IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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JOHNSON TORIBIONG, Appellant, v. TMETBAB CLAN and KOROR STATE PUBLIC LANDS AUTHORITY, Appellees.	CIVIL APPEAL NO. 14-028 C/A No. 13-137 **OPINION**

Decided: June 19, 2015

Counsel for Toribiong: Pro Se
Counsel for Tmetbab Clan: Raynold B. Oilouch
Counsel for KSPLA: Debra Lefing

BEFORE: C. QUAY POLLOI, Associate Justice Pro Tem; ROSE MARY SKEBONG, Associate Justice Pro Tem; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable Kathleen M. Salii presiding.

PER CURIAM:

Appellant Johnson Toribiong appeals the decision of the Trial Division denying his Motion for Summary Judgment against Appellees Tmetbab Clan and Koror State Public Lands Authority and granting Appellees' Motions for Summary Judgment. Because we find no significant error of fact or law in the Trial Division Decision, we will affirm.*

* Pursuant to ROP R. App. P. 34(a), this case is decided on the briefing.

BACKGROUND

I. Initial Events

The facts of this case do not appear to be disputed in any significant fashion. In August of 1999, Koror State Public Lands Authority (KSPLA) entered into a Lease with Felix Maidesil, leasing him a parcel of then-public land. Upon leasing the land, Maidesil built a structure on it for his use as a tenant. Maidesil, however, fell behind on the rent due and eventually entered an agreement in 2003 with both KSPLA and Appellant Toribiong to assign the lease to Toribiong, Maidesil's cousin (the Assignment). Subject to a separate agreement, which was referenced but not incorporated or detailed in the Assignment and which Appellant does not appear to have put before the Court, Appellant paid off Maidesil's rental arrears and paid Maidesil the sum of $103,912.42 for the building Maidesil had constructed. This terminated Maidesil's involvement in this transaction, and he is not a party to this suit.

Appellant's acquisition of the Lease appears to have gone smoothly until April 27, 2011. On that day, the Land Court issued a Determination of Ownership that awarded the land in question to Tmetbab Clan under Tmetbab Clan's successful return of public lands claim, a claim Appellant was aware was pending at the time he entered into the Assignment. KSPLA appealed the Land Court decision, but the decision was affirmed in *Koror State Public Land Authority v. Tmetbab Clan*, 19 ROP 152 (2012). Subsequent to that appellate decision, KSPLA sent a letter to Toribiong notifying him that it no longer

owned the land in question, that it had exhausted its appellate remedies, and that, as such, his lease was terminated. KSPLA further advised Toribiong to negotiate with Tmetbab Clan if he wished to continue his occupation of the land. While some negotiations appear to have taken place and some payments were made to Tmetbab Clan, the Clan appears to have been consistent in its refusal to accept the terms of Toribiong's previous lease and its insistence that Toribiong eventually vacate the premises. After negotiations and payments ceased, the Clan sent Toribiong a final notice of eviction in January of 2013.

II. Contractual terms of the Lease and the Assignment

Appellant's Assignment acknowledges and accepts all of the rights and obligations Maidesil, the previous tenant, held under the Lease. Assignment ¶ 3. Those contractual rights and obligations include the following relevant excerpts:

> Lessee shall not alter, remove, damage, or destroy any part of the Premises or any part of any improvement, structure, or fixture that is now or that later will be on the Premises. All buildings, structures and improvements (but excluding personal property) that are now or that later will be on the Premises shall remain there during this Lease's term and, after the termination (regardless of the reasons for the termination) of this Lease, shall merge with and become part of the Premises and the property of the Authority. (Lease ¶ 4.E, Alterations; Damage; Merger).
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> . . .
>
> Authority covenants that Lessee, upon paying the rent and upon fulfilling all the conditions and agreements required by Lessee by this Lease, shall and may peacefully and quietly have, hold, use, occupy, possess, and enjoy the premises during the term agreed upon without any suit, hindrance, eviction, ejection, molestation, or interruption whatsoever of or by Authority in its role as lessor or by any other person lawfully claiming by, from, under, or against Authority. (Lease ¶ 13.A, Covenant of Quiet

