

**MARK'S BODY SHOP and BRIGHT
KIN,
Appellants,**

v.

**SERESANG IYAR,
Appellee.**

CIVIL APPEAL NO. 09-019
Small Claims No. 09-002

Supreme Court, Appellate Division
Republic of Palau

Decided: February 26, 2010

[1] **Appeal and Error:** Standard of Review

This Court employs the *de novo* standard in evaluating the conclusions of law of the Court of Common Pleas.

[2] **Agency:** Apparent Authority

An agent's apparent authority results from statements, conduct, lack of ordinary care, or other manifestation of the principal's consent, whereby third persons are justified in believing that the agent is acting within his or her authority. Apparent authority arises when a principal places an agent in a position which causes a third person to reasonably believe the principal had consented to the exercise of authority the agent purports to hold.

[3] **Civil Procedure:** Parties

When a party desires to raise an issue as to legal existence of any party or the capacity of any party to be sued the party desiring to raise

the issue shall do so by specific negative averment, which shall include such supporting particulars within the pleader's knowledge. The purpose of this rule is clearly to avoid the perverse incentive of parties playing "gotcha" with the judicial system, i.e., wasting scarce judicial resources by allowing the court and the parties to execute a trial under the mistaken assumption about a party's legal status.

Counsel for Appellants: Yukiwo P. Dengokl

Counsel for Appellee: Susan Kenney-Pfalzer

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

On Appeal from Court of Common Pleas, the Honorable LOURDES MATERNE, Associate Justice, presiding.¹

PER CURIAM:

This matter is before the Court on appeal from the Decision and Judgment entered in a small claims case by the Court of Common Pleas, in favor of Appellee Seresang Iyar ("Iyar") and against Appellants Mark's Body Shop and Bright Kin ("Appellants"). Having considered the briefs submitted by the

¹ Pursuant to 4 PNC § 304, Senior Judge Honora Remengesau Rudimch recused herself on January 19, 2009, because the owner of the auto shop is a close relative of her husband. The matter was forwarded to the Office of the Chief Justice, which subsequently assigned Associate Justice Lourdes Materne.

parties and the record, we AFFIRM in part and REMAND in part.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This appeal originates from a dispute over the loss of Iyar's automobile. In August or September of 2006, Iyar was involved in a car accident. After the accident, Iyar was taken to the police station to give her statement. From this point in time forward, neither party agreed at trial as to the events that followed.

According to Iyar, Jerry Nabeyama ("Nabeyama") told her that her car would be towed to Mark's Body Shop, because the towing is free if the car is repaired there. Iyar agreed, and called Mark's Body Shop approximately two weeks later. Iyar testified at trial that she spoke to an employee, Max Arminal ("Arminal"), who informed her that the "boss" was out of town and that the shop would hold her car until she was able to get a loan to pay for the repairs. Months later, when Iyar attempted to retrieve her car, she was informed either that the car had been disposed of or was simply nowhere to be found. In her complaint of January 15, 2009, Iyar alleged that Mark's Body Shop improperly disposed of or lost the car and claimed \$1,000.00, plus interest, for the value of the car.

According to Appellants, the only time Iyar's car had ever been seen at Mark's Body Shop was more than a year prior, when, in 2005, Iyar's father brought the car in for repairs. After the accident in 2006, Appellants claim that the car must have simply been left near a shop by Rafaela's

house near the Palasia Hotel. It disappeared at some point, never to be found. At the hearing, the shop's owner, Akemi Anderson ("Anderson"), denied that she ever saw the car at her shop. Likewise, Arminal denied ever speaking to Iyar on the phone about the car.

On September 15, 2009, the Court of Common Pleas issued its Findings of Fact and Decision in favor of Iyar in the amount of \$1,000.00. In the three-page Decision, the court acknowledged that almost no documentary evidence had been presented at the hearing proving Iyar's claim, i.e., no contract between Iyar and Mark's Body Shop was ever produced. However, the court also noted that the testimonial evidence at trial allowed it to make certain credibility determinations, which were ultimately dispositive of the underlying factual dispute. In making these credibility determinations, the court found Arminal's testimony to be wholly incredible. Although Arminal testified that he never had any conversation with Iyar, when confronted with the possibility that his failure to tell his boss about the phone call could result in his own liability for the value of the car, he later admitted to telling his boss about the conversation. Indeed, upon reading the transcript of the hearing, this Court sees with its own eyes the contradictions in Arminal's testimony and the evasiveness of his answers.

