

**KIONE ISECHAL,  
Appellant,**

**v.**

**UMERANG CLAN, HILARIA SBAL,  
SABINO SBAL, MITSKO SBAL,  
VICENTA S. OLKERIIL, FRANCISCA  
SENGBAU, and BASILIUS SBAL,  
Appellees.**

CIVIL APPEAL NO. 09-026  
Civil Action No. 05-222

Supreme Court, Appellate Division  
Republic of Palau

Decided: April 25, 2011<sup>1</sup>

[1] **Custom:** Burden of Proof; Clan  
Membership

A party claiming to be a strong senior member of a clan has the burden of proving such status by a preponderance of the evidence.

[2] **Custom:** Proof of Custom

A party must establish the existence and content of a claimed custom by clear and convincing evidence.

[3] **Custom:** Proof of Custom

Where there are two permissible views of the evidence as to proof of custom, the fact finder's choice between them cannot be clearly erroneous.

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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).

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

Conclusions of law, including a court's interpretation of a contract, are reviewed de novo.

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

The findings of fact underlying an award of damages are reviewed under the clearly erroneous standard.

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

A trial court's ruling on a motion to alter or amend judgment pursuant to Rule 59 is reviewed for an abuse of discretion.

[7] **Custom:** Proof of Custom

Matters of custom are resolved on the basis of the record in each case.

[8] **Contracts:** Illegality

A contract that is in violation of the law is illegal, and thus void and unenforceable.

[9] **Contracts:** Restitution

A person who has been unjustly enriched at the expense of another is required to make restitution to the other. Ordinarily, the measure of restitution is the amount of enrichment received. In an action of restitution in which the benefit received was money, the measure of recovery for this benefit is the amount of money received.

[10] **Contracts:** Restitution

A person who has a duty to pay the value of a benefit which he has received, is also under a duty to pay interest upon such value from the time he committed a breach of duty in failing to make restitution if, and only if, the benefit consisted of a definite sum of money.

[11] **Damages:** Post-Judgment Interest; Pre-Judgment Interest

Ordinarily only simple interest is allowed.

[12] **Damages:** Post-Judgment Interest

Post-judgment interest is set by statute at 9%.

[13] **Damages:** Pre-Judgment Interest

For prejudgment interest, in the absence of a statute, the Court is as competent to determine the amount of interest awarded as compensation to lost use of money as it is any other item of damages.

[14] **Civil Procedure:** Motion to Alter or Amend Judgments; **Judgments:** Motion to Alter or Amend Judgment

Rule 59(e) allows a party to direct the trial court's attention to newly discovered material evidence or a manifest error of law or fact. The rule does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to advance arguments that could and should have been presented to the trial court prior to judgment.

Counsel for Appellant: Oldiais Ngiraikelau  
Counsel for Appellees: Raynold B. Oilouch

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; RICHARD H. BENSON, Part-time Associate Justice.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

Appellant Kione Isechal (hereinafter “Isechal” or “Appellant”) appeals an August 17, 2009 Judgment and Decision, and September 4, 2009 Order awarding ownership of a Clan house and land named Remiang to Appellees Umerang Clan, et al. (hereinafter “Appellees”), and requiring Appellees to repay Isechal the \$40,000 he paid to the contractor, plus interest. Specifically, Appellant challenges the trial court’s findings that: (1) Appellees are ochell members of Umerang Clan; (2) Appellees are strong senior members of Umerang Clan; (3) Appellees’ assent was required before strong senior members of Umerang Clan could enter into a contract with Appellant concerning the use and sale of Remiang and the Clan house; and (4) interest will be calculated at 3% per year from March 29, 2004, to the judgment date, and 9% per year from the judgment date until the debt has been repaid. For the reasons outlined below, we **AFFIRM** the Judgment and Decision, and Order of the trial court.

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

### A. *Factual Background*

The dispute in this case concerns Umerang Clan land named Remiang and a

Clan house that was built upon it in 1999. In 1999, Rechebong Daniel Miner and some strong senior members of Umerang Clan—not including Appellees—decided to build a Clan house on Remiang and entered into a contract with King’s Enterprises (hereinafter “King’s Enterprises” or “the contractor”) to build the Clan house at a cost of \$67,393.99. The contract included a lien provision, which provided that if Umerang Clan defaulted on payments to King’s Enterprises, King’s Enterprises may take possession of the Clan house, and hold the property as its own if not redeemed. Appellees were neither notified of the construction of the new Clan house, nor consented to its construction. After the Clan house was complete, Rechebong Miner and EbilRechebong Adelina Isechal held an ocheraol but raised only \$25,000, over \$40,000 short of the amount needed to repay the contractor for the Clan house. Clan members—not including Appellees—met again to resolve repayment of the unpaid debt to the contractor. They held a second ocheraol, where some money was raised, but again fell short of the \$40,000 needed to pay the contractor. The Clan then sought a loan from First Commercial Bank, but its application was denied.