Enjoyment by Authority)

> The foregoing provision, however, is subject to the following limitations: Authority holds title to the Premises only under a quitclaim deed; there are or may be claims against such Premises or its title by persons or entities other than Authority or Lessee. If such other person's or entity's claims are ultimately resolved or adjudicated in their favor and against Authority or Lessee, then: (1) in accordance with such resolution or adjudication, this Lease shall continue in effect by the succession of such other person or entities that shall replaced, for all purposes, Authority as lessor/landlord in this lease and such successor shall be entitled to all rights hereunder, and any other rights as set forth in applicable law and may be obligated to all duties hereunder; and (2) Lessee shall have no claim for or rights to damages or to any other relief for the loss of anything (including termination of this Lease, any improvements or personalty at or on the Premises, or the use or possession of the Premises) against Authority, and Authority shall not be held liable to Lessee or to anyone else for any loss or damages that may arise due to such unfavorable resolution or adjudication. (Lease ¶ 13.B, Limitation of Covenant).

III. Procedural History

Toribiong filed this suit in response to his eviction from the land. He claimed a number of parallel legal theories, notably arguing that (1) the Lease persisted, pursuant to ¶ 13.B(1), and that Tmetbab Clan was bound by the lease as a successor in interest; (2) that ¶ 13.B(2), the waiver of liability in the event of an unfavorable land adjudication does not apply; (3) the Covenant of Quiet Enjoyment by KSPLA still applies and is being violated as he does not have possession of the land or the building; (4) that the return of public lands does not include the building on the property, which he asserts he owns, and that as such Tmetbab Clan is liable in trespass; and (5) that KSPLA and Tmetbab Clan

are liable to him for compensatory damages and/or restitution.[1]

The legally relevant facts being all but undisputed, the parties filed cross-motions for summary judgment. The Trial Division denied all of Toribiong's claims, finding against him on each of the various legal theories he presented. It held that (1) the land was transferred to Tmetbab Clan unencumbered by the lease, so Tmetbab cannot be liable under any contract based theories; (2) that, based on the equities of the case, the constitutional principles involved, and the knowledge and control of the parties, Tmetbab was not liable to Toribiong in equity; (3) that Lease ¶ 13.B(1) is unenforceable and contrary to law, but that ¶ 13.B(2) remains in place; (4) that, as a result of the waiver of liability in ¶ 13.B(2), Toribiong's contractual claims against KSPLA fail; and (5) that, again based on the equities of the case and the experience and knowledge of Toribiong going into this situation, equitable relief from KSPLA was not appropriate. Having found that Toribiong had failed to make out a legal basis for relief, the Trial Division granted Tmetbab Clan's motion for summary judgment and dismissed the claims against KSPLA.

Toribiong timely appeals.

STANDARDS OF REVIEW

We review a lower court's grant of summary judgment de novo. *Ngotel v. Duty Free Shoppers Palau, Ltd*, 20 ROP 9, 13 (2012). In considering whether summary

[1] A number of other theories were raised by Appellant in parallel, but are mostly duplicative or reliant on Appellant's belief that the above-listed theories would be successful. We have reviewed the Trial Decision, Appellant's original complaint, and Appellant's briefing, and do not see any value in spending extensive time on legal theories that the Trial Division correctly disposed of as wholly without merit.

judgment is appropriate, all evidence and inferences are viewed in the light most favorable to the non-moving party, and summary judgment is inappropriate if genuine issues of material fact exist. *Id.* We may affirm or reverse a decision of the Trial Division for any reason apparent in the record. *Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219, 222 (1992).

