

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

ALAN R. SEID,
Appellant,
v.
JOHN K. RECHUCHER,
Appellee.

Cite as: 2026 Palau 10
Civil Appeal No. 25-013
Appeal from Civil Action No. 23-098

Decided: August 11, 2026

Counsel for Appellant James Kennedy, Esq.
Counsel for Appellee Raynold B. Oilouch, Esq.

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
KEVIN BENNARDO, Associate Justice

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

**ORDER DENYING PETITION OF ALAN R. SEID FOR
REHEARING OF THIS MATTER**

PER CURIAM:

[¶ 1] Appellant, Alan R. Seid, petitions¹ this Court for rehearing pursuant to ROP R. App. P. 40 and arising under *Seid v. Rechucher*, 2026 Palau 9, issued on July 17, 2026. Petitions for rehearing should be granted exceedingly sparingly, and only in those cases where this Court's original decision obviously and demonstrably contains an error of fact or law that draws into question the result of the appeal. *Espangel v. Tirso*, 3 ROP Intrm. 282, 283

¹ Petition of Alan R. Seid for Rehearing of this Matter filed July 31, 2026.

(1993). For this panel to disturb its ruling would require the most compelling circumstances. *Id.* Because such compelling circumstances are absent, Seid's Petition should be and hereby is **DENIED**.

DISCUSSION

[¶ 2] Seid makes four arguments: (1) the Court misunderstood or misstated a key fact in that the Warranty Deed was a part of the contract; (2) the Warranty Deed's status as part of the contract is relevant to the affirmative defense of prior material breach because Seid is claiming that the prior material breach was of the terms of the Warranty Deed; (3) the trial court disregarded properly preserved and presented affirmative defenses upon which it could have and should have ruled in Seid's favor and the Appellate Court misapprehended or failed to consider whether those findings were controlling as the affirmative defense of prior material breach; and (4) Seid's Appellate Briefs properly presented a legal argument on prior material breach that requires this Court to make a determination of the law in the Republic of Palau. Seid's arguments fail, neither clearing the bar as a matter of law, nor persuading as arguments in equity.

[¶ 3] Arguments arising under the Warranty Deed are not ripe: Seid failed to complete his payment obligation, making him ineligible to lay claim to clear title. Seid's right to cry foul regarding Rechucher's alleged breaches of the warranty deed only vests after the full purchase price is made per the promissory note. *See Loud v. Pomona Land & Water Co.*, 153 U.S. 564, 581 (1894) (holding that the payment of all the installments of purchase money was a condition precedent to the performance of the land company's covenant to convey). As a matter of law, pertaining to the character of covenants contained in contracts, a seller has the right to enforce payment of the purchase money, for the lands agreed to be purchased, without having first conveyed, or tendered a conveyance, of the lands purchased. *Id.* at 583. So too here, and as the trial court found, until Seid paid the full purchase price, it was still not his land. *See* Ord Pl.'s Mot. Corr. Def.'s. Mot. Recons. at 5. To suggest that the Warranty Deed nullifies the Promissory Note without full payment rendered is novel and premature at best.

[¶ 4] Seid's breach of duty to pay, not the Warranty Deed—encompassing arguments regarding transfer of title and representations of clear title—was the

central issue to this case. *Id.* at 6. It is a hoary maxim of the law that he who prevents the performance of a condition cannot avail himself of the non-performance. *See Thredgill v. Pintard*, 53 U.S. 24, 31–32 (1851). Arguments now raised as defenses, not counterclaims, thus, resemble mere afterthoughts and not a genuine dispute to Rechucher’s demand for payment of the final thirty-five percent of the total purchase price.

[¶ 5] Seid’s arguments in this petition strike the Court as a red herring. In construing contractual language, courts do not attempt to ascertain the mental processes of the parties but rather look to the actual language used. *Watanabe, et. al., v. Nelson, et al.*, 4 ROP Intrm. 169, 170 (1994). A party’s subjective, undisclosed intent is immaterial to the interpretation of a contract. *Id.* at 171. When parties put their agreement in writing, all previous oral agreements merge in the writing and a contract as written cannot be modified or changed by parole evidence in the absence of mistake or fraud. *Owens v. House of Delegates*, 1 ROP Intrm. 320, 325 n. 1 (Tr. Div. 1986). Here, Seid’s arguments neither prove a (1) fraudulent misrepresentation on the part of the appellee or (2) mutual mistake of a material fact that went to the heart of the parties’ agreement. The trial court correctly pointed out that, if both parties were mistaken as to the cliffside boundary of the property then the plaintiff could not have knowingly misrepresented that fact; and if that boundary was in fact the *raison d’etre* for the contract of sale, then it fell to the defendant to correct that misunderstanding. *See* Decision at 8 (“[Seid], on the record, agreed to pay the final purchase price *after* knowing the lot was not sufficient to his needs, yet did nothing about it until this suit.”). As to fraud, Seid fatally relies on innuendo and conjecture. *See Bilamang v. Oit*, 4 ROP Intrm. 23, 25 (1993).

[¶ 6] As an equitable matter, Seid’s arguments also fail. It is obvious that if a purchaser takes possession under a contract, and he afterwards rejects the title, he must relinquish the possession. *See Thredgill v. Pintard*, 53 U.S. 24, 31–32 (1851). Seid did not relinquish *Ongesachelkism*, he simply stopped paying for it. “The principle upon which courts of equity have proceeded in establishing the lien in the nature of a trust is, that a person having gotten the estate of another, ought not in conscience, as between them, to be allowed to keep it, and not to pay the consideration-money.” *Id.* at 34 (quoting the late Justice Story in 2 Story Eq., 465). Unjust enrichment prohibits Seid’s

acquisition of *Ongesachelkism* at a non-contractual thirty-five percent discount despite creative and novel arguments to the contrary.

[¶ 7] In sum, the law and the principles of common honesty which undergird matters in equity require that the judgment stand. Thus, Seid's Petition is **DENIED**: there shall be no rehearing on the matter.

SO ORDERED, this 11th day of August 2026.