

*Sun Ye Chin Fan v. Pacifica Dev. Corp.*, 16 ROP 56 (2008)  
**SUN YE CHIN FAN,**  
**Appellant**

v.

**PACIFICA DEVELOPMENT CORPORATION,**  
**Appellee**

CIVIL APPEAL NO. 07-012  
Civil Action No. 01-53

Supreme Court, Appellate Division  
Republic of Palau

Decided: November 17, 2008<sup>1</sup>

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Counsel for Appellant: John K. Rechucher

Counsel for Appellee: William L. Ridpath

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

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

PER CURIAM:

Appellant/Appellee Sun Ye Chin Fan (hereinafter “Fan”) appeals the decision of the trial court, arguing that it erred in awarding her only partial restitution after termination of her contract with Pacifica Development Corporation (hereinafter “PDC”). Appellant/Appellee PDC appeals the same decision, arguing that the damages awarded to Fan were inappropriate because the conclusions of law were inconsistent with the court’s findings of fact. The trial court found that Fan materially breached her contract with PDC, but that she was nonetheless entitled to restitution damages to put her in the position she was in before the contract was formed. For the reasons articulated below, we affirm in part and reverse in part the decision of the trial court.

### **BACKGROUND**

Neither party challenges the factual findings made by the trial court. Rather, the parties disagree as to various aspects of the court’s award of damages. Notwithstanding, a brief discussion of the undisputed facts is provided. On May 26, 1999, PDC, Fan, and Fan’s then business partner Kenjin Chen (hereinafter “Chen”) executed two valid contracts. The first, entitled “Management Agreement,” established that Fan and Chen would manage the Ngeremlengui Rock Quarry (hereinafter “the Quarry”) for PDC, and in p.58 exchange would

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<sup>1</sup>The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

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receive a share of the profits from the operation thereof. Under this agreement, Fan and Chen were also responsible for providing the equipment and labor for the Quarry. The second contract, entitled "Payment Agreement," detailed that Fan and Chen would pay \$250,000 to PDC by August, 1999, in monthly installments.

The first of the monthly installments was paid at the signing of the contracts. Fan and Chen each paid \$25,000. Fan paid a second installment of \$50,000 in June, 1999. It is undisputed that Fan made no further payments towards the \$250,000 agreement. In September, 1999, Chen assigned all of his rights to Fan in exchange for a payment of \$135,000. In December, after the remaining portion of the \$250,000 was overdue by several months, PDC wrote a letter to Fan demanding payment by the end of December or PDC would terminate the contract.

Fan did not complete payment by the end of December, but instead entered into a contract with Seventh Construction Company for the purchase of \$1,780,722 worth of equipment. In January and February, 2000, PDC sent Fan two additional letters threatening termination and demanding payment. Fan did not make any payments, but sent her workers from China to begin clearing the access road to the Quarry in February, 2000. PDC also provided workers to clear the road. In May, 2000, the equipment Fan purchased from Seventh Construction arrived and the access road was completed in November of that year.

Despite Fan's outstanding debt, Fan and the president of PDC, Mlib Tmetuchl, entered into a third contract, entitled "Memorandum of Understanding," (hereinafter "MOU"), in May of 2000. According to the MOU, Fan's company (Dynamic Security and Holdings Company), would manage the Quarry, be responsible for all expenses and taxes, and pay PDC \$20,000 a month. Although the parties offered differing testimony, the trial court found that Fan did not make any of these monthly payments.

While Fan did not receive any further letters indicating PDC's continued threat of termination between February and October, 2000, Fan was told by a PDC representative in October that as a result of the contract's termination, all of her employees would now be PDC employees. Subsequently, on November 27, 2000, PDC issued a letter of termination and thereafter denied Fan access to the site or the right to retrieve her equipment.

In February, 2001, Fan sued PDC and several PDC individuals for damages resulting from the loss of business relations between herself and PDC. She also filed a motion for an injunction and temporary restraining order to enjoin PDC from preventing her access to the Quarry site in order to retrieve her equipment. The motion was granted and Fan has since reacquired all of her equipment. PDC filed a counterclaim alleging that Fan materially and substantially breached the contract and an affirmative defense of unclean hands.

