MADRIS, Appellant

v.

ILAB, Appellee

Civil Action No. 235

Trial Division of the High Court

Palau District

November 16, 1962

Action by owner of house against builder, in which owner contends that price paid for house was excessive, work was poorly performed, and that interest paid on money advanced by builder was usurious. The Palau District Court held that all matters in controversy between the parties concerning house were settled and determined at traditional *ocheraol.* On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that according to Palau customary law, all issues in dispute were settled, but that interest paid by plaintiff was usurious and excess must be returned by defendant to plaintiff.

Modified in part and affirmed in part.

1. **Palau Custom—"Ocheraol"**

   Mere fact that policeman accompanies builder of house to traditional Palauan *ocheraol* does not put owner of house under duress to agree to higher payment for house than he would have otherwise.

2. **Palau Custom—"Ocheraol"**

   Under Palau custom, payment by owner of house to builder of sum of money agreed upon at *ocheraol,* and return of part of sum by builder to owner as sign of satisfaction with payment, customarily concludes all issues in dispute.

3. **Equity—Generally**

   Generally speaking, only grounds on which suit can be maintained to recover money paid are fraud, mistake or duress.

4. **Courts—Settlements**

   Executed agreements of settlement, concluding relations of parties and based upon valid and adequate consideration, honest differences, and good faith, are binding upon parties.

5. **Contracts—Usury**
In Palau, any party injured as result of usury may recover from payee, upon proof of usury before competent court, amount of usurious interest actually paid. (Palau Congress Resolution 38-59)

6. **Statutes—Construction**
In interpreting remedial statutes, special effort is made to avoid technical construction of language used and to give fair construction so as to promote justice in interests of the public good.

7. **Contracts—Usury**
Where interest collected by party in Palau exceeds maximum limit of twenty-two percent, part of interest is usurious. (Palau Congress Resolution 38-59)

8. **Contracts—Usury**
In Palau, interest in excess of twenty-two percent per annum may be recovered by one who pays it in action brought within two years of date of payment. (Palau Congress Resolution 38-59)

9. **Contracts—Usury**
Voluntary taking or reservation of more than legal rate of interest is per se usurious, despite lack of intent to violate law.

Assessor:	JUDGE RUBASCH FRITZ
Interpreter:	HARUO I. REMELIIK
Counsel for Appellant:	WILLIAM O. WALLY
Counsel for Appellee:	N. S. ITELBANG

KINNARE, *Associate Justice*

This is an appeal from a judgment holding that all matters in controversy between the parties which concern the building of a house by the appellee for the appellant, and the price to be paid therefor, were settled and determined at the *ocheraol* (a party held under Palauan custom after the building of a house). In the complaint originally filed the appellant (plaintiff below) had asked the court to render judgment against appellee (defendant below) on the ground that the price paid by the appellant for the work on the house was excessive, that the work had been poorly performed and that the interest demanded and received by appellee from appellant on the money ad-

vanced by appellee to purchase house materials on appellant's behalf was, in fact, usurious and was in violation of the law. The complaint also alleged that appellee has used threats and duress to compel the payment received. Appellee's contention is that the payment made at the *ocheraol* for the building of his house was in accord with traditional Palauan practice and settled all points at issue between the parties concerning the house and the price to be paid for it.

OPINION

Originally appellant's father, who is the real party in interest in this case, but whose age prevented his acting in his own behalf, had agreed with one Obichang to build a house for him at an agreed price of $18.00 per tsubo. Obichang was not able to build the house and therefore it was arranged that the appellee should build it, but appellant and appellee made no agreement as to the price per tsubo to be paid by appellant. The house was under construction for a long period of time and appellee, at appellant's request, advanced his own money to purchase some of the materials for the house as well as to pay certain laborers for some of the work they did. During the construction of the house appellant asked that certain changes be made in the original plans and these were made by the appellee.

On April 19, 1962, which was about 4 months after the house had been completed, the *ocheraol* was held. Appellee attended the *ocheraol*, bringing a policeman with him. At the time of the party appellant paid appellee substantially the sum originally demanded by him, and appellee thereafter returned $5.00 of the sum received by him to the appellant and also distributed to the general company attending the *ocheraol* a carton of cigarettes.

It is the contention of the appellant that the presence of the policeman brought to the party by the appellee con-

stituted a threat of force, and intimidated appellant, so that the payment made by him was not freely made as it should have been to comply with traditional practice. Appellant further charged in his original complaint that appellee had received $180.48 as interest on the $129.16 that appellee had spent for materials. The finding of the court, however, was that only $30.48 of the amount received by appellee was paid as interest on the $129.16 advanced by him, the rest of the $180.48 going to cover appellee's salary and the salary of one of his laborers. Appellee also urged that it was natural and customary for him to bring his relative, the policeman, to the *ocheraol*, that the policeman was not in uniform, made no show of acting in any official capacity and, in fact, never even went in the house to participate in the discussions concerning the price to be paid, but remained in the yard during the party, mingling with the other guests.

