

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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FELIX MINOR,

Appellant,

v.

GEORGE RECHUCHER and WESTERN
CAROLINE TRADING COMPANY,

Appellees.

CIVIL APPEAL NO. 14-023
C/A No. 13-095

SUPREME COURT
OF THE REPUBLIC OF PALAU

OPINION

Decided: August 7, 2015

Counsel for Appellant: Moses Uludong
Counsel for Appellees: Kevin N. Kirk

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable R. Ashby Pate presiding.

PER CURIAM:

Appellant Felix Minor appeals the decision of the Trial Division, which held that his complaint failed to plead a cause of action for ejectment due to contractual invalidity by fraud or mistake and found that equitable relief for unjust enrichment was not warranted in this case. We will affirm.*

BACKGROUND

On February 25, 1992, Appellant Felix Minor and Eusevio Rechucher, the now-

* Pursuant to ROP R. App. P. 34(a) and Appellant's April 24, 2015 Notice of Waiver of Oral Argument, this case is decided on the briefing.

deceased father of Appellee George Rechucher, entered into an agreement titled “Deed of Transfer/Exchange” (the 1992 Deed or the Deed). The Deed, recorded with the Clerk of Courts the day it was signed, memorialized an exchange of properties that Minor and Rechucher had agreed upon. Minor quitclaimed to Rechucher “all of [his] rights, title, interest, claims, and absolute ownership to a building structure situated on Lot No. 40321 in Ngerchemai Hamlet, Koror State, including, but not limited to, all of the lease rights and other privileges relative thereto said lease”; in exchange, he received a similarly complete transfer of ownership by quitclaim to “a building structure situated in/on Lot No. 40988, in Malakal Island, Koror State.” Pl.’s. Ex. G. Notably, while the Deed asserts that Minor owned the lease right to the Ngerchemai lot, it makes no mention of Rechucher owning the lease right to the Malakal Lot. *Id.* Minor, in fact, had already acquired that lease right from Koror State Public Lands Authority prior to the signing of the Deed. Pl.’s Ex. H.

Minor took possession of the Malakal building as agreed, renting it out for many years before eventually selling it and its accompanying lease right to Appellee Western Caroline Trading Company in 2012—George Rechucher’s company. Similarly, Rechucher, eventually succeeded by his son George, took possession of the Ngerchemai building, expanding the structure and renting it out to WCTC for employee housing. Neither party, throughout this time period, appears to have exercised any control or dominion over the lot that he gave up in the exchange.

However, in 2010 Minor asked Rechucher for money to pay arrearages on the lease to the Ngerchemai lot—the lease that the Deed appears to transfer from Minor to Rechucher. The Ngerchemai leasehold, despite the Deed, was never officially assigned to Rechucher and had persisted in Minor’s name since 1992, despite evidence that Rechucher was in fact paying rent on that lease directly to KSPLA. Rechucher gave Minor \$300.00 to pay off the arrearages on the lease subject to an extension of rent amnesty that KSPLA had offered. Having paid off the arrearages, Minor renewed the lease to the Ngerchemai lot with KSPLA in 2012.¹

Having renewed the Ngerchemai lease in his name, Minor then took the surprising step of demanding that Rechucher return the Ngerchemai building and pay rent on it dating back to 2008. Rechucher ignored these demands, so Minor made similar demands of WCTC, Rechucher’s tenant. WCTC also declined to deal with Minor, referring him back to its lessor—Rechucher. Minor then filed this case against Rechucher and WCTC, asserting that the exchange arrangement had “[fallen] through” and that the exchange that occurred was actually pursuant to the terms of an oral agreement made with Eusevio Rechucher subsequent to the signing and filing of the Deed. On the basis of such oral agreement, the terms of which Minor claims have expired, Minor sought “rental plus interest for the house and leased property from 2008,” that “Defendants be ordered to

¹ Evidence in the record suggests that the Ngerchemai lease actually lapsed, as a contractual matter, from 2002 until 2012. Nevertheless, Rechucher apparently continued paying rent on the lease for some time past that, which, given KSPLA’s apparent acceptance of these payments, suggests that KSPLA accepted the continuation of the original/existing lease as a tenancy at will in the interim. *See Schmull v. Doran*, 16 ROP 96, 98–99 (2008).

vacate the premises,” and court costs and fees.

