

SINGEO TECHONG, et al., Plaintiff-Appellee

v.

PELELIU CLUB and NGARABLOD ASSOCIATION,
et al., Defendant-Appellant

Civil Appeal No. 98

Appellate Division of the High Court

Palau District

April 13, 1976

Action to recover debts due. The Appellate Division of the High Court, Williams, Associate Justice, held that where there were several debts between the parties extending over period of years and only two of the debts were barred by statute of limitations, defendants' answer to complaint that it was true that defendants owned some sum of money but that the sum stated was not true or correct as of dates stated, did not revive those debts barred by statute of limitations, since there were several debts and it could not be determined from this acknowledgement which debt was referred to.

1. Actions on Account—Limitation of Actions

Where there were several debts between parties extending over period of years and only two of the debts were barred by statute of limitations, defendants' answer to complaint that it was true that defendants owed some sum of money but that the sum stated in complaint was not true or correct as of the dates stated, did not revive those debts barred by statute, since there were several debts and it could not be determined from this acknowledgement which debt was referred to. (6 TTC § 307)

2. Appeal and Error—Findings and Conclusions—Clearly Erroneous

Finding of Trial Court will not be set aside unless clearly erroneous.

3. Appeal and Error—Findings and Conclusions—Clearly Erroneous

Where defendant debtors' answer to complaint was a general denial of plaintiffs' claims, and defendants offered proof that during a period in which one of plaintiffs was in control of defendants' finances, income greatly exceeded expenses, and that money was not properly accounted for and should be set off against that plaintiff's claim, trial court did not err in excluding evidence of such counterclaim, since "set off" did not arise out of same transaction or occurrence or complaint and was more in nature of a permissible counterclaim which should have been affirmatively pleaded.

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Counsel for Appellee:

JONAS W. OLKERIIL

Before BROWN, *Associate Justice*, HEFNER, *Associate Justice*, and WILLIAMS, *Associate Justice*

WILLIAMS, *Associate Justice*

This is an appeal from a judgment entered in Palau Civil Action No. 518 in favor of plaintiffs and against defendants for the sum of \$30,111.87.

The original action was filed by Singeo Techong and others on March 18, 1971, claiming that the Peleliu Club, its member associations and officers owed the plaintiffs a large long-standing debt, plus accrued interest. Although the only named plaintiff, Singeo Techong, did not appear at the trial, Palau District Court Judge Francisco Morei gave evidence of his claims and claims of Asao and Joseph. The Court found that Morei and the two other plaintiffs were entitled to recover on five specific items, together with interest at the rate of 6% from the date of the original billing of each claim. The total amount found to be due plaintiffs by the Trial Court was \$30,111.87 and it is from this judgment defendants appeal.

Appellants' principal contention on appeal is that two of the claims allowed by the Court are barred by the statute of limitations. The first claim allowed by the Court was for the sum of \$1,514.34 for original construction work performed on the clubhouse between 1959 and 1961 together with interest at the rate of 6% per annum from the billing date of September 18, 1961, to the date of judgment, in the sum of \$1,090.00, for a total due from defendants of \$2,604.34.

The second claim allowed by the Court was for the sum of \$465.00 for a neon sign erected at the clubhouse by plaintiffs in 1962, together with interest at the rate of 6% per annum from the billing date of December 26, 1966, to the date of judgment, in the sum of \$181.00, for a total due from defendants of \$646.00.

The Trial Court recognized the six year limitations on actions was applicable as set forth in 6 TTC Sec. 307, and that the claims were barred unless revived in some manner by the defendants. In finding these two claims to have been revived, the Court relied on a letter dated March 20, 1971, to the Palau District Clerk of Courts in response to the complaint filed by plaintiff. Although the defendants subsequently, on April 30, 1971, filed a formal answer, the letter, in effect, constituted defendants' original answer to the complaint and was therefore properly considered by the Court. In the third paragraph of the letter, the President of the defendant Peleliu Club states:

3. It is true that Peleliu Club and Ngarablod Association owe the plaintiffs some sum of money, but it is not true nor correct that the sum stated in this *Complaint* are the sums the defendants (Peleliu Club and Ngarablod Association) owe the plaintiffs as of the dates stated.

The Court found the foregoing statement sufficient to revive the debt, and it is this finding we believe to be clearly erroneous.

The rule concerning revival of a debt barred by the statute of limitations is set forth in *Wetzell v. Bussard*, 11 Wheat 309, 6 L.Ed. 481 (1826) as follows:

. . . an acknowledgment which will revive the original cause of action must be unqualified and unconditional. It must show positively that the debt is due in whole or in part.

[1] However, in this case there are several debts between the parties extending over a period of years and only two of the debts are barred by the statute. Since there are several debts and it cannot be determined from the acknowledgement which debt is referred to, the acknowledgement is insufficient to revive those barred by the statute. *Freeman v. Wilson*, 485 P.2d, 1161 (1971). Therefore, the two debts barred by the statute of limita-

tions in this case could not be revived by the letter of March 20, 1971.

Appellants urge as an additional ground on appeal that the Trial Court's findings are not supported by the record.

[2] This Court has repeatedly held that the findings of the Trial Court will not be set aside unless clearly erroneous. *Helgenberger v. Trust Territory*, 4 T.T.R. 530 (App. Div. 1969); 6 TTC § 355(2). The function of the Appellate Court in reviewing the evidence is clearly set forth in *Arriola v. Arriola*, 4 T.T.R. 486 (App. Div. 1969), and we have reviewed the record and find the facts sufficient to support the judgment.

[3] Appellant also contends the Trial Court erred in excluding evidence concerning a set-off to plaintiff's claim.

Defendants filed an answer which consisted only of a general denial of plaintiffs' claims. At the trial, defendants counsel offered proof that during a period which one of the plaintiffs, Judge Morei, was in control of the Club's finances, the income greatly exceeded the expenses, and money was not properly accounted for, and should be set off against his claim, but the Trial Court excluded such evidence. It is readily apparent that defendants alleged "set off" did not arise out of the same transaction or occurrence as plaintiff Morei's claim and is more in the nature of a permissive counterclaim, which must be affirmatively pleaded. We find no error in excluding evidence of such claims unless properly pleaded.

Judgment of the Trial Court is affirmed in part and reversed in part, and remanded to the Trial Court for entry of a modified judgment in accordance with this opinion.