Hanpa Indus. Dev. Corp. v. Asanuma, 10 ROP 39 (2002)

HANPA INDUSTRIAL DEVELOPMENT CORP.,
Appellant,

v.

FRANCISCO ASANUMA, SR.,
Appellee.

CIVIL APPEAL NO. 01-39
Civil Action No. 00-128

Supreme Court, Appellate Division
Republic of Palau

Decided: December 23, 2002

Counsel for Appellant: Richard Brungard

Counsel for Appellee: Johnson Toribiong

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN, Associate Justice, presiding.

PER CURIAM:

Both parties to this appeal, Hanpa Industrial Development Corporation ("Hanpa") and Francisco Asanuma, have filed petitions for rehearing in which they challenge various aspects of this Court's October 17, ⊥40 2002 decision. For the reasons that follow, we deny the parties' petitions.

Hanpa asks us to revisit our decision on three grounds. First, Hanpa contends that we did not sufficiently explain why we rejected its claim for damages based on an October 1996 receipt, which memorialized Asanuma's promise to move his residence and beauty shop to the second floor by the end of November 1996 "without any condition." In our decision, we specifically discussed Asanuma's promise and the fact that he did not fulfil it. Although not specifically stated in our written opinion, we agreed with the trial court that the promise was not binding for want of consideration. Hanpa has not persuaded us that our conclusion was wrong, and we do not believe that Hanpa's dissatisfaction with the specificity of our reasoning is itself a justification for rehearing the case. Second, Hanpa contends that the trial court's damage award regarding the Kosiil residence was not supported by "substantial evidence." We considered that issue in our decision, and we are not convinced that we misapplied the standard of review or incorrectly weighed the evidence. Third, Hanpa asks that we direct the trial court to consider

new evidence pertaining to whether the back stairs can be widened in a manner that the trial court had directed. While the trial court may wish to consider this evidence on remand, it is not a basis for recalling our decision. *See* 5 Am. Jur. 2d *Appellate Review* § 882 (1995) (providing that issues raised for first time in petition for rehearing are generally not grounds for rehearing appeal).

Asanuma's petition for rehearing primarily rehashes his argument that he was entitled to possess the entire second floor. His new factual assertions–that dividing the second floor between the parties increases friction between them and leaves Asanuma without any windows along the south wall–do not dispossess us of the conclusion that Asanuma was entitled to only the floor space set aside for him after the first phase of the construction. Having said that, we note that our conclusion was not intended to foreclose any possible claim that Hanpa's subsequent construction activities interfered with Asanuma's right of quiet enjoyment. *Cf.* 49 Am. Jur. 2d *Landlord and Tenant* §§ 606-10 (1995). Asanuma also asks us to remand based on an affidavit to the effect that "the dimensions of the building [are] slightly different than what is on the record." This new evidence provides no basis for rehearing and should be raised, if at all, before the trial court.