DISCUSSION

We agree with the Trial Division that part of this issue is uniquely Palauan, and, as such, will focus on the limited case law and the constitutional and equitable principles underlying Appellant's interpretation of the return of public lands provisions and his equitable claims. *See Meriang Clan v. ROP*, 7 ROP Intrm. 33, 35 (1998). Appellant's contractual theories, however, can and will be decided under our common law and the common law adopted from the Restatements of the Law. *See* 1 PNC § 303. Because Appellant has failed to demonstrate any significant legal or factual error in the decision below, we will affirm for the reasons outlined by Tmetbab Clan.[2]

At the outset, we note two significant problems with Appellant's case. First, having reviewed Appellant's Complaint, he does not appear to have properly pleaded and

[2] KSPLA takes issue with the fact that Appellant presents the same arguments on appeal that he presented before the Trial Division, calling his appeal "frivolous" and requesting damages and fees. It does so citing to *Petrus v. Suzuky*, 19 ROP 136 (2012), in which we held that "raising arguments [the Appellate Division has] already addressed is frivolous and could warrant sanctions." *Id.* at 137. Inexplicably, however, KSPLA seems to think this precedent extends to pursuing arguments on appeal that the *Trial Division*, not the court of last resort in Palau, disagreed with. It most certainly does not. Appellant is absolutely entitled to argue the same legal theory on appeal that he did before the Trial Division, and this in no way causes his appeal to be frivolous—it is, in fact, the fundamental essence of an appeal of law. KSPLA's request is denied.

preserved a number of the claims and arguments he asserted at the trial level and on appeal.[3] Beyond this pleading issue, however, Appellant spends a significant and inexplicable amount of both his opening and reply briefs arguing a point that does not appear to be contested: that KSPLA, prior to the return of the land to Tmetbab Clan, had the legal right to lease it out. Setting aside that it is entirely unclear if Appellant has standing to contest this issue (because no harm that can be remedied by a favorable judicial decision on this point appears to have been presented), this argument fails to appreciate that KSPLA's leasing authority was not part of the basis for the Trial Division decision being appealed. No one appears to have contested, and we do not see how they could contest, that KSPLA has the authority to lease out Koror State public lands while they are publicly held. That question not being in dispute, we turn to the status of Appellant's lease and the merit of his various assertions on appeal.

I. The Status of the Lease

Several of Appellant's claims and legal theories rest upon, and presume, the continued validity of his Lease with KSPLA. Appellant asserts that the Lease, valid at the time it was entered into, must necessarily remain in force after the return of formerly public land. In bringing this appeal, he asks us to overrule the unappealed Trial Division decision *Iyar v. Masami*, 9 ROP 238 (Tr. Div. 2000) ("*Iyar I*"), and 9 ROP 255 (Tr. Div. 2001) ("*Iyar II*"), the only reported similar case that any party has identified, where this

[3] Any error of the Trial Division in moving forward with such claims is harmless, as these claims were denied and we affirm that decision.

issue was presented and which the Trial Division found to be persuasive in the instant case. *Iyar* also involved a successful return of public lands claim for lands that KSPLA had leased to another party. *Iyar I*, 9 ROP at 239. The tenant had built a building on the leased land while the claim was pending, and asked the claimant, the new owner, to honor the previous KSPLA lease. *Id.* The claimant did not want a tenant, however, so he brought an action for ejectment and the tenant brought a counter-claim for restitution. *Id.*

The court held that the principles behind the return of public lands provision of the Constitution, Article XIII Section 10, required that the land be returned unencumbered by existing long term leases. *Id.* at 240. "To find otherwise . . . would be to allow states and public lands authorities to effectively nullify the intent of the Constitution . . . the result [of which would] be that lands that were meant to be finally returned after prior generations had tried and failed [to recover them] would remain out of reach for generations to come." *Id.* The court found that the claimant was not bound by KSPLA's lease, because the ordinary basis for a lease binding a successor in interest when land is consensually transferred, such as when land is sold, is that the buyer knowingly purchases only the reversionary interest the original lessor holds—not an interest that grants a right to immediate possession. *Id.* A return of public lands claimant, however, neither agrees to such a limitation nor is bound by privity of contract or the estate as a buyer might be, because the claimant's interests and the land authority's interests are not common—they are adversarial. *Id.* As such, the *Iyar* court held that the claimant had a

right to immediate possession, free and clear of the lease.