The trial court found that Fan's refusal to pay the \$150,000 remaining under the payment agreement was a material and substantial breach of the management agreement between the parties. It therefore denied Plaintiff's breach of contract claim against PDC. Despite this finding, the court denied PDC's counterclaim for failure to prove any damages. Rather, the trial court

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awarded equitable damages for restitution to Fan for her partial performance as follows: 1) the \$25,000 she paid to PDC on May 26, 1999; 2) her second payment of \$50,000; 3) \$15,393 for employee wages and expenses; and 4) \$1,835.50 in attorney's fees. Finally, the trial court dismissed Plaintiff's claims against the individual members of PDC for lack of evidence establishing liability.

Both PDC and Fan appealed the judgment of the trial court. PDC argues that the trial court's conclusions of law do not align with its findings of fact, arguing that restitution was inappropriate based on Fan's material breach of the contract. Fan argues that because she was assigned all of Chen's rights under the management agreement, she should be awarded the \$25,000 Chen paid to PDC on May 26, 1999, in addition to the \$25,000 she paid.

### STANDARD OF REVIEW

This Court reviews the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). The trial court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Because both appeals challenge the legal standard applied in awarding damages, this Court reviews the determination *de novo*.

### DISCUSSION

#### A. Fan's Appeal

Fan does not contest the trial court's denial of her claim for breach of contract, nor its finding that she materially breached the contract by failing to complete payment of the \$250,000 agreement. Rather, she argues that she should be awarded the total amount of money conferred by both she and Chen upon PDC. The trial court found that Chen assigned his rights under the management agreement to Fan. By way of this assignment, Fan contends that she is entitled to restitution on Chen's behalf for the \$25,000 he paid PDC.

PDC argues that Fan was assigned all of Chen's obligations and duties under the contract, but not the right to recover a debt, and therefore that PDC has no obligation to Chen or to his payment after the assignment. PDC contends that Fan and Chen should have included language in their assignment to specify that Fan had the right to recover money damages under the contract. This right, PDC urges, is called a "chose in action," which is distinct from the contract rights that were assigned. Without such a provision, it argues, recovery is precluded. In addition, PDC asserts that Fan failed to prove that she is entitled to payment under the assignment, which is governed by the laws of Taiwan R.O.C.

We agree with Appellant Fan. In the absence of controlling law or custom in the Republic of Palau, as defined by 1 PNC § 301, the Restatements shall be construed as rules of decision of the Republic. 1 PNC § 303. Because there is no superceding statute, nor custom, in the Republic of Palau that speaks to the issues in this case, the Restatement of Contracts regarding rescission and restitution are the applicable law in this matter. The Restatement (Second) of Contracts defines an assignment as "the transfer of a right by the owner

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to another person.” RESTATEMENT (SECOND) OF CONTRACTS § 316 cmt. c (1981). In addition, a “joint obligee may effectively assign his right [and] the assignee can enforce it . . . in the same manner and to the same extent as the assignor could have enforced it.” *Id.* at § 335. Section 316 defines the scope to which the term assignment applies, and states that “. . . [s]uch [assignment] rights include debts, rights to non-monetary performance and rights to damages and other contractual remedies. . . . On the other hand, ‘choses in action’ is a much broader term. In its primary sense it includes debts of all kinds, tort claims, and rights to recover ownership or possession of real or personal property.” *Id.* at § 316 cmt. a.

Before Chen assigned his rights to Fan, he was a joint obligee with Fan to the rights of the contract formed with PDC. The trial court found that Fan paid Chen \$135,000 for the assignment of his rights under the contract. In return for this consideration, Fan was assigned all of Chen’s rights under the contract, and as stated in the Restatements of Contracts, she was entitled to enforce these rights in the same manner and to the same extent that Chen could have enforced them. Any right to equitable restitution that Chen would have had became Fan’s right to restitution. There is nothing in the Restatements, as urged by PDC, that Chen had to specify all of the rights assigned along with his interest in order for Fan to recover damages to his share of the contract. On the other hand, PDC has no right to the money Chen paid pursuant to the contract. Because PDC terminated the contract, the trial court attempted to place the parties in the positions they were in before the contract was formed. PDC would be unjustly enriched by Chen’s \$25,000, whereas Fan bargained for that share of the contract, paid for it, and is now entitled to it as a matter of equity.

