IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ISLAND PARADISE RESORT CLUB,
Appellant/Cross-Appellee,
v.
NGARAMETAL ASSOCIATION,
Appellee/Cross-Appellant.

Cite as: 2020 Palau 27
Civil Appeal No. 20-004
Appeal from Civil Action No. 16-053

Argued: October 9, 2020
Decided: December 2, 2020

Counsel for Appellant/Cross-Appellee ..... Johnson Toribiong
Counsel for Appellee/Cross-Appellant ..... James W. Kennedy

BEFORE: JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice,[1] presiding.

OPINION

PER CURIAM:

[¶ 1] Appellant/Cross-Appellee Island Paradise Resort Club ("IPRC") appeals from the Trial Division's judgment that it is liable for breaching a 2015 Agreement with Appellee/Cross-Appellant Ngarametal Association ("the Association"). Because we conclude that the trial court failed to properly justify its decision to preclude IPRC from presenting evidence of a settlement

[1] Justice Salii became Presiding Justice of the Trial Division after the filing of the Notice of Appeal in this case.

agreement that allegedly superseded the 2015 Agreement, we **VACATE** and **REMAND**.

BACKGROUND

[¶ 2] We recount the rather convoluted procedural history of this case not because it ultimately helps resolve the merits of the underlying question, *i.e.*, whether evidence was properly excluded at trial, but because it sheds light on the question of whether the trial court considered all relevant factors in making its ruling. This dispute arises from a September 2010 fire that started on IPRC's premises and burned down the Association's adjoining, two-story, 10,000-square-foot building, known as the Bai-ra-Metal.[2] In 2015, the parties entered into a settlement agreement, which obligated IPRC to make certain cash payments to the Association and to construct a new building in place of the destroyed Bai-ra-Metal.[3]

[¶ 3] On June 2, 2016, the Association filed suit against IPRC, alleging that by failing to make all required payments and by not taking the necessary steps towards constructing the new building, IPRC was in breach of its contractual obligations under the 2015 Agreement. Over the ensuing year and a half, trial was repeatedly rescheduled due to the possibility of settlement. When no settlement materialized, the trial court set the case for trial on April 17, 2018. However, less than two weeks prior to the scheduled trial, on April 6, then-counsel for IPRC filed a motion to withdraw. In its response to the motion, the Association requested that any postponement of the trial date not exceed ninety days. The trial court granted the motion to withdraw; ordered IPRC to retain new counsel or explain to the court how it would be represented going forward; designated IPRC's Administrative Officer as its agent for service of process; and reset the trial to July 2018.

[¶ 4] At the July 18, 2018 pretrial conference, IPRC's President informed the court that IPRC was continuing to look for counsel. Although the President stated IPRC was prepared to proceed to trial, the court expressed concern about IPRC's ability to move forward absent adequate legal representation and once

[2] Both IPRC and the Association sublease their land from an Association member who holds a lease from the Koror State Public Lands Authority.

[3] In subsequent months, the agreement was amended by consent of the parties.

again rescheduled the trial, this time to September 2018. The court ordered IPRC to report on its efforts to retain counsel and to file a status report before August 17, 2018, if IPRC continued to be unable to do so. In August 2018, the Association's counsel withdrew and was replaced by the current counsel, James Kennedy.