Prior to trial, Appellant submitted his Pre-Trial Statement which explicated the theory that the 1992 Deed was illegal at the time, and therefore without legal weight, because it was procured fraudulently, was unrecorded, was not agreed to by KSPLA, and was without appropriate consideration and meeting of the minds. Appellant’s Statement further argued a claim for ejectment. Defendant filed a timely motion in limine to preclude evidence of such theories and claims, arguing that they were not pleaded in the Complaint. The Trial Division reserved ruling on the motion in limine until after trial, so much of Appellant’s contested evidence was conditionally admitted over Appellees’ continuing objection.

The Trial Division, however, eventually granted Appellees’ motion in limine and disregarded the contested evidence, holding that the invalidity of the Deed had not been pleaded and that any such claims, even if properly pleaded, would have been barred by the statute of limitations. The Trial Division issued factual findings and conclusions of law on Appellant’s unjust enrichment claim, finding not only that the existence of the oral agreement had not been proven, so Appellant’s claim failed for lack of a equitable basis, but also that the doctrine of laches weighed against an award in equity in such a stale case even if the agreement had existed.

Appellant timely appeals.

STANDARDS OF REVIEW

A lower court's conclusions of law are reviewed de novo. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Sufficiency of pleading a claim in a complaint is a question of law. *See Palau Pub. Lands Auth., v. Koror State Pub. Lands Auth.*, 19 ROP 24, 27 (2011). Factual findings of a trial court are reviewed for clear error, and will be reversed only if they so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Pamintuan v. ROP*, 16 ROP 32, 36 (2008). We may affirm a decision of the Trial Division for any basis apparent in the record. *Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219, 222 (1992); *see also* 5 Am. Jur. 2d *Appellate Review* § 775.

ANALYSIS

We begin by noting that the questions ostensibly presented in this appeal are, being generous, poorly identified. Appellant's Brief states that "the following three questions are presented" immediately prior to listing six questions. Of them, four ask us to apply an incorrect standard of review and two are clearly duplicative. Nevertheless, Appellees appear to silently adopt Appellant's poorly pleaded questions, as Appellees did not include their own list of questions presented. We remind the parties, and all future litigants, that the obligation of clearly presenting the questions to be considered on appeal falls on the parties, and properly framed questions presented are to be included in the body of all briefs. *See* ROP R. App. P. 28(a)(6).

Accounting for Appellant's overlapping assertions of error in the opinion below, we discern only two meaningful questions presented that could be dispositive as to this appeal. Appellant's assertions raise the following two issues:

(I) Whether the Trial Division erred in refusing to consider or admit evidence regarding claims it found were insufficiently pleaded and barred by the statute of limitations; and

(II) Whether the Trial Division erred in denying Appellant's claim for unjust enrichment based on the facts and equities of the case and under the doctrine of laches.

Finding that the Trial Division erred in neither respect, we will affirm.

I. Evidence Relating to Insufficiently Pleaded or Time Barred Claims

Appellant argues that the Trial Division erred when it held that his claims for contractual invalidity due to fraud or mistake and his claim for ejectment were insufficiently pleaded as a matter of law. He further argues that the Trial Division erred in holding that, in the alternative, such claims were barred by any applicable statute of limitations. We find no error in either holding.

