IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

LIVING TRUST OF MARIANO NGIRUTANG,
by and through its Trustee REGINA NGIRUTANG,
Appellant,
v.
WESTERN CAROLINE TRADING COMPANY, a Palauan corporation, and GEORGE RECHUCHER in his personal capacity,
Appellees.

Cite as: 2026 Palau 13
Civil Appeal No. 26-010
Appeal from Civil Action No. 25-113

Decided: October 6, 2026.

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellees ..... Kevin Kirk

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
M. TODD OSTERLOH, Associate Justice

Appeal from the Trial Division, the Honorable Peter Huffman, Associate Justice, presiding.

OPINION[1]

PER CURIAM:

[¶ 1] Appellant Living Trust of Mariano Ngirutang executed agreements with Appellees George Rechucher and Western Caroline Trading Company in 2019 related to adjacent lots in Malakal. The Trust alleges that the Appellees breached these agreements. The trial court granted summary judgment, in part because there was no evidence indicating that Rechucher breached his

[1] We dispense with oral argument inasmuch as we find the parties' briefs and the trial record sufficient to address the issues presented on appeal. ROP R. App. P. 34(a).

agreement and because conditions precedent in the WCTC agreement had not been met.

[¶ 2] For the reasons set forth below, we **AFFIRM.**

BACKGROUND

[¶ 3] The Koror State Public Lands Authority ("KSPLA") owns two adjacent plots of land in Malakal, Lot 40657 and Lot 40657A. At some point prior to 1991, KSPLA leased Lot 40657 to Mariano Ngirutang. In 1991, Ngirutang deeded leasehold rights to an area referred to as "Lot 40657" (encompassing both Lot 40657 and Lot 40657A) to Eusebio Rechucher ("Eusebio"). After signing the 1991 Deed, but before learning that Ngirutang did not have the right to lease Lot 40657A, Eusebio built the West Plaza Hotel, spanning both lots. Later, George Rechucher ("Rechucher") succeeded to his father Eusebio's interest in the land.

[¶ 4] Since 1995, Ngirutang also separately leased parts of the lot 40657 to the Western Caroline Trading Company ("WCTC"). In 1995, Ngirutang leased the "butler type buildings" and the surrounding yard to WCTC. In 1999, Ngirutang leased a cold storage facility to WCTC. In 2009, Ngirutang leased the same cold storage facility to WCTC, at a higher rent. The 2009 lease was for a ten-year renewable term. In 2017, WCTC paid Ngirutang an advance of its monthly rent under the 2009 lease to fund Ngirutang's medical treatment in Taiwan.

[¶ 5] In 2015, Ngirutang obtained a commercial leasehold to Lots 40657 and, for the first time, 40657A from KSPLA. In 2017, Ngirutang obtained from Koror State Government ("KSG") a leasehold of the water and submerged land adjacent to Lot 40657. In 2018, Ngirutang transferred his land and water interests to a living trust.

[¶ 6] At issue in this case are two agreements signed in 2019. The Trust and Rechucher, in his personal capacity, signed an assignment agreement ("the Assignment"). The agreement stated its purpose was to "remedy the mistake" of the 1991 Deed. The Trust assigned to Rechucher "all interests and rights" to the land described in the 1991 Deed, which included Lots 40657 and

40657A. Under its terms, the Assignment would become effective on the date when KSPLA consented to it.

[¶ 7] The Trust and WCTC signed a sublease agreement ("the Sublease"). Rechucher, in his official capacity as WCTC's representative, signed the Sublease. It leased parts of Lot 40657 and the adjacent water rights to WCTC. The Sublease required WCTC to pay the Trust $17,500 in monthly rent and a lump sum of $953,129.10. Under its terms, the Sublease would become effective on the date when both KSPLA and KSG consented to it, whichever occurred last. If consent was not obtained by December 31, 2019, WCTC had the option to terminate the Sublease.

