

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

<p>CHIANG SHUI-LANG, <i>Appellant,</i> v. CHIU HUNG-CHAO and SEA PASSION CORP., <i>Appellees.</i></p>

Cite as: 2025 Palau 13
Civil Appeal No. 25-002
Appeal from Civil Action No. 17-222

Decided: October 28, 2025

Counsel for Appellant	J. Toribiong, Esq.
Counsel for Appellee Chiu Hung-Chao	K. Berg, Esq.
Counsel for Appellee Sea Passion Corp.	R. Dimitruk, Esq.

BEFORE: FRED M. ISAACS, Associate Justice, presiding
KATHERINE A. MARAMAN, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This is an appeal from the Trial Division’s Order Granting Motion to Dismiss; Order of Dismissal issued on January 22, 2025. At issue is the fundamental legal doctrine of mootness, and how it interacts with the ability of parties to enter into a voluntary stipulation of dismissal. For the reasons set forth below, we **AFFIRM** the Trial Division’s dismissal of this case.

BACKGROUND

[¶ 2] This appeal arises from two actions brought by Appellant Chiang Shui-Lang (hereinafter, “Chiang”) against Appellee Chiu Hung-Chao (hereinafter, “Chiu”) in Civil Action Nos. 17-222 and 18-098.

[¶ 3] The underlying basis for Chiang’s actions is a shareholder stock sale contract for Sea Passion Corporation entered into on July 19, 2012. Sea Passion is a domestic corporation of the Republic of Palau which owns, manages, and operates the Sea Passion Hotel in Malakal, Koror. Under the contract, Chiang represented ten of the nineteen shareholders of Sea Passion and agreed to sell Chiu a 40% pool of the total shares of Sea Passion for the sum of \$2,933,333. The contract required Chiu to make three payments to Sea Passion’s bank account at the Bank of Hawaii.

[¶ 4] Chiang challenges the Trial Division’s dismissal of Counts 3, 4, and 5, and wishes to re-litigate these claims pursuant to the parties’ stipulation for dismissal. Count 3 is a claim of fraudulent conversion and wrongful appropriation. Chiang argues that Chiu and Sea Passion fraudulently converted his remaining 11% shares in Sea Passion.

[¶ 5] Count 4 is a claim of abuse of power and breach of fiduciary duty. Chiang alleges that Chiu owed a fiduciary duty to the stockholders of Sea Passion as controlling stockholder, President, and Chairman of the Board of Directors of Sea Passion. Chiang maintains that Defendant Chiu used his position and power within Sea Passion to advance his own personal interests, using Sea Passion as a vehicle to perpetrate fraud.

[¶ 6] Count 5 is a claim of unjust enrichment. Chiang avers that by exercising control of Sea Passion in breach of his fiduciary duties, Chiu and Sea Passion were unjustly enriched by withholding the full payment of the purchase price for the sale of the shares of stock by Chiang to Chiu.

I. Civil Action No. 17-222

[¶ 7] Chiang first sued Chiu in Civil Action No. 17-222 for (1) breach of contract, (2) liquidated damages, (3) fraudulent conversion and wrongful appropriation, (4) abuse of power and breach of fiduciary duty, and (5) unjust enrichment.

[¶ 8] In an Order dated September 13, 2018, the Trial Division found that there was no breach of the 2012 contract. The court later dismissed Chiang’s remaining claims without prejudice pursuant to the parties’ joint Stipulation for Dismissal of Counts 3, 4 & 5 Pursuant to Rule of Civil Procedure 41(a)(1)(B).

[¶ 9] On July 13, 2022, Chiang filed Civil Appeal No. 22-012 to appeal the Trial Division’s September 13, 2018 Order.

II. Civil Action No. 18-098

[¶ 10] On July 10, 2018, Chiang—representing prior Sea Passion shareholders Tian Xiao-Hong, Cheng Feng-Ying, Yeh Chia-Yuan, Liu Yung-Ho, Chien Jen-Yuan, Chiang Jen-An, Ma Shu Fen, Liu Chin-Ching, and Cheng Kuo-Shiang—filed a second breach of contract action against other former shareholders of Sea Passion.

[¶ 11] In his 2018 Complaint, Chiang argued that the defendants breached a loan agreement reached during July 2012 shareholder meetings by failing to pay Chiang for external debts, as well as a price difference of NT\$12,000,000.

[¶ 12] After the defendants failed to appear, the Trial Division entered default judgment and granted writs of execution against the defendants, allowing the plaintiffs to seize and auction off the defendant shareholders’ stock in Sea Passion.