In its findings of fact, which the court issued orally from the bench, the court found as follows:

[The] Court accepts Plaintiff's argument that her car was taken to Mark's Auto Shop. She talked to somebody named Max who said that he will talk

to his boss, that she was under the impression that her car was gonna stay there for three months. She went after three months, her car was gone. Mr. Arminal and Mr. Loques [sic] lied to this Court. There is no question in this Court's mind that they took an oath, they testified and lied. The Court does not like liars. It will not stand for it. For the reasons stated, the Court believes Ms. Iyar's testimony and evidence that she . . . her car was brought to Mark's Auto Shop. She had asked them to take care of the car for three months while she finds money to pay for it. She went, her car was gone. The Court finds in favor of the Plaintiff for a thousand dollars.

Iyar v. Mark's Body Shop, Small Claim No. 09-002, Findings of Facts and Decision at 3 (Ct. Com. Pl. Sept. 15, 2009). This appeal followed.

STANDARD OF REVIEW

[1] 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 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

Appellants' arguments on appeal can be summarized as follows. First, Appellants argue that the court's factual finding of liability is clearly erroneous because (1) there is not enough evidence to support the finding that Iyar is the legal owner of the car in question; (2) even if sufficient evidence exists proving she is the legal owner, there is insufficient evidence to support a finding that Appellants caused the loss of Iyar's car; (3) there is no evidence of a binding contract between the parties; and (4) even if the finding of liability can be sustained, the court's award of \$1,000.00 is clearly erroneous, having no basis in the record. Second, Appellants argue that the court's treatment of Mark's Body Shop as a legal entity is a misapplication of the law. Appellants argue (1) that Mark's Body Shop is not a legally recognized corporation and thus not subject to suit, and (2) that Anderson is actually the legal owner—not Bright Kin (“Kin”)—and thus Iyar sued the wrong defendants altogether.

In her response, Iyar begins by stating “[f]irst of all, it must be said that none of the arguments made in Appellant's Brief were made at trial and it is clear that arguments not presented to the Trial Division may not be raised for the first time on appeal.” (Appellee's Br. at 2 (citing *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317 (2001))). We note this, and in some instances agree. However, because the parties here proceeded pro se in a small claims action, this

Court will construe the trial transcript in such a way as to give the parties the benefit of the doubt where at all possible. We will address Appellants' four factual arguments first and then turn our attention to Appellants' argument about their improper designation as defendants in this case.

I. Factual Arguments

A. Ownership of the Car

On the first day of trial, Kin questioned Iyar's ownership of the car; accordingly, we shall construe this as preserving the issue for appeal and address the merits of this argument. (*See* Tr. at 2: 14-27). Appellants argue that the court erroneously assumed that Iyar was the rightful owner of the car, even though the evidence suggested that, at the time of the accident, the car was still registered in her father's name. We hold, however, that the evidence on the record was sufficient to support a finding, implied or otherwise, that Iyar held equitable title to the car.

The court accepted as true Iyar's testimony that (1) she was operating under an agreement with her father to place the car in her name after she paid off a loan to him; (2) she had in fact paid off the loan and had been in possession of the car for over a week at the time of the accident; and (3) they simply had not had the time to effect the paperwork to transfer the title legally. Having accepted the above testimony, the court was entitled to imply that Iyar held equitable title to the car at the time of the accident. *See Kaminanga v. Sylvester*, 5 TTR 312, 316-17 (1971) (holding that a purchaser in possession holds equitable title and is entitled to legal title as soon as the

purchase price has been paid).² Moreover, Appellants never pursued any line of questioning to this effect at trial, other than the initial question by Kin. Accordingly, given the evidence presented, the court's finding was not clearly erroneous. We affirm on this issue.

B. Loss of the Car

The court's finding that Appellants were responsible for the loss of Iyar's car is the central finding of the underlying dispute here. Accordingly, we hold that this issue was preserved for appeal. Appellants argue that, in finding liability, the court merely relied on Iyar's self-serving testimony, in which she stated that (1) Jerry Nabeyama had called the shop to tow the car, and (2) two weeks later, she had called and spoken to Arminal, who informed her that they would hold her car for her for three months until she could procure a loan to pay for the repairs. Foremost, Appellants state that Iyar's failure to call Jerry Nabeyama at trial to corroborate Iyar's version of event caused a "gaping hole in appellee's version that made it incredible." (Appellant's Reply Br. at 2). Second, Appellants state that the court was never presented with documentary evidence supporting Iyar's claim

² It should be noted that the case cited above concerned title to land—not personal property. However we hold that, just as there was no statute of frauds in the Trust Territory requiring a writing for a contract for the sale of land, there is currently no statute of frauds in the Republic with respect to the sale of goods. Accordingly, we hold that the statement of law contained in *Sylvester* holds true here, i.e., a contract of sale and purchase contemplates a subsequent execution of a deed transferring title.

