

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

HONG BIAO XU, <i>Appellant,</i> v. GOLDEN PACIFIC VENTURES, LTD., <i>Appellee.</i>
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Cite as: 2026 Palau 11
Civil Appeal No. 25-011
Appeal from Civil Action No. 24-066

Decided: August 28, 2026

Counsel for Appellant	Siegfried Nakamura
Counsel for Appellee	Allison Nixon

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
 FRED M. ISAACS, Associate Justice
 DANIEL R. FOLEY, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This case concerns the collection of unpaid rent, penalties, and interest from a series of commercial leases. On August 18th, 2025, the trial court awarded plaintiff Golden Pacific Ventures, Ltd. (hereinafter GPV) a judgment of \$495,688.05 from defendant Hong Biao Xu (hereinafter Xu) for compensatory damages and contracted late penalties. Xu appealed this award arguing that (1) he was not liable under the 2014 lease because he was not party to it, (2) he was not liable for past-due rent under the 2019 or 2022 leases because any rent owed was waived by GPV and the trial court miscalculated the judgment amount, (3) the contractual late penalties were based on

unenforceable contract terms and should not have been awarded, and (4) he was not awarded credit for his surrendered collateral.

[¶ 2] For the reasons set forth below, we modify the judgment by reducing the amount thereof by the sum of \$19,749.23 and, as modified, **AFFIRM**, and **REMAND** for further proceedings.

BACKGROUND

[¶ 3] This case begins in 2014 when GPV signed a commercial lease (hereinafter the 2014 lease) with Xinwu Zheng (hereinafter Zheng) for a portion of the HIDC building in Koror. Zheng operated a restaurant known as “Burger Sea” in part of the leased space. Under the 2014 lease, Zheng agreed to pay \$12,000 per month in rent, and would be charged \$450 if the rent were paid late. The lease also stated that the lease could not be assigned without prior written consent. In addition to the 2014 lease, Zheng and GPV formed an oral agreement where GPV would provide generator and security services for a fee. The fee was not fixed and depended on usage.

[¶ 4] On November 21, 2016, Xu signed a promissory note with GPV. In the note, Xu agreed to pay three months of rent under the lease and granted GPV a security interest in the kitchen equipment, but not any personal property, if he defaulted. The payment schedule was \$6,000 for the first two months, and then \$24,000 in the third. After signing the note, Xu began to operate his own restaurant, “Seafood Restaurant,” and then later “Authentic Chinese Restaurant,” in part of the leased space. Xu used another part of the premises as a barracks. Xu continued to pay \$12,000 per month in rent to GPV, which GPV accepted. Xu also continued to pay for the generator and security services.

[¶ 5] Xu signed a new lease at the end of 2019 (hereinafter the 2019 lease) for the premises. When the lease was signed, Xu had an outstanding balance under the 2014 lease. The new lease charged \$8,200 per month for rent and modified the late rent charge to \$50 per day. In lieu of a cash security deposit, the 2019 lease agreed Xu would surrender all equipment in the restaurant. Shortly after signing the 2019 lease, Xu began to have trouble making the full rent payments. Xu regularly discussed his inability to make the full payment

with GPV, who allowed Xu to make partial rent payments. However, GPV continued to track the unpaid rent.

[¶ 6] Before the 2019 lease expired, Xu and GPV signed a second lease in 2022 (hereinafter the 2022 lease). The new lease increased the rent to \$9,000 per month, while retaining the late rent clause. Xu continued to discuss his financial hardships with GPV and make partial rent payments, while GPV continued to track the unpaid amounts.

[¶ 7] Before the 2022 lease expired, Xu and GPV executed a third lease on August 15, 2023 (hereinafter the 2023 lease) for a term of two years and six months. The 2023 lease charged \$6,500 per month in rent plus 10%—\$650—representing the Palau General Sales Tax (PGST), for a total of \$7,150 due per month. The late fee was increased to \$100 per day. Like the previous leases, the 2023 lease contained a default clause which allowed GPV to lock the restaurant doors in case Xu defaulted. In that situation, GPV would inventory and store any personal property on the premises. GPV could then sell the personal property if Xu failed to pay the storage costs within 30 days.