A. The Sufficiency of Appellant's Complaint

The Trial Division found that Appellant had failed to properly articulate a claim for ejectment based on the legal invalidity of the 1992 Deed due to fraud or mistake, and excluded evidence purporting to support such claims. It held that Appellant's complaint failed to meet even basic standards of notice pleading, and that the contractual claim,

which alleged that the 1992 Deed was invalid at its inception due to fraud or mistake, further failed to meet the particularized pleading requirements of ROP R. Civ. P. 9(b).

Palau maintains an extremely liberal standard of notice pleading, which requires only that a complaint contain a statement alleging the jurisdiction of the court, a “short and plain statement of the claim showing that the pleader is entitled to relief,” and “a demand for judgment for the relief the pleader seeks.” ROP R. Civ. P. 8(a). While “[n]o technical forms of pleading . . . are required,” “[e]ach averment of a pleading [must] be simple, concise, and direct.” *Id.* R. 8(e). Generally, this means that a plaintiff must plead a set of possible² facts that, if true, entitle the plaintiff to judgment.

Some matters, however, must be pleaded with greater specificity. Our Rules of Civil Procedure expressly require that “[i]n all averments of fraud or mistake, the circumstances constituting the fraud or mistake shall be stated with particularity.” *Id.* R. 9(b). We have yet to opine on the meaning of this provision, so we look to the United States, from where the rule was adopted. “Rule 9(b) requires a plaintiff averring fraud to plead the who, what, when, where, and how of the alleged misconduct. He must also offer an explanation as to why the statement or omission complained of was false or misleading.” *Johnson v. Wal-Mart Stores, Inc.*, 544 F. Appx. 696, 698 (9th Cir. 2013) (quotations omitted); *see also U.S. ex rel. Totten v. Bombardier Corp.*, 286 F.3d 542, 552

² Palauan Courts have historically been fairly plaintiff friendly, retaining the more liberal standard that the allegations in a complaint must be “possible,” and as of yet declining to adopt the heightened “plausible” standard adopted by the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

(D.C. Cir. 2002) (“[T]he circumstances that must be pleaded with specificity are matters such as the time, place, and contents of the *false* representations, such representations being the *element* of fraud about which the rule is chiefly concerned.” (quotations omitted)); *Brooks v. Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1371 (11th Cir. 1997) (“Rule 9(b) may be satisfied if the complaint sets forth: (1) precisely what statements were made in what documents or oral representations or what omissions were made, and (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same, and (3) the content of such statements and the manner in which they misled the plaintiff, and (4) what the defendants obtained as a consequence of the fraud.” (quotation omitted)).

Appellant, nevertheless, argues that he need not plead his claim with any specific particularity because “a plaintiff need not set forth or plead detailed factual allegations or specific facts.” Appellant’s Brief 6 (citing 61A Am. Jur. 2d *Pleadings* § 179). While this presents a reasonable description of notice pleading, specific rules and exceptions still apply; this general rule does not abrogate the specific pleading requirements and rules imposed by our Rules of Civil Procedure in Rule 9.³ Further, Appellant overstates the strength of the general rule; that a plaintiff need not plead *detailed* or *specific* facts does not mean he need not plead facts at all. A “short and plain statement of the claim”

³ Indeed, while Appellant cites to 61A Am. Jur. 2d *Pleadings* §§ 171 & 179, he fails to recognize section 172—which *expressly* notes that the simplified pleading standard of the Federal Rules of Civil Procedure is subject to “limited exceptions.” Continuing on to section 201 *et seq.*, American Jurisprudence explains the Rule 9(b) requirements in some detail.

requires that plaintiffs plead at least a general set of facts sufficient to make out a breach of a legal right, duty, or obligation. Liberal notice pleading still requires the use of clear and cogent language. While particular words or phrases are rarely required, this does not absolve a claimant who pleads or argues in language that either lacks a judicially recognizable meaning or, more problematically, language that generally means something other than what the claimant intends. Put more simply, the fact that a plaintiff is not required to use specific legal language does *not* mean that any language is sufficient.