The trial court found as follows:—

"CUSTOMARY PRINCIPLES

Under the Palauan customs, when an *ocheraol* is held, most of the time there's always a controversy as to the payment of the house and what is known as *desechel a blai* (a Palauan money paid as formation of the house). Once the *ocheraol* is finished, and the sign of it is a money or some money paid by the collector to the contributors as the sign of satisfaction of the collector, whether the money is enough or not, it is finished. If no such sign is seen then the *ocheraol* is not considered completed.

It is very clear in the present situation that the defendant has paid some money to the plaintiff at the *ocheraol,* and he also bought a carton of cigarettes and distributed it to the contributors.

JUDGMENT ORDER

The court therefore orders that:—
What has been determined at the *ocheraol* is approved by court."

[1–3] A careful review of the record fails to substantiate the appellant's claim that the mere presence of the policeman who accompanied appellee to the *ocheraol* did in fact put the appellant under duress, and the statement of the trial judge as to the custom concerning *ocheraols* is found to be accurate. Disputes between the owner and the builder are not uncommon at *ocheraols.* These disputes may concern the quality of the work, the price to be paid, the accuracy with which the plans were followed, the time of completion and the other points which ordinarily arise between owner and builder in cases of this kind. According to Palauan custom, a payment by the owner to the builder of the sum agreed upon at the *ocheraol,* and the return of a part of the sum by the builder to the owner as a sign of satisfaction with the payment, customarily conclude all issues in dispute. Generally speaking there are only three grounds on which a suit can be maintained to recover money paid—to wit, fraud, mistake or duress. (See *Lamborn v. Dickinson County,* 97 U.S. 181, 24 L.Ed 926.) The record here, as has been stated, does not support appellant's charge of duress and, similarly it cannot be said that it is any more helpful to the appellant on the grounds of fraud or mistake.

However, the court believes that appellant's contention that usurious interest was collected by appellee is correct, and it appears that this point was not considered by the trial judge who apparently believed that the settlement reached at the *ocheraol,* whether or not it included usurious interest, was binding on the parties involved.

[4–6] There is no doubt that, under the general law, executed agreements of settlement, concluding the relations of the parties and based upon valid and adequate consideration, honest differences and good faith, are binding upon the parties. (See A.L.R. Vol. 99, p. 601.) However, in the case before us we must consider that the

Palau Congress (Resolution 38-59) has specifically set forth that any party injured as a result of usury may recover from the payee, upon proof of usury before a competent court, the amount of usurious interest actually paid. This is a remedial statute and in the interpretation of remedial statutes, a special effort is made to avoid any technical construction of the language used and to give it a fair construction so as to promote justice in the interests of the public good. (See 50 Am. Jur., Statutes, § 393.)

This is particularly true of usury statutes. "The object of such legislation being to protect those whom necessity compels to borrow, from outrageous demands often times made and required by those who have money to loan. That view of the law should be adopted which will accomplish the purposes thus sought." (55 Am. Jur., Usury, § 6.)

[7-9] From the findings of the court, and upon appellee's own testimony, it is clear that part of the interest collected by appellee was usurious in that it exceeded the maximum of 22% allowed in Resolution 38-59. Appellee had advanced $129.16 for the purchase of materials and collected, as interest on that sum for a period of seven months, the sum of $30.48. 22% interest on $129.16 for a seven month period amounts to $16.58, so that appellee has collected $13.90 interest more than the maximum amount allowed by Resolution 38-59, and this resolution specifically provides that interest in excess of 22% per annum may be recovered by the one who pays it in an action brought within two years of the date of payment. This action was brought within that time.

"The voluntary taking or reservation of more than the legal rate of interest is per se usurious, and the offense is not condoned by want of intent to violate the law. Although the lender may not intend to be guilty of usury, he is nevertheless guilty, for he intends to do what he does, but mistakes the law." *Lloyd v. Scott,* 4 Pet. (U.S.) 205, 7 L.Ed 833.

JUDGMENT

It is ordered, adjudged, and decreed that appellant have and recover from appellee the sum of $13.90 which sum is the excess interest paid by appellant to appellee at the *ocheraol* held on or about April 19, 1961. Otherwise the judgment is affirmed. No costs are assessed against either party.