Following trial, the *Iyar* court denied the former tenant restitution in *Iyar II*. 9 ROP at 260–61. It did so under the mistaken improver doctrine of the Restatement of Restitution, § 40–42, a rule this Court has applied on several occasions. *See, e.g.*, *Asanuma v. Golden Pac. Ventures, Ltd.*, 20 ROP 29, 32 (2012); *Haruo v. Ridep*, 17 ROP 1, 5 (2009); *Giraked v. Estate of Rechucher*, 12 ROP 133, 139 (2005). The general rule is that "a person who, in the mistaken belief that he or a third person on whose account he acts is the owner, has caused improvements to be made upon the land of another, is not thereby entitled to restitution from the owner for the value of such improvements." Restatement of Restitution § 42(1). Two significant exceptions to this rule exist: (1) if the mistake was reasonable, the improver is entitled to a restitution offset in equity for trespass claims or any other action brought against the improver, and (2) the rule is inapplicable, in its entirety, to an owner who, having notice of the mistake being made, stands by and does nothing to prevent it. *Iyar II*, 9 ROP at 257; Restatement of Restitution § 42(1), cmt. b.

The *Iyar* court found that neither exception applied, because the return of public lands claimant gave the improver notice that he had claimed the land in question and because there was no basis for the claimant to do anything more than give such notice prior to the success of his claim, as one must have a present right to possession of land in order to bring an action in trespass or for ejectment. *Iyar II*, 9 ROP at 257–58. The court

applied cases interpreting the Restatement as holding that actual knowledge of the adverse claim defeats any equitable request for an offset: "the occupier of the land of another, in order to have the equitable doctrine apply, must have acted in good faith in making the improvements *and must be ignorant of any adverse claim on the title.*" *Id* at 259. (quoting *Welsh v. Welsh*, 254 Md. 681, 255 A.2d 368, 372 (1969)) (interpreting Restatement of Restitution § 42, cmt. a) (emphasis in *Iyar*). As such, the *Iyar* court found that the lessee, who was aware of the pending return of public lands claim, "simply went ahead on the chance that [the return of public lands claimant] would not succeed. On these facts, the [c]ourt [saw] no unfairness in applying the 'harsh' common law rule that 'a person who intermeddles with the property of another assumes the risk as to his right to do so.'" *Iyar II*, 9 ROP at 259.

Appellant tries to distinguish *Iyar*, because the *Iyar* court found the tenant had not acted in good faith and Appellant asserts that he acted in good faith here.[4] He suggests that posture and timing of this case (in *Iyar*, the Land Court decision had already been rendered, but was pending on appeal, when the lessee entered the lease) changes the calculus, but has demonstrated almost no *facts* about the underlying transaction that distinguish the cases. In doing so, he fails to recognize the controlling legal language quoted by the court: "in order to have the equitable doctrine apply, [the occupier of the

[4] As previously noted, the *Iyar* case involves two published opinions. *Iyar I*, which Appellant cites, expressly left open the question of whether the lessee had acted in good faith and was entitled to restitution. But *Iyar II*, entirely ignored by Appellant, is enormously unfavorable to his case as it makes clear that the facts on which that case was decided are extremely similar to the facts of this case.

land of another] must have acted in good faith in making the improvements and *must be ignorant of any adverse claim on the title.*" *Id.* (quoting *Welsh*, 255 A.2d at 372). The existence of the *claim* against the land, of which Appellant indisputably had actual knowledge, is the controlling legal event—not the outcome of the litigation. To that extent, this case is the same as *Iyar*, and we agree with the Trial Division that the mistaken improver doctrine applies, while its exceptions do not.

Appellant also challenges the Trial Division's interpretation of the Constitution's return of public lands provision, arguing that the framers did not intend for tenants to suffer termination of their leases, yet once again ignores the hardship that his theory would impose on the successful claimant. But we disagree with Appellant's interpretation of this provision, which plainly is intended purely for the benefit of those who have suffered wrongful takings of their land, and can find absolutely no support for his speculation as to the legislative intent surrounding the plain meaning of 35 PNC § 1314(b). That section, which Appellant nakedly asserts involves the Statute of Frauds and the requirement that leases and use rights of one year or longer be in writing, makes no mention whatsoever of the validity of the leases, a writing requirement, or any other substantive element of the Statute of Frauds. What it does say, plainly and clearly, is what the Trial Division understood it as saying: that public lands are to be returned subject to any leases or use rights of less than one year, which Appellant's indisputably is not. It is black letter law that, when the plain language of a statute is clear and unambiguous,

courts should not look beyond that language. *Lin v. ROP*, 13 ROP 55, 58 (2006). Appellant's argument that an alleged legislative intent controls over the actual language of the statute simply is legally incorrect. *See id.*

