

Before BURNETT, *Chief Justice*, GIANOTTI, *Associate Justice*, and LAURETA, *Temporary Justice by Appointment of the Secretary of Interior*

PER CURIAM

The very limited record available to us indicates that a Notice of Appeal was filed sometime in 1976, and that all records, both in the Trial and Appellate Divisions, appear to have been lost.

We need not inquire as to how this might have happened. We do conclude, however, that having nothing to review, the Appeal must be allowed, and conviction below be set aside.

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FRANCISCA BALETO AGUON, et al., Plaintiffs-Appellants

v.

ROSA TORRES SAN MIGUEL, et al., Defendants-Appellees

Civil Appeal No. 200

Appellate Division of the High Court

Mariana Islands District

November 30, 1978

Plaintiffs appealed from judgment for co-defendant. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed.

**Trusteeship—Implied Trusts—Particular Cases**

Where claims commission awarded money to man and woman, both signed releases and endorsed the checks issued for the award, they had been awarded the money as representatives of the heirs of a certain person and the heirs sued for the money, the man defaulted, and it was found that the woman disclaimed any interest in the property or the money and had not accepted any responsibility for the money and did not know the purpose of the checks or who was entitled to the money and allowed the man to have the money, the woman was not liable as a trustee or fiduciary.

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*Counsel for Appellant:*  
*Counsel for Appellee:*

MICHAEL A. WHITE, ESQ.  
DOUGLAS F. CUSHNIE, ESQ.

Before HEFNER, *Associate Justice*, NAKAMURA, *Associate Justice*, and GIANOTTI, *Associate Justice*

HEFNER, *Associate Justice*

On October 20, 1975, the Micronesian Claims Commission issued Decision No. 8208 which, in part, made an award of certain money to "Gregorio E. Torres and Rosa T. San Miguel as the Representatives of the Heirs of Dolores Palacios." Both named payees signed releases and endorsed the checks issued for the award. The plaintiff, representing the heirs of Dolores Palacios, filed suit against Gregorio and Rosa, with Gregorio defaulting, and the issue presented to the Trial Court was whether Rosa was liable since she endorsed over the checks to Gregorio.

Rosa disclaims any interest in the real property which was the basis of the Claims Commission award and further disclaims any interest in the claims proceeds.

It is concluded by both sides of this litigation that the only reason Rosa's name was placed on the checks was that her name appeared on the land records as representing the heirs of Dolores Palacios along with Gregorio.

Appellants urge that the Trial Court erred in not finding the appellee, Rosa San Miguel, a trustee and jointly liable with Gregorio E. Torres.

The Trial Court held:

The Court further concludes that acceptance of a trust by a trustee is necessary to change (sic) the trustee with liability. 76 Am.Jur.2nd, *Trusts*, § 124, page 364. The facts of this case reveal no acceptance expressed or implied by Defendant Rosa Torres San Miguel regarding the War Claims proceeds. There being no acceptance by her, she cannot therefore be considered a trustee subject to personal liability for a wrongful disbursement of funds.

Appellants argue that Rosa, as a trustee or at least a holder of title of the land for the heirs of Dolores Palacios, knew that she was a "trustee" and that when she endorsed the checks and allowed them to be placed in the hands of

Gregorio, she breached her fiduciary responsibility to the heirs of Dolores Palacios and should be held accountable for the funds not paid over to the heirs.

A review of the pertinent portions of the testimony in this matter reveals that the Trial Court committed no error. This Court will not reweigh the evidence. It found that the appellee did not accept any fiduciary responsibility for the checks as she did not have knowledge of the purpose of the checks nor who was entitled to the proceeds. This finding will not be disturbed.

The Judgment of the Trial Court is **AFFIRMED**.

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**LANILON KONOU, Plaintiff-Appellant**

**v.**

**MO JITIAM and CHIHAYA ANMONTA, Defendants-Appellees**

Civil Appeal No. 210

Appellate Division of the High Court

Marshall Islands District

November 30, 1978

Plaintiff appealed judgment against him. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed.

**Real Property—Damages—Right to**

Person awarded money for damage to or use of property occurring prior to 1951, who admitted he had no rights in the property in 1951, and who gained no rights in the property until 1956, was not entitled to share in the award. 50 U.S.C. App. §§ 2020-2020b.

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*Counsel for Appellant:* JOSEPH L. HESLY  
*Counsel for Appellee:* BILIMON AMRAM

Before HEFNER, *Associate Justice*, NAKAMURA, *Associate Justice*, and GIANOTTI, *Associate Justice*