[¶ 8] On August 17, 2024, GPV sent Xu a letter notifying him of an outstanding balance for unpaid rent. On August 30, 2024, Xu informed GPV that he would be vacating the leased premises because GPV would not agree to a rent reduction. On September 6, 2024, GPV invoked the default clause of the lease and locked the premises to prevent Xu from removing any kitchen equipment. GPV then inventoried the equipment that remained on the premises.

[¶ 9] In September 2024, GPV filed suit against Xu for failure to pay rental monies, breach of the 2023 lease, and breach of the promissory note. The trial court held a five-day trial in April 2025. At trial, Xu and GPV testified about their prior discussions concerning Xu's partial rent payments. GPV also provided a "Summary of Account" detailing Xu's unpaid rent and calculations for late fees and interest. Xu testified that it would cost "at least \$10,000" to replace the kitchen equipment left behind on the premises.

[¶ 10] The trial court found for GPV and awarded GPV a total of \$495,688.05 for unpaid rent, prejudgment interest, and contracted late penalties on August 18, 2025. The award amount was based on the Summary

of Account. The trial court denied Xu's request that either he be reimbursed for the value of the kitchen equipment or that it be returned.

[¶ 11] Xu timely filed his notice of appeal of the August 18, 2025 decision and judgment on September 16, 2025. This appeal is therefore properly before us. ROP R. App. P. 4.

STANDARD OF REVIEW

[¶ 12] We review the trial court's conclusions of law *de novo* and its factual findings for clear error. *PNCC v. Wally*, 2026 Palau 3 ¶ 6. "[W]e will not reverse a factual determination unless it lacks evidentiary support 'such that no reasonable trier of fact could have reached the same conclusion.'" *Beches v. Sumor*, 17 ROP 266, 272 (2010) (quoting *Sambal v. Ngiramolau*, 14 ROP 125, 126 (2007)).

[¶ 13] "Generally speaking, the interpretation of a contract is a matter of law, which we review *de novo*." *Anastacio v. Eriich*, 2016 Palau 17 ¶ 8. We also review *de novo* the question whether a contract is so ambiguous that parol or extrinsic evidence is required. *Id.* However, the review of factual extrinsic evidence is reviewed for clear error. *Id.* "[W]hether a contract has been formed is generally a question of fact." *Rossman L. Grp., PLLC v. Holcomb*, 579 P.3d 914, 922 (2025).

[¶ 14] "Generally, the existence of a waiver is a question of fact, but if circumstances of an alleged waiver are admitted or clearly established and reasonable persons can draw only one conclusion from those circumstances, the existence of waiver is a question of law." *Carpenter v. Southbay Homeowners Ass'n*, 2025 ND 114, ¶ 15. "The findings of fact underlying an award of damages are reviewed under the clearly erroneous standard." *Isechal v. Umerang Clan*, 18 ROP 136, 142 (2011).

[¶ 15] Questions of statutory interpretation are reviewed *de novo*. *Roll 'Em Prods., Inc. v. Diaz Broad. Co.*, 21 ROP 96, 97 (2014). "Whether a contractual clause provides for enforceable liquidated damages, or an unenforceable penalty, is a matter of law." *LaSalle Bank Nat. Ass'n v. Shepherd Mall Partners, L.L.C.*, 2006 Okla, Civ. App. P3d 91, ¶ 17.

DISCUSSION

[¶ 16] Xu raises four issues on appeal. First, whether the trial court erred in finding that Xu was liable for compensatory damages under the 2014 lease. Second, whether the trial court erred in finding Xu liable for compensatory damages for unpaid rent under the 2019 or 2022 leases, and whether those damages were properly calculated. Third, whether the trial court erred in finding Xu liable for contractual penalties and late fees. Fourth, whether the trial court erred in not granting Xu an offset for the value of the kitchen equipment left behind when he surrendered the premises.

I. Xu's Liability under the 2014 Lease

[¶ 17] Xu contends that he is not liable under the 2014 lease because he was not party to the original 2014 lease between GPV and Zheng, and he did not assume the lease in the promissory note. He argues the trial court erred in using parol evidence to find an assumption of the lease which is not present in the promissory note itself.