When Umerang Clan was unable to raise the funds, and facing repossession calls by King’s Enterprises, Rechebong Miner, EbilRechebong Adelina Isechal and other strong senior members of Umerang Clan asked Isechal to repay the debt to King’s Enterprises, with the expectation that the Clan would repay him. Before paying \$40,000 to the contractor for the Clan’s debt, Isechal wanted assurances from the clan that they would repay the money. On February 12, 2002, Isechal, Rechebong Miner and

EbilRechebong Adelina Isechal executed a land use right agreement. Then on March 27 through March 29, 2002, Isechal and Umerang Clan entered into an agreement, providing that Isechal was “willing to assist the Clan . . . by paying off the outstanding balance to the contractor on the account of the Clan, taking title to the premises, and granting the Clan the opportunity to repay such sums expended by [Kione] Isechal, and any additional costs incurred by Isechal in maintaining the premises and protecting title and possession thereof, with interest, in order to reacquire the premises.” In consideration of Isechal’s payment of \$39,348.83 to King’s Enterprises, the Clan “shall convey the premises to Isechal” as set out in the Warranty Deed, with the repayment option. The agreement was signed by Isechal, Rechebong Miner, and EbilRechebong Adelina Isechal. On March 28, 2002, Rechebong Miner, EbilRechebong Adelina Isechal, Isaac Soaladoab, Gracia Yalap, Joyce Salii, and Ngirutelchii Ngirngesechei (Adelina Isechal’s brother) signed the Warranty Deed as strong senior members of Umerang Clan, assigning their “right, title and interest in” Remiang to “Grantee,” Kione Isechal.

On March 28-29, 2002, Isechal, Rechebong Miner and Ebil Rechebong Adelina Isechal also signed an Option to Purchase Real Property. Umerang Clan reserved the option to repurchase Remiang if it paid Isechal \$39,348.83, plus the costs of legal services in connection with the transaction, interest of 13.5% per year to the date of purchase, and costs incurred by Isechal in maintaining the property and evicting “any persons residing on the premises without authorization” with 13.5% interests on these costs. Payment was to be in cash or cashier’s

check. The option expired at 12:00 a.m. on March 29, 2004. The March agreement, Warranty Deed, and Option to Purchase Real Property (hereinafter “the Remiang contracts”) superceded the February land use agreement. Appellees received no notice and never attended any meetings to discuss the February or March 2002 contracts.

On April 10, 2002, Isechal filed notice in the local newspapers seeking to quiet title. Many objections to Isechal’s notice were timely filed. Appellees received further notice of Isechal’s claim on Remiang on September 5, 2002, when Isechal and others sought to halt the burial of Celestino Kerai by filing for a temporary restraining order in court.

On May 3, 2002, Isechal, Rechebong Miner, and Isaac Soaladoab received a foreclosure notice from King’s Enterprises, threatening to seize the property unless it received \$43,410.51 by May 27, 2003. On that date, the contractor signed a release of claims in return for Isechal’s payment of \$40,000 by May 29, 2003. On May 29, Isechal wrote a check to King’s Enterprises on his company checkbook. Appellees never repaid Isechal.

### *B. Procedural History*

On September 19, 2005, Umerang Clan, its chief, Rechebong Sabino Sbal, along with Ngirchongor Basilius Sbal, Vicenta Olkeriil, Mitsko Sbal, Francisca Sbal and Hilaria Sbal, filed a complaint seeking to eject Isechal from Remiang and the Clan house built in 1999, to bar Isechal from returning to that house and land, and damages, which flowed from Isechal’s allegedly unlawful occupation of Remiang. Umerang Clan also

argued that Isechal had no right to the property or the house because he did not abide by the requirements of the Mortgage Act, 39 PNC § 609 et seq. On January 23, 2009, Isechal answered and counter-claimed. He denied the allegations of unlawful occupation, countered that he had properly gained ownership of Remiang, including the house, from Umerang Clan after the Clan was unable to pay for the construction of the Clan house on Remiang, and Isechal agreed to pay the outstanding debt in return for rights to the property, to include outright ownership of Remiang if the Clan did not repay him within two years of signing the Remiang contracts. When the Clan did not repay Isechal within the prescribed period, both Remiang and the Clan house reverted to him. Isechal argued, alternatively, that if the trial court found that the Clan house and land belong to the Clan, he sought compensation for the \$40,000 he paid to the contractor, along with interest, improvements and other damages, and attorney's fees.

