

Kulas v. Becheserrak, 7 ROP Intrm. 76 (1998)

**SARE KULAS,
Appellant,**

v.

**TMILCHOL BECHESERRAK,
Appellee.**

CIVIL APPEAL NO. 41-95
Civil Action No. 428-93

Supreme Court, Appellate Division
Republic of Palau

Argued: December 8, 1997
Supplemental Briefs Filed: March 27, 1998
Decided: June 15, 1998

Counsel for Appellant: Raynold B. Oilouch, Esq.
Counsel for Appellee: David F. Shadel, Esq.

BEFORE: JEFFREY BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; and
R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

BACKGROUND

This appeal is another example of this creditor attempting to collect a debt well over ten years old at the time the suit was instituted. ¹ See *Tmilchol v. Ngirchomlei*, 7 ROP Intrm. 66 (1998).

During the 1970's, appellant Sare Kulas worked as a contractor building houses. Pursuant to an oral agreement, Kulas obtained building materials from appellee Tmilchol Becheserrak on credit. The materials obtained and amount owed were recorded on invoices which Kulas signed. Becheserrak maintained a separate invoice for each house that Kulas built. By 1979, several invoices were unpaid and Becheserrak turned the matter over to a collection agency. In 1980, Kulas made three payments on the accounts.

The statute of limitations on the original indebtedness would have required commencing

¹ Given the discussion below, the creditor had a good faith argument to explain why he filed a case clearly outside the statute of limitations. We note that commencing litigation when a claim is obviously barred by res judicata, collateral estoppel, or the statute of limitations may subject a litigant to sanctions. Rule 11, ROP R. Civ. Pro. See *Estate of Blue v. County of Los Angeles*, 120 F.3d 982 (9th Cir. 1997).

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suit on or before December 9, 1986. The Trial Division, however, found that defendant reaffirmed the debt sometime in 1989 or 1990, when he acknowledged the debt to plaintiff and said that he would pay it. This action was commenced on August 16, 1993.

The Trial Division held that, although the original claim for relief was barred by the statute of limitations, plaintiff could proceed upon a later acknowledgment of the debt and promise to pay, which revived the claim.

ANALYSIS

Appellant raises three issues on appeal. First, appellant contends the trial court erred in finding that appellant owed one debt rather than several debts. Second, the trial court erred in finding that Kulas acknowledged the debt or debts. Finally, the trial court erred in finding that appellant entered into a new promise or contract to repay the debt or debts.

Appellate review of the trial court's ¶77 findings of fact is done under a "clearly erroneous" standard. *Idechiil v. Uludong*, 5 ROP Intrm. 15, 16 (1994). "If the findings are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that a mistake has been committed." *Id.*

A. Separate debt v. Single debt

The trial court concluded that "[a]lthough the purchases were reflected on separate account cards, this was for administrative convenience and was not intended to be a reflection of separate debts." Trial Decision at 1. Appellant Kulas argues that the invoices reflected several debts and that the trial court erred by concluding that the disputed account was a single debt. Kulas contends his acknowledgment of his indebtedness was insufficient because he did not acknowledge the separate debts on the invoices.

The record provides a reasonable basis for the trial court's conclusion that the separate invoices were merely an "administrative convenience" rather than separate debts.² Thus, the trial

² For example, Becheserrak testified as follows regarding the separate invoices:

Q. Why did you keep track of each house that Sare was building separately? Why did you keep track of those separately?

A. First of all, Sare gives us the estimation. He comes up with the estimation of the house in the overall cost of the materials that he would be using and the amount of the materials that he's using. And so we based . . . based on those estimations we would give the materials and we then write the invoices according to those estimation he gives us.

Q. Did you attempt to help Mr. Kulas by keeping those bills in

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court was not clearly erroneous in making that finding of fact.

B. Acknowledgment of the debt

Appellant also argues that the trial court erred by concluding that Kulas acknowledged the debt. Becheserrak testified that, on a number of occasions and as recently as 1989 or 1990, Kulas acknowledged that he owed money for the materials, promised to pay for them, and asked Becheserrak not to sue him. There was also testimony from both L78 Becheserrak's attorney and Kulas himself concerning a subsequent acknowledgment in 1992.

There is thus a reasonable basis in the record to support the trial court's finding that Kulas acknowledged the debt.

C. New Contract or Promise to Pay

Finally, appellant contends that the trial court erred in finding that he entered into a new contract to repay the debt. Kulas argues that the terms of the alleged agreement were too vague to form a contract and that there was no consideration because Becheserrak's claims were barred by the statute of limitations. Having already concluded that Kulas acknowledged the debt, we believe his vagueness argument is similarly without merit.

As to the statute of limitations, Section 411 of Title 14 of the Palau National Code governs the limitation of time for commencing an action and provides that:

A civil action or proceedings to enforce a cause of action mentioned in this chapter may be commenced within the period of limitation herein prescribed, and not thereafter, except as otherwise provided in this chapter.

The application of the plain meaning of this provision to this case is straightforward. The Trial Division correctly held that the original claim was barred. However, under the Trial Division's analysis, section 411 is not a bar to bringing an action for collection based on the new promise. We agree.

As summarized in the Restatement,

[a] promise to pay all or part of an antecedent contractual or quasi-contractual

separate files?

A. No. I was basically doing it to protect myself. For my own protection. Because whenever Sare Kulas submits to me the estimation of the house, for instance, I need these number of lumber, I need these number of plywood, and so on. I would write all those into an invoice, gives it to him and he signs it.

Tr. at 122-23.

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indebtedness owed by the promisor is binding if the indebtedness is still enforceable or would be except for the effect of a statute of limitations.

Restatement (Second) of Contracts 82. This is the accepted common law rule in the United States, although in many jurisdictions statutes now limit the rule to written acknowledgments. *See id.* at Comment (a).³

The new promise can be a basis of a complaint without additional consideration. “A moral obligation to pay constitutes sufficient consideration to sustain a new promise to pay a debt barred by the statute of limitations.” *Young v. Pileggi*, 455 A.2d 1228 (Pa. Super.1983) [citing Restatement (Second) of Contracts §82]. The acknowledgment and promise to pay establish “a new period from which the statute of limitation [begins] to run.” *Street Improvement District No. 113 v. Mooney*, 158 S.W.2d 661 (Ark. 1942).

We conclude, therefore, that a complaint may be properly brought based upon an acknowledgment of a debt and a promise to pay. Such an action may be **179** brought within six years of the time the acknowledgment and the promise is made.

Accordingly, the decision of the Trial Division is AFFIRMED.

³ Illustration 2 of that Restatement section provides this example:

A owes B three debts of \$500 each. All of the debts are barred by the statute of limitations. A writes B, “I promise to pay you one of those \$500 debts which I owe; the other two I shall not pay.” A’s promise of \$500 is binding.