[¶ 18] The parol evidence rule “prohibits evidence of prior or contemporaneous oral agreements which vary or contradict the terms of an unambiguous, final and complete writing.” *STL Riverview Plaza LLC v. Metro. St. Louis Sewer Dist.*, 681 S.W.3d 290, 299 (Mo. Ct. App. 2023). Palauan courts do not “look beyond the plain words” of a written agreement to find their meaning. *ROP v. Terekiu Clan*, 21 ROP 21, 24 (2014).

[¶ 19] Xu did not raise an objection to the parol evidence at trial. “Evidentiary objections not raised at trial are waived.” *RTFT v. Airai State Pub. Lands Auth.*, 12 Rop 76, 79 (2005). A party seeking to appeal based on the admission of evidence must raise “a timely objection or motion to strike” which states “the specific grounds of the objection, if the specific ground was not apparent from the context.” ROP R. Evidence 103(a)(1). Because there was no objection at trial, the trial court did not err in admitting the parol evidence or in using it to find Xu was liable under the 2014 lease.¹

¹ Counsel for Xu, who was not his counsel at the trial below, urges us to address this issue despite the waiver rule. We have in the past declined to deem an issue waived that was not raised or preserved below where addressing the issue would prevent the denial of a constitutional right, or the general welfare of the public is at stake, *Kumer Clan/Lineage v.*

II. The Trial Court's Award of Compensatory Damages

[¶ 20] Xu argues that the trial court erred in its award of compensatory damages to GPV under the 2019, 2022, and 2023 leases. Xu first argues that he is not liable for rent under the 2019 or 2022 leases because the back rent was waived. Alternatively, he contends that the trial court incorrectly calculated the damages.

[¶ 21] “A waiver is an intentional relinquishment or abandonment of a known right.” *Heirs of Drairoro v. Yangilmau*, 14 ROP 18, 23 (2006). Because Xu is arguing GPV waived the collection of past rent, he has the burden of proof to show there was a waiver, the facts of which “must be unequivocal.” 28 Am. Juris. 2d Estoppel & Waiver § 209 (August 2026 Update).

[¶ 22] Xu argues that the amounts owed under the 2019 and 2022 leases were waived by GPV when the subsequent leases were signed. Xu correctly notes that “[p]arties to a valid contract may... substitute another in its place, or by conduct inconsistent with the continued existence of the original contract estop themselves from asserting any right thereunder.” 17A Am. Juris. 2d *Contracts* § 513 (May 2026 Update). But:

[t]he general rule is that when parties enter into a second contract dealing with the same subject matter as their first contract without stating whether the second contract operates to discharge or substitute for the first contract, the two contracts must be interpreted together and

Koror State Pub. Lands Auth., 20 ROP 102, 105 (2013), or to avoid a misleading application of the law. *Nakamura v. Nakamura*, 2016 Palau 23 ¶ 25. Unfortunately for Xu, none of these exceptions apply in this case.

Even if the argument had not been waived, the trial court's use of the testimony from both parties did not violate the parol evidence rule because the trial court was not using the evidence to interpret, alter, or amend an otherwise unambiguous agreement. *Alstom Power, Inc. v. Balcke-Durr, Inc.*, 269 Conn. 599, 609 (2004) (The parol evidence rule only prohibits using outside evidence to “vary or contradict the terms of [an integrated] contract.”). The trial court's sole use of the evidence was to explain the reason for the promissory note and to demonstrate the assignment and delegation of Xu's predecessor in interest in the 2014 lease.

the latter contract prevails to the extent they are inconsistent.

17A Am. Juris. 2d *Contracts* § 489 (August 2026 Update).

[¶ 23] Xu provides no explanation as to why a new lease would extinguish the rent obligations already incurred from his prior possession of the premises. Xu also points to the “time is of the essence” clause, and the lack of notice about his ongoing balance as proof that GPV waived the old rent. But Xu provides no argument or citation that these facts create a legal basis for finding a waiver. “Litigants may not, without proper support, recite a laundry list of alleged defects in a lower court’s opinion and leave it to this Court to undertake the research.” *Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276, 282 (2010). Inadequately briefed arguments do not need to be addressed. *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270, 276 (2013).