Appellant relies extensively on his complaint's allegation that "[t]he exchange arrangement **fell through** as the late Rechucher was not the owner of the Malakal lease and Koror State Land Authority did not approve of the exchange."⁴ Complaint ¶ 12 (emphasis added). He insists that the use of the colloquial "fell through" is appropriate and sufficient, and that the Trial Division erred when it held that his averment did not sufficiently plead a claim of contractual invalidity due to fraud or mistake.⁵ But the issue

⁴ That Appellant believes Rechucher's ownership interest in the Malakal lease, or lack thereof, is even relevant to his claim strongly indicates how thin this argument is. Appellant had full, actual knowledge that Rechucher did not own the Malakal lease at the time the Deed was negotiated and signed—*because Appellant himself owned it*.

⁵ We note that Appellant has not actually argued that his complaint properly pleaded a Rule 9(b) averment of fraud or mistake; he instead argues that Rule 9(b) is inapplicable because the rule does not cover "contractual invalidity caused by violation of regulations," despite the fact that absolutely no regulations have been cited, discussed, or even mentioned in this case. *See* Appellant's Brief 9. Based on this argument, it appears that Appellant believes the requirement of KSPLA approval to transfer the leasehold interest was regulatory. But the only approval requirement shown or mentioned in the record is a contractual one, specifically binding on a

is not that Appellant used the term “fell through”; the issue is that “fell through” is generally understood to refer to a potential agreement that, despite negotiations that may have had promise or the belief that a deal had been reached, was never actually consummated. The evidence Appellant sought to present at trial was *not*, as his pleadings indicated, of a deal that had fallen through, but rather of one that had in fact been signed, sworn, and duly recorded—yet allegedly was invalid because of an external restraint or some other fraud or mistake that Appellant had failed to detail in his complaint.⁶ Even assuming that the term “fell through” is in any way sufficient to put a defendant on notice that a signed, recorded, and otherwise facially valid deed allegedly is invalid as a matter of law because of an unmentioned external restraint imposed by a pre-existing lease

lessee because he agreed to it and not because of any generally applicable legal regulation imposed by an administrative agency. *See* KSPLA Lease § 11.1. And yet, disturbingly, Appellant—after claiming he is not subject to Rule 9(b) because his claim is for invalidity under a regulation—argues *on the very same page* that he should be allowed to plead his “averments of fraud/mistake and invalidity” in the same count as his other averments. Appellant’s Brief 9. We address this holding of the Trial Division, despite it not actually having been properly argued on appeal, only in the interest of developing Palauan jurisprudence in an area of the law where it is currently limited.

⁶ We are also deeply disturbed by a clear factual misrepresentation in the record, of which Appellant was or should have been aware. Appellant alleged, in his Pretrial Statement at 3, that the 1992 Deed was invalid in part because it was not recorded. Yet the copy produced as *Plaintiff’s* Exhibit G and as Exhibit 1 to *Plaintiff’s* Motion for Partial Summary Judgment—his own document—has a signed and dated record of recordation with the Clerk of Courts on the very day the Deed was signed. Giving Appellant the full benefit of the doubt, this allegation may result from the careless inclusion of boilerplate language explaining the ways a recorded deed might be invalid with the conjunctive “and” instead of the disjunctive “or,” thereby mistakenly asserting that the Deed was invalid in *all* such fashions. The Trial Division, in its discretion, appears to have chosen not to impose Rule 11 sanctions over this misrepresentation to the court, but we would caution all counsel of their obligations under Rule 11 and the Model Rules of Professional Conduct.

agreement—it is not—the Complaint lacks *any* of the required Rule 9(b) particularity and was insufficient to put Defendant on fair notice that allegations of fraud or mistake were being raised.