[¶ 13] On May 21, 2019, Sea Passion, Chiu, Hsiao Yu Yeh and Chiu Shao Wei (collectively, “Intervenors”) moved to intervene, asserting that they were the current owners of the shares, not the defendants. Chiang opposed the motion to intervene and moved to enforce the writs of execution.

[¶ 14] On January 29, 2020, the Trial Division declared the Intervenors as owners of the Sea Passion shares. On March 30, 2020, Chiang initiated Civil Appeal No. 20-003 against the Intervenors, appealing the January 29, 2020 Order.

III. 2023 Palau 13

[¶ 15] On February 28, 2023, we consolidated Chiang’s two appeals on the basis that they involved the same parties and facts, as well as similar issues of

law. In our subsequent Opinion, we affirmed the Trial Division’s orders in both appeals. *See Chiang v. Chiu*, 2023 Palau 13 (“*Chiang I*”).

[¶ 16] Addressing the two appeals separately, we first held that the Trial Division did not err in granting summary judgment in Civil Action No. 17-222. *Id.* ¶ 19. We then found that (1) the stock transfers in Civil Action No. 18-098 were valid, *id.* ¶ 26, and (2) Chiang had no priority interest in the shares, *id.* ¶ 31.

IV. Civil Action No. 17-222: Order of Dismissal

[¶ 17] Pursuant to the parties’ Stipulation in Civil Action No. 17-222, Chiang filed a Notice of Re-Filing of the Amended Complaint for Claims in Counts 3, 4, & 5 on October 10, 2023. In light of this Court’s decision in *Chiang I*, Chiu and Sea Passion jointly filed an Amended Motion to Dismiss for Lack of Jurisdiction, asserting that Plaintiff Chiang’s claims were moot.

[¶ 18] On January 22, 2025, the trial court dismissed the case, holding that Chiang’s claims had been rendered moot by our decision in *Chiang I*. The instant appeal followed.

STANDARD OF REVIEW

[¶ 19] “We may affirm or reverse a decision of the Trial Division for any reason apparent in the record.” *Rengiil v. Ongos*, 22 ROP 48, 50 (2015). The appellate standards of review are as follows:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. Matters of law we decide *de novo*. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted). We review the Trial Division’s Order of Dismissal under the *de novo* standard as there are mixed questions of law and fact.

DISCUSSION

[¶ 20] Chiang raises two arguments in favor of reversing the Trial Division’s Order of Dismissal. First, Chiang maintains that the Order violated the terms of the parties’ joint Stipulation. Second, Chiang avers that the trial court committed reversible error by relying on the judgments and orders in Civil Action Nos. 17-222 and 18-098, and *Chiang I*, which do not apply to the issues raised in Chiang’s claims contained in Counts 3, 4, and 5.

I. Violation of the Parties’ Joint Stipulation

[¶ 21] Chiang’s argument on this issue rests on the fact that the parties agreed in their Stipulation that Counts 3, 4, and 5 could be re-filed, and therefore, dismissing the re-filed claims would be in violation of the express terms of the Stipulation.

[¶ 22] The relevant portion of the Stipulation that Chiang relies on is Paragraph 3(a): “[t]he re-filed case will not begin anew with new discovery or motions deadline, but rather the Parties would be bound by the fact that such deadlines had already passed in Civil Action No. 17-222 and the *newly re-filed matter would be deemed ready to be scheduled for trial*” (emphasis added).

[¶ 23] In the absence of controlling Palauan authority for voluntary dismissals of claims, this Court can look to outside case law for guidance. *E.g.*, *Republic of Palau v. Carreon*, 19 ROP 66, 74 (2012) (“[W]e are not bound to mechanically embrace United States case law and may freely adopt the rationale set forth if we find it persuasive.” (internal quotations omitted)).

[¶ 24] A voluntary dismissal of claims generally preserves the *status quo ante* of the proceedings with regard to the related claims. *See Daniels v. Jacobs*, 753 F. App’x 748, 755 (11th Cir. 2018) (holding that the court’s procedural conditions for dismissal to preclude additional discovery in any refiled actions were proper to preserve the *status quo*); *Worrell v. Bruce*, 296 F. App’x 665, 667 (10th Cir. 2008) (holding that a voluntary dismissal preserves the *status quo* but does not toll the limitations period).

