

Airai State v. Tkoel, 3 ROP Intrm. 124 (1992)
STATE OF AIRAI and REPUBLIC OF PALAU,
Plaintiffs/Appellees,

v.

RDECHOR TKOEL, President of NGARA-BRAS ASSOCIATION,
ROMAN TMETUHL, and DOES 1-10
Defendants/Appellants.

CIVIL APPEAL NO. 17-91
Civil Action No. 451-90

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: February 21, 1992

Counsel for Appellee State of Airai: John Rechucher

Counsel for Appellee ROP: Jennifer Schwartz

Counsel for Appellants: Johnson Toribiong

BEFORE: ARTHUR NGIRAKELSONG, Associate Justice; FREDERICK J. O'BRIEN,
Associate Justice; and ROBERT A. HEFNER., Associate Justice.

PER CURIAM:

On February 20, 1991, the Trial Court entered its decision granting the Plaintiffs' Motion for Summary Judgment and ruling that the Republic of Palau's possessory right to the Old Airai Elementary School was superior to that of Defendants'. The Trial Court declared that Defendants entered the site and buildings illegally. A hearing on damages and costs resulting from Defendants' trespass on the site was scheduled, however, the parties apparently waived a hearing on the matter. Plaintiff filed a Statement of Damages and Costs on March 18, 1991, which **L125** Defendants opposed in a statement they filed on March 25, 1991.

On April 3, 1991, the Trial Court entered its judgment and decision on damages, which included \$2,500 in general damages. The Trial Court found that Defendants' trespass "was not unintentional or non-negligent and that the entry did cause harm." Relying on evidence it found "compelling," the Trial Court ruled that Defendants' "thinly veiled effort to add legitimacy to Defendants' alleged possessory rights to the site constitutes fraud and that while such has not been pleaded directly this finding may and does constitute grounds for an award of general damages."

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Appellants are not appealing the February 20, 1991 decision regarding liability. Their joint appeal, filed May 3, 1991, is from the April 3, 1991 judgment on damages, and the findings and conclusions on which it was based, which they ask this Court to vacate and set aside.

No trial or hearing was held to determine the amount of damages to be awarded, an anomaly apparently agreed to by the parties. The findings set forth in the April 3, 1991 decision on damages are based on inferences drawn from facts presented in connection with the summary judgment on the issue of liability. Appellees have failed to identify, and the record does not include, sufficient evidence to support the Trial Court findings of intentional or negligent trespass and fraud set forth in its decision on damages.

Appellees did not plead fraud, which is required to be averred with particularity under Rule 9(b) of the ROP Rules of Civil **1126** Procedure. No testimony or other reliable evidence establishing the elements of fraud was presented in connection with the determination of damages.

We find that the Trial Court erred in inferring fraud when it was neither pled nor argued. As that was the stated basis for the assessment of \$2,500 in general damages, we hereby REVERSE the Trial Court's judgment and decision on damages, dated April 3, 1991. This matter is hereby REMANDED to the Trial Court for a hearing to establish, as requested by Plaintiffs, the amount of damages necessary to restore the Old Airai Elementary School to the condition it was in before Defendants entered.