

Ngerketiit Lineage v. Seid, 8 ROP Intrm. 44 (1999)
NGERKETIIT LINEAGE AND EUSEBIO RECHUCHER,
Appellants,

v.

ALAN SEID,
Appellee.

CIVIL APPEAL NO. 98-60
Civil Action Nos. 121-94, 108-94

Supreme Court, Appellate Division
Republic of Palau

Argued: August 23, 1999
Decided: October 7, 1999

Counsel for Appellant Ngerketiit Lineage: Douglas F. Cushnie

Counsel for Appellant Eusebio Rechucher: Carlos H. Salii

Counsel for Appellee Alan Seid: Mark Doran

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

MILLER, Justice:

This is an appeal from an order of the Trial Division authorizing the release of \$163,805.65 held by the Clerk of Courts to Appellee Seid.

On November 24, 1993, Appellee Seid entered into a lease agreement involving land in Ngermid hamlet with Appellants Ngerketiit Lineage and Eusebio Rechucher. Appellants claimed ownership interests in the property, however, the ownership interests had yet to be determined by the Court.¹ The lease agreement required the claimants to file a quiet title action to determine ownership of the land, and provided that each party to the lease would be entitled to rental payments based on the court's determination of their ownership interests. 145

The claimants instituted the quiet title action and Seid subsequently intervened, requesting the court to recognize the validity of the lease. On November 14, 1995, the Trial Division issued a partial judgment holding that the lease was valid. This judgment was never appealed.

¹ Ngerukebid Clan also signed the lease. However, the Clan was ultimately determined not to have any ownership interest and therefore is not a party to this appeal.

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Two days later, Seid again entered the quiet title action, this time filing an emergency motion to interplead his rental payment due under the lease. The lease provided that if there were no final judgment in the quiet title action by the time the final rental payment was due, Seid was required to deposit the funds in an escrow account to be distributed following a determination of the ownership interests in the land. Because the parties were unable to reach agreement regarding escrow instructions, Seid filed a motion to interplead the final payment of \$3,194,270.00. On November 17, 1995, the Trial Division issued an order granting the motion and ordering Seid to deposit the funds with the Clerk of Courts.

Ownership of the land was finally determined on April 1, 1998 when this Court decided the appeal of *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38 (1998). Following the ruling by the Appellate Division, the prevailing parties filed motions in the Trial Division requesting the disbursement of their shares of the funds held by the Clerk of Courts. On May 11, 1998, Seid filed a motion that raised for the first time his entitlement to 10% of the lease funds owed to Appellants pursuant to a commission agreement signed by Appellants on the same day that the lease was executed. On July 17, 1998, the Trial Division authorized the Clerk of Courts to release the funds to Appellants, retaining a portion of the rent due to Appellants pending its decision on Seid's motion.² Appellants opposed Seid's claim, arguing that Seid had not complied with the terms of the commission agreement and demanded full disbursement of the same funds Seid claimed. On October 9, 1998, the Trial Division authorized the Clerk of Courts to release the balance of the funds held in the case to Seid, holding that pursuant to the commission agreement, Seid was entitled to the remaining funds. That October 1998 order is at issue in this appeal.

Appellants raise two arguments in this appeal. First, they argue that the Trial Division lacked jurisdiction to release the money to Seid because Seid never pled his right to the funds. Second, they argue that even if the Trial Division did have jurisdiction to rule on the validity of the commission agreement, the Trial Division's failure to hold a hearing before releasing the funds violated Appellants' right to due process.

¶46 This Court affirms the decision of the Trial Division holding that the commission agreement was properly before the Trial Division and that the Trial Division was not required to hold a hearing before distributing the funds.

The Trial Division's Jurisdiction

The Trial Division granted Seid's request to interplead his final payment of rent due under the lease. In his motion to interplead the funds, however, Seid did not assert a right to any of the funds, nor did he mention the commission agreement. Appellants argue that due to this failure to plead any entitlement to the funds, the Trial Division was without jurisdiction to award funds to Seid.

Appellants' argument fails for three reasons. First, Appellants never raised this issue in

² The Trial Division also released the rental shares due to other successful claimants, who were not parties to the commission agreement, and whose motions were unopposed.

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the Trial Division and therefore it is waived. *Ngiraked v. Media Wide, Inc.*, 6 ROP Intrm. 102, 103-4 (1997). One of the Appellants did raise such an objection--apparently successfully--to the Trial Division's consideration of a different claim by Seid that he had overpaid the rent due under the lease. But neither Appellant filed any opposition to Seid's claim pursuant to the commission agreement until invited by the Court to do so, *see* Notice, September 15, 1998, and the memoranda they eventually filed related solely to the merits of that claim. *See* Ngerketiit Lineage Memorandum in Opposition to Seid Motion for Commission, September 29, 1998; Memorandum of Eusebio Rechucher in Opposition to Seid Motion for Commission, September 24, 1998.

In any event, Appellants' argument fails on the merits because the Trial Division had jurisdiction to release the funds to Seid.³ The Trial Division granted Seid's request to interplead his final payment of rent due under the lease. Rule 22 of the ROP Rules of Civil Procedure governs the procedure for interpleader actions, and specifically provides that an interpleader does not forfeit his right to claim an interest in the funds. ROP R. Civ. Pro. 22; *see also United Benefit Life Ins. Co. v. Leech*, 326 F. Supp. 598 (D. Pa. 1971). Although Seid did not assert a right to any of the funds nor mention the commission agreement in his motion to interplead the funds, he did raise the issue in his motion for disbursement of funds.⁴ As noted above, in their response to Seid's motion for disbursement of funds, Appellants argued that the terms of the commission agreement were not met. Rule 15(b) of the Rules of Civil Procedure provides that

[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been **L47** raised in the pleadings . . . Failure to amend does not affect the result of the trial of these issues.