[¶ 5] Over the next several months and several status conferences, IPRC remained unable to secure counsel. In its reports to the trial court, IPRC represented that it had contacted four on-island attorneys but had been unable to retain any of them due to the attorneys' schedules and various conflicts of interest. The trial court once again rescheduled the trial, this time to February 4, 2019, and again ordered IPRC to provide a status report on its efforts to retain counsel by October 12, 2018. The court also stated that discovery had to be completed by November 9, 2018, and required "that the discovery shall be served in time to make the response to discovery due on or before said completion date." Pretrial Order No. 5 (Sept. 10, 2018) at 3. The court explicitly warned the parties that failure to comply with its order could result in sanctions, as well as the exclusion of untimely disclosed evidence. On January 23, 2019, the parties jointly moved to vacate the trial date and schedule a status conference, pending submission of a stipulated judgment. The court granted the motion and scheduled a status conference for February 25. At the conference, IPRC once again informed the court that its efforts to retain counsel had not met with success. The court ordered IPRC to file a status report on its continued efforts to retain counsel by March 25 and again rescheduled trial, to August 12. The court also reset the date for the completion of discovery to April 15, 2019, again requiring "that the discovery shall be served in time to make the response to discovery due on or before said completion date." Pretrial Order No. 6 (Feb. 25, 2019) at 2. The court also reiterated its warning to the parties that failure to comply with its orders could result in sanctions, as well as the exclusion of untimely disclosed evidence. IPRC failed to file the required status report by the March 25 deadline.

[¶ 6] On April 5, 2019, the Association served IPRC with a request for admissions seeking, as relevant to the present appeal, admissions (1) "that on February 15, 2015, [IPRC] entered into an agreement with [the Association] to resolve an outstanding claim originating from the destruction of [the Association]'s building on September 8, 2010"; and (2) that the 2015

Agreement and its amendments "constitutes a complete accounting of all agreements currently contracted between" the parties. *See* Pl.'s Mot. to Deem Matters Admitted at 3. On May 9, 2019, after IPRC failed to timely respond, *see* ROP R. Civ. P. 36(a) (setting a 30-day time limit to respond to such requests), the Association moved to deem the matters contained in its requests admitted. The Association also contended that IPRC's failure to respond by the court-imposed deadline for the close of discovery constituted an additional basis for the relief it requested in its motion. The Association submitted that "[n]o leniency or post-expiration extension of the deadline can be appropriate in this case" considering what was, in the Association's view, IPRC's "frequent[] disregard[]" for the court's deadlines. *Id.* at 2.

[¶ 7] On May 13, 2019, the court issued a brief order granting the Association's motion, "[a]s the deadline for [IPRC] to respond [to the request for admissions] has expired." Order Granting Mot. to Deem Matters Admitted at 1. On the same date, the court yet again ordered IPRC to file a status report on its efforts to retain counsel by May 20 or face sanctions for its "continued disregard for deadlines" and "failure to communicate with [the Association] and the court." Order to File Status Report at 1-2. The next day, Johnson Toribiong filed a notice of appearance on behalf of IPRC.

[¶ 8] On June 14, 2019, the Association filed a motion for partial summary judgment, arguing that in light of IPRC's deemed admissions, no material facts remained in dispute. The same day, IPRC filed a motion to strike the Association's May 9, 2019 motion to deem matters admitted. IPRC advanced several arguments in support of its motion. First, IPRC argued that because the request for admissions was served on IPRC's Administrative Officer, who "is not a lawyer and not familiar with the rules of discovery . . . at the time when [IPRC] was not represented by counsel," failure to timely respond should be excused. Def.'s Mot. to Strike at 2. Next, IPRC argued that the request for admissions was itself untimely given that it was served too close to the deadline for the completion of discovery and was therefore in violation of the court's relevant pretrial order "that the discovery shall be served in time to make the response to discovery due on or before said completion date." *Id*. Finally, IPRC pointed out that the request for admissions referred to the 2015 Agreement as controlling when, according to IPRC, "[t]hat agreement has since been replaced by [a] Settlement Agreement[] executed on January 23,

2017." *Id*. at 2-3. IPRC essentially repeated the last argument in its response to the Association's motion for partial summary judgment. According to IPRC, the Association's claim that "the Agreement dated February 15, 2015 [is] the controlling agreement . . . is simply and demonstrably false as the February 15, 2015 agreement has since been replaced by [the] Settlement Agreement[] executed on January 23, 2017." Def.'s Resp. to Mot. for Summ. J. (July 10, 2019) at 4. The Association opposed the motion to strike, rejecting IPRC's allegations regarding a 2017 agreement and arguing that IPRC "itself admitted that only the agreements listed in the Requests for Admission were currently in effect[] by failing to respond to [the] Request[s] for Admission." Pl.'s Resp. to Mot. to Strike (June 28, 2019) at 5. The Association also argued that IPRC was not entitled to any special solicitude due to its lack of representation because "[i]t was [IPRC]'s election to proceed without counsel, despite being warned repeatedly by this [c]ourt" to retain counsel. *Id.* at 4.

