

IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION

FILED <sup>caK</sup>

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PELELIU SENIOR CITIZENS ORGANIZATION,  
*Appellant,*  
v.  
ELSAU CLAN, rep. by DILSEBSIS KIKUO RIDEB  
NGIRAINGAS and JACKSON NGIRAINGAS and NOBERT  
ITO,  
*Appellees.*

SUPREME COURT  
OF THE  
REPUBLIC OF PALAU

Cite as: 2023 Palau 20  
Civil Appeal No. 22-023  
Appeal from Civil Action No. 21-143

Decided: October 17, 2023

Counsel for Appellant ..... Mariano W. Carlos  
Counsel for Appellee ..... Masami Elbelau, Jr.

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding  
JOHN K. RECHUCHER, Associate Justice  
FRED M. ISAACS, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice,  
presiding.

**OPINION**

PER CURIAM:

[¶ 1] This case asks us whether Appellee Nobert Ito had apparent authority to sign a contract with Appellant Peleliu Senior Citizens Organization (“the Organization”) over the use of land belonging to Elsau Clan after holding himself out as the Clan’s highest chief.

[¶ 2] Because we find that the Organization forfeited the argument and failed to meet the criteria of apparent authority, we **AFFIRM**.

## BACKGROUND

[¶ 3] In 1996, the Organization entered into a Use Right agreement with Elsau Clan. The agreement allowed the Organization to build and use the Senior Citizens' Center on Cadastral Parcel No. 050 R03, which belongs to Elsau Clan. The agreement lasted for twenty-five (25) years and was paid for through public funds from the Peleliu State Government.

[¶ 4] Elsau Clan from Ngerchol Hamlet in Peleliu State recognizes the male chief title of *Louch* and its female counterpart *Dilsebsis*. On March 19, 2021, Nobert Ito, holding himself out as *Louch*, signed a Use Right Agreement purporting to extend the duration of the contract for another twenty-five (25) years ("the Agreement"). The Agreement was signed by Ito and Postol Remeliik, the President of the Organization, and witnessed by several members of the government, including Governor Temmy L. Shmull.

[¶ 5] Shortly thereafter, Jackson Ngiraingas filed suit in the Trial Division on July 5, 2021, arguing that he himself holds the title of *Louch* and that accordingly, the Agreement signed by Ito is void. The Trial Division issued a judgment on November 15, 2022, finding that Jackson Ngiraingas was the rightful bearer of the *Louch* title, and had been appointed as such by *Dilsebsis* Kikuko Ngiraingas and other *ourrots* of Elsau Clan in 2014. Because Ito did not have the authority to dispose of Clan land, the Trial Division held the Agreement void. The Organization timely appeals this decision.

## STANDARD OF REVIEW

[¶ 6] We have delineated the appellate standards of review as follows:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. *Salvador v. Renguul*, 2016 Palau 14 ¶ 7. Matters of law we decide de novo. *Id.* at 4. We review findings of fact for clear error. *Id.* Exercises of discretion are reviewed for abuse of that discretion. *Id.*

*Kiuhul v. Elilai Clan*, 2017 Palau 14 ¶ 4 (internal citations omitted).

[¶ 7] Accordingly, the lower court’s interpretation of a contract is reviewed *de novo*. *Palau Marine Indus. Corp. v. Pac. Call Invs., Ltd.*, 9 ROP 67, 71 (2002).

## DISCUSSION

[¶ 8] Apparent authority is an affirmative defense. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense. ROP R. Civ. P. 8(c). Therefore, an affirmative defense must be pleaded and proven by the party asserting it, and what is not pleaded is waived. *See Palau Marine* 9 ROP at 72; *Kumangai v. Isechal*, 1 ROP Intrm. 587, 589 (1989).

[¶ 9] “No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue.” *Ngerdelolk Hamlet v. Peleliu State Pub. Lands Auth.*, 2021 Palau 15 ¶ 7 (quoting *Sugiyama v. Han*, 2020 Palau 16 ¶ 38). We are “a court of review, not of first view.” *Angel v. King*, 2020 Palau 29 ¶ 2 (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). It is therefore “incumbent upon litigants to properly present all arguments to the court properly vested with the responsibility to make decisions in the first instance. The familiar consequence for failure to do so is forfeiture of the argument.” *Robert v. Robert*, 2021 Palau 34 ¶ 26 (Bennardo, J., concurring in part).