In response to the counterclaim, Umerang Clan alleged that Isechal's contracts are unenforceable. Remiang belonged to Umerang Clan prior to any contact with Isechal. Under Palauan custom, strong senior members of the clan must agree to a transfer of clan land. Appellees are strong senior members of Umerang Clan, and they neither reviewed nor signed the contracts transferring a use right and then outright ownership of Remiang to Isechal.

On March 5, 2009, Isechal moved to dismiss Umerang Clan's claims on the grounds of *res judicata*. On March 31, 2009, Umerang Clan opposed the motion to dismiss. The trial court denied Isechal's motion on April 14, 2009.

This matter went to trial on May 4, 2009, and continued for three weeks, through May 22, 2009. The parties closed on June 25, 2009.<sup>2</sup>

On August 17, 2009, the trial court issued a Judgment and Decision, ultimately finding that the land of Remiang and the Clan house on Remiang are the property of Umerang Clan. In its findings of fact, the trial court first found that Appellees are all ochell members of Umerang. The court traced Appellees' ancestry to Dirratmekebud, a female ochell member of Iderbei Clan. The court explained that because Iderbei Clan and Umerang Clan are talchad, or "one people," Dirratmekebud was also an ochell of Umerang Clan. Further evidence of the talchad relationship between Iderbei and Umerang Clans is that Dirratmekebud was adopted, or brought, to Umerang Clan by Ngitong, who came from Orakiblai Clan in Angaur to assume the chiefly title of Rechebong of Umerang Clan.<sup>3</sup> Dirratmekebud later became EbilRechebong of Umerang Clan and was buried on the Umerang stone platform. Dirratmekebud's descendants also considered themselves ochell of Umerang Clan. Many of them were born and raised on Umerang Clan land, bore Umerang Clan titles, and were buried on the Umerang stone platform. One of Dirratmekebud's descendants, Elsau, is the mother of the Appellees in this case. As to Elsau's children, Basilius Sbal was Ngirchongor before passing away recently;

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<sup>2</sup> One witness, Palauan customary expert Florencio Gibbons, completed his testimony on June 23, 2009, because of a previously scheduled medical appointment in the Philippines.

<sup>3</sup> Like Iderbei, Orakiblai is also talchad with Umerang.

Sabino Sbal bears the title Rechebong; and Vicenta is LalaAdelbai. Mitsko Sbal was the daughter of Kerai, one of Elsau's sons, and Elsau adopted her. Finally, Francisca Sbal was Elsau's natural daughter, and was adopted to her father's family. They have all performed services for Umerang Clan and consider themselves ochell members of Umerang Clan.

The trial court also found clear and convincing evidence based on expert witness testimony that all strong senior members must agree to, or at least be notified of, a transfer of clan land before that transfer is valid. Strong senior members are typically older people who have performed services for the clan, although there may be younger strong senior members as long as they have good knowledge of things in their clan. To determine relative strengths of strong senior members, a clan considers: participation in clan affairs, knowledge of internal clan matters, services to the clan and the clan's village, the ability to make peace within the clan, knowledge of the history of the clan, financial contributions to the clan, and whether the member is ochell or ulehell. A clan member's ancestors—whether they had held titles, whether they were buried on the stone platform, whether they had managed clan lands—are also relevant to strength within the clan. The court concluded that given Appellees' status as ochell members and their involvement in clan affairs, Appellees are all strong senior members of Umerang Clan.<sup>4</sup> The court further concluded that given Appellees' status as strong senior members, they should have approved any proposed transfer of land. Therefore, the Remiang

contracts signed by Isechal and some—but not all—of the strong senior members of Umerang Clan are null and void.

Recognizing that Appellees would be unjustly enriched, and Isechal unjustly penalized, if Remiang and the Clan house were returned at no cost to Umerang Clan, the trial court ordered that Appellees repay Isechal \$40,000, in addition to 3% interest per year from March 29, 2004, to the judgment date, and 9% per year from the judgment date until the debt has been repaid. The trial court found no basis for Isechal to receive compensation for any improvements, or other increased value of the property. The court ordered that Isechal is allowed to remain on the property until Appellees complete payment to him, but since Remiang is Umerang Clan property, Isechal cannot expel the residents of the other house on Remiang. Finally, because the trial court found that the Remiang contracts were voidable under Palauan custom, the court did not address the applicability of the Mortgage Act.