[¶ 9] On July 3, 2019, the trial court, without explanation, denied IPRC's motion to strike and reaffirmed its ruling deeming IPRC to have admitted all the matters in the Association's request for admissions. In its subsequent reply to IPRC's response to the motion for summary judgment, the Association noted, "[t]his [c]ourt has twice confirmed that [IPRC]'s failure to respond to the submitted Requests for Admission has resulted in the facts alleged being admitted."[4] Pl.'s Reply (July 22, 2019) at 1.

[¶ 10] On August 19, 2019, IPRC filed a "Notice of Waiver of Claim & Accord and Satisfaction," in which it sought to bring to the court's attention a provision of the alleged 2017 Agreement in which the Association agreed to release all claims arising from the fire. Nothing in the record before us directly indicates that the trial court ever considered this "notice." On August 22, 2019, the court denied the Association's motion for partial summary judgment stating, "[w]hile the undisputed facts based on the [request for admissions] seem relatively straightforward and would support granting of partial summary judgment that [IPRC] breached the 2015 Settlement Agreement, [IPRC] has

[4] IPRC filed a motion for a sur-reply to which it, for the first time, attached what it purported to be the 2017 Settlement Agreement. However, the trial court denied the motion to file the sur-reply and ordered it stricken.

raised genuine issues of material fact relating to terms and scope of the parties' agreement." Order on Pl.'s Mot. for Summ. J. at 3.

[¶ 11] After some more procedural skirmishing and delays, the case finally moved to trial on September 24-26, 2019. In a pretrial order dated August 12, 2019, the court granted the Association's motion *in limine* to exclude "[e]vidence of any contracts which contradict matters deemed admitted by Order of May 13, 2019." Pretrial Order No. 7 at 2. Despite this order, IPRC attempted to introduce evidence of the 2017 Settlement Agreement at trial, but the court adhered to its prior ruling. IPRC noted its objection to the exclusion of the 2017 Agreement for the record. On January 10, 2020, the court issued its Decision and Judgment, concluding that IPRC was in breach of the 2015 Agreement and awarding damages to the Association. This appeal timely followed.[5]

STANDARD OF REVIEW

[¶ 12] We review a trial court's discretionary pretrial rulings for abuse of discretion. *See Saito v. Mekreos*, 19 ROP 108, 111 (2012). Under this standard, "a trial court's decision will not be overturned unless the decision was arbitrary, capricious or manifestly unreasonable, or because it stemmed from an improper motive." *Remengesau v. ROP*, 18 ROP 113, 118 (2011). Generally, "[a] discretionary act or ruling under review is presumptively correct, and the burden is on the party seeking reversal to demonstrate an abuse of discretion." *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008) (internal quotation marks omitted); *see also Palau Red Cross v. Chin*, 20 ROP 113, 118 (2013). At the same time, a court abuses its discretion "when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment." *Eller v. ROP*, 10 ROP 122, 128-29 (2003)

[5] In addition to appealing the trial court's handling of the purported admissions, IPRC contends that the court erred by awarding lost rental income to the Association. The Association cross-appealed, contending that the court improperly calculated prejudgment interest, failed to make an award of costs and attorneys' fees, and neglected to opine on whether IPRC breached an implied warranty of good faith and fair dealing or engaged in fraudulent misrepresentation.