Defendant's ejectment claim is similarly deficient. While Rule 9(b) is not, on its surface, applicable to actions for ejectment, an action for ejectment requires that a claimant show a present right of possession to real property. *Anastacio v. Palau Pub. Utils. Corp.*, 17 ROP 75, 77 (2010). Appellant, in his pretrial statement and at trial, attempted to do so by alleging that the 1992 Deed, which purports to divest him of the very same property interest he now claims, was invalid due to fraud or mistake. The ejectment claim he sought to argue fundamentally relied on showing that fraud or mistake, because if the 1992 Deed is valid he has no present right to possession of the property. Yet the right to possession asserted in his Complaint is entirely different; by alleging that the 1992 Deed “fell through,” i.e. that it *never was consummated*, and that instead Minor and Eusevio Rechucher proceeded on a handshake agreement, Appellant has complained of an entirely different set of facts than the ones he actually attempted to proceed to trial on.

We note that, because Appellant's Complaint does not actually even aver fraud or mistake, it appears, on its face, to properly plead a basic claim for ejectment. Had the evidence presented been as alleged in the Complaint—that there was never a Deed because the deal fell through, so the parties proceeded on an oral agreement that had

expired—evidence supporting ejectment might have been properly admitted. Appellant, however, attempted to present evidence supporting contractual invalidity for fraud or mistake, likely because the 1992 Deed makes it patently clear that the actual theory pleaded was untrue. Evidence that does not tend to prove or disprove a fact of consequence to the pleaded claim is irrelevant, and as such is properly excluded under ROP. R. Evid. 401–02.

Finally, Appellant argues that Appellees' cross examination of Appellant's witnesses somehow suggests consent to trial on issues not in the pleadings. He does this despite noting, accurately, that Appellees made a timely motion in limine to preclude consideration of claims and evidence not pleaded and renewed that argument in a standing objection at the beginning of trial. Appellant's Brief 11. The court reserved ruling, but, nevertheless, Appellant inexplicably claims that counsel's active participation in the trial constituted Rule 15 consent. But a party who has properly made and preserved an objection is not required, and in fact may not be permitted by the presiding judge, to continue making such objection repeatedly simply because the trial court, in its discretion, reserves ruling on the objection until a later time. Appellee clearly and properly articulated his objection for the record, both by written motion and at trial, and the Court noted such objection; had Appellees' counsel simply assumed that his objection would eventually be sustained and, on that basis, refused to cross examine the witness merely because he believed the witness should not have been allowed to testify, counsel

would likely have committed malpractice.

The Trial Division was correct when it held that the contested issues were not tried by Appellees' consent, and we struggle to understand how Appellant actually believes this is subject to dispute given Appellees' express and repeated objection. The motion in limine was properly granted because the evidence presented was not relevant to the claims in the pleadings.

B. The Statute of Limitations

In the alternative, the Trial Division held that, assuming Appellant had properly pleaded claims for contractual invalidity and ejection, the statute of limitations barred a challenge to the 1992 Deed and any related ejection claim. The statute of limitations for actions to recover land is twenty years, 14 PNC § 402; the statute of limitations for any other legal claim potentially applicable to this case is six years, 14 PNC § 405. The reason for the twenty year statute of limitations for recovery of land is made clear by its counterpart: the twenty year adverse possession period. *See Palau Pub. Lands Auth. v. Salvador*, 8 ROP Intrm. 73, 77 (1999) ("Adverse possession and the statute of limitations must be considered together. A claimant obtains much the same result whether claiming under a twenty year adverse possession claim or invoking a twenty year statute of limitations defense."). Like the Trial Division, we will assume, without deciding, that the twenty year statute of limitations applies to the claims Appellant sought to argue.