Even if we chose to seek out legislative intent in this case, it is a standard (and extremely compelling) tenet of statutory construction that, where the legislature explicitly enumerates an exception or exceptions, additional exceptions will not be implied absent compelling evidence of contrary legislative intent. *Gulibert v. Borja*, 16 ROP 7, 11 (2008). The inclusion of the exception for leases of less than one year quite clearly implies that other leases, of which we believe the legislature is certainly aware, are not and shall not be preserved. *See id.* Appellant's apparent belief that the statute can and should be "interpreted to avoid harm or injustice to both parties" seems to ignore the harm he has asked the Court to impose upon Tmetbab Clan—namely, the continued involuntary loss of control of its land. Indeed, were it possible to "harmonize the interests of Tmetbab Clan and Appellant," we suspect this case would never have been brought in the first place. Appellant ignores Tmetbab Clan's claim that it is harmed by his continued presence on its land, but we will not. Tmetbab Clan was never a voluntary party to the lease and, given that the statute quite clearly states that returned public land will be encumbered only by leases or use rights of less than one year, the Trial Division was correct when it refused to bind Tmetbab Clan to a contract it had nothing to do with.

Appellant's most understandable argument for the persistence of the Lease is that

his Lease with KSPLA states that it "shall continue in effect by the succession of such other person or entities that shall replace . . . [KSPLA] as Lessor/landlord in the lease . . . ." On this basis, Appellant asserts that "the lease has remained in full force and effect after the Land Court's decision," but fails to specify what force or effect he believes the Lease currently has. The Trial Division found that this provision was unenforceable as contrary to law, and we agree. "What law," Appellant asks, "is being violated by that section of the Lease agreement?" The most basic principle of contract law—that a contract is a binding promise or set of promises between a promisor and a promisee. Restatement (Second) of Contracts §§ 1–2. Tmetbab Clan was neither a promisor nor a promisee under the lease, and KSPLA is not a lawful agent that may bind a successor return of public lands claimant by KSPLA's promise. Indeed, any contractual obligations of Tmetbab Clan cannot possibly "remain," as Appellant argues, because they did not exist under the original lease as is plain from its face, and KSPLA had no more authority to bind Tmetbab Clan than it would to bind a random third-party off the street. Tmetbab clan did not agree to the lease, appears to have received no consideration for the lease (a fundamental element of contract formation), and, as such, Appellant has no contractual relationship with or contractual claim against Tmetbab Clan. *See id.*

In attempting, however, to argue also that KSPLA is still bound by the Lease, Appellant claims that it was KSPLA's Notice of Termination of the lease--not the Land Court's Determination of Ownership--that caused the termination of his lease. This

necessarily asserts that the Land Court's Determination of Ownership is irrelevant when the fact is that KSPLA's notice of termination resulted from the Land Court's ruling in favor of Tmetbab Clan. We are concerned that an attorney would raise such an argument in good faith not only because of its obviously faulty logic but also because of the disregard it shows for the authority of the Land Court.

The Land Court Determination divested KSPLA of any ownership interest in the land and, consequently, any ability to lease out the land. KSPLA's obligations under the Lease, clearly predicated on its ownership of the land, were therefore discharged by impossibility. *See* Restatement (Second) of Contracts §§ 261 (Discharge by Supervening Impracticability), 263 (Destruction . . . of Thing Necessary for Performance).[5] KSPLA's letter was a courtesy that served to put the Appellant on notice of the Land Court's Determination. Nothing in KSPLA's letter is of any legal significance with regard to Appellant's contractual rights, and the Trial Division was correct when it found that the Land Court Determination was the triggering event that severed the existing lease. Both the Lease and the Assignment, which presupposes the existence of the lease as a necessary condition, were extinguished as a result of the Determination of the Land Court, and neither contract has any remaining legal force.

