

CASMIR REMENGESAU,
Appellant,

v.

**ALFONSO DIAZ, in his personal
capacity, and under color of title as
SENATOR ALFONSO DIAZ; DIAZ
BROADCASTING COMPANY, d.b.a.
WFFM 89.5 Radio Station; and MEDAL
BELAU TV,**
Appellee.

CIVIL APPEAL NO. 10-029
Civil Action No. 08-322

Supreme Court, Appellate Division
Republic of Palau

Decided: June 29, 2011¹

[1] **Torts:** Defamation

Whether a communication is capable of a defamatory meaning is a question of law.

[2] **Torts:** Defamation

To create liability for defamation there must be a false and defamatory statement concerning another; an unprivileged publication to a third party; fault amounting to at least negligence on the part of the publisher; and either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

[3] **Torts:** Defamation

A statement is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

[4] **Torts:** Defamation

In determining whether a statement is defamatory, the court must determine whether the communication is reasonably capable of bearing a particular meaning.

Counsel for Appellant: J. Uduch Sengebau Senior

Counsel for Appellees: Salvador Remoket

BEFORE: ALEXANDRA F. FOSTER,
Associate Justice; KATHERINE A.
MARAMAN, Part-Time Associate Justice;
RICHARD H. BENSON, Part-Time
Associate Justice.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice, presiding.

PER CURIAM:

Appellant Casmir Remengesau appeals a June 18, 2010, Judgment and Decision, in which the trial court found Appellee Alfonso Diaz not liable for defamation against Remengesau. Specifically, Remengesau claims that the trial court erred in finding that (1) Diaz did not act with reckless disregard for the truth when Diaz broadcast the email message about Remengesau, (2) the email statement was non-defamatory, and (3) Remengesau was a “public official.” For the reasons that follow, we **AFFIRM** the trial court’s Judgment and Decision.

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

I. BACKGROUND

On October 20, 2008, Diaz received an email from a third party at his email address. The allegedly defamatory email reads:

Dear Senator Diaz,

The President has recently appeared on television claiming that all stimulus grants are reported via ribbon cutting ceremony to prove that funds were used as requested. I recently heard from sources that the Minister of Finance gave Ngaraard State the amount of \$50,000.00 stimulus grant to build a state office in Ngaraard State. The building has been paid for but has been abandoned since and no record of ribbons cutting ceremony has ever been reported. So presumably the president was lying about the stimulus grants unless of course those funds which were not appropriated by the OEK somehow leaked out from the National Government to the Ngaraard State Government.

Additionally, sources say that Casmere [sic] Remengesau had indicated that there are some funds somewhere within the government that can be used to pay Franny Reklai's construction company to build

a road to the President[']s mansion located in Choll, Ngaraard. Last weekend I visited the President[']s mansion and learned the public road to the beach needs resurfacing so I am disappointed that public roads are not maintained but yet new roads to single homes are being built.

Please discard this after reading for I don't want to get fired[.]

I remain anonymous for my safety[.]

Although Diaz believed he had never previously received an email statement from this anonymous individual, Diaz was familiar with the individual, had dealt with him before, found him trustworthy, and was familiar with his place of work. Diaz read the statement on his WWFM Radio Station on October 20, 2008. He did not first independently investigate whether national government funds were being used to build the road before airing the statement. In fact, requests for survey and procurement of easements to build a road leading to former President Remengesau's house were underway by the Council of Choll Hamlet. No funds of the national government were involved in the project.

At the time of the broadcast, Remengesau was employed as the National Planner for the Republic. He began working for the National Government in 1992 as Chief of the Division of Planning and Program. He

later became Financial Management Advisor, and subsequently became National Planner. As National Planner, Remengesau was involved in coordinating the functions of Revenue and Taxation, Personnel Human Resources, and Budgeting and Treasury. He was the person charged with preparing the national budget, providing statistics to various agencies, alerting agencies that fell behind on budget preparations, and orchestrating the finalization of the national budget to submit to the Minister of Finance and the President for approval and submission to the National Congress. He was also involved in the review process for Taiwan stimulus project grants. Remengesau was responsible for identifying sources of funding for capital improvement projects. He would make a list of recommendations, from which the President would decide the projects to receive funding. Moreover, Remengesau was a member of various committees and organizations, including the World Bank and the Compact Board of Trustees.

In his years of government service, Remengesau helped raise recognition and support for the establishment of a cohesive and coordinated framework for national planning, including the development of a reliable statistics dissemination system, the implementation of a sound public sector capital investment program, and improved accountability and productivity of governmental expenditures through the institution of medium term budgeting and performance management.