[¶ 8] The Trust brought a claim of breach of contract against the Appellees for failure to pay the monthly rent and lump sum under the Sublease. The Trust moved for summary judgment. The trial court denied the motion. Later, WCTC and Rechucher, separately, moved for summary judgment. The Trust failed to file an opposition. Ultimately, the trial court entered summary judgment for WCTC and Rechucher.

STANDARD OF REVIEW

[¶ 9] This Court's review of grants of summary judgment "is plenary, considering both whether there is no genuine issue of material fact and whether the substantive law was correctly applied." *PNCC v. Wally*, 2026 Palau 3 ¶ 7; ROP R. Civ. P. 56(c). This Court must view all evidence and inferences in the light most favorable to the nonmoving party. *Rechelulk v. Tmilchol*, 2 ROP Intrm. 277, 281 (1991). This Court reviews *de novo* an appeal from summary judgment. *Id.*

[¶ 10] "The interpretation or construction of a contract is a matter of law for the court." *Ngaraard State Public Lands Authority v. PPLA*, 2022 Palau 27 ¶ 12. Whether the terms of a contract are ambiguous is a matter of law. *Yalap v. Umetaro*, 16 ROP 126, 127 (2009). Matters of law are reviewed *de novo*. *Obechou Lineage v. Ngeruangel Lineage of Mochourang Clan*, 2024 Palau 2 ¶ 5.

DISCUSSION

[¶ 11] On appeal, the Trust maintains that summary judgment should not have been granted in favor of the Appellees on its breach-of-contract claims. To establish a breach of contract, the non-breaching party must prove the existence of an enforceable contract, performance by the non-breaching party, lack of performance by the opposing party, and consequential damages. *ROP v. Reklai*, 11 ROP 18, 22 (2003). Because a plaintiff must prove each of these elements, the absence of support for any one element justifies summary judgment in favor of the defendant. *See id; see also Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9, 17 (2012) (affirming the trial court's grant of summary judgment for the defendant in a breach of contract claim).

[¶ 12] In granting summary judgment in favor of the Appellees, the trial court considered the Assignment and Sublease as separate agreements. With respect to the Sublease, the trial court found that there were no genuine issues of material fact contesting the lack of existence of an enforceable agreement because a condition precedent to the Sublease (i.e., KSPLA and KSG approvals) had not been met. With respect to the Assignment, it found that the Trust had not provided any evidence that Rechucher failed to perform under the contract.

[¶ 13] The Trust asserts the trial court erred in two ways. First, it maintains that the Assignment and the Sublease were not independent agreements and should be construed jointly. Second, the Trust argues that the Sublease's condition precedent requiring governmental approval was met.

I. The Assignment and Sublease are independent agreements

[¶ 14] The Trust maintains that the Assignment and the Sublease should be read together as a single contract with shared benefits and obligations.[2] This Court applies the "the objective law of contract interpretation." *Chiang Shui-Lang v. Chiu Hung-Chao*, 2023 Palau 13 ¶ 16. We will:

[2] On appeal, the Trust posits certain "facts" that are disputed, including that the Assignment and Sublease were intended to operate as interdependent agreements and that the Sublease required separate KSPLA approval. These are questions of law, not fact, and are addressed below.

> give force and effect to the words of a contract without regard to what the parties thought it meant or what they intended for it to mean. As a result, if the language of a contract is clear and unambiguous, then there is no room for a court to weigh what is reasonable or likely to have been intended.

Id. (citations omitted). The words used in the contract are assigned their ordinary and plain meaning "unless all parties have clearly intended otherwise." *Airai State v. ROP*, 10 ROP 29, 32-33 (2002). The plain texts of the Assignment and the Sublease are the guideposts of our analysis.

[¶ 15] The Assignment also states its purpose is to "remedy the mistake" of the 1991 Deed – which included the rights to Lot 40657A, which Ngirutang did not then, but subsequently did, have authority to lease. Moreover, the Assignment states the Trust recognizes "the receipt and sufficiency" of "consideration of the value given for the [1991] Deed, and for other valuable consideration." In contrast, the Sublease pertains to Lot 40657 and the water and submerged land adjacent to the lot, in exchange for increased rent and a lump sum advance payment.