II. Toribiong's Claims against Tmetbab Clan

Having determined that the Lease no longer exists, the Trial Division correctly

[5] While a common law rule may be superseded by statute, the legislature has done so here only to a limited extent, preserving leases and use rights of less than one year. *See* 35 PNC § 1314(b).

held that Appellant's claims under it against Tmetbab Clan necessarily fail. Appellant, however, also brought a pair of claims regarding the building on the land, asserting ownership of the building, trespass against it, and, if the building is not his, restitution for its purchase. These claims are particularly puzzling, because the Lease—which Appellant acquired with full knowledge of its terms—expressly stated that improvements on the land run with the land, must remain on the land, and at the conclusion or termination of the Lease will belong to KSPLA, *not* to the tenant. Lease ¶ 4.E. As such, Appellant's reliance on the *Meriang Clan* decision is entirely misplaced. *Meriang Clan*, which held that a successful return of public lands claimant under 35 PNC § 1104(b) receives the land as it was taken but does not gain ownership of improvements built upon it while it was public, may indeed be relevant with regards to the ownership of the building. *See Meriang Clan v. ROP*, 7 ROP Intrm. 33, 35 (1998). But it is not relevant to Toribiong—it is relevant to KSPLA.

Appellant insists that he purchased the building from the previous tenant, but such insistence is wholly irrelevant and entirely surprising, given that the Lease makes clear that the previous tenant did not own the building outright: he merely held a temporary leasehold interest in it subject to KSPLA's contractual future ownership interest upon termination of the lease. *See* Lease ¶ 4.E. That termination having occurred, any ownership interest held by either Appellant or the previous tenant has transferred to KSPLA, as agreed to in the Lease that both the former tenant and Appellant bound

themselves by. Whatever interest, if any, that Appellant once held in the building was extinguished under his contract with KSPLA at the time of termination. Consequently, Appellant's trespass and unlawful occupancy claims are entirely without merit, as he has failed to show any property that he lawfully possesses and that Tmetbab Clan has infringed upon. His restitution claim is similarly futile as his ownership interest was divested under his own contract, not by the action of Tmetbab Clan or the Land Court.

III. Toribiong's Claims against KSPLA

Appellant's claims against KSPLA face a similar fate. Appellant's quiet enjoyment claim ignores the enormous disclaimer present in Lease paragraph 13.B: that KSPLA held the land only under a quitclaim deed, and that KSPLA did not warrant against termination of the lease by adverse legal decision. While we acknowledge that paragraph 13.A appears to offer a broad covenant of quiet enjoyment, it is immediately limited by the broad exceptions and disclosures in 13.B. Appellant's warranty simply was not as strong as he believes it was because KSPLA's title was weak, and a tenant can acquire no more right to land held under a quitclaim deed than the landlord itself has to convey. *See Kikuo v. Ucheliu Clan*, 15 ROP 69, 74 (2008) (noting that a grantee, similarly, can acquire no more than a grantor owns when title is transferred under a quitclaim deed).

Even had KSPLA held the land under a warranty deed and not included a broad waiver of liability, Appellant has failed to articulate what specific act or acts allegedly

breached the covenant in paragraph 13.A. As Appellant himself quotes, KSPLA agreed that he would be free from "suit, hindrance, eviction, ejection, molestation, or interruption whatsoever *of or by Authority* in its role as Lessor or by any other person lawfully claiming *by, from, under, or against Authority*." Lease ¶ 13.A (emphasis added). But Appellant has failed to allege any such conduct that KSPLA or any other person claiming "by, from, under, or against Authority" engaged in.[6] But what Appellant asserts is that KSPLA intentionally disregarded its covenant, suggesting that KSPLA somehow consented to Tmetbab Clan's acquisition of the land. Given that KSPLA vigorously contested Tmetmab Clan's claim in the Land Court and on appeal, we disagree. KSPLA merely complied with the lawful order of the Land Court and notified Appellant that its ownership interest, and thus its authority to rent out the land, had been terminated.

