Uchelkumer Clan, Erungel Remengesau as trustee, is affirmed.

GEORGE N. MARKET, INC., Plaintiff

v.

PELELIU CLUB and its BOARD OF DIRECTORS, represented by MITSUO SOLANG, president, Defendants

Civil Action No. 34-73

Trial Division of the High Court

Palau District

February 19, 1974

Action for balance due on mutual and open account. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held defendant club admitted the debt where its president, in a letter to plaintiff, stated he shared plaintiff's concern with the amount owed and that it had been unpaid for four years.

1. **Action on Account—Statute of Limitations**

   Where plaintiff entered charges for merchandise sold defendant, credited defendant with payments received, and, at the end of each year, prepared a statement of indebtedness remaining for the year, there was a mutual and open account and statute of limitations providing that for an action for balance due on a mutual and open account, the cause of action accrues at the time of the last item in the account applied, not general six-year statute of limitations, so that items entered by plaintiff more than six years before suit and claimed by plaintiff were not barred. (6 TTC § 307)

2. **Evidence—Declarations Against Interest**

   In action for balance due on mutual and open account, letter from president of defendant club to plaintiff, stating he shared plaintiff's concern with the amount of money the club owed plaintiff and that the amount had been unpaid for four years, was a clear and unqualified acknowledgment of the debt.

3. **Interest—Accounts Due**

   Where, in action for balance due on mutual and open account, plaintiff's annual statement of account notified defendant that interest would be charged on the unpaid balance, interest would be allowed by the court.

Assessor: SINGICHI IKESAKES, *Associate Judge, District Court*
Interpreter: AMADOR D. NGIRKELAU
Reporter: SAM K. SASLAW
Counsel for Plaintiff: JONAS W. OLKERIIL
Counsel for Defendants: KAZUMOTO RENGULBAI

TURNER, *Associate Justice*

Plaintiff began selling merchandise to the defendant club when plaintiff opened for business in 1959. When typhoon Sally on March 1, 1967, destroyed the club and also inflicted damage to plaintiff's establishment, plaintiff extended credit to the club, running a "mutual and open account" as that term is defined in the law. Plaintiff entered charges for merchandise sold and credited defendant with payments received. Each year plaintiff prepared a recapitulation of the indebtedness remaining at the end of the year. The dealings and accounting approached the text book definition of "mutual and open account."

It is said in 1 Am. Jur. 2d, Accounts and Accounting, Sec. 7:—

> "Transactions between merchant and customer, where the customer buys goods from time to time and from time to time makes payments to the merchant . . . may result in a mutual account."

[1] The nature of this action as one upon mutual account is significant because of the Trust Territory statute of limitations barring an action six years after it accrues. 6 TTC § 305. Some of the items in the plaintiff's claim were sold and entered in the account in 1967—from January 6, 1967, through March 2, 1967. Suit was filed June 15, 1973, and an indebtedness six years before that date would be barred by limitation except for the provision of the statute that an action upon "a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action shall be considered to have

accrued at the time of the last item proved in the account." 6 TTC § 307.

The evidence introduced shows that plaintiff's invoices for merchandise sold were issued from January 6, 1967, to January 16, 1971. The last item of account being within the period of the statute of limitations, the cause of action of the entire balance due accrued on that date.

Defendant's own evidence brought in defendant's cancelled checks for payments during the accounting period in question. A comparison of the indebtedness and the payments made shows that none of the items of debt sued on had been extinguished by payment and that payments had been credited upon other invoices claimed in this action.

The record is clear that the six-year statute did not bar plaintiff's claim. Defendant did not raise the defense and the Court has considered it but finds it inapplicable. This case is distinguishable from the application by the Court of the two-year tort limitation applied in *Butirang v. Uchel*, 3 T.T.R. 382.

The present case is similar in many respects to *Techong v. Peleliu Club, et al.*, 6 T.T.R. 275 (1973). In *Techong* the Court was not required to apply the statute of limitations because of the acknowledgment of the debts sued upon by the defendant's president. The Court there said:—

"In *Victory Inv. Corp. v. Muskogee,* 150 F.2d 889, the court held that 'any language that clearly admits the debt will be considered as 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.' "

[2] In the present case the defendant club, through its president, made a "clear and unqualified acknowledgment of the debt." In a letter to the plaintiff, Plaintiff's Exhibit 2, the club president said:—

"I share with you your concern with the amount of money Peleliu Club owes your company, and that the amount due has been unpaid by the Peleliu Club for more than 4 years now."

The plaintiff submitted an annual "statement of account" to the defendant club in January, 1974. The billing listed invoice numbers, dates and charges. (Plaintiff's Exhibit 4.) The statement also notified defendant of an interest charge of 1% per month on the unpaid balance which is the statutory maximum.

[3] In *Techong* the plaintiffs asked for the same rate of interest but the court disallowed it because there was no express charge for interest as in the present case. In *Techong* the plaintiffs asked for "legal interest" in their complaint. In the present case the demand for interest within the limits of 33 TTC § 251 was made and we believe should be allowed. Plaintiff's demand for payment, Plaintiff's Exhibit No. 1, to which the defendant replied, Exhibit No. 2, demanded interest at the rate of 10% per annum from January, 1967, through December, 1970, and commencing April 10, 1971, interest at the rate of 12% per annum.

As was said in *Techong* interest is allowed as part of the damages for breach of contract because of nonpayment. Interest may not, however, be compounded.

Because the defendant was unable to produce any probative evidence of payment reducing plaintiff's claim, the full amount of $5,187.77 must be allowed. Interest at 10% on the yearly balance for each of the first four years is $474.72 and thereafter interest at 12% on the yearly balance from April, 1971, to date of Judgment is due in

the amount of $2,386.39. Interest at the "legal rate" of 6% is allowable on the Judgment including interest.

Ordered, adjudged and decreed:—

1. That plaintiff have and recover from the defendant Peleliu Club the sum of $8,048.88 together with interest thereon at the rate of 6% per annum on the balance due from date hereof until paid.

2. Plaintiff is allowed costs it may claim in accordance with the law.

TECHERENG BAULES for ONGEROOL CLAN, Plaintiff

v.

JOHN O. NGIRAKED, Palau District Land Management Officer, and DELBIRT RULUKED, Defendants

Civil Action No. 445

Trial Division of the High Court

Palau District

February 20, 1974

Appeal from land title officer's determination of ownership. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held there was no denial of due process at hearing below.

1. **Constitutional Law—Public Trial and Confrontation of Witnesses**

   Where record showed appellant was present and testified at hearing before Land Title Officer, that her testimony was reduced to writing, which appellant signed under oath, that many additional witnesses gave statements similarly made and that notice of the hearing was given by posting in Palauan and English, there was no denial of due process, even though there was no cross-examination.

2. **Appeal and Error—Findings and Conclusions**

   In an appeal on the record, the court will not disturb the findings below unless there is manifest error.