[¶ 16] In addition, the Assignment and Sublease include virtually identical merger clauses.[3] Generally, "a merger provision in a contract [is] 'strong evidence that the parties intended and agreed for the signed contract to be the complete embodiment of their agreement' because *[sic]* language was 'simple and straightforward,' and 'not buried in fine print.'" *See Airai State*, 10 ROP at 33 (citing *Betaco, Inc. v. Cessna Aircraft Co*., 32 F.3d 1126, 1133-34 (7th Cir. 1994)). Where an agreement includes a merger clause and "there is no contrary language in the [a]greement suggesting that something other than a fully integrated agreement was meant," it is appropriate to conclude the agreement is the full embodiment of the parties' negotiations. *Id*.

[¶ 17] The plain text of the agreements is clear and unambiguous. Both include a complete, independent bargained-for exchange and a merger clause. Moreover, neither agreement refers—directly or indirectly—to the other.

[3] The Assignment's clause states: "Except as otherwise provided, this Assignment Agreement constitutes the entire agreement of the parties with respect to the subject matter and upon the Effective Date hereof supersedes all other written or oral agreements or understandings, if any."

Accordingly, we do not look to extrinsic sources to determine the subjective intent of the parties. *Chiang Shui-Lang*, 2023 Palau 13 ¶ 16.

[¶ 18] The Trust, citing to 1 PNC § 303, requests that we apply the Restatement (Second) of Contracts § 202 (1981). The Restatement permits review of extrinsic evidence during contract interpretation. Section 202(1) states, "[w]ords and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight." Section 202(2) further states, "[a] writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together." In doing so but without citing specific case law, the Trust suggests that courts will construe contemporaneous agreements together when the agreements are executed by the same parties and involve the same subject matter.

[¶ 19] Insofar as our case law departs from the Restatement, we follow this Court's past decisions. The "manifest purpose of [1 PNC § 303] is to avoid gaps in the law during the development of Palau's legal system." *Renguul v. ASPLA*, 8 ROP Intrm. 282, 284 (2001). Generally, we apply the Restatements when there "is scant decisional law in the Republic" on an issue. *Anson v. Ngirachereang,* 21 ROP 58, 60 (2014).

[¶ 20] With respect to contract interpretation, our case law is well-developed – we apply the objective law of contract interpretation and do not look beyond a contract's clear and unambiguous terms.[4] *Chiang Shui-Lang*, 2023 Palau 13 ¶ 12; *Yalap v. Umetaro*, 16 ROP 126, 127 (2009); *Airai State*, 10 ROP at 32-33; *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 48 n.7 (1999); *Watanabe v. Nelson*, 4 ROP Intrm. 169, 170 (1994). Because the text of the two agreements is clear and unambiguous, the Restatement (Second) of Contracts § 202(2) is inapplicable to this case. The Assignment and the Sublease contain separate obligations, applied to separate parties. We will not impose the Sublease's monetary obligations onto the Assignment where there is no textual support to do so. *See Estate of Rechucher v. Seid*, 14 ROP 85, 91

[4] Of course, our case law does not proscribe the examination of extrinsic evidence if a contract's terms create a patent ambiguity. See *Ngiratkel Etpison Co., Ltd. v. Rdialul*, 2 ROP Intrm. 211, 222 (1991) (holding that parol evidence may be introduced where the terms of a contract are ambiguous).

(2007) (refusing to impose a lease's attorney's fee provision onto a related commission agreement).

[¶ 21] The Trust further asserts that treating the two documents as separate contracts would be manifestly unjust. In particular, the Trust argues that if the Assignment and the Sublease are independent, Rechucher will gain the benefit of the Assignment (obtaining rights to the land) without WCTC providing consideration (increased rent and a lump sum of money). As discussed above, each agreement includes a complete, independent bargained-for exchange – including "sufficien[t]" consideration already received by the Trust in exchange for Lot 40657 and Lot 40657A. As a result, there is no manifest injustice.

[¶ 22] For the above reasons, we do not read the Assignment and the Sublease as integrated agreements that impose mutual obligations and consideration.