On August 27, 2009, Isechal filed a motion to amend the trial court's Judgment and Decision concerning the interest calculation. On September 4, 2009, the trial court entered an order denying the motion to amend.

## II. STANDARD OF REVIEW

[1-6] A party claiming to be a strong senior member of a clan has the burden of proving such status by a preponderance of the evidence. *Dokdok, v. Rechelluul*, 14 ROP 116, 118 (2007) (citing *Ngiramechelbang v. Katosang*, 8 ROP Intrm. 333 (Tr. Div. 1999)). A party must establish the existence and

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<sup>4</sup> The trial court also found that Isechal is also a strong senior member of Umerang; however, this is not an issue on appeal.

content of a claimed custom by clear and convincing evidence. *Children of Matchiau v. Klai Lineage*, 12 ROP 124, 125 (2005). This Court reviews the trial court's findings of fact for clear error. *Masters v. Adelbai*, 13 ROP 139, 140-41 (2006). Under this standard, if the trial court's findings of fact are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Appellate Division is left with a definite and firm conviction that an error was made. *Ngirutang v. Ngirutang*, 11 ROP 208, 210 (2004). Where there are two permissible views of the evidence as to proof of custom, the fact finder's choice between them cannot be clearly erroneous. *Id.* Conclusions of law, including a court's interpretation of a contract, are reviewed de novo. *Estate of Rechucher v. Seid*, 14 ROP 85, 88 (2007). The findings of fact underlying an award of damages are reviewed under the clearly erroneous standard. *Gibbons v. Cushnie*, 8 ROP Intrm. 3, 6-7 (1999). Finally, the trial court's ruling on a ROP R. Civ. P. 59 motion is reviewed for an abuse of discretion. *Dalton v. Borja*, 8 ROP Intrm. 302, 304 (2001).

### III. DISCUSSION

Although divided into five subheadings, Appellant set forth three key arguments on appeal. First, Appellant argued that the trial court erred in finding that Appellees are ochell members of Umerang Clan. Second, Appellant contended that the trial court erred in finding that Appellees are strong senior members of Umerang Clan, and thus needed to assent to the transfer of Remiang property and the clan house to Appellant. Third, Appellant argued that the trial court erred in determining the interest

rates that apply to Appellees' repayment of the \$40,000.

Appellees responded to each of Appellant's appellate arguments, essentially arguing that the trial court's findings were proper. Appellees further argued that Appellant's appeal must be dismissed because under Palauan custom, a clan house and/or clan land cannot be transferred to anyone.

Appellant replied to Appellees' response with three arguments. First, Appellant argued that Appellees cannot be ochell members of Umerang Clan because they have not established any blood connection between Iderbei Clan and Umerang Clan for there to be a talchad relationship. Second, Appellant contended that, under Palauan custom, a clan house and land may be transferred to an individual with the consent of the strong senior members. Third, Appellant argued that, under Palauan custom, Appellees were bound by the actions of their predecessors and are therefore liable under the terms of the contract, including the contractual stipulation of interest.

#### *A. Whether the trial court committed clear error in finding that Appellees are all ochell of Umerang Clan*

Appellant presented two arguments for why the trial court committed clear error in finding that Appellees are all ochell of Umerang Clan. First, Appellant contended that Appellees' ancestor Dirratmekebud was not talchad with Umerang Clan because Appellees did not satisfy their burden in proving that she had a blood connection with Umerang Clan. Second, Appellant argued that even if Dirratmekebud was talchad with

Umerang Clan, her ochell status in Iderbei Clan did not translate to ochell status in Umerang Clan because an individual can be an ochell of only one clan.

[7] Matters of custom are resolved on the basis of the record in each case. *Saka v. Rubasch*, 11 ROP 137, 141 (2004). This practice allows for the Court to recognize the evolution of custom and ensures that, whatever the result in any particular case, the issue may be addressed anew in subsequent cases and not be strictly determined by precedent, as are matters of law. *Dokdok*, 14 ROP at 119. Treating custom as a factual matter also limits the depth of appellate review. *Id.* If the trial court’s findings of fact are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Appellate Division is left with a definite and firm conviction that an error was made. *Ngirutang*, 11 ROP at 210.

