

Arbedul v. Isimang, 7 ROP Intrm. 200 (1999)
ESPANGEL ESEBEI ARBEDUL,
Appellant,

v.

UODELCHAD ISEBONG ISIMANG,
Appellee.

CIVIL APPEAL NO. 33-97
Civil Action No. 485-96

Supreme Court, Appellate Division
Republic of Palau

Argued: February 22, 1999
Decided: May 11, 1999

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice

MILLER, Justice:

Appellee, Uodelchad Isibong Isimang, filed this action seeking to void a warranty deed she signed over to Appellant Espangel Esebei Arbedul. The 93-year old Isimang contends that the her signature on the deed was fraudulently procured by Arbedul through his son, Sabo Esebei. The Trial Division held that Isimang's signature on the deed was procured by fraud and voided the conveyance. Arbedul now appeals, claiming that Isimang failed to prove the elements of fraud.

The facts, as found by the Trial Division, are as follows. In 1992, Arbedul, along with Esebei, met with Isimang and two other senior female members of Omrekongel Clan to explain that he was being evicted from his house and needed land upon which to build a new house. At that meeting, Arbedul **L201** repeatedly requested that Isimang sell him a "small portion" of her land known as Tberbor, but Isimang repeatedly refused. However, at some point in the meeting, an understanding was reached by which Arbedul would be allowed to build a house on and use Isimang's land, but that if he ever stopped using the land, it would remain with her. At the conclusion of the meeting, Arbedul gave Isimang \$2,500, telling her it was "for her cigarettes and sardines."

Arbedul's son Esebei, an employee of the Bureau of Lands and Surveys, then arranged for a survey of Isimang's property, the creation of a parcel split map, and the drafting of a

Arbedul v. Isimang, 7 ROP Intrm. 200 (1999)

warranty deed that conveyed more than 2/3 of Tberbor to Arbedul. Esebei did not inform Isimang of any of these actions, however.

On April 29, 1992, Esebei went to Isimang's house, accompanied by Donald Haruo, an Assistant Clerk of Courts, with the deed. He proffered the deed to Isimang, stating that "this is the instrument which reflects the discussion or transaction between you and my father regarding a portion of your land." Esebei then asked Haruo to translate the document into Palauan, since Isimang cannot read English. Haruo began to explain the document, but Isimang interrupted him, stating "I already know that because I discussed it with [Arbedul]." Isimang then signed the deed. Esebei took the signed deed to the Land Commission and obtained a Certificate of Title in Arbedul's name to the larger portion of Tberbor, and, telling the Land Commission that he was Isimang's nephew,¹ also obtained her Certificate of Title for the smaller portion. Instead of delivering Isimang's Certificate, however, Esebei locked it in his father's safe, delivering it to Isimang some three years later.

Upon discovering that she had inadvertently conveyed the vast majority of her land to Arbedul, Isimang asked Arbedul to rescind the sale and to take back his \$2,500 plus interest. Although Arbedul seemed sympathetic, telling Isimang that "if this had happened to me, I wouldn't like it," he referred her request to Esebei who refused to void the transaction. Isimang then sued to set aside the deed and Certificates of Title on the grounds that Esebei fraudulently misrepresented the deed. The Trial Division found in her favor, and Arbedul now appeals, contending that Isimang failed to establish the four elements of fraud.

To prove a case of fraud, a plaintiff must prove² that the defendant (i) made a fraudulent misrepresentation of fact, opinion, or law, (ii) with the purpose of inducing the plaintiff to act upon the representation, (iii) that the plaintiff justifiably relied on the representation, and (iv) was damaged as a result of that reliance. Restatement (Second) of Torts § 525. A representation is fraudulent **L202** if it is known by the maker to be false. Restatement (Second) of Torts § 526; *Lazar v. Rykoff-Sexton, Inc.*, 909 P.2d 981 (Cal. 1996). A finding of fraud by a trial court is one of fact, and such a finding will not be disturbed on appeal unless clearly erroneous. *Feit v. Donahue*, 826 P.2d 407 (Col. 1992).

