

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

ARLENE SINGEO and
MCKINLEY SINGEO,

Appellants,

v.

HANPA INDUSTRIAL
DEVELOPMENT CORPORATION,

Appellee.

CIVIL APPEAL NO. 16-013
(Civil Action No. 14-163)

OPINION

Decided: May 15, 2017

Counsel for Appellants: S. Remoket
Counsel for Appellee: W. Ridpath

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

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

PER CURIAM:

This appeal arises out of a dispute over payment for construction materials and services. On various occasions Appellee Hanpa Industrial Development Corporation (“Hanpa”) provided materials and services on credit to Appellants Arlene and McKinley Singeo (the “Singeos”). The Singeos did not pay certain invoices and several years later Hanpa filed suit to collect. The Singeos argued that the collection action was barred by the statute of limitations but the Trial Division disagreed and ruled for Hanpa. We affirm.¹

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

BACKGROUND

The Singeos own and operate a retail store and a construction company in Choll, Ngaraard. In 2007, they decided to expand their business to operate a bungalow resort on their beachfront property. As part of this effort, they needed to complete a 100-yard access road from the Compact Road to their property. Arlene Singeo went to Hanpa's office to enquire about materials and services for the road. She spoke to Joy Salvador, Hanpa's secretary, who relayed the inquiry to Hanpa's president, Soon Seob Ha. The parties ultimately reached an oral agreement and the Singeos made a \$1,000 initial payment.

Hanpa issued 11 invoices to the Singeos for supplies and heavy equipment work in October and November of 2007. Each invoice was acknowledged by signature by either Arlene or McKinley Singeo. The last invoice was dated November 28, 2007. The Singeos made no payments to Hanpa beyond the initial \$1,000, and by December 2007 the balance of the Singeos' debt to Hanpa was more than \$6,000. Each invoice contained a statement that the purchaser understood that a monthly interest applied to any unpaid balance and that the purchaser would pay the costs if a lawsuit was brought to collect.

At this time in late 2007 the access road was nearly, but not quite, complete. With the Singeos having not made any additional payments, Hanpa's president ordered a stop to Hanpa's provision of goods and services. The road was eventually completed by a third party.

The Singeos continued to purchase materials from Hanpa for other projects, paying cash at the time of purchase. Then on November 18, 2008, and again on November 19, 2008, they obtained gravel from Hanpa on credit for work on a house project. The parties did not discuss any terms of payment. The invoices for the gravel were acknowledged by signature by McKinley Singeo and contained the same language regarding interest and collection costs as the 2007 invoices.

Several years later, on October 17, 2014, Hanpa filed a collection action. The Singeos moved for judgment on the pleadings, arguing that the action was barred by a six-year statute of limitations. Because more than six years had passed since the 2007 invoices, the Singeos argued the action was time-barred. Hanpa responded by producing the November 2008 invoices, and argued that all of the invoices were billed to an open credit account the Singeos had with Hanpa. Hanpa pointed to 14 PNC §407, which provides that an action on an open account accrues at the time of the last account item. Hanpa argued that their action accrued at the time of the last 2008 invoice, meaning that the six-year limitation period had not run. The Trial Division determined that the issue turned on disputed facts and set the matter for trial.

Following trial, the Trial Division issued judgment for Hanpa. The court found that the Singeos had entered into an open credit account with Hanpa. The court found the Singeos “needed materials, specifically rock products, and equipment to construct their road, and [Hanpa] agreed to extend short-term credit to them primarily because they are located in Ngaraard; to require them to travel to Koror on a daily basis to pay each invoice whenever the rock product and heavy equipment were provided would have been inconvenient.”

The court rejected the Singeos’ argument that they had hired Hanpa to construct the road for an agreed flat-fee of around \$10,000. The court noted that the price figure was based only on Arlene Singeo’s testimony; the court characterized her as testifying that she estimated that the cost would be approximately \$10,000, “but that [Hanpa] never provided an estimate for the actual cost to construct the road.” The trial court credited testimony by Hanpa’s secretary, Joy, and president, Ha, both of who testified that Hanpa would not “enter into an open-ended construction contract for the construction of a road (or any other construction project, for that matter) where both the price and the completion date were open-ended, and where no

substantial payment was required until the project was complete.” Any project required a written contract with fixed terms. Additionally, it was undisputed that Hanpa did not provide an engineer or any other laborer apart from the operator for a rented backhoe. The court found that the operator simply “worked to place the rock products as directed by [McKinley Singeo] in a sketch [McKinley] provided for the layout of the road.”

The court observed that the Singeos’ “characterization of the events makes no sense” and found it incredible that Hanpa, a construction company, would enter into an oral contract for a construction project with crucial terms unfixed and open-ended. The court found Hanpa “agreed to provide [the Singeos] with an open line of credit for certain limited services and materials, with an agreement for [the Singeos] to pay as they were invoiced for such services and materials.” The initial \$1,000 payment from the Singeos was a deposit that would be drawn down “with additional payments to be made as invoiced after the deposit was depleted.”

The court also explicitly found that the two November 2008 invoices had never been paid. The court rejected Arlene’s uncorroborated testimony that “she believed they had been paid.” The court instead credited Joy’s testimony that as far as she was aware, the invoices remained unpaid. Hanpa’s standard practice was to retain the original invoices until paid, at which point the original was stamped “Paid” and released to the customer. The two original November 2008 had been acknowledged by signature by McKinley Singeo, but remained with Hanpa and were not stamped.