First, as to whether Dirratmekebud, as a member of Iderbei Clan, had a talchad relationship with Umerang Clan, the trial court heard expert testimony concerning the Palauan customary term, talchad. Appellant’s witness Florencio Gibbons, an expert on Palauan custom, testified that “[talchad] means that we’re related either by through the father or through the mother. When we’re all together we generally just say we’re talchad but then we classify whether we come from a sister or a brother but when you say talchad, they’re related by blood.” Gibbons also testified that “[s]ome members from Clan D can be talchad with Clan U, not all of them.” Gibbons further clarified his definition of talchad with the following testimony:

Q: So those some members that you say they can be talchad, they are talchad by blood relation?

A: Yes, there’s some blood relation.

Q: Okay. And if there is no blood relation we do not refer to those members as talchad, would that be correct under Palauan custom?

A: To my knowledge, it’s like that.

Q: And so we would simply refer to those who are not talchad members of Clan U and Clan B as simply related through this clan relationship kaukebliil, would that be correct under Palauan custom?

A: They’re related by clan or we’re from the clan.

Appellees’ expert witness, Reklai Raphael B. Ngirmang, also testified to the definition of talchad. He testified that “if we use the Palauan saying that we’re talchad or one people then they’re related.” He further clarified that “[i]n Palauan, when we say talchad or one people, we’re talking blood relation. So the people of Iderbei and Umerang are one people.” Although both Gibbons and Reklai Ngirmang agree that the Palauan customary term of talchad means that there is a blood relation between clans, they disagree as to the degree of specificity to which one needs to identify his or her blood

relation to the other clan. While Gibbons testified that only some members of a clan can be talchad with another clan, because one must trace his or her blood relation to a specific member of the other clan, Reklai Ngirmang testified that talchad is simply the blood connection between two clans. Both of these views of talchad are permissible and the trial court's choice as to Reklai Ngirmang's definition cannot be clearly erroneous.<sup>5</sup>

On the issue of whether Dirratmekebud was talchad with Umerang Clan, the trial court also heard lay testimony concerning Dirratmekebud's history and the relationship between Iderbei and Umerang Clans. Appellant did not contest that Appellees are descendants of Dirratmekebud. Rather, Appellant disputed that Dirratmekebud was talchad with Umerang Clan. Appellees' lay witness, Vicenta Olkeriil testified that Dirratmekebud was an ochell of Iderbei Clan of Ngiwal and that Umerang Clan and Iderbei Clan are related. Vicenta confirmed that members of Iderbei Clan are also members of Umerang Clan, and specifically, that strong female members of Iderbei Clan are also strong female members of Umerang Clan. She also testified that Dirratmekebud was a member of Umerang Clan by way of her membership in Iderbei Clan. Another witness for Appellees, Silil Meltel, testified that he is a member of Iderbei Clan, that there is a relationship between Iderbei Clan and Umerang Clan, and that he is also a member of Umerang Clan. Silil further testified that Iderbei and Umerang are one house and that was why a man came to Iderbei

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<sup>5</sup> The trial court further explained that Reklai Ngirmang's credibility was heightened in this case because he had previously sided with Appellant's faction in a past case.

to get Dirratmekebud to be his helper when he went to bear the Umerang Clan title of Rechebong. Confirming Vicenta and Silil's testimonies was Rechebong Sabino Sbal, who explained that Iderbei and Umerang Clans are related, and that they are two clans in two different places, but members of one clan are members of the other clan. The trial court based its finding on this lay testimony, finding that Iderbei Clan and Umerang Clan are talchad and that Dirratmekebud, an ochell of Iderbei, was talchad with Umerang. The trial court's finding is supported by evidence in the record such that a reasonable trier of fact could have reached the same conclusion, and is therefore not clearly erroneous.

As to whether an ochell of Iderbei can also be an ochell of Umerang, by virtue of the talchad relationship between the clans, the trial court heard testimony from expert witnesses. Appellant's expert witness Gibbons testified that one cannot be an ochell of more than one clan because that would mean the individual has more than one birth mother. Appellees' expert witness Reklai Ngirmang testified that "if a female of Umerang bears a child then it would be an ochell of Iderbei because they are one people." Again, Appellees' lay witness testimony confirmed Reklai Ngirmang's testimony: that through the relationship of Iderbei Clan and Umerang Clan, the members of Iderbei Clan are members of Umerang Clan.

