IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED
2024 JUL -8 P 1:55
SUPREME COURT
OF THE
REPUBLIC OF PALAU

REGINA MESEBELUU,
Appellant,
v.

SOON SEOB HA,
Appellee.

Cite as: 2024 Palau 20
Civil Appeal No. 23-029
Appeal from Civil Action No. 21-128

Decided: July 8, 2024

Counsel for Appellant .... Siegfried B. Nakamura
Counsel for Appellee .... Allison Nixon

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This appeal involves a breach of contract claim resulting from a right to sell agreement for land.[1] The issue is whether the trial court erred when it granted summary judgment for Appellee, concluding he is entitled to damages for performing under an enforceable contract after weighing evidence, hearing pretrial testimony, and making credibility determinations.

---

[1] Although Appellant requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

[¶ 2] For the reasons set forth below, we **AFFIRM** the Trial Division's judgment on the issue of contract enforceability and **VACATE** and **REMAND** the Trial Division's judgment on the issue of performance and damages with instructions to set this case for trial.

BACKGROUND

[¶ 3] This appeal stems from a trial court decision granting Appellee Soon Seob Ha's motion for summary judgment. Appellant Regina Mesebeluu owns property known as *Ngeruchob*. Ha offered to help Regina and her husband, Augustine Mesebeluu, contract to lease *Ngeruchob* to the Korea Aerospace Research Institute ("Institute").[2] The trial court found it indisputable that Ha introduced the Institute to Regina and helped secure the Institute as a lessee. Order Granting Pl.'s Mot. for Summ. J., *Ha v. Mesebeluu*, Civ. Action No. 21-128, at 5 (Tr. Div. May 4, 2023) [hereinafter 2023 Order].

[¶ 4] On April 18, 2016, Regina and Ha entered into a Right to Sell Listing Agreement ("Agreement"), which gave Ha the exclusive authority and right to sell *Ngeruchob* for a six-month term, commencing on April 18, 2016 and continuing through October 17, 2016. *Id.* at 2. As compensation for Ha's services, the Agreement provided:

> 1. COMPENSATION TO BROKER. (Check Marked)
>
> ___ a fee of 10% (ten percent) of the selling price, plus credit owed to Broker
>
> ___ half of the selling price in excess of \$5.00/sqm, in the event that Broker will be able to sell it more than \$5.00/sqm; plus the credit owed to Broker.

---

[2] Ha alleges he learned that the Institute was interested in leasing land in Palau and took representatives to view potential locations. Appellee's Resp. Br. 1. The Institute expressed interest in *Ngeruchob*, so Ha researched the land, went to Regina's house, and met with Augustine. *Id.* at 1-2. Ha informed Augustine of the Institute's interest, and Augustine stated he would speak with Regina. *Id.* at 2. After learning that Regina was open to leasing *Ngeruchob* to the Institute, Ha met with Augustine to review maps and visit the site. *Id.*

> Owner agrees to pay broker as compensation for service rendered provided that:
> a. Broker procures a buyer who offers to purchase the property with terms acceptable to Owner.
> b. The property is sold, exchanged, or otherwise transferred by Owner, or through any other source.
> c. The property is withdrawn from sale, or transferred, conveyed, or leased without the consent of Broker, or made unmarketable by Owner's voluntary act.

The Parties' versions of Ha's involvement in negotiations from that point on differ. *Id.* at 4.

[¶ 5] On May 25, 2016, Augustine, through power of attorney to act on Regina's behalf, executed a Memorandum of Understanding ("MOU") with the Institute, stating that the Institute and Regina would execute a lease renting *Ngeruchob* for $280,000 (roughly $9.73 per square meter). *Id.* at 2. On February 8, 2017, the Institute and Regina entered into a lease agreement ("Lease") under terms similar to those in the MOU.[3] *Id.* After Regina refused to compensate Ha, Ha filed suit claiming breach of contract.

[¶ 6] During the pretrial phase, Ha filed a motion for summary judgment. To prove that his involvement in negotiations was not disputed, Ha proffered photographic evidence of himself, Augustine, and members of the Institute on several occasions. Ha asserts those images show him negotiating and entering into the Lease. At a pretrial hearing, Regina called a witness to testify as to the veracity of the events allegedly depicted in those photographs.

[¶ 7] The trial court weighed the evidence presented in the affidavits and at the hearing, finding that "the witness had little to offer by way of refuting the representations in the photos due, in large part, to the length of time that had passed since they were taken and lapses in memory." *Id.* at 4.

---

[3] The difference being the MOU stated that the Institute would make a $28,000 prepayment once it had established a nonprofit organization in Palau. The prepayment was not timely made, but the Lease was executed anyway without inclusion of the prepayment term. 2023 Order at 2.