[¶ 10] The Organization argues on appeal that Ito had apparent authority to represent Elsau Clan as *Louch*. A review of the record shows almost no mention of this argument below. The Organization’s answer to the complaint somewhat hints at this argument, stating:

The Government of Peleliu State, based on the recognition of Nobert Ito by the Chiefs of Ngerchol Hamlet as a member of their council of chiefs representing the Elsau Clan as *Louch*; and, furthermore, based on his recognition by the members of Elsau Clan, the community at large, the chiefs and residents of Ngerchol

Hamlet that he is the Chief of Elsau Clan bearing the title *Louch*, the Government of Peleliu State, on behalf of the Peleliu Senior Citizens, entered into negotiation with him to renew the use of that certain portion of Elsau Clan's land by the Peleliu State Senior Citizens Organization resulting in a new agreement . . . .

Answer by Peleliu State Senior Citizens Organization, *Elsau Clan v. Ito et al.*, Civil Action No. 21-143, at 3-4 (Tr. Div. Jul. 26, 2021).

[¶ 11] The record otherwise demonstrates that the parties and the trial court entirely focused on determining the rightful titleholder. The answer to the complaint contains no mention of apparent authority or its legal elements, and as a result does not satisfactorily preserve the argument.

[¶ 12] Because the argument is forfeited, it would be well within our discretion to decline to address the merits of this argument. Regardless, we find that even if we were to construe the argument as preserved, the Organization fails to prove the legal elements of apparent authority.

[¶ 13] Principles of agency law provide a useful framework to understand the interplay of some relationships within clans and lineage. *See Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 47 (2006) (finding that a lineage had an agency relationship with an attorney). An agent's "apparent authority results from statements, conduct, lack of ordinary care, or other manifestation of the principal's consent, whereby third persons are justified in believing that the agent is acting within his or her authority." *Ngirachemoi v. Ingais*, 12 ROP 127, 130 (2005) (quoting 3 Am. Jur. 2d Agency § 76 (2002)); *see also Island Paradise Resort Club v. Gibbons*, 2020 Palau 3 ¶ 18. "Apparent authority arises when a principal places an agent 'in a position which causes a third person to reasonably believe the principal had consented to the exercise of authority the agent purports to hold.'" *Id.* (quoting *Makins v. Dist. of Columbia*, 861 A.2d 590, 594 (D.C. 2004)).

[¶ 14] From these principles, we discern two elements necessary to prove apparent authority: (1) a representation or manifestation from the principal, (2) which leads a third party to reasonably believe in an agent or actor's

authority to act on behalf of the principal.<sup>1</sup> The circumstances of this case manifestly do not meet the second requirement.

[¶ 15] The Organization argues that the Clan, as principal, placed Ito into a position that caused the Organization to believe Ito had authority as the *Louch* to legally bind the Clan. The Organization points out that a *blengur*, a customary feast, was held for Ito's appointment as *Louch*, with the *klobak* in attendance, and that Ito spent six years attending the meetings of the *klobak* and participating in customary functions. On the other hand, Elsau Clan argues that *Dilsebsis* never selected Ito as *Louch* and that she did not sign the 2021 Agreement. Elsau Clan refers to a letter from Ngiraingas sent to Governor Shmull on March 8, 2021, in which Ngiraingas stated that Ito was not the *Louch* and had no authority to dispose of Clan property.

[¶ 16] The *blengur* and Ito's participation in *klobak* meetings and other customary obligations certainly went to show that the Clan placed Ito in a position of apparent authority. Nevertheless, the Organization could not reasonably believe in Ito's authority when it knew that the title was disputed. Ngiraingas' letter to Governor Shmull unequivocally stated that Ngiraingas both claimed the title and disavowed Ito's title. Critically, Ngiraingas also sent this letter to Postol Remeliik, the Organization's President. Therefore, the Organization was on notice of the title dispute before it signed the Agreement.

[¶ 17] Disputes over chief titles are too commonplace in Palau for the Organization to accept less than extensive and compelling evidence that Ito had authority as *Louch*. Because apparent authority requires a holistic and highly fact-specific analysis, we do not attempt a strict definition of what would constitute such compelling evidence. On the specific facts of this case, we cannot find it reasonable for the Organization to believe that Ito had authority.


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<sup>1</sup> While some United States jurisdictions sometimes require a third element in the form of detrimental reliance, our case law and the Restatements have not adopted this requirement. *See* Restatement (Second) of Agency § 8 (1958); Restatement (Third) Of Agency § 2.03 (2006).

**CONCLUSION**

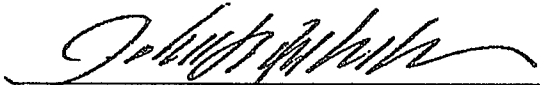
[¶ 18] We **AFFIRM** the Trial Division's judgment.

**SO ORDERED**, this 17th day of October, 2023.




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OLDIAS NGIRAIKELAU  
Chief Justice, presiding



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JOHN K. RECHUCHER  
Associate Justice



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FRED M. ISAACS  
Associate Justice