The trial court ultimately found that because the clans are talchad, an ochell of Iderbei Clan is also an ochell of Umerang Clan. Appellant argued that there is no evidence in the record that Appellees are ochell of Umerang Clan, other than the bare assertion that the members of Iderbei Clan and

Umerang Clan are talchad. In support, Appellant quoted a recent opinion of this Court, which states that “ochell status within a clan is typically determined based on bloodlines, birthright, and ancestry, rather than actions or behavior.” *Imeong v. Yobech*, 17 ROP 210, 218 (2010). However, the Palauan custom that ochell status is typically determined by bloodlines does not negate the possibility that a person can be an ochell of more than one clan, particularly where those clans are talchad, or blood-related. The trial court’s conclusion that a person can be an ochell of more than one clan is supported by *Delemel v. Tulop*, 3 TTR 469 (1968), in which the Trial Division of the High Court for Palau District held that a person can be a strong member and stand in the position of an ochell of another clan, while still being a member or a true ochell of his own clan.<sup>6</sup> 3 TTR at 478-79. The court’s choice between two permissible views of the Palauan custom of ochell status—that one can be an ochell of two clans through the talchad relationship—cannot be clearly erroneous. Although we **AFFIRM** the trial court’s ruling that Appellees are

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<sup>6</sup>Although *Delemel* is not exactly on-point with the present case, it is instructive as to whether an individual can be an ochell of more than one clan. In *Delemel*, the Ngerbuuch Clan had died out in the female line and there were no ochell remaining in the true literal sense. The last living member of the Ngerbuuch Clan was a man, whose children considered themselves ochell, as there were no other true ochell members. The Court explained that “[i]n such a situation it is well recognized that the term ‘ochell’ must be used in a figurative or simulated sense. Anthropological studies have also confirmed that persons may properly arrive at the status of ‘strong members’ and be considered as ‘ochell’ without being members by blood in the female line.” *Delemel*, 3 TTR at 479.

ochell members of Umerang Clan, we end by reiterating that this holding is based on the specific facts and circumstances found in the record of this case. *See Saka*, 11 ROP at 141.

*B. Whether the trial court committed clear error in finding that Appellees are all strong senior members of Umerang Clan*

Appellant brought forth two arguments here. First, Appellant argued that even if Appellees are ochell members of Umerang, they are not strong senior members. Second, Appellant contended that Appellees are, at best, ulechell members of Umerang Clan and not strong senior members of the Clan. Because we have found that the trial court did not commit clear error in finding that Appellees are ochell of Umerang Clan, we will not address Appellant’s second argument.

At trial, the court heard testimony from expert witnesses concerning the characteristics of a strong senior member. Both Appellant and Appellees’ expert witnesses agreed on the characteristics of strong senior members. Appellees’ expert witness Reklai Ngirmang testified that a strong senior member participates in clan functions, has knowledge of internal clan affairs, performs services for the clan, and keeps peace within the clan. Reklai Ngirmang also testified that ochell members are stronger than ulechell members in a clan. He added that further evidence of an individual’s strong senior member status is whether that individual has close relatives (e.g. mother or maternal uncle) buried on the clan’s stone platform. Appellees’ expert witness Rechebal Takeo Ngirmekur explained that strong senior members are “[t]he ones doing all the services, the ones who pay the debts, the ones who can buy nglosech.”

Ngirmekur further clarified that although all ocell are strong, “the strongest of them are the ones who give out more money.” Appellant’s expert witness Gibbons agreed that an individual is a strong member of a clan if that individual’s mother is buried on the stone platform because normally it would be the strong members of the clan who would be buried there. Gibbons added that further evidence of one’s strength in a clan is whether one’s mother and relatives administered or controlled the properties of the clan, or bore titles in the clan. As to contracts concerning clan land, all of Appellees’ and Appellant’s expert witnesses agreed that for a clan to transfer clan land or grant a use right to clan land or a clan house, all strong senior members must at least be informed, if not give their consent.<sup>7</sup>

At trial, the court heard testimony from various lay witnesses for Appellees that Appellees performed services to Umerang Clan, and have ancestors who bore titles in the Clan and are buried on the Clan stone platform. Although Appellant contended that Appellees performed few services to the Clan,

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<sup>7</sup> Appellees’ witness Reklai Ngirmang first testified that for a transfer of clan land, the strong senior members “have to know because they’re from the clan.” He later testified that their consent is required for a transfer of clan land. He further testified that for a clan to grant a use right to clan land or a clan house, the male and female title holders of the clan must obtain the consent of the strong senior members. Appellees’ expert witness Ngirmekur testified that the strong senior members of a clan must consent to the transfer of clan land or a clan house, or the grant of a use right to clan land or a clan house. Appellant’s expert witness Gibbons testified that an ulehell strong senior member “would probably only be informed but his consent is not necessary.”