[¶ 24] GPV provided both testimony and exhibits to support its argument that it had not waived the right to collect the rent under the 2019 or 2022 leases. GPV kept ongoing records of the unpaid rent, and at trial disputed that it ever waived any of the unpaid rent. The evidence of waiver in this instance is not “unequivocal.” A rational finder of fact could have found that GPV did not waive its right, and therefore the trial court’s decision was not in error.

[¶ 25] Xu’s alternative argument is that the trial court erred in how the damages were calculated. The trial court relied on GPV’s Summary of Account to calculate the compensatory damages Xu owed for unpaid rent and interest. As GPV conceded, the amounts listed in the trial court’s order do not match the exhibit, as the entry for \$19,749.23 was included in the amounts owed for both the 2014 and 2019 leases. With the exception of this duplication, the trial court’s judgment matches the Summary of Account provided by GPV. The trial court provided no indication this duplication was intentional. Instead, the difference is the result of a simple clerical error in copying the values from the Summary of Account to the judgment. We therefore reduce the amount of compensatory damages for the 2019 lease by \$19,749.23.

[¶ 26] GPV argues that the trial court further erred in calculating the compensatory damages, but that the damages were too low rather than too high. GPV believes that the trial court incorrectly used September 13, 2024

(the date in GPV's Summary of Account) as the date for calculating prejudgment interest, rather than August 18, 2025 (the date of the judgment).

[¶ 27] “[A] person who has a duty to pay the value of a benefit which he has received, is also under a duty to pay interest upon such value from the time he committed a breach of duty in failing to make restitution if, and only if: (a) the benefit consisted of a definite sum of money.” *Isechal*, 18 ROP at 148. (*Carlos v. Whipps*, 7 ROP Intrm. 73, 74 (1998) (quoting Restatement of Restitution § 156 (1958))). Prejudgment interest is due up to the time the judgment is entered. *F/V Chin Mien Yu v. F/V Zhong Yuan* 601, 4 ROP Intrm. 312, 326 (Tr. Div. 1994). Here, the alleged breach is for nonpayment of rent, which is a definite sum of money.

[¶ 28] Whatever the merits of GPV's argument, it is improper for us to consider it. GPV is the appellee and did not file a cross-appeal. Under the cross-appeal rule, “an appellate court may not alter a judgment to benefit a nonappealing party.” *Greenlaw v. U.S.*, 554 U.S. 237, 244 (2008). Palauan courts follow the same rule and do not allow an appellee to “attack the decree with a view either to enlarge [her] own rights thereunder or of lessening the rights of [her] adversary, where what [she] seeks is to correct an error or to supplement the decree with respect to a matter not dealt with.” *Tmetuchl v. Kohn*, 5 ROP Intrm. 81, 85 (1995) (quoting *U.S. v. Am. Ry. Express Co.*, 44 S. Ct. 560, 564 (1924)).

[¶ 29] In this case, the trial court only granted prejudgment interest up to September 13, 2024, as listed in GPV's Account Summary. But because GPV did not cross-appeal, it cannot as the appellee request an increase to the judgment. The parties' mutual identification of a separate error in calculating compensatory damages does not open the door to allow GPV to increase its award under a different legal theory.² Therefore, the trial court's award of compensatory damages is reduced in the amount of \$19,749.23 but is otherwise affirmed.

² We note that the 9th Circuit has allowed for an appellee to increase recovery without filing a cross-appeal when the request is “interrelated to the issues properly on appeal.” *Mahach-Watkins v. Depee*, 593 F.3d 1054, 1063 (9th Cir. 2010). However, we decline to abandon the “firmly entrenched” cross-appeal requirement. *Greenlaw*, 554 U.S. at 245.

III. The Trial Court's Award of Late Fees

[¶ 30] Xu argues that the trial court erred in finding him liable for the leases' contractual penalties because they are unenforceable. Xu offers two legal theories for this, either that they constitute liquidated damages, or that they violate the anti-usury provision of 11 PNC § 305(d).