1. Representation known to be false

The Trial Division found that Esebei's statement to Isimang that the deed reflected the

¹ Esebei and Isimang are unrelated by blood. However, Isimang holds the senior female title of Omrekongel Clan, and Arbedul holds the senior male title. As a result, Arbedul and Isimang consider themselves to be like siblings, and Esebei considers Isimang to be his aunt.

² There is a disparity of opinion in the common law of the United States, which we apply here pursuant to 1 PNC § 303, over whether fraud must be proven by clear and convincing evidence, or merely by a preponderance of the evidence. *Compare Batten v. Watts Cycle and Marine, Inc.*, 783 P.2d 378 (Mont. 1989) (preponderance of the evidence) with *Jarman v. Hale*, 842 P.2d 993 (Idaho 1992); *Brown v. Founders Bank and Trust Co.*, 890 P.2d 855 (Old. 1994) (clear and convincing). Since neither party has raised the issue on appeal, we need not decide today what level of proof is necessary for fraud actions.

Arbedul v. Isimang, 7 ROP Intrm. 200 (1999)

agreement she had reached with Arbedul was known by Esebei to be false. The Trial Division credited Isimang's testimony that she reached an agreement with Arbedul giving him a use right to Tberbor, and discredited Arbedul's testimony that the \$2,500 was the purchase price of the land, not an expression of gratitude to a traditional leader for granting a use right. It is not our function to re-weigh the credibility of the witnesses, *Lakobong v. Anastacio*, 6 ROP Intrm. 178, 181 n. 6 (1997), and thus, we adopt the Trial Division's finding that Arbedul and Isimang agreed to a use right, not a sale of the property. Since Esebei was present at the meeting where the land was discussed, he was aware of the nature of the agreement reached by his father and Isimang, and his characterization of a deed of sale as reflecting that agreement was clearly and knowingly false.³

2. Intent that the other party rely on the representation

The Trial Division also found that Esebei made the misrepresentation to Isimang with the intention that she rely upon it. The requisite intent to defraud is shown by demonstrating that the defendant misrepresented a material fact "for the purpose of misleading the other party or with the knowledge he is misleading the other party." *United States Nat. Bank of Oregon v. Fought*, 630 P.2d 337, 351 (Or. 1981). An intent to defraud may be inferred from circumstantial evidence. *Carlson v. Garrison*, 689 P.2d 735 (Col. App. 1984); *Vern Walton Motors v. Taylor*, 591 P.2d 555 (Ariz. App. 1978).

Esebei's intent that Isimang rely on his representation is evident from the very fact that he deliberately mischaracterized the deed he wished her to sign. As stated above, Esebei knew from being present at the initial meeting that Arbedul and Isimang agreed to a use right involving a "small portion" of Tberbor. Because he directed the surveying and drafting of the deed, Esebei also knew that the deed did not grant merely a use right, and involved much more than a "small portion" of the land. Thus, when Esebei told Isimang the deed reflected her agreement, he clearly knew that he was misleading her, and thus, had the necessary intent to defraud.

Esebei's intent to mislead Isimang is further demonstrated by the fact that Esebei had already procured a map which showed the proposed division of the two parcels, yet he never showed the map to Isimang.⁴ Esebei's **L203** failure to show Isimang the boundaries of the split is even more curious since Isimang and Arbedul had not discussed or agreed to any specific boundaries or area to be transferred and that Esebei had unilaterally decided the size, shape, and location of the area to be transfer. By merely asserting that the deed reflected the agreement between Arbedul and Isimang, instead of demonstrating graphically that the transaction she was

³ Even assuming there was some ambiguity in the discussions between Arbedul and Isimang regarding the nature of the transaction, Esebei was well aware that his father had requested only a "small portion" of Tberbor, yet he procured a deed that transferred more than 2/3 of it to his father. Such a division of the land is so at odds with an agreement involving a "small portion" that Esebei's assertion that the deed reflected the parties' discussions would be considered fraudulent on this ground alone.

⁴ Esebei testified that he unrolled a map showing the plot on the floor in front of Isimang before she signed the deed, but the Trial Division, on the strength of Haruo's disinterested testimony to the contrary, discredited Esebei's on this point.