there is evidence in the record to support the trial court’s finding that Appellees are strong senior members of Umerang Clan. Vicenta testified that all of Appellees have been performing services for Umerang Clan, and that they are all strong senior members of the Clan. Silil testified that Rechebong Sabino Sbal is in charge of Umerang Clan and that Appellees’ mothers were the ones taking care of Umerang. Sabino testified that after the war to the present time, his uncle and other family members have performed Umerang Clan customs; Sabino also had the Umerang Clan stone platform repaired. Sabino further testified that his family has attended the customs of other clans connected to Umerang Clan because those clans have relation to Umerang Clan. Moreover, Thomas Aguon testified that he has attended customs, including funerals, of Umerang Clan with Appellees. Regardless of Appellees’ services or participation in Umerang Clan customs, there was testimonial evidence that Appellees’ relatives considered themselves ocell members of Umerang Clan, bore children and raised them on Umerang Clan land, held titles in Umerang Clan, and are buried on the Umerang stone platform. (V. Olkeriil, 5/6/09-10:28:00-11:06:00; 1:03:00-1:44:50.) Contrary to Appellant’s argument, there was extensive evidence in the record that a reasonable trier of fact could have come to the same conclusion as the trial court that Appellees are strong senior members of Umerang Clan. Thus, the trial court’s finding is not clearly erroneous and we **AFFIRM** the trial court’s ruling that Appellees are strong senior members of Umerang Clan. Further, because Appellees are strong senior members of Umerang Clan, we **AFFIRM** the trial

court's finding that Appellees' assent<sup>8</sup> was required before Umerang Clan could enter into the Remiang contracts. In affirming the trial court's finding that Umerang Clan needed Appellees' consent concerning the Remiang contracts, the panel need not decide the issue raised by Appellees of whether, under Palauan custom, a clan house or clan land can be given to a person to be his individual property.

*C. Whether the trial court committed clear error in setting the interest rate*

Appellant contended that the trial court applied the incorrect interest rate to the \$40,000 owed to him by Appellees. Specifically, Appellant argues that the trial court found that the Remiang contracts are enforceable against Appellees and that the 13.5% interest rate contained in those contracts apply here. Appellant specifically claims that "the trial court did find that Appellees were bound by the actions of their predecessors and, therefore, committed a breach of duty when they failed to pay Defendant by March 29, 2004, as required in the contract. The trial court restored the terms of the contract, found Appellees liable thereunder, and required them to satisfy the obligations imposed thereunder." Contrary to Appellant's contention, the trial court did not find that the Remiang contracts were enforceable. Rather, the trial court stated that it was "inclined to view this matter through the lens of equity and restitution, instead of breach of contract, however, since it has just

<sup>8</sup> As discussed *supra*, strong senior members must either be informed of a transfer of clan land or give their consent. The distinction is irrelevant because the parties do not dispute the trial court's finding that Appellees were not informed of and did not consent to the Remiang contract.

decided that the March, 2002 contracts are voidable under Palauan custom." Regardless, we review the court's interpretation of a contract de novo. *Estate of Rechucher*, 14 ROP at 88.

[8] Under Palauan statute, "[t]he recognized customary law of the Republic shall have the full force and effect of law." 1 PNC § 302. A contract that is in violation of the law is illegal, and thus void and unenforceable. *See* Restatement (Second) of Contracts § 178(1) (1981) ("A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable."); 17A Am. Jur. 2d Contracts § 223 (2004) ("An illegal contract is a promise that is prohibited by law because the performance, formation, or object of the agreement is against the law. . . . A contract that is illegal or in violation of the law is void."). The parties do not dispute that under Palauan custom, all strong senior members of a clan must consent to the transfer of clan land. Here, because Appellees are strong senior members of Umerang Clan, and their consent was not obtained before Umerang Clan entered into the Remiang contracts, the contracts are in violation of Palauan customary law. Thus, the contracts are void and unenforceable.

[9] In reliance on the Remiang contracts, Appellant paid King's Enterprises \$40,000. As the trial court correctly noted, if Appellees regained Remiang and the Clan house at no cost, Appellees would be unjustly enriched, and Appellant unjustly penalized. *See ROP v. Reklai*, 11 ROP 18, 22 (2003) ("Unjust enrichment occurs where a person receives a benefit and the retention of the benefit is unjust."). Under the common law concept of

restitution, “a person who has been unjustly enriched at the expense of another is required to make restitution to the other.” Restatement of Restitution § 1 (1937). “Ordinarily, the measure of restitution is the amount of enrichment received.” *Id.* at Cmt. a. “In an action of restitution in which the benefit received was money, the measure of recovery for this benefit is the amount of money received.” *Id.* at § 150. The benefit to Appellees was Appellant’s payment of \$40,000 to the contractor for the Clan’s debt, and Appellant is entitled to recover that amount from Appellees. We therefore agree with the trial court that the proper way to view this case is through the lens of equity and restitution.