While the sufficiency of Appellant's complaint is plausibly subject to argument,

the expiration of the statute of limitations is not. It is beyond dispute that the Deed was executed and filed on February 25, 1992, and that this case was filed on September 3, 2013—more than twenty-one years later. Nevertheless, Appellant, without citation to any legal authority, argues that his renewal of the lease in 2012 is what provides for his right of possession, a right he requires to trigger a claim for ejection, and that as such the statute of limitations runs only from 2012. But the lapse of his lease is irrelevant; this claim is not about that lease, or any lease of the land.⁷ In fact, it appears undisputed (as Appellant himself asserts) that the lease, at the time of the original deed and throughout most of the time in question, was in Appellant's name. Appellant's claim is about the *building*, a building he deeded to Eusevio Rechucher in 1992. While it is not uncommon for structures built on leased land to run with the land and become property of the landlord, *see, e.g.*, Def's. Ex. 7 ¶ 4, Appellant did not put the original lease of the lot in the record below—so the complete terms of the lease are unknown. *See* Pl's. Ex. H (consisting of only two pages of the 1992 KSPLA lease to Appellant, but excluding an undisclosed number of pages containing fourteen out of sixteen articles of the lease). Appellant's failure to factually develop this issue precludes any argument or conclusion that the leasehold on the land was necessary to demonstrate a right to possession of the

⁷ Even were this case about the lot, and not the building, it is far from clear that his right to the lot actually lapsed. As previously discussed, *infra* n. 1, the rent for the lease of the lot continued to be paid for some time. When a tenant holds over, with or without consent of the lessor, the existing terms of the lease remain in place unless abrogated by a new agreement or by action of law. As such, so long as KSPLA took no action to evict—which it did not—Appellant maintained many of his rights, including any right to eject a trespasser that he may have had. *See* Restatement (Second) of Property § 14.7.

building. It appears that Appellant has the 1992 lease agreement in his possession; his decision to introduce only a portion of this critical (and legally binding) document into the record is perplexing and ill-advised.

Beyond his lease-lapse theory, Appellant has failed to argue on appeal any other basis for tolling the statute of limitations; nevertheless, we will address them for completeness because the Trial Division considered them. Appellant has not asserted that the facts necessary to determine the Deed's alleged invalidity were fraudulently concealed from him, *see* 14 PNC § 409, or that they were somehow unknowable despite the exercise of reasonable due diligence, *see, e.g.*, Restatement (Second) of Torts § 899, cmt. e.⁸ Indeed, he concedes he had actual knowledge of the facts pertinent to the Deed's alleged invalidity nearly immediately after its signing. That is the last possible time that his claim could have accrued and started the clock. The statute of limitations cannot be reset by a claimant's failure to preserve his own rights, and the limited circumstances in which it can be tolled do not apply here. *See* 14 PNC §§ 401-14.⁹

⁸ Palau has not adopted this "discovery rule," which tolls the statute of limitations on a claim when the plaintiff does not know, and should not reasonably know, the facts necessary to state the claim. Appellant, further, has not argued it. We acknowledge it only because it presents a plausible legal theory that may warrant consideration if such a case was to arise in the future.

⁹ For reference, the American Bar Association, from which Palau has adopted the Model Rules of Professional Conduct, recently published an article highlighting the imposition of sanctions on a law firm for refusing to dismiss claims that were clearly time barred. *See generally* Onika K. Williams, *Law Firm's "Dishonest" Conduct Merits Sanctions*, ABA Section of Litigation News (June 15, 2015), http://apps.americanbar.org/litigation/litigationnews/top_stories/061515-baseless-claims-sanctions.html.

The Deed, which appears entirely valid on its face, has to be successfully challenged if Appellant wants to demonstrate a right to possession of the building—and any claims to challenge the Deed are time barred. Consequently, even were Appellant’s claims pleaded with sufficient particularity, the Trial Division would have been correct in dismissing such claims under the statute of limitations—an alternative ground the Trial Division recognized and noted.

II. The Trial Division’s Denial of Appellant’s Unjust Enrichment Claim

Appellant also contends that the Trial Division erred both in its factual findings and its legal conclusion supporting denial of his claim for unjust enrichment. The Trial Division found that the alleged oral agreement had not been proven and that, further, even if such an oral agreement had existed, Appellant’s unjust enrichment claim under that purported agreement was barred by the doctrine of laches. We find error in neither conclusion.