II. The enforceability of the Sublease

[¶ 23] The Trust argues that the trial court improperly determined the Sublease to be unenforceable. We disagree because not all of the conditions precedent of the Sublease have been met.

[¶ 24] When a contract includes a condition precedent, "a particular event must occur before the obligation to perform arises *at all*." *Bin-Fang v. Mobel*, 2020 Palau 7 ¶ 38. The Sublease states: "This Sublease Agreement will become effective (the 'Effective Date') on the date it is consented to by the KSPLA and by the KSG, whichever consent is last."[5]

[¶ 25] The Trust concedes that KSPLA never provided express consent and remains completely silent on KSG's consent.[6] The fact that KSG did not consent to the Sublease is alone sufficient to establish that the agreement did

[5] The Assignment included a similar clause. However, the Assignment required only KSPLA's consent. There is no dispute that KSPLA provided express written consent to the Assignment.

[6] On summary judgment, the Appellees assert that KSPLA and KSG did not provide consent to the Sublease. When a party "fails to properly address another party's assertion of fact" we may "consider the fact undisputed for purposes of the motion." See ROP R. Civ. P. 56(e). Accordingly, we consider it undisputed that KSPLA did not provide express consent and KSG did not provide any consent.

not take effect. Nevertheless, because the Trust argues that KSPLA consented to the Sublease through silence and, alternatively, through waiver and estoppel, we address each argument in turn.[7]

[¶ 26] First, the Trust argues that KSPLA consented to the Sublease through silence or acquiescence. The Trust's reliance on the Restatement (Second) of Contracts § 69(1)(b) (1981) is misplaced for several reasons. As an initial matter, "acceptance by silence is exceptional." *Id.* cmt. a. Typically, a party's silence may constitute consent only when the party has a duty to speak. A duty to speak arises in two classes of cases: "those where the offeree silently takes offered benefits, and those where one party relies on the other party's manifestation of intention that silence may operate as acceptance." *Id*. cmt. b. Neither scenario is applicable here. With respect to the Sublease, staying silent does not confer any benefit to KSPLA – the prior lease between Ngirutang and WCTC remained in effect. Likewise, there is no indication in the record that KSPLA ever consented to Ngirutang and WCTC's many prior leases (dating back to 1995) in any manner other than through express consent.

[¶ 27] Moreover, KSPLA's express written consent to all subleases is required by law. Palau Public Lands Authority, Regulations Affecting the State Public Lands Authorities § IV(3)(B)(i)(f) (1999) (authorizing state Public Land Authorities to lease public land for private uses, so long as "[t]he lease specifies that the lessee may not enter into a sublease respecting the subject lands or improvements without express written approval from the State PLA . . . ."). Because KSPLA's consent must be in writing pursuant to regulation, its silence is insufficient to establish KSPLA's consent to sublease public land.

[¶ 28] Second, the Trust argues that KSPLA's actions have estopped it from asserting that it did not consent to the Sublease or somehow amount to waiver. "[E]stoppel is a bar which precludes a person from denying or asserting anything to the contrary of that which has been established as the truth by his own deed, acts, or representations, either express or implied." *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000) (cleaned up). "[T]o invoke [the] doctrine of estoppel, [a] party must have reasonably relied to his detriment on

[7] On appeal, the Trust posits certain "facts" that are disputed, including that KSPLA's silence constituted approval, acquiescence, or waiver and the parties relied upon KSPLA's conduct in proceeding with the transaction. We resolve these as matters of law, not fact.

the acts, promises or representations of the adverse party." *Brikul v. Matsutaro*, 13 ROP 22, 24 (2005) (citation modified).

