

*In re Rengiil*, 8 ROP Intrm. 118 (2000)  
**In the matter of the estate of JAMES RENGIIIL.**

CIVIL APPEAL No. 98-38

Supreme Court, Appellate Division  
Republic of Palau

Argued: November 1, 1999

Decided: February 4, 2000

Counsel for Appellant: William Ridpath

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

BEATTIE, Justice:

This appeal concerns a dispute over whether the house occupied by decedent James Kyoshi Rengiil (“James”), his wife, Renay Roberts (“Renay”), and their children was owned by decedent or by his father’s family at the time of his death. The trial court concluded that the house was owned by decedent, and we affirm.

### **BACKGROUND**

During his lifetime, decedent was involved in a family business, Rengiil Bros., and businesses that he owned and operated with his wife, Renay. Decedent’s father and siblings (the “family”) claim that the house James lived in with Renay and their children had been purchased with a check drawn on the family’s business account. It was uncontested that, at the time of the trial, Renay was the lessee of the land which the house occupied.

**¶119** The trial court found that the purchase of the house was a wedding gift to James from his father. Because the house was owned by James rather than the family, the court ruled that it became part of James’ estate and that Renay inherited the house.

The family now appeals the award of the house to Renay. Appellants argue that the evidence at trial was insufficient to support a finding that the house was intended to be a gift, that if the house was not a gift at the time of purchase, any subsequent parol transfer would violate the Statute of Frauds, and that they should have been granted a lien on the property.

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**ANALYSIS**

The Appellate Division reviews the Trial Court's findings of fact under the clearly erroneous standard. Under this standard, the court's findings of fact will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made. *Haruo v. Thomas*, 6 ROP Intrm. 48, 49 (1997).

**A. Sufficiency of the evidence**

Appellants argue that there was no evidence that James' father intended for the house to be a gift. A gift is "a voluntary transfer of property by one to another without any consideration or compensation therefor." 38 Am. Jur. 2d *Gifts* § 1. There must be a clear, unmistakable, and unequivocal intention on the part of a donor to make a gift of his property in order to constitute a valid, effective gift. *Id.* § 17; *United States v. Schroeder*, 348 F.2d 223, 226 (8<sup>th</sup> Cir. 1965). There must also be delivery by the donor and acceptance by the donee. 38 Am. Jur. 2d *Gifts* § 18; *Schroeder*, 348 F.2d at 226. Intent does not have to be expressed in words or writing; it can be inferred from the relation of the parties, and the surrounding facts and circumstances. 38 Am. Jur. *Gifts* § 17. A gift is presumed when the parents of a newly married couple deliver property to them. *Id.* § 93.

In ruling that a gift had been made, the Trial Court cited testimony that the decedent's father loved him very much, the house was purchased just after decedent got married, and that decedent always was in possession of the house and held it out as his own property. Moreover, decedent added several extensions to the house without permission or objection, one that was 18' by 30', and another that was 18' by 27', all at a cost of approximately \$25,000. The extensions were used to house businesses that Renay and James owned together.

In view of this evidence, we cannot say that the court's finding that the house was a gift to James from his father was clearly erroneous.

Appellants raise two arguments on appeal that they did not raise in the Trial Court. They argue that the gift of the house to James violated the Statute of Frauds. Appellants also argue that they should receive a lien on the property in the amount of the purchase price because in the absence of an express agreement that the house was a gift, equity demands that he is entitled to the lien. The Statute of Frauds defense is an affirmative defense which must be raised in the Trial Court. *See* ROP R. Civ. P. 8(c), (d). Similarly, appellant's claim of a lien is a claim that was required to be made in the **¶120** Trial Court and cannot be raised for the first time on appeal.

This Court will not entertain arguments that the trial court did not have the opportunity to hear. *See Ngiraked v. Media Wide, Inc.*, 6 ROP Intrm. 102, 104 (1997) (arguments not presented to the Trial Court will not be considered on appeal). Where, as here, a party presents not only arguments that were not made in the court below, but affirmative defenses and new claims, there is no basis for considering them for the first time on appeal.

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The decision of the Trial Court is hereby AFFIRMED.