Further, the damages Appellant claims are similarly unsupported. In separate sections of his briefing he asserts that the payment he made to the former tenant was for ownership of the building, while later asserting that this payment was consideration for assignment of the lease—consideration he wants repaid by KSPLA. Setting aside that Appellant has confused and failed to support what this payment actually was for, neither theory involves KSPLA being the beneficiary of any unjust enrichment. Appellant also asserts that KSPLA should be required to refund the rents it collected while he was leasing the land, despite the fact that he was in actual possession of the land during the

[6] While we recognize that Tmetbab Clan could be construed to be a party lawfully claiming against KSPLA, Appellant did not raise such an argument in the Trial Division or on appeal.

time for which those rental payments were made and was receiving exactly what he was paying for. Having failed to justify any damages, Appellant cannot be awarded equitable relief.

Perhaps the most favorable legal principle Appellant invokes is his reliance argument against KSPLA, in which he argues that he relied on KSPLA's assurance that the Lease would persist beyond succession. While reliance on the assurances of a party to a contract is a justifiable basis for restitution in equity, Appellant has failed to factually support his argument. Appellant seems to have assumed that his reliance, which must have been reasonable to even give rise to restitution, is sufficient in and of itself to justify such an award, but the Trial Division found that any reliance was not reasonable and in this we find no error. Furthermore, given the express waiver of liability in the event of an adverse Land Court decision, Appellant must also show that the waiver clause is unenforceable for liability to attach—a burden he has largely ignored and certainly has not met.

The Trial Division expressed no opinion as to whether this resolution would, as Appellant insists "do an injustice to another class of Palauans, who in good faith relied upon official acts of government made pursuant to law," because it found that Appellant was fully aware of the adverse claim and thus was not relying exclusively on those official acts. Moreover, the official acts in question (the KSPLA lease) explicitly highlight that the land is held only subject to quitclaim deed and that the title was not

secure. It is unclear what Appellant would have KSPLA do that it did not; the potential for the return of public land was disclosed in the contract itself, in addition to Appellant's actual knowledge and awareness of the pending claim. Indeed, Appellant's own Reply includes a point heading that concedes that KSPLA acted in good faith. Equitable relief from a party contracting in good faith will generally be inappropriate, and we see no basis for reversing the Trial Division's decision on this basis.

Even beyond the legal waiver of liability, Appellant appears to have been on express notice that any reliance on assurances or promises outside the Assignment and the Lease was entirely at his own risk. The Assignment, which bears Appellant's signature, warns that "this Assignment was prepared exclusively for the KSPLA by its counsel, and that said counsel does not and cannot represent or advise any Party besides the KSPLA." Assignment ¶ 9. It also stresses that:

> EACH PARTY HAS: (A) READ, AND UNDERSTOOD THIS ASSIGNMENT AND AGREES TO ITS TERMS AND CONDITIONS; (B) INDEPENDENTLY EVALUATED THE DESIRABILITY OF ENTERING INTO THIS AGREEMENT *AND IS NOT RELYING ON ANY REPRESENTATION OR GUARANTEE NOT SET FORTH HEREIN* (OR IN ANY WAY UPON THE ADVICE, GUIDANCE, OR COUNSEL OF THE KSPLA'S ATTORNEY); AND (C) BEEN AFFORDED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH REGARDS TO ITS RIGHTS AND OBLIGATIONS SET FORTH IN THIS ASSIGNMENT . . . ."

Id. ¶ 10 (emphasis added). Given the actual, clear notice that any such reliance was misplaced, and particularly given that Appellant is an experienced businessman and attorney, we agree with the Trial Division that Appellant's reliance on any professed assurances by KSPLA that the lease ran with the land was unreasonable and does not

warrant relief.

We further agree with the Trial Division that this may *not* hold true in a future case if the tenant in question does not have the legal and professional pedigree that Appellant has. Paragraph 13.A asserts a strong and broad covenant of quiet enjoyment, but Paragraph 13.B immediately eviscerates it—the exceptions in 13.B all but swallow the rule of 13.A. We expect an experienced attorney to understand how little 13.A and B, read together, actually warrant against, but not all tenants are so sophisticated.