Moreover, PDC’s argument regarding “choses in action” is meritless. As the Restatements clearly state, an assignee has the right to recover contract damages. RESTATEMENT (SECOND) OF CONTRACTS § 316. A chose in action is a broader term that simply does not apply to this matter. Fan is not recovering a “debt,” but rather she is collecting only that which she and Chen conferred upon PDC.

Lastly, PDC’s argument that Fan failed to prove that the assignment was proper in accordance with the laws of the Republic of China is inapplicable. Fan’s right to restitution, and therefore to Chen’s restitution, is an equitable remedy the trial court could have created in its discretion to restore the parties’ *status quo*. The trial court found that Fan purchased Chen’s rights to the contract for \$135,000. It is undisputed that Fan paid this money to Chen. There is no evidence to contradict this finding, and thus we cannot find it to be in error. Based on this finding, Fan is entitled to equitable restitution in order to place her in the position she was in before the contract existed. Because this conclusion is based in equity rather than law, it is immaterial whether the assignment was proper under the laws of China. In other words, even if p.61 Chinese law did not recognize the assignment, this Court would still have the discretion to order restitution to Fan to place her in as near a position as she was in before the contract was signed. It is only fair that she be awarded Chen’s share of the restitution in this matter, as Chen conferred \$25,000 upon PDC and Fan conferred \$135,000 upon Chen. PDC would be unjustly enriched if it were allowed to rescind the contract in addition to keeping the monetary benefits conferred upon it. Therefore, we find that the trial court erred and should have awarded Fan an

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additional \$25,000 as restitution for the money Chen paid to PDC on May 26, 1999.<sup>2</sup>

## **B. PDC's Appeal**

PDC appeals the conclusions of law made by the trial court in its award of damages to Fan. Its primary position is that the trial court did not find PDC liable for any breach, and therefore that it should not have to pay damages to Fan for her material breach. Additionally, PDC argues that it is mere conjecture that the trial court awarded Fan damages based on restitution and unjust enrichment, because it is not specified in the trial court's conclusions of law. PDC also contends that Fan is not entitled to restitution because she never argued for it at trial. Lastly, PDC asserts that Fan is not entitled to restitution damages for attorney fees, nor for worker compensation, because those benefits were never conferred upon PDC.

Fan responds that the trial court did not err in its apportionment of damages to her for restitution. She argues that the court properly awarded her restitution damages to avoid unjust enrichment. Citing the Restatement (Second) of Contracts, Fan contends that even a breaching party may recover the benefit conferred upon the non-breaching party by way of part performance under the contract. RESTATEMENT (SECOND) OF CONTRACTS at § 374(1). She argues that, as a matter of equity, PDC should not be permitted to both repudiate the contract while at the same time retain its benefits. *Warren v. Tampa Mortg. Investor's Co.*, 112 Fla. 555 (1933). In addition, Fan asserts that she is entitled to restitution for her employees' wages because she paid them in reliance upon the contract. Lastly, she argues that she is entitled to attorney fees because she was forced to seek a court order to retrieve her machinery back from PDC after it terminated the contract.

We agree with Appellee Fan. Fan does not argue that PDC improperly rescinded the contract based on her material breach. Rather, she argues that she is entitled to be placed back in the position she was in before the contract was formed, to avoid unjust enrichment to PDC. Again, because there is no superceding statute or custom regarding this issue in Palau, the Restatement of Contracts is controlling law. "Inherent in the remedy of rescission is the return of the parties to their precontract positions." 17A AM. JUR. 2D, *Contracts*, at § 574 (2004) p.62 (citing *Dean v. Garland*, 779 A.2d 911 (D.C. 2001), *cert. den'd*, 536 U.S. 924 (2002); see also RESTATEMENT (SECOND) OF CONTRACTS at § 374 ("if a party justifiably refuses to perform on the ground that his remaining duties of performance have been discharged by the other party's breach, the party in breach is entitled to restitution for any benefit that he has conferred by way of party performance or reliance"). As a general rule of equity, the non-breaching party, and therefore the one to rescind a contract, must return the opposite party to the *status quo*. *Pan-American Petroleum & Transport Co. v. U.S.*, 273 U.S. 456 (1927); see also *Barker v. Ness*, 1998 N.D. 223 (1998) (stating that "[r]estoration of the *status quo* as a requirement for rescission at law of a contract, though party of a legal action, is nevertheless based on the equitable principle