When Remengesau arrived at his office on October 20, 2008, his staff informed him of the statement aired by Diaz. His wife also called him and told him that Diaz had

accused him of “embezzlement.” Remengesau told his staff that he would demand a retraction and an apology from Diaz and that he would file a lawsuit if he did not receive both. Remengesau hired an attorney who wrote a letter demanding that Diaz issue an apology for airing the statement without first investigating whether national funds were involved in the road construction project. Remengesau’s attorney also emailed Diaz with a prepared statement for him to read on the radio. Diaz did not retract the statement or publicly read the prepared statement, but he did offer Remengesau free time on his radio station to respond to the statement. Remengesau refused the offer and instead filed this action against Diaz on November 25, 2008.

II. STANDARD OF REVIEW

[1] Whether a communication is capable of a defamatory meaning is a question of law. *See Ngiraingas v. Soalablai*, 7 ROP Intrm. 208, 209 (1999); *see also* Restatement (Second) of Torts § 614(1) (1977)). This Court reviews the lower court’s conclusions of law de novo. *Rechucher v. Lomisang*, 13 ROP 143, 145 (2006). This Court reviews the trial court’s findings of fact for clear error. *Nakamura v. Uchelbang Clan*, 15 ROP 55, 57 (2008). Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Id.*

III. DISCUSSION

Although Appellant sets forth two

questions presented on appeal,² the body of Appellant’s opening brief reveals three arguments. First, Appellant argues that the trial court erred in finding that Appellee did not act with reckless disregard for the truth when he broadcast the email statement about Appellant. Second, Appellant contends that the trial court erred in finding that the email statement was non-defamatory. Third, Appellant argues that the trial court erred in finding that Appellant is a public official. Appellee did not file a brief in response to Appellant’s opening brief.³ The Court will focus its discussion on whether the statement was defamatory.

[2-4] Palau has no civil statute regarding tortious defamation. In the absence of a local defamation statute, the Court seeks guidance from the Restatements of Law. 1 PNC § 303. To create liability for defamation there must be:

- (a) a false and defamatory statement concerning another;
- (b) an unprivileged publication to a third party;
- (c) fault amounting to at least negligence on the part of the publisher; and
- (d) either actionability of the statement irrespective of

special harm or the existence of special harm caused by the publication.

Restatement (Second) of Torts § 558. A statement is defamatory “if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *Id.* at § 559. In determining whether a statement is defamatory, the court must determine whether the communication is reasonably capable of bearing a particular meaning. Restatement (Second) of Torts § 614(1)(a) and cmt b.

Here, the email statement is not reasonably capable of bearing a defamatory meaning that Appellant Remengesau mishandled public funds or is involved in some corrupt practices. The first paragraph of the email suggests the possibility that the Executive and the Legislature mishandled stimulus funds to build a state office for Ngaraard State. Then, the first sentence of the next paragraph names Appellant Remengesau and states that he “had indicated that there are some funds somewhere within the government that can be used to pay Franny Reklai’s construction company to build a road to the President[’]s mansion located in Choll, Ngaraard.” Unlike the second paragraph, the first paragraph does not name Appellant or the road; rather, it pertains to a state office and the President. Contrary to Appellant’s suggestion, the first paragraph does not affect the meaning of the second paragraph as they clearly concern different government offices and projects. Accordingly, the first paragraph is not reasonably capable of bearing a defamatory meaning toward Appellant because it does not pertain to Appellant at all.

² The two questions presented are: (1) whether appellee acted with reckless disregard for the truth of the matter in broadcasting the email statement about appellant, and (2) whether the trial court erred in finding that appellant was a public official. Appellant’s Opening Brief at 4.

³ The Court denied Appellee’s late motion to extend time when he failed to show excusable neglect.

The first sentence of the second paragraph, when read alone, is also not reasonably capable of conveying a defamatory meaning. The first paragraph is the only part of the email statement that suggests misappropriation of funds and dishonesty. The second paragraph is not reasonably capable of conveying such meaning by use of vague language that unidentified “sources” name Appellant Remengesau as having indicated that there are “some funds somewhere within the government” to build a road to the President’s house. Such a statement suggests merely that Appellant is aware of the availability of government funds, not that he is embezzling money or is engaged in corruption. Appellant’s failure to establish that the statement is defamatory precludes a finding of defamation because Appellant must satisfy all elements of liability for defamation. *See* Restatement (Second) of Torts § 613(1) (plaintiff bears the burden of proving all elements of a cause of action for defamation). Because the trial court’s reading of the statement was not clear error, the Court need not address Appellant’s other arguments as to whether Appellant is a public official or whether Appellee acted with reckless disregard for the truth when he broadcast the email statement.

IV. CONCLUSION

For the reasons set forth above, the trial court’s Judgment and Decision are hereby **AFFIRMED**.