that Mark's Body Shop was ever in possession of the car. Instead, Appellants contend, the court impermissibly concluded that Mark's Body Shop was responsible for the loss of the car based solely on its finding that Arminal's testimony was incredible. Appellants state, "[a]lthough the trial court is given deference when it comes to credibility determinations, credibility determinations should be based on facts." *Id.*

Although we agree that more documentary evidence would be helpful to determine conclusively what happened in the underlying case, we also note that testimonial evidence, such as Iyar's credible testimony and Arminal's incredible testimony presented below, can logically and permissibly lead to a trial court's determination of liability. This is a classic case of "he said / she said" in the context of a small claims dispute. The trial court found that Iyar's testimony was corroborated by (1) Anderson's testimony about the auto shop's phone call protocol in which the female "mamasang" always answered the phone and then passed the caller along to the person best suited to their needs, and (2) the inherent contradiction in Arminal's testimony regarding the occurrence *vel non* of the phone call. Had the trial court found Iyar's testimony to be incredible and Arminal's testimony to be credible, it could have determined that Iyar had not sufficiently proved her claim and thus found no liability on behalf of Mark's Body Shop. Here, however, when both Iyar and the court questioned Arminal, the court disbelieved Arminal's answers. Indeed, this appears wholly justified in light of his contradictory testimony. Where "there are two permissible views of the evidence, the fact finder's choice cannot be clearly erroneous." *Ngiramos v.*

Dilubech Clan, 6 ROP Intrm. 264, 266 (1997). "Answers, or the lack thereof, to the probative questions of the court help the court make credibility determinations." *Worswick v. Kedidai Clan*, 14 ROP 161 (2006). The evasiveness and contradiction in Arminal's answers, coupled with corroboration by Anderson of Iyar's testimony, thus properly led the court to conclude that, based on the testimonial evidence, Iyar carried her burden and Mark's Auto Shop was liable for the loss of Iyar's car. We affirm on this issue.

C. Presence of a Contract

Appellants' argument that there was never any binding contract between the parties was never explicitly raised at trial; however, it was implied by the Appellants' testimony, in which each witness uniformly denied remembering speaking to her or seeing the vehicle. Accordingly, we shall address the merits of this argument as well. Appellants contend that there was no evidence that Iyar ever signed a contract containing the terms to which she testified, i.e., the three-month holding period and subsequent promise to repair. Appellants contend that the "formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange, and a consideration." *Palau Pub. Lands Auth. v. Tmui Clan*, 8 ROP Intrm. (2001) (citing *Kamiishi v. Han Pa Const. Co.*, 4 ROP Intrm. 37, 40 (1993)). Although it is true that no documentary evidence was ever produced proving a written contract between the parties, we hold that the combination of Arminal's incredible testimony with Iyar's credible testimony is sufficient to uphold the trial court's finding not only that Arminal possessed at least the apparent authority to bind Mark's Auto Shop but also that a

bailment was subsequently created between the parties.

[2] An agent's "apparent authority results from statements, conduct, lack of ordinary care, or other manifestation of the principal's consent, whereby third persons are justified in believing that the agent is acting within his or her authority." *Ngirachemoi v. Ingais*, 12 ROP 127, 130 (2005) (quoting 3 Am. Jur. 2d *Agency* § 76 (2002)). "Apparent authority arises when a principal places an agent 'in a position which causes a third person to reasonably believe the principal had consented to the exercise of authority the agent purports to hold.'" *Id.* (quoting *Makins v. Dist. of Columbia*, 861 A.2d 590, 594 (D.C. 2004)). As Iyar points out in her brief, she testified that she spoke with Arminal, who told her that the shop would hold the car for three months. Although Appellants argued at trial (1) that Arminal never spoke with Iyar and (2) even if he did, he lacked the authority to enter into contracts on behalf of the shop, the court disbelieved Arminal's testimony on this issue. Accordingly, in the court's permissible view, Arminal did in fact speak to Iyar about her car. Being in the position to take phone calls and make representations about the work of the shop is clearly a situation in which Arminal possessed at least apparent authority to bind the shop. Moreover, when the court discredited Romeo Loquez's ("Loquez") denial that Arminal was the person in charge of the shop when Mr. Bright Kin was off-island, the apparent authority theory holds even more sway. In light of the clear evasiveness of their answers at trial, we hold that the inferences drawn by the trial court as to Arminal's authority to bind the shop are permissible views of the testimonial evidence presented below and, once again, where "there

are two permissible views of the evidence, the fact finder's choice cannot be clearly erroneous." *Ngiramos v. Dilubech Clan*, 6 ROP Intrm. 264, 266 (1997).