(internal quotation marks omitted). Finally, "where a lower court has not clearly set forth the basis for its decision, remand for further elaboration is appropriate." *Estate of Tmilchol v. Kumangai*, 13 ROP 179, 182 (2006). That is so because when "we cannot discern the legal and factual basis for the trial court's" decision, we are "unable to conduct a full and fair review of [that] decision." *Id.*

DISCUSSION

[¶ 13] As in the trial court, the parties do not craft their arguments with precision and spend too much time on irrelevant or specious arguments. As a result, it is not entirely clear precisely what trial court ruling IPRC is challenging. However, considering the parties' agreement that the abuse of discretion standard governs this appeal,[6] and the fact that IPRC's assertion of error rests on the trial court's decision to bar evidence of the 2017 Agreement based on IPRC's admissions, *see* Appellant's Opening Br. at 1, we conclude that our inquiry should focus on the trial court's denial of IPRC's June 14, 2019 motion to strike.

[¶ 14] On the one hand, to the extent IPRC sought reconsideration of the trial court's May 13, 2019 Order deeming certain matters admitted, its motion to strike was not the appropriate procedural vehicle. After all, strictly speaking, IPRC's motion merely sought to strike the Association's *motion* to deem matters admitted, rather than to in any way disturb the entered *court order* granting the motion and deeming the matters admitted. Motions to strike are governed by Rule of Civil Procedure 12(f), which provides that "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." ROP R. Civ. P. 12(f). IPRC did not reference Rule 12(f) in its motion, but we are not aware of another basis in our rules for a "motion to strike." In any event, IPRC does not contend that there was anything "redundant, immaterial, impertinent, or scandalous" about the Association's motion. Nor is a motion to strike an appropriate vehicle for

[6] Contrary to the Association's urging, the relevant standard is "abuse of discretion" not "*gross* abuse of discretion." We have previously only applied the "gross abuse of discretion" standard to a court's handling of protective orders during discovery. *See, e.g.*, *Ellechel v. ROP*, 7 ROP Intrm. 143, 147 (1999); *Tmetuchl v. Kohn*, 5 ROP Intrm. 81, 83 (1995). We see no reason to extend this standard to a court's other discretionary determinations.

challenging either a court order or an opposing party's motion, even if it were "redundant, immaterial, impertinent, or scandalous." *See* 5C Fed. Prac. & Proc. Civ. § 1380 (3d ed.) (noting that motions to strike "only may be directed towards pleadings as defined by Rule 7(a); thus motions, affidavits, briefs, and other documents outside of the pleadings are not subject to Rule 12(f)").

[¶ 15] Furthermore, Rule of Civil Procedure 36 is clear that if a party does not timely respond to a request for admissions, "[t]he matter is admitted." ROP R. Civ. P. 36(a). This means that Rule 36(a) is "self-executing"—the requesting party need not move for a matter to be admitted if a response was not timely filed. *See, e.g.*, *Brosnan v. Tradeline Sols., Inc.*, 681 F. Supp. 2d 1094, 1097 (N.D. Cal. 2010). Once a matter is admitted pursuant to Rule 36, it "is conclusively established unless the court on motion permits withdrawal or amendment of the admission." ROP R. Civ. P. 36(b). What this means is that even if the Association's motion to deem matters admitted were struck, IPRC would still be deemed to have admitted all matters to which it failed to respond by the deadline. Thus, once IPRC missed the deadline for responding to the request for admissions, the onus was on IPRC to move for withdrawal or amendment of its admissions.

[¶ 16] On the other hand, though improperly denominated, it is clear to us (and we suspect was equally clear to the trial court) that IPRC's motion sought to reverse the effects of its failure to respond to the Association's request for admissions. In other words, in effect, if not in name, IPRC's motion was of the type contemplated by Rule of Civil Procedure 36(b). The question, then, is whether the trial court abused its discretion when it denied IPRC's motion.[7]

[¶ 17] We are at a disadvantage in answering this question because the record does not reveal what reasoning the trial court used to reach its decision. While we recognize that IPRC's motion to strike was an improper procedural vehicle to achieve the ends IPRC sought to achieve, the trial court's failure to engage with the substance (or even the procedural deficiencies) of IPRC's motion gives us pause. We simply cannot tell whether the trial court denied

[7] While we do not directly address the trial court's ruling on the Association's motion *in limine* to exclude the 2017 Settlement Agreement, we note that this ruling flowed directly from the May 13, 2019 Order that deemed admitted the matters in the request for admissions and the July 3, 2019 Order denying IPRC's motion to strike.

