

*Carlos v. Whipps*, 7 ROP Intrm. 73 (1998)  
**MARIANO CARLOS,**  
**Appellant,**

v.

**SURANGEL WHIPPS,**  
**Appellee.**

CIVIL APPEAL NO. 53-97  
Civil Action No. 583-93

Supreme Court, Appellate Division  
Republic of Palau

Argued: April 7, 1998  
Decided: June 12, 1998

Counsel for Appellant: Pro Se

Counsel for Appellee: John K. Rechucher, Esq.

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

BEATTIE, Justice:

This case is before us for the second time. In the first appeal, we held that the trial court erred in finding that a deed to appellee Surangel Whipps from Teresa Tirso which ambiguously described the property to be conveyed as simply “parcel 1600” was intended to convey the whole of Tochi Daicho Lot 1600. We remanded for further proceedings, instructing the trial court to either determine what portion of Tochi Daicho Lot 1600 was intended to be conveyed or, if the evidence was insufficient to make such a determination, to declare that the deed was inoperative as a conveyance due to the uncertainty of the description of land and to issue an appropriate judgment”. *Carlos v. Whipps*, 6 ROP Intrm. 43, 47 (1996).

On remand, the trial court found that the deed was inoperative as a conveyance because of the uncertainty of the description of the land sought to be conveyed. It also ordered Carlos to reimburse Whipps for the money he paid Tirso for the invalid deed to the land, with interest. Carlos appeals only that portion of the judgment that requires him to pay prejudgment interest. We reverse that portion of the judgment.

I.

This action was filed by Carlos to quiet his title to a portion of Tochi Daicho Lot 1600. He obtained his interest in the land in 1988 when Teresa Tirso conveyed a portion to him in payment for legal services. The deed to Carlos described the property conveyed as lot 1600 “less the government property as shown in Civil Action No. 73-76 less the part of this land that had been purchased by Mr. Surangel Whipps.” *Id.* at 43. In 1984, Tirso, who had owned the entire lot, had executed the subject deed to Whipps and Whipps paid her consideration in the amount of \$14,650.<sup>1</sup>

After Carlos found out that Whipps claimed that the Tirso deed conveyed all of lot 1600 to him, which if true would mean that Carlos obtained nothing from his deed from Tirso, Carlos filed this quiet title action. In the complaint he filed, Carlos alleged that Tirso’s deed only conveyed a portion of lot 1600 to Whipps, not the entire lot. The court proceedings that followed determined that Tirso only intended to convey a portion of lot 1600 to Whipps, but it was not possible to **L74** ascertain the boundaries of what was to be conveyed, so the deed was inoperative. The trial court, after finding the deed to be inoperative, ordered Carlos to pay Whipps the \$14,650 purchase price plus interest from the date of Tirso’s deed to Whipps, January 3, 1984, to the date the complaint was filed. The interest amounted to in excess of \$13,000.

II.

The Restatement of Restitution 156 (1958), provides that, subject to certain exceptions 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 . . . .

Thus, in determining whether Carlos has a duty to pay interest on the money Whipps paid to Tirso, the initial inquiry must focus on whether Carlos had a duty to make restitution to Whipps.

The Restatement of Restitution 15 (1958), provides that

[a] person is entitled to recover money which he has paid another pursuant to the terms of a supposed contract with or offer from the other which, because of the payor’s mistake of fact as to the existence of consent, of consideration or of a required formality, he erroneously believed to exist, if he does not get the expected exchange.

Whipps paid money to Tirso under the mistaken belief that the deed from Tirso met the formalities necessary to convey property to him. Because of the mistake, he did not get the land he expected, so Tirso, who is now deceased, was obligated to restore to him the money he paid

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<sup>1</sup> The consideration paid was a combination of cash and vehicles which the trial court found to have a value of \$14,650.

her. Tirso's estate is not a party to this case, however.

Section 15 of the Restatement provides no basis for making Carlos responsible for Tirso's debts, nor do we see any other legal basis for doing so. Whipps conferred no benefit on Carlos by paying his money to Tirso. Nor is there any evidence that Whipps constructed any improvements on the land under a mistaken but good faith belief that he owned it.

Whipps argues that Carlos should be required to pay him the money he paid Tirso, with interest, because Carlos came into the court with unclean hands. He quotes authority which provides in part that "the maxim and principle for which [the unclean hands doctrine] stands signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue." 27 Am. Jur. 2d *Equity* § 136 at 667 (1966)(footnotes omitted). The record does not show--and the trial court did not find--that Carlos engaged in any inequitable, unfair, dishonest, fraudulent, or deceitful conduct. Moreover, even where the unclean hands doctrine is applicable, it is used only to prevent affirmative equitable relief and not as a basis to grant affirmative relief. *Id.* at 669.

The trial court noted that, in the prayer of his complaint, Carlos offered to reimburse Whipps for his purchase price. Specifically, after praying for a declaration that the Tirso deed to Whipps only conveyed a portion of lot L75 1600, the complaint states that "[i]f Defendant does not like what was sold to him then declares [sic] the sale contract null and void and return the land to the Plaintiff and Plaintiff reimburse the defendant for the purchase price . . . ." The trial court appears to have concluded that the "offer" in the complaint created an enforceable obligation on the part of Carlos. <sup>2</sup> We disagree. This was, at best, an offer to settle the matter which, if accepted by Whipps, would have created a legal obligation on the part of Carlos to reimburse Whipps in the amount of the purchase price. The offer did not mention the payment of any interest. In any event, Whipps did not accept the "offer" and instead proceeded to press his claim that Tirso conveyed him all of lot 1600.

It appears from the foregoing that Whipps had a meritorious claim against Tirso or Tirso's estate for restitution of the purchase price plus interest. <sup>3</sup> It is one thing to say that a party to a transaction that fails due to mistake of fact must give back money paid by the other party. But it is quite a different proposition, however, to say that somebody who is not a party, who committed no wrong, and to whom nothing was given in the transaction must reimburse a party for losses suffered due to the failure of the transaction. We find no basis for holding Carlos liable for Tirso's restitution obligation. Therefore, it follows that there is no legal basis for requiring him to pay interest on her obligation.

Carlos has consistently recognized a "moral obligation" to reimburse Whipps for what he

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<sup>2</sup> The trial court quoted section 15 of the Restatement of Restitution and then stated that Carlos "recognized this equitable principle in . . . the original complaint." Tr. Ct. Order September 25, 1997, at 1.

<sup>3</sup> The record is silent as to the status of Tirso's estate and we express no opinion as to the viability of such a claim at this time.

*Carlos v. Whipps*, 7 ROP Intrm. 73 (1998)

paid.<sup>4</sup> It is presumably for that reason that he did not appeal the portion of the judgment which required him to pay the \$14,650. However, since Carlos had no duty to pay restitution, he has no duty to pay any prejudgment interest.

Accordingly we REVERSE and REMAND with instructions to modify the judgment to delete any prejudgment interest.

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<sup>4</sup> For example, in his brief Carlos states that "[Because of] Appellant's sense of moral and religious belief to keep his deceased aunt's name clean of any claim of debt [he] took on the responsibility of returning the \$14,650 to the Appellee even though the Appellee is not entitled to restitution . . ." Appellant's Opening Brief at 11.