[¶ 29] The proponent of an estoppel theory bears the burden of production. *Tutii v. Ngiraulau*, 19 ROP 184, 186 (2012). The Trust does not meet this burden. In particular, the Trust could not reasonably rely on KSPLA's silence as consent to perform the Sublease because regulations require written consent.[8]

[¶ 30] Alongside its estoppel argument, the Trust invokes the doctrine of waiver. "Although waiver and estoppel are closely akin, and the terms 'estoppel' and 'waiver' are often loosely used interchangeably, nevertheless, they are separate doctrines." 28 Am. Jur. 2d *Estoppel and Waiver* § 35. Generally, "a waiver is the intentional abandonment or relinquishment of a known right." *Id.* The elements of waiver are: (1) the party waiving must know of the existence of the right or privilege and must be in a position to assert it; (2) the right or privilege must be in effect; (3) the waiver of the right or privilege must be voluntary and intentional. *Owens v. House of Delegates*, 1 ROP Intrm. 513E, 513L (1988).

[¶ 31] Because waiver only occurs when the conduct is intentional, "[m]ere silence, acquiescence, or inactivity is insufficient to show a waiver of contract rights when there is no duty to speak or act." 13 Williston on Contracts § 39:35 (4th ed.). Because KSPLA had no duty to speak, its silence cannot be considered a waiver. Accordingly, as with estoppel, the Trust's waiver claims also fail.[9]

[¶ 32] In sum, the Sublease identifies two conditions precedent: KSPLA's and KSG's consent. The Trust has never asserted that KSG consented to the Sublease, either expressly or impliedly. In addition, KSPLA's actions (and

[8] The Trust also argues that it detrimentally relied on KSPLA's silence because Rechucher benefited from the Assignment without WCTC making payments under the Sublease. Because the Assignment is an independent contract, this argument does not factor into the estoppel argument with respect to the Sublease.

[9] Because KSPLA's silence is otherwise insufficient to establish waiver, we do not reach whether a claim of waiver, in these circumstances, is appropriate against KSPLA at all. KSPLA is a non-party to the Sublease and it remains unclear whether KSPLA has any waivable rights stemming from the agreement.

inactions) cannot be construed as consent. Because both events did not occur, the Sublease is not enforceable, and the trial court did not err in its determination.

III. Summary Judgment

[¶ 33] Finally, we address the Trust's argument that there *must* be a genuine dispute of fact because the trial court first denied the Trust's summary judgment motion before granting summary judgment for the Appellees. "[T]he fact that both parties simultaneously are arguing that there is no genuine issue of fact does not establish that trial is unnecessary." *Rechelulk v. Tmilchol*, 2 ROP Intrm. 277, 282 (1991). Likewise, denial of one party's motion does not necessarily mean there is a genuine dispute of fact.

[¶ 34] When there are cross-motions, a court "must first draw inferences in favor of the plaintiff/non-movant and then draw inferences in favor of the defendant/non-movant to determine whether genuine issues of material fact exist and to decide which motion to grant, if either." *ROP v. Reklai,* 11 ROP 18, 21 (2003). If one party fails to establish that the trial record contains no genuine dispute, the opposing party, in its own motion may meet its burden in establishing a material fact is undisputed in its own favor.

[¶ 35] In the context of an underlying breach-of-contract claim, a plaintiff must establish there are no genuine issues of material fact on all four elements of its claim in order to succeed. In contrast, a defendant can succeed on summary judgment if it identifies indisputable evidence negating any one element of the plaintiff's claims or establishing from the record an absence of evidence in support of any one element. Thus, the denial of one party's motion for summary judgment is not an automatic bar to granting summary judgment for the opposing party.

[¶ 36] In this case, WCTC's ability to demonstrate that the Sublease was not yet enforceable and Rechucher's ability to demonstrate that he had not breached the Assignment were dispositive factors in granting summary judgment in their favor. The Trust's inability to demonstrate the enforceability of the Sublease and that Rechucher had, in fact, breached the Assignment were dispositive in denial of summary judgment in its favor.

[¶ 37] For the above stated reasons – the Assignment and Sublease were separate agreements, and the Sublease did not become effective because KSG and KSPLA did not consent to it – the Sublease did not impose contractual obligations on the Appellees. The Appellees were entitled to summary judgment as a matter of law.

CONCLUSION

[¶ 38] For the foregoing reasons, we **AFFIRM** the trial court's grant of summary judgment.