immigrate at will. There has been no showing that the statute in any way inhibits free movement from one district to another.

The Court finds that 39 TTC § 202 is not a denial of equal protection and that the Court has no jurisdiction over this action.

Motion for decree denied.

BRIKUL NGIRUCHELBAD, Plaintiff

v.

MOSES NGIRASEWEI, Defendant

Civil Action No. 594

Trial Division of the High Court

Palau District

June 22, 1973

Claim for balance claimed due on oral contract to build house. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where plaintiff claimed $11,000 was agreed on as the maximum cost and defendant claimed it was $6,000, and there was no other evidence, contract could be found unenforceable for ambiguity or for mutual mistake, and that under the circumstances plaintiff could be allowed either the value of the improvements or the cost of labor and materials, and would be allowed the latter.

1. **Contracts—Oral Contracts—Proof**

   In action for balance due on oral contract to build house, where plaintiff testified the cost of labor and materials was not to go over $11,000, and defendant testified the limit was $6,000, the evidence was at a stalemate, that being all there was, and plaintiff failed in his burden of proving his claim by a preponderance of the evidence.

2. **Contracts—Terms—Clarity**

   Before there can be a contract, the terms must be definite and understood, so that they can be agreed on.

3. **Contracts—Terms—Mutual Agreement**

   When one party to a contract reasonably means one thing, and the other reasonably understands differently, there is no contract; the parties have said different things.

4. **Contracts—Construction—Vagueness**

The court would not prepare a new contract where the terms of oral contract to build a house were so uncertain that there was no enforceable contract; but where the house was already built, the party for whom it was built would not be allowed the benefit of it without being required to pay for it, and builder was entitled to the value of the improvements or the cost of labor and materials, whichever was less.

5. **Contracts—Mistake—Mutual Mistake**

Where parties to oral contract to build house each testified that a different maximum cost was agreed on, one claiming it was $11,000 and the other claiming it was $6,000, and there was no other evidence on the issue, court had the power to set aside the agreement on grounds of mutual mistake.

Assessor:	PABLO RINGANG, *Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Plaintiff:	BAULES SECHELONG
Counsel for Defendant:	KAZUMOTO H. RENGULBAI

TURNER, *Associate Justice*

This was an action by a building contractor to collect what he claimed to be the balance due on an oral agreement to construct a twenty *tsubo* cement block house for defendant. At the pre-trial defendant amended his answer by counterclaiming for the difference between the amount he actually paid the plaintiff and the amount he claims the construction contract to have been.

Unfortunately for both parties and their claims, the agreement between them was in accordance with the usual practice in Palau in that it was oral and was most indefinite in its terms. Both parties agreed in principal as to how the final contract price was to be ascertained, but the respective statements as to what this amount was were in irreconcilable conflict.

The plaintiff testified he told defendant before start of construction that the "cost," meaning contract price, would

not exceed $11,000. Defendant claimed he was told and agreed to an amount that would not exceed $6,000. The Court is unable to accept either version, but does conclude the contract was intended to include actual cost of labor and materials.

[1] Both parties showed by their testimony it was their intention to charge and to pay costs of labor and materials, but, according to plaintiff's version, it was not to exceed $11,000 and, by defendant's version, it was not to exceed $6,000. There is some corroboration for defendant's claim, but none whatever for the plaintiff's. Plaintiff said the amount was $11,000 and defendant denied it. As far as proof was concerned, it was one man's word against the other. It was a stalemate that proved nothing. Plaintiff clearly did not meet his burden of proving his claim by a preponderance of the evidence, which, of course, is necessary for a civil action recovery.

There was no testimony from either side that the contract also included a profit for the contractor, although plaintiff's billing to defendant (Exhibit No. 1) showed an item of "20% overhead", calculated on plaintiff's claimed cost of material and labor. Defendant rejected this billing, and there is nothing in the record from which the Court might conclude there was any agreed amount for profit or overhead, which is normal in cost-plus construction contracts.

[2, 3] The question to be decided under the circumstances of this case was whether or not there was any binding agreement between the parties. Before there can be a contract, its terms must be definite and understood so they can be agreed to by the parties. When one party reasonably means one thing and the other party reasonably understands differently, there is no contract. The parties have "said different things." When there is such a misunder-

standing, neither party is obligated. 17 Am. Jur. 2d, Contracts, Sec. 22.