IPRC's motion because it found it to be procedurally deficient; whether it considered IPRC's substantive arguments and found them unpersuasive; or whether it was sanctioning IPRC for various delays and lack of attention to the court's orders.[8] Because the "lower court has not clearly set forth the basis for its decision," *Kumangai*, 13 ROP at 182, we are unable to assess whether "a relevant factor that should have been given significant weight [was] not considered," whether "an irrelevant or improper factor [was] considered," or whether "the court in weighing [the] factors commit[ted] a clear error of judgment," *Eller*, 10 ROP at 128-29 (internal quotation marks omitted). Absent an ability to meaningfully review the trial court's decision, we are constrained to vacate and remand for a fuller elaboration of the factors that undergird the court's judgment. *See Kumangai*, 13 ROP at 182 ("[W]here a lower court has not clearly set forth the basis for its decision, remand for further elaboration is appropriate."); *Temael v. Beketaut*, 8 ROP Intrm. 101, 101 (2000) (vacating and remanding because "[t]he Land Court's findings of fact and conclusions of law do not make clear the basis for . . . its determination of ownership").

[¶ 18] Remand is also warranted in light of our concern that the trial court act with particular care when it takes an action that potentially forecloses the decision of a matter on its merits. *See Ngeliei v. Rengulbai*, 3 ROP Intrm. 4, 9 (1991). Although in our adversary system procedural default rules have an important function of streamlining litigation, "whenever it is reasonably possible, cases should be decided on their merits." *Id*. As the trial court recognized in its order on the Association's motion for partial summary judgment, once the matters in the request for admissions were deemed admitted, the battle over liability had essentially been won by the Association far in advance of trial. In these circumstances, it behooved the court to ensure that IPRC's protests were carefully considered.

[8] In this regard, the Association suggested in its briefs and at argument that deeming the matters admitted was a sanction for IPRC's dilatory behavior. Certainly, IPRC did not retain counsel until the last possible moment and exhibited a pattern of missing court deadlines. However, the trial court nowhere stated that it was deeming the matters admitted or rebuffing IPRC's attempts to present evidence of the 2017 Agreement as a sanction. If the trial court believes that IPRC should not be allowed to withdraw or amend its admissions as a sanction, it should say so, and we can review such a determination in due course.

[¶ 19] We therefore conclude it is necessary to remand so that the trial court can determine in the first instance if IPRC should be permitted to withdraw or amend its admissions. In making this determination, the trial court should fully explain its reasoning and consult Rule 36's framework for assessing whether admissions may be withdrawn or amended. *See* ROP R. Civ. P. 36(b) ("[T]he court may permit withdrawal or amendment [of an admission] when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the party's action or defense on the merits."). While we do not prejudge the trial court's determination of the issues raised in IPRC's motion, we draw the court's attention to the non-frivolous arguments raised by IPRC regarding (1) the existence of a binding 2017 agreement and (2) the fact that the time for responding to the request for admissions ran when IPRC was not represented by counsel.[9] Finally, because all other issues in this case may depend on the question of whether IPRC can withdraw or amend its admissions, we do not address IPRC's other assignment of error or those raised in the Association's cross-appeal.

CONCLUSION

[¶ 20] For the foregoing reasons, the Trial Division's judgment is **VACATED** and **REMANDED** for further proceedings consistent with this opinion. Each side shall bear its own costs.

[9] Although we do not reach the merits of the underlying dispute, in light of the contentious history of this litigation, we pause to note that whatever the validity of the 2015 or 2017 agreements, they appear to be mutually exclusive documents. We make this observation so as to ensure that, irrespective of how the trial court handles this matter on remand, the parties are not permitted to "double dip" on their contractual claims.