Arbedul v. Isimang, 7 ROP Intrm. 200 (1999)

about to undertake was consistent with the agreement, it is reasonable to find that Esebei intended Isimang to take him at his word and sign the deed without further inquiry.

While the fact that Esebei arranged to have Haruo translate the deed might suggest that Esebei did not intend that Isimang rely on only his representation, Esebei's failure to also show Isimang the map undercuts any such inference. The deed itself refers only to the size of the plot, noting that it is some 2,000 square meters, and refers to "the attached Lands and Surveys Cadastral plat" for the precise boundaries and contours of the plot. However, there is no map attached to the deed either. Thus, even if Isimang had listened to Haruo's entire translation of the deed, her only hint of Esebei's overreaching would have been if she had realized that a 2,000 square meter plot of land was unusually large.

These factors together support the Trial Division's finding that Esebei intended that Isimang rely on his characterization of the deed.

3. Justifiable reliance on the representation

Isimang must also demonstrate that she relied on Esebei's statement that the deed reflected the agreement and that that reliance was justified. The record certainly supports a finding that Isimang relied upon Esebei's statement that the deed reflected her agreement with Arbedul; Isimang's refusal to hear Haruo's translation of the deed and her statement to Haruo that "I already know [what the deed says] because I have discussed it with Arbedul" clearly indicates that she took Esebei at his word that the deed reflected her discussions with Arbedul.

Isimang's reliance on Esebei's statement was also justifiable under the particular circumstances presented here. Ordinarily, a person is presumed to know the contents of written contract they sign, 17A Am. Jur. 2d *Contracts* § 224, and even illiterate persons are held to the terms of a contracts if they had an opportunity to have the contract read to them before signing. *Id.* at § 225. This rule would tend to suggest that a party who is given the opportunity to read (or have read to them) a contract before signing it cannot instead rely on someone else's characterization of it.

However, we have previously held that "if a party to a transaction misrepresents the contents of a document, then the deceived party is excused from his normal obligation of reading the document or asking that it be read to him." *Miner v. Delngelii*, 4 ROP Intrm. 163, 166 (1994). Thus, Isimang was entitled to rely on Esebei's characterization of the deed and was relieved of her duty to listen to Haruo's translation. Moreover, where the parties share a sufficiently close relationship -whether through blood, business, friendship, or other special circumstances -- such that the parties place special trust in each other, a heightened requirement of good faith and due regard for the interests of each other is created. *Brown v. Fowlks*, 657 P.2d 501 (Kan. 1983); *Hal Taylor Assoc. v. UnionAmerica. Inc.*, 657 P.2d 743 (Utah 1982); *Perry v. Jordan*, 900 P.2d 335 (Nev. 1995). Such a close relationship can create a climate of trust in which facts that would ordinarily merit investigation do not warrant § 204 suspicion, and the ordinary degree of vigilance required of a party is lessened. *Johnston v. CIGNA Corp.*, 916 P.2d 643 (Col. App. 1996).

Arbedul v. Isimang, 7 ROP Intrm. 200 (1999)

The Trial Division found that such a confidential relationship existed between Isimang and the Arbedul, as well as between Isimang and Esebei. All three individuals testified freely of the close feelings they share for each other. We find it no surprise that Isimang would be more likely to accept her “nephew’s” characterization of a legal document than to listen to a stranger explain its contents to her. Under these particular circumstances, then, we agree with the Trial Division that Isimang’s reliance on Esebei’s representation was justified, despite Haruo’s attempt to translate the deed for her.

4. Damage as a result of the reliance

As to the final element of fraud, actual damage, there is no question that Isimang was harmed by her reliance on Esebei. She was divested of more than 2/3 of her own land at a price which appears to be below the property’s fair market value.⁵

Thus, we agree with the Trial Division that Isimang appropriately proved each of the elements of a cause of action for fraud. The judgment of the Trial Division is accordingly affirmed.

⁵ When Isimang discovered what had occurred, she attempted to repurchase the land from Arbedul for the original \$2,500 plus interest. Arbedul’s refusal suggests that he considered the value of the land to be substantially in excess of the price he had paid.