[¶ 25] Interpreting the plain meaning of the Stipulation in light of its context, the paragraph Chiang relies upon intends to maintain the *status quo ante* of Counts 3, 4, and 5 as “trial ready” because the relevant deadlines have

already passed. Accordingly, inasmuch as the trial court correctly evaluated the merits of the claims and resumed the proceedings as stipulated, we find there was no violation of the Stipulation. Chiang, therefore, cannot rely on the parties' agreed Stipulation as to where litigation would begin when it resumed to override a subsequent valid dismissal of claims by the trial court.

II. Counts 3, 4, and 5 are Separate and Distinct Claims

[¶ 26] “This Court does not address moot issues,” *Micronesian Yachts Co. v. Palau Foreign Inv. Bd.*, 7 ROP Intrm. 128, 131 (1998), because “if it is not necessary to decide more, it is necessary not to decide more,” *Leleng Lineage v. Rekisiwang*, 2020 Palau 5 ¶ 10 (internal citations omitted). A case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome; in other words, a case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief. *E.g.*, *Pac. Sav. Bank v. Llecholch*, 15 ROP 124, 126 (2008). We have previously held that if events subsequent to the filing of the complaint in the present case have caused it to become moot, there is no justiciable controversy presented. *See, e.g.*, *Mesubed v. Ninth Kelulul a Kiuluul*, 10 ROP 104, 105 (2003).

A.

[¶ 27] Before addressing the substance of Counts 3, 4, and 5, Chiu and Sea Passion jointly argue that by failing to challenge the issues of mootness at the trial court level, Chiang waived his right to challenge the mootness of his claims. We agree that Chiang cannot argue against mootness for the first time on appeal.

[¶ 28] “No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue.” *Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004). Therefore, absent compelling circumstances, we will generally not consider an issue unless the issue was first addressed by the trial court. *See Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 43 (1998).

[¶ 29] One permitted exception is the issue of standing, which can be challenged at any juncture as an element of subject matter jurisdiction and can be raised for the first time on appeal. *See Gibbons v. Seventh Koror State*

Legislature, 11 ROP 97 (2004). Mootness has been described as “the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000).

[¶ 30] The rationale underlying both mootness and standing is the same and ensures that a case is justiciable. Mootness—like standing—can therefore be raised at any time, even for the first time on appeal. If so raised by a party, the other side can oppose the new claim of mootness. However, a party opposing mootness cannot raise it for the first time on appeal if they had the opportunity to challenge it below and failed to do so.

[¶ 31] Chiang had ample notice and opportunity to argue against mootness in the trial court, but failed to dispute the assertion that his claims were no longer live issues in his response to the Appellees’ Motion to Dismiss. As such, we find that Chiang is not entitled to appeal the issue of mootness and we cannot conclude that compelling circumstances exist to excuse his waiver.

B.

[¶ 32] Even if we were to find that Chiang is entitled to challenge the issue of mootness, we find that the trial court was correct in finding the issues moot. Chiang argues that the issues decided in *Chiang I* are separate and distinct from the claims in Counts 3, 4, and 5, and that the issues are not moot.

[¶ 33] Fraudulent conversion, as alleged by Chiang in Count 3, consists of two elements: fraudulent intent and conversion. Fraudulent intent requires “knowledge that the appropriation is contrary to the wishes of the owner of the property.” *In re Parker*, 653 B.R. 765, 779 (E.D. Va. 2023), *aff’d*, 141 F.4th 583 (4th Cir. 2025). Conversion is “an unauthorized appropriation of property belonging to another.” *United States v. Stockton*, 788 F.2d 210, 217 (4th Cir. 1986). Based on this definition, fraudulent conversion is synonymous with wrongful appropriation.

[¶ 34] The crux of all three claims therefore boils down to whether the Appellees wrongfully retained the benefits of the 11% of shares, depriving Chiang of the use and benefit of these shares. In *Chiang I*, we found that there was no breach of contract, no fraud, and a valid transfer of shares from the

absent shareholders to the Intervenors before the trial court entered default judgment. Consequently, the Appellees here could not have committed fraudulent conversion, wrongful appropriation, abuse of power, breach of fiduciary duty, or unjust enrichment as Chiang alleges. Thus, we find that the Appellees' actions were lawful, and there remains no justiciable controversy between the parties.

CONCLUSION

[¶ 35] For the foregoing reasons, we find that while Counts 3, 4, and 5 may be facially distinct from the claims presented in *Chiang I*, the substantive analysis underlying each claim has already been extensively litigated and denied. Accordingly, we **AFFIRM** the Trial Division's decision to dismiss Chiang's claims.