

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

2022 JUL -6 A 10: 25

SUPREME COURT
OF THE
REPUBLIC OF PALAU

MARK RUDIMCH,
Appellant,

v.

**BANK OF HAWAII, KR BUSINESS TRUST, ESTATE OF
ISIDORO RUDIMCH, IVAN RUDIMCH, DEAN RUDIMCH,
EYOS RUDIMCH, SEAN LEE RUDIMCH, SHIRLEY
RUDIMCH, EUNICE RUDIMCH, and EVELYN RUDIMCH,**
Appellees.

Cite as: 2022 Palau 10
Civil Appeal No. 21-019
Appeal from Civil Action No. 20-052

Decided: July 6, 2022

Counsel for Appellant	William L. Ridpath
Counsel for Appellee Bank of Hawaii	Siegfried B. Nakamura
Counsel for Appellees KR Business Trust, et al.	Salvador Remoket

BEFORE: DANIEL R. FOLEY, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This case concerns the ownership of and withdrawals from a checking account with Appellee Bank of Hawaii. Appellant Mark Rudimch brought a declaratory judgment claim seeking a declaration that he is the sole owner of the account and a claim against the Bank of Hawaii seeking more than \$175,000 in damages for negligently and wrongly facilitating wrongful withdrawals by his family members from the account. The Trial Division

granted motions for summary judgment against Mark and dismissed both his claims. We **AFFIRM IN PART**, holding that Mark has no claim for damages against Bank of Hawaii, and **REVERSE IN PART**, holding that Mark's affidavit created a genuine issue of material fact as to the ownership of the account.

BACKGROUND

[¶ 2] In 1978, Isidoro Rudimch opened a business checking account with Bank of Hawaii. The parties dispute whether ownership of this account changed prior to Isidoro's death (and, as a result, who now owns the account and can make withdrawals from the account). In an affidavit, Mark states that, sometime in the 1990s, Isidoro gave Mark "signature authority over the Account, with the clear mutual understanding at that time that [Mark] was then a co-owner of the Account." Mark Aff. ¶ 5. Mark further explains that he signed a signature card at Bank of Hawaii's Koror branch in connection with this transaction and that, after becoming a co-owner, he transacted freely on the account at his discretion. *Id.* ¶¶ 5–6. The manager of Bank of Hawaii's Koror branch, by contrast, asserts in his affidavit that "[a]t no time before the passing of the late Isidoro Rudimch did the ownership of the [account] change." Morei Aff. ¶ 11.

[¶ 3] Isidoro died in 1999 and his estate was probated.¹ Mark and Ivan Rudimch, another of Isidoro's sons, were appointed as joint executors of the estate. In connection with their appointment as joint executors, Mark and Ivan signed a signature card in 2000 indicating their authority to access funds from the account. BOH Ex. 3. Several other family members—Eriko Singeo, Eyos Rudimch, and Dean Rudimch—were later named co-administrators of Isidoro's estate, and they also signed a signature card in 2009 indicating their authority to access funds from the account. BOH Ex. 4. Between 2012 and 2015, more than \$175,000 was withdrawn from the account. Bank of Hawaii

¹ As the Trial Division noted, "the record does not clearly denote" what happened to the account during the probate proceeding. Order at 6. We recount only the facts relevant to our decision. Any other impact the probate proceeding may have on this case—such as whether the account was included in the KR Business Trust—is left for the Trial Division's consideration on remand.

asserts that these withdrawals were facilitated in reliance on the signature cards for the account and that each of the withdrawal slips contain a required signature. Morei Aff. ¶ 6; BOH Ex. 5.

[¶ 4] After confusion arose over ownership of the account, Bank of Hawaii filed a petition—which named Mark, in addition to a number of Isidoro’s other relatives, Isidoro’s estate, and a business trust established in the probate proceeding (except for Mark, the “Respondents”)—asking the Trial Division to determine which party or parties own the account. Mark filed counterclaims seeking a declaration that he owns the account and seeking damages from Bank of Hawaii for negligently allowing withdrawals from the account between 2012 and 2015.

[¶ 5] Respondents and Bank of Hawaii separately moved for summary judgment on Mark’s counterclaims. The Trial Division granted both motions for summary judgment, holding that “there is no evidence to suggest that Mark Rudimch opened the account with his father or joined in ownership of the account prior to his father’s death.” Order at 6. Thus, the Trial Division dismissed both of Mark’s counterclaims. Mark now appeals.

STANDARD OF REVIEW

[¶ 6] We review the Trial Division’s decision on summary judgment de novo. *Salvador v. Angel*, 2018 Palau 14 ¶ 5. Summary judgment should be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. ROP R. Civ. P. 56(c). “The sole responsibility of the trial court at summary judgment is to determine whether genuine issues of material fact exist; it is not to make factual determinations where facts remain in dispute.” *Becheserrak v. Eritem Lineage*, 14 ROP 80, 81–82 (2007). The court must view all evidence and inference in the light most favorable to the nonmoving party, and affidavits submitted by the nonmoving party are to be “liberally construed.” *ROP v. Reklai*, 11 ROP 18, 21 (2003). “Where the affidavits of the parties are diametrically opposed, and it is apparent that both cannot be true, the credibility of the parties is a question for the trier of fact, and the motion should be denied.” *Id.*

DISCUSSION

I.