ROP R. Civ. Pro. 15(b); *see also, ROP v. Pacifica Dev. Corp.*, 1 ROP Intrm. 383, 394-95 (1987). By arguing the merits of the commission agreement, Appellants impliedly consented to allow the Trial Division to try this issue. This case is similar to the case *United States ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512 (9th Cir. 1995), where the plaintiff failed to raise certain claims in his complaint but raised the claims in response to a motion for summary judgment. In that case, the court stated that "when a party raises a claim [for the first time] in materials filed in opposition to a motion for summary judgment, the district court should treat the filing as a request to amend the pleading." *Id.* at 1524. We similarly agree that the Trial Division could consider Seid's motion as a request to amend his pleadings under Rule 15(b) and that it properly considered Seid's claim to the money even though he did not raise it in his motion to interplead

³ There is, of course, no question of the Trial Division's jurisdiction *per se*. The only question is whether it was entitled to consider Seid's claim for a commission in the action then pending, or should have required him to file a new action.

⁴ On appeal, Appellants argue that Seid's motion was an attempt to alter the judgment and that Rules 59 and 60 of the rules of civil procedure rules were his only avenues of relief. Seid's motion, however, did not seek such relief. Although there was a final judgment in the quiet title action and on the validity of the lease agreement, the interpleader action was not concluded until the claims to the funds were litigated. ⁷ Wright, Miller & Kane, *Federal Practice and Procedure*: Civil 2d § 1715 (1986).

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the funds. *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 668 F.2d 1014,
1052-54 & n. 68 (9th Cir. 1981).

Finally, we note that Appellants themselves did not plead their entitlement to the funds at the time of their deposit with the court. Rather, like Seid, they waited until the appeal was concluded and asserted their rights through a joint motion for disbursement. *See* Motion for Disbursement of Funds by Clerk of Courts, June 2, 1998. Appellants are thus in no position to argue that their claims, but not Seid's, were the only matters properly before the court.

The Trial Division did not err in failing to hold a hearing

Appellants argue that the Trial Division erred in failing to hold a hearing on this matter, and that the lack of a hearing violated their right to due process. We disagree.

At the outset, some clarity is needed. Procedural due process always guarantees notice and an opportunity to be heard. *Governor of Kayangel v. Wilter*, 1 ROP Intrm. 206, 209 (Tr. Div. 1985). There is no question that Appellants were afforded that degree of due process. Each filed a written memorandum opposing Seid's motion. Indeed, as noted above, they were specifically invited to do so by the trial court even though they had failed to file any response in the four months after the motion was made.

The only question presented here is whether Appellants were entitled to an in-court hearing before the Trial Division ruled on Seid's motion. It is clear, however, that procedural due process does not entitle a litigant to a hearing on every motion. *Federal Communications Com'n v. WJR, the Goodwill Station, Inc.*, 69 S. Ct. 1097, 1103 (1949). Rather, this Court looks at the specifics of each case to determine whether the Trial Division abused its discretion by failing to hold a hearing.

Appellants argue that their responses to Seid's motion anticipated that a hearing would be held at which they would have the opportunity to present testimony. We agree that that is a fair reading of the memoranda they filed. But neither Appellant complied with the formal requirements of motion rules for requesting the opportunity to present oral **L48** testimony, *see* ROP Mot. R. 7,⁵ and a party is not entitled to an evidentiary hearing on request in any event.⁶ *Id.* Rather, such a hearing is necessary only if determination of the motion requires resolution of a material and genuine factual dispute.

Here, the only matter raised by Appellants' opposition to Seid's motion was their contention that, by the terms of their agreement, Seid was not entitled to receive a commission unless he subleased the property. It is clear, however, that the Trial Division considered this contention and concluded that it was an incorrect interpretation of the commission agreement. It

⁵ "The opportunity to present oral testimony may be requested by any party by separate statement filed at the time of filing of the motion or any opposing brief or opposition and shall be included in the title of the motion or opposing brief or opposition."

⁶ "Oral testimony in support of or in opposition to any motion shall be permitted only upon order of the court."

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concluded that Seid was instead entitled, under the plain terms of the commission agreement, to receive the commission upon signing the lease agreement, and that any factual issue as to whether he had thereafter subleased the land was immaterial. As Appellants have not argued that this legal conclusion was erroneous,⁷ their argument that they were entitled to a factual hearing is without merit.⁸

The order of the Trial Division is therefore AFFIRMED.

⁷ Counsel for Eusebio Rechucher suggested at oral argument that, if called to testify, Rechucher would explain that, on his understanding of the commission agreement, Seid was not entitled to receive his commission. It is clear, however, the interpretation of an unambiguous contract is for the court, and that a party's private understanding of what a contract means is similarly immaterial. 17A Am. Jur. 2d *Contracts* § 337 (1991); *see also*, *Kamiishi v. Han Pa Const. Co.*, 4 ROP Intrm. 37, 40 (1993).

⁸ Moreover, it is not even clear that there was a factual dispute, material or not. Seid submitted an affidavit below stating that he had, in fact, subleased the property. Appellants did not submit any opposing affidavit, and neither in their appellate briefs nor in oral argument have Appellants suggested that they are prepared to present facts to the contrary.