We disagree, however, with the Trial Division's specific analysis of the validity of the waiver of liability in KSPLA's lease, although we find such limited error to be entirely harmless in this case. First, the Trial Division, despite reaching the correct result, appears to have reversed the burden on the parties. Once the existence of a legally binding contract is proven, a party who wishes to escape a clause of that contract bears the burden of proving that the clause is unenforceable by reason of misrepresentation, illegality, unconscionability, or any other applicable rule of contract law that may void a provision of a contract. The Trial Division seems to have found that KSPLA affirmatively showed that Toribiong knew and understood what he was agreeing to, and as such the clause was enforceable. The correct statement of the law, however, would be that Toribiong failed to prove that the contract was unenforceable—he bore the burden.

Second, we believe the Trial Division extended this improper burden shift in its discussion of potential future claimants under such a clause. KSPLA's obligations in this

situation are statutory in nature. Public lands authorities such as KSPLA are entities created and obligated by statute to hold public lands and administer them for the public benefit. Land which sits unused is, without question, of less public benefit than land which generates revenue or is provided for communal use. As such, KSPLA must be able to at least consider leasing out unused public lands to provide for public revenue. Nevertheless, KSPLA is aware of the realities of the return of public land structure, also imposed by statute and by the Constitution. Because KSPLA has a duty to administer the lands for the public benefit, despite the fact that many of those lands are currently subject to title disputes, it would be negligent (and perhaps even unconscionable) to expose itself, a public entity, to enormous potential liability by leasing these lands out while unprotected. Waiver of liability in the event of an unfavorable Land Court decision strikes a reasonable compromise that allows KSPLA to fulfill its obligations under its enabling statute while protecting the public it has been created to serve.

This understanding does not require a lessee and a successful claimant to duke it out merely because KSPLA insulates itself from liability in its lease, for the same reason we addressed with regard to the current existence of the lease: the claimant was never a party to the lease, and the lessee was. The lessee openly and knowingly acknowledges that KSPLA holds only a quitclaim deed and agrees to the waiver of liability, effectively

assuming the risk of an adverse Land Court determination.[7] This Court presumes that, like any other terms of a lease such as the duration, price, or other specific conditions, a lessee takes the quality of a land owner's deed or a waiver term into account when considering whether to agree to a lease agreement. Perhaps, if the waiver of liability was not included, KSPLA would have required a higher rent; perhaps Appellant would not have been willing to pay it. We need not speculate on what might have occurred if the waiver of liability wasn't included, because Appellant agreed to the Lease as written. We will not intervene because he rolled the dice and lost; as the *Iyar* Court aptly put it, "[f]rom all that appears, [Toribiong] simply went ahead on the chance that [Tmetbab Clan] would not succeed. On these facts, the Court sees no unfairness in applying the 'harsh' common law rule that 'a person who intermeddles with the property of another assumes the risk as to his right to do so.'" *Iyar II*, 9 ROP at 259–60 (quoting Restatement of Restitution § 42, cmt. a).

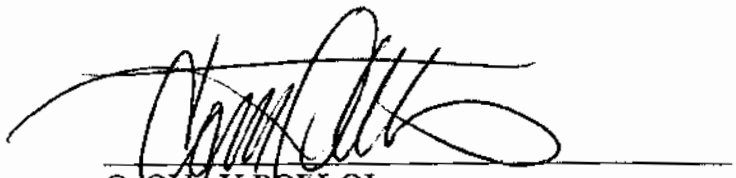
CONCLUSION

Because the Trial Division correctly held that the Lease does not transfer to Tmetbab Clan, that the Lease no longer binds KSPLA because it no longer owns the land, that Appellant validly waived liability in the event of an adverse Land Court decision, and that Appellant was not entitled to equitable relief on the undisputed facts before the

[7] As the Trial Division correctly noted, though, these factors are critical as they are the heart and soul of contract formation. Were a lessee able to demonstrate he that was unable, despite the reasonable exercise of due diligence, to understand the consequences of the waiver, a different case might be presented.

Court, the decision of the Trial Division is **AFFIRMED**.

SO ORDERED this 19th day of June, 2015.



C. QUAY POLLOI
Associate Justice Pro Tem

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