2008, after trial, the court issued a Decision and Order granting judgment on partial findings in favor of Mrs. Umetaro, finding that she had no ownership of Umetaro & Sons at the time of the contract and was not a party to the contract. On March 11, 2008, Mrs. Umetaro filed a motion for costs and attorney's fees. A hearing on the issue was held April 3, 2008. The April 15, 2008 order granted Mrs. Umetaro's motion. Subsequently, on April 30, 2008, the court entered an order awarding Mrs. Umetaro \$3,967.75, based upon the affidavit and other evidence setting forth the fees and costs.

BACKGROUND

Mr. Yalap filed this appeal, asserting that p.127 the trial court erred in awarding costs and attorney's fees to Mrs. Umetaro. Appellant makes two arguments in support of this claim. Firstly, Appellant claims that Appellee's entitlement to fees and costs is based entirely on a provision of the contract to which she was not a party. Because Appellee argued successfully that she should not be bound to the terms of the contract, Appellant asserts that Appellee cannot reap benefits from the contract. Secondly, Appellant argues that the post-trial hearing on attorney's fees and costs violated the Rules of Civil Procedure. Specifically, Appellant asserts that Appellee did not provide a brief to support her claim and did not provide supporting evidence at the proper time. Also, Appellant asserts that the trial court did not provide Appellant with an opportunity to contest the receipts and billing statements that were ultimately provided, before granting Appellee's motion.

STANDARD OF REVIEW

The interpretation or construction of a contract is a matter of law for the court. *Ngiratkel Etpison (NECO) v. Abby Rdialul*, 2 ROP Intrm. 211, 217 (1991). Also, the question of whether contractual language is ambiguous is a question of law for the court. *Id.* Therefore, both of these issues are reviewed *de novo*, with no deference to the trial court's decision. *Id.*; *Palau Marine Indus. Corp. v. Pac. Call Invs., Ltd.*, 9 ROP 67, 71 (2002).

DISCUSSION

A. Contractual Interpretation Issue

The trial court based its determination that Appellee was entitled to collect attorney's fees on Paragraph 20 of the contract, which states:

In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

Appellant argues that "the only reasonable construction of this language is that the term 'party' refers to a party to the contract," claiming that the provision was intended to protect the contractual parties in the event of a breach. Appellant's Opening Br. at 10. However, if the language of a contract is clear and unambiguous, then there is no room for a court to weigh what is reasonable or likely to have been intended. *Airai State v. ROP*, 10 ROP 29, 32-33 (2002) ("contract interpretation involves utilizing the ordinary and plain meaning of the words used unless all parties have clearly intended otherwise") (internal quotations and citations omitted); *In re Estate of Tmetuchl*, 12 ROP 171, 173 n.2 (Tr. Div. 2004) ("under the objective law of contract interpretation, the court will give force and effect to the words of a contract without regard to what the parties thought it meant or what they intended for it to mean.") (internal citations omitted).

Paragraph 20, read independently or in the context of the contract, is unambiguous; it obliges the unsuccessful party to ANY action filed in relation to the contract to pay the **p.128** successful party's legal fees. There is no room for different interpretations of this language, evaluating what would be reasonable. Accordingly, the trial court's decision to grant Appellee an award of fees is affirmed.

B. Procedural Issues

Appellant asserts that Appellee's post-trial motion for fees and the subsequent hearing were conducted in violation of the Rules of Civil Procedure. Firstly, Appellee's motion for fees was not filed with affidavits or billing statements. Appellant argues that the evidence submitted was merely receipt for amounts paid, without any accounting of time or supporting affidavits. Secondly, Appellee's motion was submitted without a brief. Appellant argues that this violated ROP R. Civ. P. 7(b)(1) and made it impossible for Appellant to prepare properly for the hearing on attorney's fees. He asks this Court to vacate the award of fees because of these alleged omissions.

ROP R. Civ. P. 54(d)(2)(B) requires a motion for attorney's fees to be filed within 14 days of entry of judgment, to specify the grounds for the award of fees, and to estimate the amount sought. Appellee's motion, filed the day after the judgment in her favor, requested attorney's fees based upon Paragraph 20 of the contract and provided an estimate of \$3,914 for attorney's fees and \$53.75 for expenses. The estimates were supported by receipts showing that Appellee had paid the above amounts. Appellee's motion complies with the terms of ROP R. Civ. P. 54(d)(2)(B); the award of fees will not be overturned on these grounds.

As an additional procedural ground for reversal, Appellant submits that the trial court erred in failing to provide an opportunity for Appellant to contest the accounting of attorney's fees. Subsequent to the hearing on fees, held April 3, the trial court issued an order establishing Appellant's liability for fees, but did not grant a specific monetary award. The court ordered Appellee to submit an affidavit setting forth costs and fees before a monetary award would be granted. Appellee submitted an affidavit and billing statements on April 24; the court issued the award April 30. Appellant argues that he was entitled to contest the submissions before the court ruled. He asserts that, if he had the opportunity, he would have argued against the imposition of costs, in that Paragraph 20 only entitles the successful party to fees.

This argument must fail. Appellant has not shown that he was entitled to make legal arguments in opposition to a fee accounting, after liability had already been established. He had an opportunity to make his argument against awarding costs in his motion in opposition to Appellee's request for fees. Appellee's motion indicates that she was seeking costs, as well as fees, but Appellant chose not to object to that request at the proper time.

Additionally, Appellant's failure to object to the award of costs was harmless. While the contract does not support an award of costs, ROP R. Civ. P. 54(d)(1) allows for an award of costs to the prevailing party as a matter of course. Although the trial court's decision does not explain

Yalap v. Umetaro, 16 ROP 126 (2009)

that the award of costs was justified by ROP R. Civ. P. 54(d)(1), while the award of fees was based upon the contractual language, it was not error to award costs to Appellee. p.129
Accordingly, Appellant's opposition to the award of costs would not have succeeded.

CONCLUSION

For the foregoing reasons, the trial court's Decision and Order of April 15, 2008 and Order of April 30, 2008 are **AFFIRMED** and Civil Appeal Number 08-034 is **DISMISSED**.