

Loitang v. Jesus, 5 ROP Intrm. 216 (1996)
ICHIRO LOITANG, et al.,
Appellants,

v.

VERONICA JESUS, et al.,
Appellees.

CIVIL APPEAL NO. 17-95
Civil Action No. 183-90

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: May 3, 1996

Counsel for Appellants: Johnson Toribiong

Counsel for Appellees: David J. Kirschenheiter

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice.

HOFFMAN, Justice:

This appeal involves the tortuous path of a Micronesian War Claims award originally made in 1976.¹ The final award was made to Rubasch Fritz, as a representative of Edaruchei Clan, for damages resulting from World War II to Ngercheu Island, located in Peleliu State. The next step in the saga of this award was an action brought by Uchelmekediu Ngireblekuu against Rubasch Fritz, *Ngireblekuu v. Fritz*, Civil Action No. 81-76, seeking a share of the War Claims award. This action was settled by an agreement by which Rubasch Fritz and Uchelmekediu Ngireblekuu were each to take half of the award for distribution to their respective lineages and families.

The action by Uchelmekediu Ngireblekuu against Rubasch Fritz was brought as a joint effort by Ngireblekuu and an individual by the name of Ngirchomtilou. The families of each had raised crops and trees on Ngercheu Island and each had suffered damages during 1217 the war. As a result of this cooperation, the portion of the award given to Uchelmekediu Ngireblekuu under the settlement with Fritz was again divided, with Ngireblekuu keeping half for his family and half being given to Ngirchomtilou for his family.

The settlement in *Ngireblekuu v. Fritz* covered only that portion of the award that had

¹ The award was made pursuant to the Micronesian Claims Act, Pub. L. No. 97-39, 85 Stat. 92 (1971).

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been paid by the date of the agreement and that was on deposit in the Bank of Hawaii. Following the settlement, several additional payments were made on the award. These payments were divided in the same way as in the initial division, that is, one-half to the holder of the title of Rubasch and one-half to the holder of the title of Uchelmekediu. The Uchelmekediu's share was further divided, with half being kept by the family of Uchelmekediu and half to the family of Ngirchomtilou.

A final payment was made in 1989 which has led to the present controversy. This payment was also divided between the Rubasch and Ichiro Loitang, who had succeeded to the title Uchelmekediu. Ichiro Loitang was a member of the family of Ngirchomtilou. This time the Uchelmekediu refused to give the family of Ngireblekuu any portion of the award. The family of Ngireblekuu has now brought the present action seeking a portion of the payment made to the Uchelmekediu. The trial court found for the plaintiffs and against the defendants, holding that the money should be split between the two families.

The Uchelmekediu and members of his family, appellants herein, now argue that the trial court committed reversible error when it decided that the method used by Uchelmekediu Ngireblekuu and Ngirchomtilou to distribute the monies was binding on the current litigants. In response, appellees argue that the distribution is reasonable and the evidence supports the trial court's findings that the War Claims award was for the property and crops of both parties and that the predecessors of the parties had agreed on the appropriate division of the funds.

For the reasons stated below, we affirm the trial court.

Analysis

The trial court set forth two bases for dividing the monies evenly between the two families: (1) the lawsuit against Fritz was a joint effort by both families and the leaders of the two families agreed to split the monies recovered between their respective families; and (2) the record established that the award to Fritz was meant to cover damages to all of Ngercheu Island, including the trees and crops of appellees' family.

1218 The trial court's findings are supported by the record. 14 PNC § 604(b). The parties stipulated regarding the equal distribution of the prior payments, and the exhibits submitted make it clear that Fritz's claim was for all damages to Ngercheu Island. Moreover, one of the appellants testified that both families had trees and crops on the island, and that the families jointly pursued the litigation against Fritz. Although there is no evidence of an express agreement or contract to split the monies recovered as a result of the lawsuit between the two families, the existence of such an agreement and its terms can be inferred from the circumstances leading up to this action.

"A promise may be stated in words either oral or written, or may be inferred wholly or partly from conduct." Restatement (Second) of Contracts § 4 (1981); *accord Kamiishi v. Han Pa Construction Co.*, 4 ROP Intrm. 37, 40 (1993) (manifestation of mutual assent to terms of contract may be in form of words or acts). A contract implied in fact is "inferred from the facts

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and circumstances of the case." 17A Am. Jur. 2d *Contracts* § 12 (1991); *see also Baltimore & Ohio R.R. v. United States*, 43 S.Ct. 425, 426 (1923) ("[A]n agreement 'implied in fact' [is] founded upon a meeting of the minds, which although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding."). Moreover, the Restatement (Second) of Contracts § 202(4) indicates that "[w]here an agreement involves repeated occasions for performance by either party . . . any course of performance accepted or acquiesced in without objection is given great weight in the interpretation of the agreement."

In this case, the litigants' families jointly pursued the initial suit against Fritz, which resulted in an award of one-half of the war claims payments for Ngercheu Island to Uchelmekediu Ngireblekuu for distribution to his lineage and family. The prior payments made pursuant to the settlement of the *Fritz* litigation were distributed by the Uchelmekediu equally between both families, without objection. In light of these facts it was reasonable for the trial court to infer the existence of an agreement to divide subsequent War Claims payments evenly between the parties and to enforce that agreement with respect to the most recent payment received.

In addition, given the trial court's findings that the War Claims award at issue in the *Fritz* litigation was for the whole of Ngercheu Island, that both litigants' families lost trees and crops on Ngercheu Island, and that the two families jointly pursued the litigation to recover monies from Fritz, the distribution of monies is "fair and equitable." *See, e. g., Sengebau v. Balang*, 1 ROP **L219** Intrm. 695, 699-700 (1989). Those persons who suffered losses as a result of the war will be compensated by the trial court's distribution of monies. *See Ngiraingas v. Isechal*, 1 ROP Intrm. 34, 44 (Tr. Div. 1982) (purpose of the Micronesian Claims Act is to compensate for losses suffered as a result of the war). Accordingly, the judgment of the trial court is AFFIRMED.