

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

11-045
JAN 14 2013

COURT REPORT
OFFICE

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NGEPTUCH LINEAGE,

 Appellant,

 v.

AIRAI STATE,

 Appellee.
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CIVIL APPEAL NO. 11-045
Civil Action No. 02-111

OPINION

Decided: January 14th, 2013

Counsel for Appellant: J. Roman Bedor
Counsel for Appellee: John K. Rechucher

BEFORE: ROSE MARY SKEBONG, Associate Justice Pro Tem; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem; KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN SALII, Associate Justice, presiding.

PER CURIAM:

This case concerns whether the Trial Division correctly placed the burden of proof on Appellant to show that it did not receive just compensation for land that was

taken for construction of the Palau National Airport. For the following reasons, the decision of the Trial Division is **AFFIRMED**.¹

I. BACKGROUND

A parcel of land that was previously owned by Appellant, commonly known as *Llakel*, was condemned in conjunction with other similarly situated parcels for the Palau National Airport in 1979. In accordance with this condemnation, the Trust Territory Government paid a sum of \$500,000 to Airai State for disbursement to all affected land owners. In 1986, Airai State quitclaimed all of its interest in the land to the Republic of Palau, including the portion belonging to Appellant.

In 2002, Appellant filed this case, claiming that it did not receive compensation for the land it had previously owned that was taken for the airport. The Trial Court heard testimony from Appellant, which consisted of hearsay statements claiming that Airai State never paid Appellant for *Llakel*. The Court determined that Appellant did not present sufficient evidence to show that it did not receive compensation. Appellant appeals this decision, arguing that the Trial Division inappropriately placed the burden of proof on Appellant.

II. STANDARD OF REVIEW

¹ Although Appellant requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

The question presented by Appellant is whether the Trial Division correctly placed the burden on Appellant to show that Appellant was not compensated for the *Llakel* land. The allocation of the burden of proof in a case is a question of law, which we review de novo, giving no deference to the decision of the trial court. *See Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

Companion to Appellant's contention that it should not have held the burden is its assertion that it presented sufficient evidence to prove its case and that any burden it may have had was thus satisfied. Challenges related to the sufficiency of the evidence are questions of fact, which we review for clear error, only reversing the trial court's decision if its findings are not "supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion." *Dmiu Clan v. Edaruchei Clan*, 17 ROP 134, 136 (2010) (internal quotation marks and citation omitted).

III. ANALYSIS

First, this Court rejects Appellant's contention on appeal that the Trial Division should have placed the burden on Airai State to prove that it did in fact pay the funds to Appellant. We have long held that a plaintiff bears the burden of establishing the elements of his or her case. *See, e.g., Ho. v. Liquidation Comm. of Nanjing Orientex Garments, Co.*, 11 ROP 2, 6 (2003); *see also Wolff v. Sugiyama*, 5 ROP Intrm. 105, 111 (1995) (same). Specifically, the plaintiff has the burden of proving "those facts that are

necessary elements of [his or her] claim.” *Ngirmang v. Filibert*, 9 ROP 226, 228 (Tr. Div. 1998) (quoting 29 Am. Jur. 2d Evidence § 158).

Appellant was the plaintiff at the trial level and brought its claim against Airai State, alleging that Airai State failed to compensate Appellant for the land taken for the airport. The Trial Division properly held Appellant to its burden to show that its claim had merit. Specifically, Appellant was asked to show by a preponderance of the evidence that it did not receive any payment from Airai State for land that it owned, taken for the Palau National Airport. It would be not only inconsistent with this Court’s jurisprudence, but wholly counter-intuitive if a plaintiff could bring a claim against another party and, without more, force upon that party the burden of proving that the claims are unsubstantiated. Accordingly, the Trial Division did not err in placing the burden of proof on Appellant.

It is true that once a plaintiff meets his or her burden of proving the elements of the claim, the opposing party then has an opportunity to rebut that evidence. *See Palau Marine Indus. Corp. v. Seid*, 11 ROP 79, 82 (2004) (noting in a contract dispute that the plaintiff must establish the elements of his or her claim before the burden may shift to the other party to rebut the evidence). In this way, the burden of proof shifts to the opposing party when the plaintiff’s case is strong enough that a reasonable trier of fact could conclude that the claim is substantiated. *Id.* However, this burden-shifting takes place only once the plaintiff has met his or her initial burden. *See id.*


Although not fully developed, it appears that Appellant also argues that it met the burden that it argues should not have been placed upon it, anyway. Nonetheless, even if Appellant's arguments in its brief do amount to a charge that it met its burden and, consequently, that that burden of proof shifted to Airai State, this Court is inclined to dismiss that contention. Appellant's attack on the court's finding of insufficiency of the evidence presents a question of fact before this Court and we will only reverse the Trial Division's decision if it is clearly erroneous. *Dmiu Clan*, 17 ROP at 136.

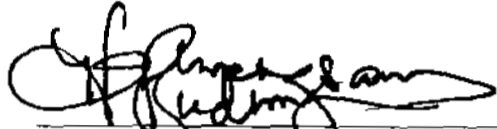
Appellant's only evidence before the Trial Division, which it characterized as "scant," was hearsay testimony from one person who spoke to Appellant's trustee and claimed that the trustee told her he never received payment. This Court concludes that a reasonable trier of fact could have found, as the Trial Division did, that this hearsay testimony did not meet the burden placed upon Appellant to show that it was more likely than not that Appellant was not compensated for its land. *Id.* Appellant has failed to persuade this Court that "a reasonable trier of fact could [not] have reached the same conclusion." *Id.* (internal quotation marks and citation omitted). Accordingly, the Trial Division did not err in placing the burden upon Appellant and concluding that Appellant failed to meet its initial burden. The burden never shifted to Appellee. The trial court did not err in finding for Appellee based on Appellant's failure of proof.


IV. CONCLUSION

For the forgoing reasons, the decision of the Trial Division is **AFFIRMED**.

SO ORDERED, this 14th day of January, 2013


ROSE MARY SKEBONG
Associate Justice Pro Tem


HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem


KATHERINE A. MARAMAN
Part-Time Associate Justice