[¶ 8] The trial court further deemed the Agreement clear, concluding the Parties intended for Ha to receive a 10% commission or, if the selling price exceeded $5.00 per square meter, then a commission equal to half the selling price above the original $5.00 per square meter price. *Id.* at 3-4. The court determined that: (1) the Institute leased the property for $9.73 per square meter; (2) Ha's witnesses were more credible than Regina's, and Regina failed to present any genuine dispute regarding Ha's involvement in finding a lessee; and (3) Ha introduced the Institute to Regina and this Court's precedent makes any further involvement irrelevant. The trial court then granted summary judgment for Ha and awarded Ha the higher compensation amount. Regina appeals this determination.

STANDARD OF REVIEW

[¶ 9] We review matters of law de novo, findings of fact for clear error, and exercises of discretion for abuse of that discretion. *Ngirmeriil v. Terekieu Clan*, 2023 Palau 21 ¶ 12. We review appeals from summary judgment de novo, "employing the same standards that govern the trial court," considering "whether the substantive law was correctly applied," and giving no deference to the trial court. *Id.*; *ROP v. Salii*, 2017 Palau 20 ¶ 2; *House of Traditional Leaders v. Koror State Gov't*, 17 ROP 101, 105 (2010).

[¶ 10] The trial court must grant a motion for summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." ROP R. Civ. P. 56(a). A factual question is "material" when the factfinder must resolve it to determine whether an essential element has been established. *Wolff v. Sugiyama*, 5 ROP Intrm. 105, 110 (1995). The material facts in a breach of contract claim are that there was a contract, performance by plaintiff, failure of performance by defendant, and consequential damages. *ROP v. Reklai*, 11 ROP 18, 22 (2003). We "must view all evidence and inferences in the light most favorable to the nonmoving party." *Id.* at 21.

DISCUSSION

[¶ 11] Regina presents one issue on appeal: Whether the trial court erred when it concluded that Ha is entitled to damages for performing under an enforceable contract after weighing evidence, hearing pretrial testimony, and

making credibility determinations. Regina claims the following three genuine issues of material fact remain: (1) whether there is an enforceable contract; (2) whether Ha performed his end of the bargain; and (3) whether Ha is entitled to damages. We consider these in turn.

I. Contract Enforceability

[¶ 12] The first issue is whether there is an enforceable contract when the Lease was signed after the Agreement expired. While the parties dispute this material issue, resolving it requires a legal determination, not a factual finding. Hence, a grant of summary judgment on this issue is proper, and the trial court did not err in concluding the Agreement was valid.

[¶ 13] The Agreement expired in October 2016, and Regina and Augustine executed the Lease with the Institute four months later in February 2017. Ha does not dispute this fact. In *Ingas*, we recognized a broker's right to be compensated under an exclusive listing agreement for "the sale or lease of property during the contract period, no matter by whom negotiated." *Ingas v. Udui*, 2019 Palau 14 ¶ 16. While *Ingas* is a useful starting point, the facts of this case differ in that *Ngeruchob* was not leased during the contract period and there is a question as to the clarity of the Agreement's grant of exclusive authority to negotiate.

[¶ 14] Courts often uphold a broker's right to compensation for a sale or lease of realty, even if occurring after an exclusive listing agreement expires, when the parties were brought together prior to the agreement's expiration and the lease is signed within a reasonable time of the expiration. In *Moeller v. Theis Realty, Inc.*, an appellate court considered a breach of contract claim resulting from an expired listing agreement. 683 S.W.2d 239 (Ark. Ct. App. 1985). There, an option was granted during the listing period, and the optionee exercised the option after the exclusive listing agreement expired. *Id.* at 240. The appellate court held that summary judgment was properly granted on this issue, "see[ing] little difference in the granting of an option which is ultimately exercised, and the execution of a contract to sell property which is signed during the listing period but performed afterwards." *Id.*; *see also Briggs v. Henley*, 319 S.W.2d 453, 455 (Tex. Civ. App. 1958) ("We think the record shows without dispute that Henley did perform his part of the contract and that he is entitled to recover the commission . . . . Briggs sold to May within ninety

days after expiration of the sixty days in which Henley had the exclusive right to sell the lots.").

[¶ 15] Here, although the Agreement expired before the Lease was signed, the Agreement was nevertheless valid. The undisputed facts show that Ha procured a lessee, the Institute, who agreed to lease Regina's property with terms acceptable to Regina, as provided in the MOU, prior to the expiration of the Agreement. The MOU was executed during the term of the Agreement, and the Lease provided identical substantive terms as the MOU. Additionally, the Lease was signed within four months of the Agreement expiring. Thus, we affirm the trial court's determination that there is an enforceable contract.