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<sup>2</sup>It should be noted that PDC was also entitled to restitution damages as a matter of equity, but because PDC did not confer any benefit to Fan under the contract, there was no restitution necessary to put PDC back in the place it was in before the contract was formed. Fan breached the contract, and as a remedy, PDC was permitted to rescind the contract. Beyond that remedy, however, PDC was not entitled to monetary damages, as it could not prove any damages that it suffered as a result of the breach.

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that he who seeks equity must do equity”). Therefore, despite Fan’s breach, it is clear that she is entitled to equitable restitution.

PDC’s contention that Fan cannot recover because she did not argue for restitution and because the trial court did not base its award thereon is unfounded. In its conclusions of law, the trial court stated “. . . [p]laintiff seeks restitution from PDC for the value of the equipment and parts which she secured.” Supreme Court of the R.O.P. Tr. Div. Op., Civ. Action No. 01-53, at 10. The trial court later stated that “Fan also seeks restitution for expenses related to the wages and salaries of the thirteen employees she hired to work at the Quarry.” *Id.* at 11. Although the trial court did not say explicitly in its award of damages that their purpose was to place the parties back to the *status quo*, it is clear that the court was awarding restitution damages for Fan’s part performance under the contract.

Even if the trial court’s intention was not clear, the court had substantial discretion to award damages as it found necessary. *See* RESTATEMENT (SECOND) OF CONTRACTS at § 358 cmt. a. (“[t]he objective of the court in granting equitable relief is to do complete justice to the extent that this is feasible. Under the rule stated in [§ 358], the court has the power to mold its order to this end. The form and terms of the order are to a considerable extent within the discretion of the court.”) Moreover, it is not a prerequisite in the collection of damages that a party must argue the exact theory of recovery that the court eventually awards. “If a party has more than one remedy under the rules stated in this Chapter, his manifestation of a choice of one of them by bringing suit or otherwise is not a bar to another remedy.” *Id.* § 378. Therefore, Fan is not precluded from an award of restitution damages simply because she did not initially plead her damages under this theory of recovery.

Finally, PDC’s argument that Fan is not entitled to damages for attorney’s fees and employee wages fails. The trial court found that Fan was entitled to the return of her equipment as restitution. Because PDC did not return the equipment on its own initiative, Fan was forced to seek a court order. As previously stated, a breaching party is entitled to restitution for any benefit conferred by way of part performance or *reliance on the contract*. RESTATEMENT (SECOND) OF CONTRACTS at § 374(1) (emphasis added). Fan tendered her equipment to the Quarry in reliance upon the contract. The trial court found that the fees paid to her attorney during the process of reacquiring this equipment p.63 were a result of her reliance on the contract. This award was proper and appropriate as a measure to place the parties as closely back to the positions they were in before the contract was formed. Therefore, we find that the award of attorney fees was proper.

Likewise, the fees paid by Fan to her employees were in reliance on the contract. Restitution damages include not only the benefits conferred by way of performance, but also by way of reliance. RESTATEMENT (SECOND) OF CONTRACTS at § 374. In addition, the work Fan’s employees provided to the Quarry and access road was a benefit conferred upon PDC by way of part performance. Thus, Fan is entitled to the return of these wages and the trial court’s award in this respect was appropriate.

## CONCLUSION

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We hereby **AFFIRM** in part and **REVERSE** in part as follows: 1) Appellant Fan's appeal is granted and the trial court's failure to award her restitution damages for the amount Chen paid to PDC on May 26, 1999 is reversed; 2) Appellant PDC's appeal is denied and the trial court's award of restitution damages to Fan is affirmed.