[10] Appellant is also owed interest on the \$40,000. “[A] person who has a duty to pay the value of a benefit which he has received, is also under a duty to pay interest upon such value from the time he committed a breach of duty in failing to make restitution if, and only if: (a) the benefit consisted of a definite sum of money.” *Carlos v. Whipps*, 7 ROP Intrm. 73, 74 (1998) (quoting Restatement of Restitution § 156 (1938)). In other words, “interest may be allowed as justice requires on the amount that would have been just compensation had it been paid when performance was due.” Restatement (Second) of Contracts § 354(2) (1981). Under the Remiang contracts, Appellees’ repayment of the \$40,000 to Appellant was due on March 29, 2004. Because the benefit consisted of a definite sum of money, Appellees have a duty to pay interest on the \$40,000 from the date payment became due, March 29, 2004.

[11-13] Next, the Court must determine the rates of prejudgment and post-judgment

interest. “Ordinarily only simple interest is allowed.” Restatement of Restitution § 156 Cmt. b. Post-judgment interest is set by statute at 9%. 14 PNC § 2001. As for prejudgment interest, “[i]n the absence of a statute, the Court is as competent to determine the amount of interest awarded as compensation to lost use of money as it is any other item of damages.” *A.J.J. Enterprises v. Renguul*, 3 ROP Intrm. 29, 31 (1991). The findings of fact underlying an award of damages are reviewed for clear error. *Gibbons*, 8 ROP at 6-7. The trial court established 3% as the prejudgment rate of interest, explaining that it was guided by 35 PNC § 318(b)(2), which provides that the Republic is required to pay prejudgment interest at a rate of 3% per year pending resolution of an eminent domain claim. Although other cases have applied a 9% rate of prejudgment interest, the rate of 9% is a “ceiling” and is not mandatory. *See A.J.J. Enterprises*, 3 ROP at 31; *Ngirausui v. Baiei*, 4 ROP Intrm. 140 (1994). Accordingly, the court did not commit clear error in setting the rate of prejudgment interest at 3% in this case. We **AFFIRM** the trial court’s ruling that the Remiang contracts are void, and that Appellees must repay Appellant the \$40,000, plus 3% interest per year from March 29, 2004, through the date of judgment, and post-judgment interest at 9% per year until the debt is paid in full.

[14] Finally, the Court will address Appellant’s appeal of the trial court’s Order denying its ROP R. Civ. P. 59(e) motion to amend judgment concerning the interest calculation. “Rule 59(e) allows a party to direct the trial court’s attention to newly discovered material evidence or a manifest error of law or fact . . . . The rule does not

provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to . . . advance arguments that could and should have been presented to the trial court prior to judgment.” *Dalton*, 8 ROP Intrm. at 304 (quoting *Aghar v. Crispin-Reyes*, 118 F.3d 10, 16 (1st Cir. 1997)). Appellant’s motion disagreed with the court’s decision concerning the rate and timing of prejudgment interest. The trial court denied Appellant’s motion because the issues raised by Appellant did not rise to the level required for amendment or alteration of judgment and because Appellant’s arguments could have been made prior to the court’s entry of judgment. In his reply brief, Appellant did not discuss in what manner the trial court made a manifest error of law with regard to the Rule 59(e) motion. We find that the trial court did not abuse its discretion in setting the rate and timing of prejudgment interest, and accordingly, **AFFIRM** the trial court’s denial of Appellant’s Rule 59(e) motion to amend judgment.

Accordingly, for the reasons set forth above, the Judgment and Decision, and Order of the trial court are **AFFIRMED**.

#### IV. CONCLUSION

The trial court did not commit clear error in finding that Appellees are ocell members of Umerang Clan and that they are all strong senior members of Umerang Clan whose assent was required before Umerang Clan entered into the Remiang contracts with Appellant. Likewise, the trial court did not commit clear error in determining that the interest Appellees must repay on the \$40,000 debt to Appellant is 3% per year from March 24, 2009, to the date of judgment, and 9% per year from the date of judgment until the debt is repaid in full. Finally, the trial court did not abuse its discretion in denying Appellant’s Rule 59(e) motion to amend judgment.