First, Appellant simply ignores the court’s most important factual finding—that it “doubt[ed] the veracity of Minor’s testimony altogether, and [was] not convinced that *any* conversations between Minor and Eusevio ever took place in which they agreed to alter any of the terms of the 1992 deed.” Trial Decision 13. The court explained that “Minor’s testimony [was] fraught with internal inconsistencies” that “undermine[d] [his] credibility as a reliable witness.” *Id.* 14. It further noted that his testimony was entirely

self-serving, uncorroborated by any significant evidence in the record, belied common sense, and strained credulity. *Id.* 14–15.

Without proving the existence of such an oral agreement, on which Appellant’s unjust enrichment claim is predicated, his claim can go no further. Despite Appellant’s scattershot appeal, this factual finding is not actually challenged. Even if it were, we see absolutely no evidence in the record to suggest it was clear error. “We generally defer to the credibility determinations of the trial court, and we will only overturn them in extraordinary cases.” *Palau Cmty. Coll. v. Ibai Lineage*, 10 ROP 143, 149 (2003). This is not such a case. This finding is amply supported by the record, and this alone causes Appellant’s unjust enrichment claim to fail, as the Trial Division correctly determined.

What Appellant does challenge is the Trial Division’s statement, in its discussion of the doctrine of laches, that “[a]t the very least, when Minor approached Rechucher in 2010 asking for money to pay arrearages on the KSPLA lease for Ngerchemai Lot, Minor should have mentioned to Rechucher that Rechucher owed two years of back rent . . . nothing in the record suggests Minor did this.” Challenging this point, Appellant draws our attention to the trial transcript, Tr. 104:1–6, 107:15–19, where he argues that Rechucher admits Appellant claimed to own the Ngerchemai lease and mentioned the alleged oral agreement between Minor and Rechucher’s father during that conversation. Appellant’s Brief at 13.

This exchange is entirely unpersuasive for a number of reasons. First, Appellant is

patently incorrect that the cited passages reveal any mention of the oral agreement—they state only that Minor claimed the lease was still his, that it was in arrears, and that he wanted to discuss it with Rechucher but that Rechucher “knew the *document*.” *Id.* (emphasis added). But second, this passage is *entirely nonresponsive* to the Trial Division conclusion quoted above. It has nothing to do with Rechucher’s alleged back rent owed to *Minor*, the very thing that the Trial Division expected Minor would have mentioned; it mentions only the rent owed to KSPLA. Accordingly, we find no factual error on this basis.

Beyond finding no factual error, we have little trouble approving of the Trial Division’s alternative, and similarly sufficient, basis for denying the unjust enrichment claim—laches. The doctrine of laches, which weighs against relief for stale claims, “makes an individualized inquiry into the situation of the parties, weighing the justification (if any) for the plaintiff’s delay and the prejudice (if any) to the defendant as a result.” Restatement (Third) of Restitution and Unjust Enrichment § 70(2) cmt. g. “[E]quity aids the vigilant and not those who slumber on their rights. [Laches] is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to the adverse party, operates as a bar in court of equity.” *Kansas v. Colorado*, 514 U.S. 673, 687 (1995) (quoting *Black’s Law Dictionary* 875 (6th ed. 1990)).

Over twenty years have elapsed since the events that actually triggered any

potential claims in this case occurred—and, in the interim, a key witness has passed away, significantly prejudicing Appellees’ ability to contest Appellant’s factual allegations. Beyond the loss of evidence, during the extensive passage of time before this case was brought, Appellee WCTC actually purchased the Malakal building from Minor—a purchase, presumably, that it would not have had to make if Appellant was correct that the original exchange “fell through,” because Rechucher would have still owned the building. The Trial Division determined that the evidence presented did not justify equitable relief, and we find no error in this.