II. Performance

[¶ 16] The second issue is whether Ha is exclusively entitled to the bonus under the Agreement, or alternatively, for his performance in negotiations as evidenced by photos of his presence at meetings between Regina, Augustine, and the Institute. The Agreement is ambiguous, and whether Ha's performance merits the bonus is an issue for trial.

[¶ 17] Although Ha had exclusive authority to sell *Ngeruchob*, the Agreement's compensation terms are ambiguous. The plain language of the Agreement requires a checkmark to indicate the compensation amount, but neither option is checked. Under one reasonable interpretation, Ha had exclusive authority to negotiate an amount of $5 per square meter and would receive a bonus for negotiating a higher amount, meaning someone else could negotiate the higher amount and Ha would not be entitled to the bonus. Under another reasonable interpretation, Ha had exclusive authority to negotiate an amount of $5 per square meter *and* any higher amount, meaning he is entitled to a bonus for any higher amount regardless of who negotiated it.

[¶ 18] Because of this ambiguity, *Ingas*, which involved an agreement with clear compensation terms, does not apply here. Moreover, the ambiguity in compensation terms must be construed against Ha as the drafting party. *See ROP v. Terekiu Clan*, 21 ROP 21, 24 (2014) ("The terms of a contract are generally strictly construed against the party drafting the agreement."). Hence, Ha's performance is essential to determining whether he is entitled to the bonus.

[¶ 19] Regina and Augustine allege that Ha failed to perform by drafting the Agreement using ambiguous language and by failing to contact them until the Lease execution, which was months after the Agreement expired.[4] These allegations must be liberally construed and should be viewed in the light most favorable to Regina as the nonmoving party. As for the photos, Regina argues they do not evidence that Ha negotiated the increase in price; rather, they simply evidence his physical presence with the relevant parties.

[¶ 20] The court should not weigh evidence or determine credibility at the summary judgment stage. *See, e.g.*, *Estate of Olkeriil v. Ulechong v. Akiwo*, 4 ROP Intrm. 43, 52 (1993) ("[T]he court weighed the evidence and found Olkeriil's version more persuasive. . . . It is exactly this type of factual dispute that should be decided by a trier of fact at trial, not upon a battle of affidavits in a motion for summary judgment."); *Rudimch v. Bank of Hawaii*, 2022 Palau 10 ¶ 8 ("When, as in this case, 'the affidavits of the parties are diametrically opposed, and it is apparent that both cannot be true, the credibility of the parties is a question for the trier of fact, and the motion [for summary judgment] should be denied.'").

[¶ 21] There is a genuine issue of material fact as to whether Ha's involvement in negotiations resulted in the higher lease amount. Ha argues that he performed, and Regina argues that Ha did not perform. A decision on this point affects the outcome of this case. Regina should have the opportunity to present evidence and impeach Ha's witnesses, if any. Furthermore, if Regina excluded Ha from negotiations, Ha should demonstrate violation of the Agreement through evidence presented at trial, not on a motion for summary judgment.

III. Damages

[¶ 22] The third and final issue is whether Ha is entitled to damages. The issue of performance discussed in Part II must be properly determined before

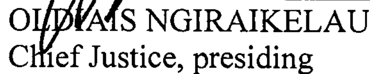
[4] Regina's affidavit states that: "Ha stopped helping Augustine" while she was off-island; "Ha was nowhere to be found and did not attend any of these negotiations;" "Ha was not part of the negotiation process or discussions that [her] husband had with [the Institute];" "Ha failed to help [her] like he promised in [their] agreement;" and "[w]hatever actions [she and her] husband took to secure the lease were a result of [their] own efforts." Augustine attests to a similar experience.

damages can be awarded. As previously discussed, whether Ha is entitled to the standard compensation amount or the bonus amount is contingent on whether Ha negotiated the higher lease price of approximately $9.73 per square meter. This is an issue for the trial court to determine based on evidence presented at trial.

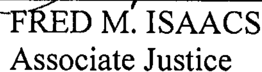
CONCLUSION

[¶ 23] For the foregoing reasons, we **AFFIRM** the Trial Division's judgment on the issue of contract enforceability and **VACATE** and **REMAND** the Trial Division's judgment on the issue of performance and damages with instructions to set this case for trial.

SO ORDERED, this 8th day of July 2024.



OLDIAIS NGIRAIKELAU
Chief Justice, presiding



FRED M. ISAACS
Associate Justice

ALEXANDRO C. CASTRO
Associate Justice