For the same reasons, we hold that there was sufficient evidence below to support a finding that a bailment was created when Arminal assured her the shop would take care of the car for three months. Even though the trial court did not specifically address the issue of a bailment, the oral transaction is a classic example of one. As Iyar points out in her brief, the case at bar is similar to *Ngiralo v. Sbal*, 1 ROP Intrm. 85, 86 (Tr. Div. 1983). In *Sbal*, the Plaintiff took his car to Defendant's shop for repairs and, after a series of unfortunate events, the car was lost. The court stated,

[a] bailment is defined as "the delivery of personal property by one person to another in trust for a specific purpose, with a contract, express or implied, that the trust shall be faithfully executed, and the property returned or duly accounted for when the specific purpose is accomplished, or kept until the bailor reclaims it." 8 Am. Jur. 2d. *Bailments* § 2. There is no question that a bailment existed between plaintiff and defendant, and defendant was entrusted with plaintiff's vehicle for safe keeping while awaiting repair.

1 ROP Intrm. at 86. Here, the court's findings that the car was delivered to the shop—and

that Arminal promised the shop would take care of it for three months—was sufficient to create a bailment between the parties. Accordingly, we affirm on this issue.

D. Award

After making the above factual conclusions, the trial court awarded the sum of \$1,000.00 to Iyar. As Appellants rightly point out, however, the record is devoid of any evidence as to value of the car, much less the award of \$1,000.00. Iyar bore the burden of proof on the elements of her claim, which included proof of liability *and* damages. At no point during the three-day trial was the amount of damages ever discussed. In the absence of relevant evidence, a finding cannot be sustained on appeal. *Whipps*, 8 ROP Intrm. at 318. Furthermore, in her response brief, Iyar all but concedes that a remand is the most appropriate result with respect to this issue, acknowledging that the court never asked any questions about the amount of damages claimed. Accordingly, we hold that the trial court's award cannot be sustained on appeal because it is not supported by relevant evidence. We therefore remand this issue to the trial court for proceedings consistent with the determination of damages.

II. Legal Argument

As a final contention, Appellants challenge the court's treatment of Mark's Body Shop as a legal entity altogether. Appellants argue that Mark's Body Shop is not a legally recognized corporation and thus is not subject to suit; moreover, because Kin is not its legal owner (Anderson apparently is), the entire proceeding below was against the wrong defendant. After a thorough

scouring of the record below, the Court can find no instance where this argument was ever made by Appellants for purposes of preserving it on appeal.

[3] “When a party desires to raise an issue as to legal existence of any party or the capacity of any party to be sued . . . the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars within the pleader's knowledge.” ROP R. Civ. P. 9(a). The Court accepts Appellants' argument that small claims proceedings are informal and the parties are not normally bound by the specific strictures of the Rules of Civil Procedure. Appropriately, the Court does not expect these defendants to have raised this issue by some specific negative averment, and would be willing to accept any argument at all, even one that failed to include so-called supporting particulars. However, common sense and fairness dictate that the Court still insist the parties to have formulated some kind of objection at trial to an issue so fundamentally dispositive of the case, especially when the “actual” owner of Mark's Body Shop, Akemi Anderson, appeared and testified at trial.

According to the arguments made by the parties on appeal, Mark's Body Shop is not a registered corporation. We take the parties' word for it. Perhaps Iyar's uncertainty about Mark's Body Shop as a legal entity lead her to join Kin—the person who Iyar believed to be the legal owner of Mark's Body Shop—as a co-defendant in that action, instead of Anderson. Perhaps not. Whatever the reasoning, mistaken or not, behind Iyar's decision to sue these particular defendants, ROP R. Civ. P. 9(a) requires defendants in this case to correct the mistake at a far earlier

date than today. The purpose of this rule is clearly to avoid the perverse incentive of parties playing “gotcha” with the judicial system, i.e., wasting scarce judicial resources by allowing the court and the parties to execute a trial under the mistaken assumption about a party’s legal status. “This approach seems particularly appropriate because of the waste of judicial and litigant resources that would result from the dismissal of a suit as late as the trial when one of the parties lacks the requisite existence, capacity, or authority to sue or be sued.” 5A Charles Alan Wright and Arthur R. Miller, *Federal Practice & Procedure* § 1295 (3d ed. 2004). Had the Appellants raised this issue at trial, which they had ample opportunity to do, then according to the Republic’s liberal pleading rules, Iyar would no doubt have been allowed time to amend her pleading to include the “correct” parties. Failing to raise this clearly dispositive issue at trial prejudices Iyar, since the trial has now concluded. Accordingly, the Court finds that Appellants waived this issue by failing to raise it at trial. “Although an objection to a party’s . . . legal existence is not technically speaking an affirmative defense, it can be analogized to an affirmative defense and treated as waived if not asserted . . .” *Id.*

CONCLUSION

For the reasons set forth above, the Judgment of the Court of Common Pleas is AFFIRMED in part and REMANDED in part.