[¶ 31] “‘Liquidated damages’ are a set amount of money, or a certain formula, expressly stipulated in a contract as the amount of damages to be paid by a party that breaches the agreement.” 22 Am. Juris. 2d *Damages* § 499. Although liquidated damage clauses can provide an “honest or legitimate estimate” of damages, “liquidated damages are customarily unenforceable as penalties when they are in excess of actual damage caused by a contractual breach.” *Shmull v. Hanpa Indus. Dev. Corp.*, 21 ROP 35, 41 (2014) (quoting 22 Am. Juris. 2d *Damages* § 516). Xu did not raise the issue of liquidated damages at trial. “A litigant who does not raise an argument before the trial court waived that issue and may not purse it for the first time on appeal.” *Ucherremasech v. Hirochi*, 17 ROP 182, 192 (2010). The question of impermissible liquidated damages is therefore waived.

[¶ 32] Xu argues an alternative theory under 11 PNC § 305(d). Section 305(d) limits the amount of late penalties that can be assessed “on an extension of credit” to “five percent of the amount overdue.” Xu argues for the first time on appeal that this statute invalidates the contractual late fees. However, because this theory was also not raised at trial, it is also waived. *Ngaraard State Pub. Lands Auth. v. Rechucher*, 10 ROP 11, 12 (2002).

[¶ 33] Therefore, the trial court did not err in awarding GPV the contractual late fees.

IV. The Disposition of the Kitchen Equipment

[¶ 34] Xu's final argument is that the trial court erred in failing to “offset or take into account” the value of the kitchen equipment that was left on the premises. In its decision, the trial court identified the kitchen equipment as “collateral for default,” and denied Xu's request that it be returned to him or that he be reimbursed \$10,000 for its value. However, the trial court did not explicitly specify what should happen to the equipment.

[¶ 35] Under the Restatement (Second) of Contracts § 223 (1981), “Unless otherwise agreed, a course of dealing between the parties gives meaning to or supplements or qualifies their agreement.” Under the terms of the promissory note, “all equipment inside the restaurant will be covered to pay all liabilities except for personal things.” The note distinguishes between the kitchen equipment and personal property because in addition to the restaurant, Xu was using part of the leased property as living space. The distinction between equipment and personal property is also present in the 2019 lease which lists the kitchen equipment as part of the security deposit separately from any personal property.

[¶ 36] Under the 2023 lease, GPV has the right to secure the premises in case of default. In case of a default, any personal property remaining on the premises “shall be inventoried and stored by the LESSOR to sell any and all of said personal property if the LESSEE has not paid the cost of said inventory and storage within thirty (30) days after termination or expiration of the lease.” It goes on to say Xu “specifically waives all claims of loss of or damages to property arising out of or in connection with his rights hereunder.”

[¶ 37] The default provision expressly deals with Xu’s personal property, not the kitchen equipment. The distinction between these kinds of property was made in the original promissory note and was not amended or modified in the subsequent agreements. If GPV’s taking possession of the equipment was treated as a “loss” under the default provision, then GPV would have the right to take the collateral without compensating Xu for its value. But that outcome runs counter to the purpose of collateral, and therefore we reject GPV’s argument that the kitchen equipment is controlled by the default provision.

[¶ 38] The trial court found that “Xu breached these agreements by failing to make full payments as set forth in the promissory note, and he does not dispute that he did not make full payments.” Based on the plain language of the promissory note and the 2019 lease and the findings of the trial court, the kitchen equipment is collateral that should be used to cover Xu’s liabilities towards GPV. However, Xu is not entitled to a \$10,000 credit simply because there was evidence at trial that the replacement cost of the equipment is \$10,000. Instead, Xu is entitled to a credit for the value of the collateral as determined by a commercially reasonable sale. 68A Am. Juris. 2d *Secured*

Transactions § 486 (May 2026 Update). Because the trial court's ruling was ambiguous, we remand for further proceedings.

CONCLUSION

[¶ 39] The judgment is modified by reducing the amount by \$19,749.23, and as so modified, we **AFFIRM** the Trial Division's judgment, and **REMAND** to the Trial Division for further proceedings consistent with this opinion.