[¶ 7] We first consider Mark’s claim for a declaration that he is the sole owner of the account. This dispute is a narrow one—whether Mark became a co-owner of the account prior to Isidoro’s death. And on that question, the parties submitted dueling affidavits—Mark claims that he became a co-owner in the 1990s, and Bank of Hawaii claims that ownership did not change before Isidoro’s death. Nevertheless, the Trial Division granted Bank of Hawaii’s motion for summary judgment, holding that “there is no evidence to suggest that Mark Rudimch opened the account with his father or joined in ownership of the account prior to his father’s death.” Order at 6.

[¶ 8] The Trial Division erred by failing to account for the statements in Mark’s affidavit, which are directly relevant to ownership of the account. Although a nonmoving party “cannot rely on conclusory allegations in an affidavit to establish a genuine issue of fact,” *Becheserrak v. Eritem Lineage*, 14 ROP 80, 83 (2007), Mark’s affidavit—liberally construed—contains sufficient detail explaining how he allegedly became a co-owner of the account. Mark asserts the general time period when he became a co-owner of the account (sometime in the 1990s), how he became a co-owner (by going to the Koror branch and executing a signature card), and actions he took consistent with being a co-owner (including using the funds in the account at his discretion). Mark Aff. ¶¶ 5–6. When, as in this case, “the affidavits of the parties are diametrically opposed, and it is apparent that both cannot be true, the credibility of the parties is a question for the trier of fact, and the motion [for summary judgment] should be denied.” *Reklai*, 11 ROP at 21; *see also Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 32, 50–52 (1993) (holding that conflicting affidavits created a genuine issue of material fact). Thus, the Trial Division should have denied Bank of Hawaii’s motion for summary judgment.

[¶ 9] Much of Bank of Hawaii’s argument on appeal applies the wrong standard of review. The Bank of Hawaii repeatedly asserts that the Trial Division’s factual findings should be reviewed for clear error and argues that the Trial Division did not err in weighing the evidence. But “weighing of the relative weight and plausibility of each side’s evidence ... is inappropriate on a motion for summary judgment.” *Dilubech Clan v. Ngeremlengui State Gov’t*,

8 ROP Intrm. 106 (2000). In other words, “at the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). As discussed above, Mark’s affidavit creates a genuine dispute over the ownership of the account, and the proper time for the Trial Division to weigh the evidence and resolve that factual dispute is at trial.

II.

[¶ 10] Next, we consider Mark’s claim for damages against Bank of Hawaii for wrongfully and negligently allowing withdrawals from the account by individuals lacking legal authority to do so. Although the Trial Division did not reach this issue because of its holding on ownership, we may “affirm a decision of the Trial Division for any basis apparent in the record.” *Minor v. Rechucher*, 22 ROP 102, 105 (2015).

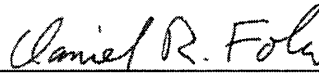
[¶ 11] The summary judgment evidence contains a signature card for the account signed by Mark and Ivan in 2000, BOH Ex. 3, and a signature card for the account signed by Dean and Erkiio (which also listed Eyos as an agent) in 2009, BOH Ex. 4. As Bank of Hawaii explains, “a signature card indicates any persons that are authorized to access the account.” Morei Aff. ¶ 12. And Bank of Hawaii relied on the signature cards when facilitating the contested withdrawals from the account. *Id.* ¶ 6. Finally, Bank of Hawaii points out that each of the withdrawal slips for the contested transactions contains a required signature. BOH Ex. 5.

[¶ 12] Given this undisputed evidence, there can be no question that Bank of Hawaii facilitated withdrawals from the account in accordance with the signature cards it had on file. In other words, Bank of Hawaii did not negligently and wrongfully facilitate withdrawals from the account by “persons who lacked legal authority,” *see* Mark Countercl. ¶ 6, but rather properly facilitated withdrawals by individuals who had signature cards on file at the bank. Thus, we find that Bank of Hawaii is entitled to summary judgment on Mark’s claim seeking damages from the bank.

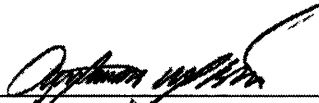
CONCLUSION

[¶ 13] We **AFFIRM** the Trial Division's decision granting Bank of Hawaii's motion for summary judgment on Mark's claim for negligent and wrongful withdrawals. We **REVERSE** the Trial Division's decision granting Bank of Hawaii and Respondents summary judgment on Mark's claim for a declaratory judgment regarding ownership of the account and **REMAND** for further proceedings on that claim.

SO ORDERED, this 6th day of July, 2022.



DANIEL R. FOLEY
Associate Justice



ALEXANDRO C. CASTRO
Associate Justice



KEVIN BENNARDO
Associate Justice