This Court said in *Mongami v. Melekeok Municipality*, 4 T.T.R. 217:—

"If the language of a contract is uncertain or unclear, called 'ambiguous' by the courts, then the court must decide on the meaning and intent of the parties."

[4] The Court will not prepare a new contract for the parties if the terms are so uncertain there is no enforceable contract. But by declaring there was no contract because there was no agreement as to specific terms—particularly the maximum amount—does not mean the defendant may have the benefit of a house on his land without being required to pay for it.

A similar situation arose in Yap when a man made improvements on land he believed he had purchased. But the court found the contract to be void and without effect. In the decision, *Narruhn v. Sale*, 3 T.T.R. 514, 518, the court said:—

". . . the only compensation to which he would be entitled for improvements made on the land would be the amount that the value of the land and *taro* swamp was increased by the improvements, or for the value of the labor and materials employed in making such improvements, whichever is least."

[5] There is a quite obvious second doctrine of law applicable to the present case as an alternative to the rule a contract is void when it is unenforceable because of ambiguity. This stems from the court's power, under the circumstances of the present case, to set aside any agreement between the parties on the grounds of mutual mistake. *Tmetuchl v. Western Carolines Trading Co.*, 4 T.T.R. 395, 400.

Otobed was plaintiff's agent in negotiating the contract, plaintiff agreed. Otobed testified that it was not clear to defendant that the "not in excess of $6,000" statement,

which defendant took to mean the contract price, actually was only to cover cost of materials and did not include labor. Thus there was no true "meeting of the minds" because of the mistaken statement of plaintiff's agent and defendant's mistaken understanding of the statement. Setting aside the contract due to mutual mistake again confronts the parties with the rule of the *Narruhn* case. All that plaintiff is entitled to is either the value of the improvements or the cost of the labor and materials, whichever is less. We are compelled to accept the cost of labor and materials measure because there was no showing whatever as to the value of this twenty *tsubo* house.

Defendant cast serious doubt upon the propriety of the plaintiff's billing for materials. Even the plaintiff billed a greater amount than the invoices supported. Defendant also testified that plaintiff's agent told him he was instructed by plaintiff to add to the billing to cover certain purchase obligations. Plaintiff did not refute this statement. Plaintiff also admitted working on at least one other house while constructing defendant's residence. This might reasonably lead to confusion and improper duplication of billings. For example, defendant challenged, without any contradiction by plaintiff or his agent, the charges shown in Exhibit No. 1 for 85 sheets of decorative plywood, billed at $374. Defendant did not object to billing for 26 additional sheets of decorative plywood, billed at $143.

Defendant testified he furnished some materials, including electric wiring which was billed at $87.50. He also challenged in Exhibit No. 1 assorted other items, including lumber and equipment rentals. He failed to show, however, that these were improper.

Without a more specific showing as to billing errors for materials, the Court must accept plaintiff's Exhibit No. 1 items, shown to be $4,207.33. But from this amount must be deducted the challenged invoices of $461.50, leaving a

balance of $3,735.83. It is noted plaintiff's Exhibit 1 invoice amount of $4,207.33 is less than plaintiff's billing of $4,439.33. The cost of labor was not challenged in the amount of $4,034.01, which, added to the allowed cost of materials, brings the billing to $7,769.84. Defendant has admittedly paid $7,568.01, and thus owes a balance of $201.83.

Because the Court has held there was no contract at either a $6,000 or at a $11,000 maximum, there can be no recovery on defendant's claimed contract overpayment.

Without a contract, plaintiff is to be allowed only his established labor and material costs, even though with a contract it would have been proper to grant a fair (and agreed) profit. Plaintiff may consider this case a costly one (and, for that matter, the defendant also may consider it so from his standpoint), but the lessons to be learned should be clear. Plaintiff, of necessity, must obtain specific understanding and agreement as to the maximum construction costs and his profit to be earned in his house building business.

Ordered, adjudged and decreed:—

1. That plaintiff have and recover from defendant the sum of $201.83.

2. That defendant's counterclaim is denied.