WARNING TO COUNSEL

The submissions of Appellant’s counsel, both at trial and on appeal, fall so far below the appropriate professional standard as to potentially fail to meet an attorney’s duty of competency. *See* ABA Model R. of Prof. Conduct. 1.1; *see also In re Kalscheur*, 19 ROP 179 (Disc. Pro. 2011). Construing Appellant’s filings as generously as possible, a lack of linguistic clarity pervades this entire case. Construing them more plainly as they are presented, Appellant’s filings contain numerous affirmative misrepresentations beyond those already discussed above.

For example, Appellant brazenly asserts that the “Trial Court has already considered the evidence that is pertaining to the issue of contractual validity,” and that having done so “it is an abuse of discretion to deny [a] motion [to amend the pleadings].” Appellant’s Brief 12. From this he concludes that the Trial Division abused its discretion

in failing to treat the pleadings as amended to conform to proof *without* Appellant ever bringing such a motion. *Id.*; *see* Decision 9. But this is patently false; the Trial Division “disregard[ed] all evidence and argument relating to” the disputed claims. Decision 10. Appellant further claims that “the trial court [] determined that an issue [had] been tried with the express or implied consent of the parties,” and thus abused its discretion in refusing to make factual findings on that issue. But the Trial Division did just the opposite—it specifically recognized Appellees’ motion in limine *refusing* to allow issues not raised in the pleadings to be tried by express or explicit consent. Decision 7. It made no contrary finding. And no factual misrepresentation is quite so clear as the one discussed earlier, *supra* n. 6, that the Deed—which was in Appellant’s possession—was unrecorded, when it is plain from its face that it was in fact recorded.

The requirement that pleadings and briefs be clear and accurate is not some minor procedural issue. Sufficiency of pleading is a cornerstone of the adversarial system, which presumes that defendants will have fair notice of the claims and arguments against them.¹⁰ While Palau’s courts have generally been plaintiff friendly, defendants *do* have rights—perhaps most importantly the right to notice of the character of any claims against them. The requirement that claims be pleaded and argued with understandable clarity is not just an element of the Rules of Civil Procedure, but is a substantive

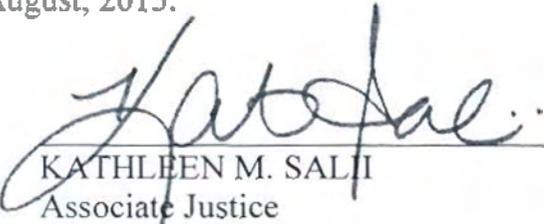
¹⁰ The signing of such documents by counsel also certifies that “the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; the allegations and other factual contentions have evidentiary support . . . and the denials of factual contentions are warranted on the evidence. . . .” ROP R. Civ. P. 11.

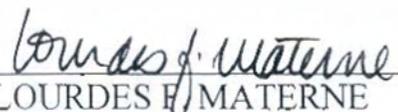
requirement of the constitutional right to Due Process. Appellant's haphazard briefing on appeal so disregards the rules, the record, and fundamental fairness to opposing parties that we would not have been outside our discretion to summarily affirm the decision below without a substantive opinion. This is not an inquisitorial Court, tasked with investigating the evidence, developing relevant legal theories, and presenting the arguments of the claimants. That burden falls on counsel, and counsel who fails to seriously appreciate this obligation exposes himself to both disciplinary action and malpractice litigation.

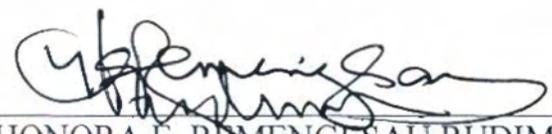
CONCLUSION

Because Appellant has failed to identify any error of fact or law material to the outcome of this case, the judgment of the Trial Division is AFFIRMED.

SO ORDERED this 7th day of August, 2015.


KATHLEEN M. SALI
Associate Justice


LOURDES E. MATERNE
Associate Justice


HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem