Ordered, adjudged and decreed:—

1. That Lot 862, as listed in the Tochi Daicho, comprising 485 *tsubo*, bounded on the north by the land of Tellames, on the east by government road, on the south by government road, and on the west by the land of Roduk and Tellei, is individually owned by Dembei, adopted son of Umang, and that plaintiff Koichi Watanabe is his duly appointed representative in control of the land.

2. That the defendant and all those claiming through him have no interest in any part of the land.

3. That defendant shall have ninety (90) days from date of entry of judgment to remove himself and his effects from the land, and that any property remaining after that period shall be deemed forfeited to plaintiff.

4. No costs are awarded.

SINGEO TECHONG, and Others, Plaintiffs

v.

PELELIU CLUB and NGARABLOD ASSOCIATION, and Others, Defendants

Civil Action No. 518

Trial Division of the High Court

Palau District

July 9, 1973

Action for amounts claimed due. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that statute of limitations had run out but the claims would be allowed where defendants acknowledged that some sum, though not that claim, was owed.

1. Action on Account—Admissions

An admission of "some" indebtedness without naming an amount is an admissible admission against interest, going to prove the fact of indebtedness, and justifies the court in ruling the amount to be one dollar less than the amount claimed.

2. Civil Procedure—Limitation of Actions—Promise to Pay

The bar to suit created by six-year statute of limitations for an action to recover balance due on a mutual or open account, or upon a cause of action upon which partial payments have been made, can be removed by a promise to pay, partial payment or an acknowledgment of the debt from which a promise can be inferred. (6 TTC § 307)

3. Civil Procedure—Limitation of Actions—Promise to Pay

Although claim for money due, based on completed items of account, was asserted after applicable statute of limitations had run out, the bar of limitations was removed as to the amount ultimately proven to be due where defendants acknowledged that it was true they owed some sum of money, but alleged it was not true that the sums stated in the complaint were the sums owed as of the date stated in the complaint. (6 TTC § 307)

4. Action on Account—Burden of Proof

Without some showing by defendants offsetting prima facie case for money claimed due, established by billings, plaintiffs' claims would be sustained, and plaintiffs were not required to support the billings by invoices, other documents or any other evidence.

5. Contracts—Terms—Binding Terms

Where plaintiff claimed $11,364.83 was due for reconstruction costs, and admitted on cross-examination that the contract price for the work had been fixed at "not to exceed" $10,000, plaintiff was limited by the agreement, even though the costs and billing exceeded the agreed upon amount.

6. Interest—Unliquidated Claims

When there is an issue as to whether an unliquidated claim is involved, the modern and more fair rule is that interest will be allowed on the amount recovered, and from the date of the loss, as against the old rule that it should not be permitted unless the claim is liquidated, so that it is not necessary to decide the issue whether the claim is liquidated.

7. Contracts—Breach—Damages

In suit for amount claimed due under a construction contract, filed after completion of the work and demand made by billing, interest on amount recovered should be from the date work was completed and billing made, the theory being that interest is a part of the damages for breach of contract by nonpayment and the date of the loss is the completion and billing date.

8. Action on Account—Damages—Interest

Interest on amount recovered under claim for amount due was interest at the legal rate, uncompounded, from the billing date to the date of entry of judgment.

Assessor:	PABLO RINGANG, *Presiding Judge, District Court,* and, after the first day, SINGICHI IKESAKES, *Associate Judge, District Court*
Interpreter:	AMADOR NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Plaintiffs:	JONAS W. OKERIIL
Counsel for Defendants:	FUMIO RENGIIL

TURNER, *Associate Justice*

One of the plaintiffs, Francisco K. Morei, was an organizer, with others, building contractor, and eventually manager of the Peleliu Club of Koror from commencement in 1954 until recent years. It is evident his efforts in behalf of the people and the organizations of men and women from Peleliu Island in Palau District were largely unrewarded during the formative years, and until as recently as May 15, 1969, primarily because of inadequate funds and lack of financing. This shortage was substantially contributed to by typhoons in 1964 and 1967, which damaged and destroyed the club building.

In recent years the club has prospered. With a substantial income being received by the several men's and women's organizations of Peleliu Island which comprise the Peleliu Club membership. The plaintiffs who built the original club building, repaired it after Typhoon Olive in 1964 and rebuilt it after Typhoon Sally in 1967, brought this suit against the defendant organizations and the two presidents.

Although the evidence is not as clear and precise as it might have been had the plaintiffs kept and maintained adequate records, nevertheless, the proof is clear that defendants owe plaintiffs "some sum of money." The president of the Peleliu Club so admitted in a response to the court to plaintiffs' complaint. Defendants deny the amount owed is the amount claimed by plaintiffs, but defendants did not assert what amount was owed.

[1] The rule of law for this type of response normally is that an admission of "some" indebtedness without naming the amount justifies the court in ruling the amount to be one dollar less than the amount claimed. This was not an offer in compromise but was merely an admission against interest and was admissible to prove the fact of indebtedness. 80 A.L.R. 919.

Establishment of liability alone was not sufficient, however, when defendants plead the six-year statute of limitations and disputed the amount claimed. As to the six-year statute, counsel for plaintiffs suggested 6 TTC § 307 was applicable. This statute "accrues the cause of action" and thereby starts statute of limitations running upon entry of the last item entered in an open account or upon which partial payments were made.

The evidence clearly shows that plaintiffs' claim for $4,656.04 was based upon completed items of account for the initial construction of the club building, after "free labor" had been used, and that it was billed September 18, 1961. Even with the exception of 6 TTC § 307, the six-year period of the statute, from the billing date, expired in 1968, and the claim was barred by the time complaint was filed March 18, 1971.

[2, 3] The claim was barred by the statute, that is, unless the acknowledgment of an indebtedness by the president of the Peleliu Club revived the debt. The bar of limitations can be removed by a promise to pay, partial payment, or, as in the present case, an acknowledgment of the debt from which a promise can be inferred. The issue is how much "promise" can be inferred from the acknowledgment that: "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 sums as stated in this complaint are the sums the defendants (Peleliu Club and Ngarablod Association) owe the plaintiffs as of the dates stated."

In *Victory Inv. Corp. v. Muskogee*, 150 F.2d 889, the court held that "any language that clearly admits the debt will be considered an implied promise to pay." To the same effect was *Western Coal Mining Co. v. Jones*, 167 P.2d 719, in which the court quoted the common law rule, as follows:—

"The law, then, as now fully established both in England and in this country, clearly is: 1. That a debt barred by the statute of limitations may be revived by a new promise. 2. That such new promise may either be an express promise or an implied one. 3. That the latter is created by a clear and unqualified acknowledgment of the debt. 4. That if the acknowledgment be accompanied by such qualifying expressions or circumstances as repel the idea of an intention or contract to pay, no implied promise is created."

In the present case the defendants acknowledged the debt to be due in part. That, said the United States Supreme Court in the old case of *Wetzell v. Bussard*, 11 Wheat. 309, 6 L.Ed. 481 is sufficient to revive the debt proven to be due. The court said:—

". . . 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."

The acknowledgment that "some sum" was due was sufficient to remove the bar of the statute of limitations as to the amount proven by the plaintiffs to be due, which is not necessarily the amount claimed in their complaint.

Plaintiff Morei's evidence as to the amount due him for the first construction work, which he billed to the defendants September 18, 1961, was either $4,656.04 (item 1 of the pretrial affidavit) or $5,084.34, according to the itemized accounting attached to the complaint beginning in 1959 and ending in 1961. However, against the latter figure the plaintiff Morei, while on the stand, withdrew his claim of $3,570.00 for meals furnished workers from 1953 to 1965,

which was included in the $5,084.34 claim. The balance due then is $1,514.34.

Although it was separately claimed by the plaintiffs as "Joseph's account," is the item for $465.00, the cost of a neon sign purchased by the club. The defendants attempted to establish this was a gift to the club. The evidence showed, however, that cost of bringing the sign from Japan and of its installation was a gift, but not the sign cost. It is subject to the same rule of revival as the Morei claim.

There were five other items of claim, none of which were barred from recovery by limitations. However, two of the five were either paid off or waived by plaintiff Morei and need not be considered. Each of the remaining three pertain to contract items between the plaintiffs and the defendant organizations, which defendants disputed (but did not deny) on the ground the plaintiffs did not support the claims with invoices or other documents.

[4] As indicated previously, defendants did not dispute the fact of the indebtedness but merely challenged the amount claimed. Without some showing by defendants offsetting the plaintiffs' prima facie case established by the billings, plaintiffs' claims must be sustained. In effect, defendants said we will not pay, even though we admit we are indebted, because the bills submitted to us were not proved by supporting documents. Defendants misconstrue the rule of law pertaining to burden of proof. When plaintiffs made their showing as to their several claims, the burden of showing the claims, in full or in part, were not owed to plaintiffs was upon the defendants. This burden defendants failed to meet. It was not necessary for plaintiffs to produce "supporting documents" or invoices, or any other proof under the circumstances.

The Morei billing did not include the billing of another plaintiff, Isao Singeo, for inside repairs and renovation of

the club building at a cost of $4,247.53. Singeo submitted his bill to Morei, who gave it to the defendant organization officers. The same rule of law that is applicable to Morei's claim applies to the Isao billing. Isao established his claim; defendants did not dispute it but only objected because there were no invoices or supporting documents. This was an insufficient defense, and Singeo is entitled to recover.

[5] Finally, we consider plaintiffs' claim for reconstruction costs after Typhoon Sally, March 1, 1967, in the amount of $11,364.83. Plaintiff Morei agreed, when asked on cross-examination whether he and the organization officers fixed the contract price at "not to exceed" $10,000.00. Even though the costs and billing exceeded this amount, the plaintiff Morei is limited by his agreement as to the cost.

The same theory of defense was advanced as to the Morei claim for the Typhoon Olive repair, together with related items. In this instance Morei limited the contract to "not to exceed $6,000.00."

One other item remains. Plaintiffs seek interest at the statutory rate of 1% per month. 33 TTC § 251. This code provision pertains to usury, the maximum legal interest to be charged on the balance due upon a contract. In a stricter and more limited sense, "legal interest" is the amount allowed by the courts on judgments in the amount of 6% per annum.

[6, 7] The old rule as to allowance of interest was that it should not be permitted unless it was on a liquidated claim, meaning the claim was subject to precise mathematical calculation. It is not necessary to decide the point as to whether an unliquidated claim is here involved because the modern and fairer rule allows interest on the amount recovered from the date of the loss. In a construction contract, when the work has been completed and the billing demand made, interest on the amount of the recovery should be from

that date. The theory of the allowance is that interest is a part of the damages for breach of contract by nonpayment.

The Federal Court said in *Duckman v. Forsyth Furniture Lines*, 22 F.2d 59:—

"Damages are allowed by law for breach of contract as a compensation to the injured party. It is perfectly obvious if a party can breach his contract which requires him to accept and pay for certain property and can escape . . . without allowance of interest for the months or years that may have elapsed during which he has failed to pay . . . the aggrieved party has not been adequately compensated for the wrong done. It hardly needs the citation of authorities to show that such a theory is consonant neither with reason or justice."

It is said in 22 Am. Jur. 2d, Damages, Sec. 182, that interest is "computed at the legal rate" and that compound interest, that is interest on interest, is not allowed as damages.

[8] Reviewing the foregoing findings of fact and the law applicable, the court concludes the plaintiffs are entitled to recovery of interest at the rate of 6% per annum, not compounded, from billing date to entry of judgment, and thereafter at the same rate on the judgment amount. On the first item, allowed in the amount of $1,514.34 from September 18, 1961, interest due is $1,090.00; interest on the neon sign at $465.00 from December 26, 1966, is $181.00; interest due on the first contract, limited to $6,000.00 and billed December 26, 1966, is $2,340.00; interest is due on the $10,000.00 agreement from May 31, 1968, in the amount of $3,000.00; and on the $4,247.53 billed May 31, 1968, in the amount of $1,274.00.

In accordance with the foregoing mathematical calculations, it is

Ordered, adjudged and decreed:—

1. Plaintiffs shall have and recover from the defendant organizations the sum of $30,111.87, together with interest

on the judgment amount from date of entry until paid at the rate of 6% per annum.

2. Plaintiffs are denied their prayer in their complaint to take over the operation of the Peleliu Club until the judgment has been paid, but the parties are reminded that if the time of judgment payments are not promptly agreed upon, some form of relief may be available in response to a motion for order in aid of judgment.

3. No costs are allowed.

CECILIA S. TAISAKAN, Plaintiff

v.

JESUS A. TAISAKAN, Defendant

Civil Action No. 1014

Trial Division of the High Court

Mariana Islands District

August 6, 1973

Suit by wife against husband, for specific performance of promise to transfer one-half interest in homestead deeded to husband only. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, upheld District Court's dismissal on ground interest in land was involved and a statute provided District Court had no jurisdiction over such cases.

1. **Courts—District Court—Jurisdiction**

   Wife's action against her husband for specific performance of alleged promise to transfer land depended upon what interest, if any, wife had in the land, which had been conveyed to the husband only and which wife claimed a one-half interest ownership of; and District Court properly dismissed for want of jurisdiction due to statute providing District Court did not have jurisdiction where title to or interest in land was involved. (5 TTC § 101)

2. **Courts—District Court—Jurisdiction**

   In action for specific performance of promise to transfer land, statute providing District Court had no jurisdiction where title to or interest in land was involved could not be avoided by first granting the alternative relief of money damages equal to the value of the land and then ordering transfer of the land in satisfaction of the judgment, for when money judgment is satisfied through execution, the attached property is sold