“Other than Arlene’s testimony,” the Singeos “presented no evidence” that the invoices were not part of the same open account. The trial court accordingly held “that the November 2008 credit purchases by [the Singeos] were made via the same open account as the 2007 purchases, so that the filing of this action in October 2014 was timely brought within six years

of the last invoice on this account.” The court awarded Hanpa contract damages and pre-and-post judgment interest. The Singeos timely appealed.

STANDARD OF REVIEW

This appeal only raises issues regarding findings of fact. “We review the trial court’s findings of fact for clear error.” *Estate of Remeskang v. Eberdong*, 14 ROP 106, 107 (2007). “Under this standard, the factual determinations of the lower court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made.” *Id.* “The burden of demonstrating error on the part of a lower court is on the appellant.” *Rudimch v. Rebluud*, 21 ROP 44, 46 (2014).

DISCUSSION

The Singeos identify one issue for appeal: whether the Trial Division erred in not determining that Hanpa’s collection action was time-barred by the statute of limitations. The parties agree that 14 PNC § 405 applies and provides a six-year limitation period. The dispute here is about when the cause of action accrued to start the six-year clock.

When the cause of action accrued depends on the business relationship between the Singeos and Hanpa. The trial court found the parties had entered into an open credit account. “In an action to recover the balance due upon a mutual and open account . . . the cause of action shall be considered to have accrued at the time of the last item proved in the account.” 14 PNC § 407. The Trial Division found that the “last item” on the Singeos’ open account was an unpaid November 19, 2008 invoice. Hanpa’s claim thus did not accrue—and the limitations clock did not begin to run—until November 19, 2008. Because Hanpa filed its complaint within six years of that date, the six-year period had not run and its claim was timely.

I. Open Account vs. Construction Contract

At trial, the Singeos argued that the facts showed they had entered into an open-ended, oral construction contract under which Hanpa agreed to construct a road to their property. The trial court rejected this argument, instead crediting the testimony of Hanpa's president and its secretary "that it never agreed to enter into an open-ended contract with [the Singeos] for the construction of their road." The court instead found that "the credible evidence presented supports [Hanpa's] claim that it provided an open line of credit to [the Singeos]."

On appeal, the Singeos continue to dispute that they entered into an open account. But beyond simply asserting their characterization of historical facts, they do not explain why the trial court's contrary view of the facts was erroneous. An appellant challenging a trial court's view of the evidence must do more than merely show that their own view of the evidence is reasonable. They must show that the trial court's view was unreasonable. *See, e.g., Kebekol v. KSPLA*, 22 ROP 38, 40 (2015).

The court below discussed various record facts it found relevant in determining that the parties had entered into an open account rather than a construction contract. Most of the record evidence considered by the trial court is not addressed in the Singeos' brief at all. In short, they have not established that the Trial Division's interpretation of the record evidence was unreasonable and we will not disturb it on appeal.

II. The November 2008 Invoices

The Singeos next assert that "the November 18 & 19, 2008 invoices are separate and paid for." This argument fails because it does not address the factual bases for the Trial Division's finding that the 2008 invoices were unpaid and part of the open account. The trial court pointed to: the testimony of Hanpa's secretary that the invoices were unpaid; the fact that

the original invoices were introduced at trial and were not stamped “Paid”; the fact that no new terms of account were discussed when McKinley Singeo asked for delivery of the rock product on credit in 2008; and the fact that the 2008 invoices contained identical language to the 2007 invoices on the open account. “The appellate court’s role on clear error review is not to re-weigh the evidence produced below.” *Oseked v. Ngiraked*, 20 ROP 181, 183 (2013).

Accordingly, we will not disturb the trial court’s finding that the 2008 invoices were unpaid and billed to the open account.

III. Dormant Account

The Singeos contend that “the continuity of their account was broken when [Hanpa] stopped work on [the Singeos’] project at the end of November of 2007.” Therefore, “if there was an open account, it became dormant and broken” and the “2008 invoices would be separate actions.” Even assuming this proposition is correct—that an open account can go dormant—the Singeos have not established the proposition applies

The trial court looked at the circumstances and determined that the account was active at the time of the November 2008 invoices. The Singeos do not explain why the trial court’s factual determination about the status of the account is erroneous. For example, the court found that in November 2008 the Singeos “got gravel from [Hanpa] on credit, without any discussion as to the terms of payment.” This fact indicated to the court that there was an ongoing open account between the parties. The Singeos do not provide an alternative theory for why Hanpa would provide construction materials on credit without any discussion of terms unless the

parties had a pre-existing account. They “present[] nothing on appeal that would compel a rejection of the Trial Division’s factual findings.” *Salii v. KSPLA*, 15 ROP 86, 87 (2008).

CONCLUSION

For the reasons above, the judgment of the Trial Division is **AFFIRMED**.

SO ORDERED, this ¹15 day of May, 2017.



ARTHUR NGIRAKLSONG
Chief Justice



JOHN K. RECHUCHER
Associate Justice



R. BARRIE MICHELSEN
Associate Justice