A court will affirmatively establish or enforce a gift when there is proof of all the essential elements of a completed gift. In the present case there was only a promise to make a gift. It was not enforceable, hence there was no liability to plaintiff of Reiko.

Ordered, adjudged and decreed:—

1. That plaintiff shall have and recover from the defendant Teruzi Iluches the sum of $850.00 together with interest thereon at the rate of 6% per annum from date of Judgment until paid.

2. That plaintiff is denied recovery from the defendants Reiko Fish and Telei Rengiil.

3. That Teruzi Iluches is allowed six months from date of entry of Judgment within which to make payment.

4. That no costs are assessed.

BRIKUL NGIRUCHELBAD, Plaintiff

v.

TARO NGIRAINGAS, Defendant

Civil Action No. 595

Trial Division of the High Court

Palau District

March 26, 1974

Action to collect amount unpaid under oral building contract. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held plaintiff failed in his burden of proof as to amount claimed due.

Contracts—Oral Contracts—Proof

Where building contractor orally agreed to limit labor cost to $2,000, and could not substantiate billing for more than that, claim for that part of billing in excess of the agreed upon amount must fail.

Assessor:	FRANCISCO MOREI, *Acting Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	SAM K. SASLAW
Counsel for Plaintiff:	JONAS W. OLKERIIL
Counsel for Defendant:	KAZUMOTO RENGULBAI

TURNER, *Associate Justice*

This is another action by plaintiff, a building contractor, to collect what he claims to be due on an oral agreement to complete the construction of a dwelling house. The previous action, decided June 22, 1973, was *Ngiruchelbad v. Ngirasewei*, 6 T.T.R. 259.

Except for the existence of a counterclaim by the defendant in the prior litigation, the present case is substantially the same both as to the facts and the applicable law.

In *Ngirasewei* this Court said:—

"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 comment in that case is equally applicable to the present dispute. The plaintiff and his counsel were unable to produce any more convincing evidence in the present case than they did in *Ngirasewei*. And as a corollary, defense counsel in the present case, who also was the defense counsel in the former trial, was equally at a loss to produce persuasive evidence in behalf of his client. Counsel and the parties failed to benefit from the prior experience.

In the present case the defendant had hired another to build a house for him but the job was only partially completed when it was abandoned by the worker. Taro and his wife then negotiated with the plaintiff and his builder

to complete the house. Plaintiff's and defendant's versions of the oral agreement were in substantial conflict.

Plaintiff insisted the agreement was to complete the house for cost plus 20% for profit and overhead. Plaintiff's builder testified he told defendant the cost would be "not less than $4,000" and "maybe five or six thousand dollars" for labor and materials plus 20%

Defendant agreed the plaintiff and his builder had given an estimate of $4,000 for labor and materials and that he would buy the materials and thus save the 20% surcharge. The evidence, both plaintiff's billing and defendant's paid invoices, supports this version of the agreement.

Defendant also testified he told the plaintiff he had borrowed $4,000 from the bank and had spent half of it upon the construction and therefor he only had $2,000 remaining for the contract with plaintiff to complete the house. How much money defendant had for the work is not significant except that it sheds light on the contract itself.

According to defendant the plaintiff said "not to worry" about the cost as it would be within the $2,000 figure for the labor. He also said the house would be completed in thirty days. As it turns out plaintiff billed the defendant $391.66 for materials, which defendant paid without a 20% overhead payment, and he billed defendant $3,112.52, which included 20% overhead, for labor. Defendant paid $1,500.00 in three installments, the first one being February 18, 1972, and the third one March 31, 1972.

Plaintiff sues for the difference in defendant's payment of $1,891.66 and the invoice, dated June 1, 1972, for $3,582.51. Plaintiff's workers left the job March 27, 1972, and did not return. Plaintiff's billing for labor included charges for March 28, 29, and 30. Defendant's records, he kept careful daily accounts of employment, show only four workers reported on March 27 for clean up, whereas plain-

tiff's copy of his payroll records, he said he lost the original record, showed the same four workers on Monday, March 27, but thereafter for the next three days eight workers.

Another discrepancy in the plaintiff's labor billing was the inclusion in the payroll charged to the defendant of employees transferred to another job. The evidence shows that:—

(1) Plaintiff agreed to limit labor costs to $2,000.

(2) Plaintiff's claim for $2,593.77, plus 20% overhead of $518.75, being a total of $3,112.52, was not substantiated by the evidence.

Plaintiff pulled his men off the job after he had been given the third $500 payment on March 31, 1972. Plaintiff did not finish his contract. Defendant introduced exhibits showing payment of four contracts for $571.21 required to complete the house. Defendant also produced records showing he purchased materials for plaintiff's use in the amount of $2,136.15, not including 20% overhead. This figure, plus the labor agreement limited to $2,000, substantiates defendant's claim the original estimate for completion was $4,000, even though defendant has paid to plaintiff, to material men and to other contractors to complete the structure some $4,599.

The plaintiff sought affirmative relief of payment by the defendant. The burden of proof was upon him to show by the greater weight of the evidence that the defendant owes the amount he claims. This the plaintiff did not do.

Taking all of the evidence offered by both parties the Court is convinced the defendant owes a $500.00 balance for labor, under the agreed $2,000 limitation and that he also owes the agreed 20% surcharge on materials purchased by plaintiff. Defendant paid the $391.66 material cost but not the 20% surcharge of $78.33. In accordance with the foregoing, it is

Ordered, adjudged and decreed:—

1. That plaintiff shall have and recover from the defendant the sum of $578.33, together with interest on said sum at the rate of 6% per annum from date of Judgment until paid.

2. That no costs are assessed.

LLECHOLECH, Plaintiff

v.

JOSEPH BLAU and TMOL ILILAU, Defendants

Civil Action No. 517

Trial Division of the High Court

Palau District

March 28, 1974

Ejectment action involving dispute over ownership of Tochi Daicho lots. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where, in return for caring for him, which defendant did for eight years, landowner told defendant to build his house on landowner's land, plant coconut trees and join the clan landowner derived his title from, and landowner instructed defendant to have all his lands, and defendant entered the land, built on it and planted coconut trees, an inter vivos gift of the land occurred.

1. **Palauan Land Law—Clan Ownership—Reversionary Rights**

   Land a clan transfers to an individual does not, under Palauan custom, revert to clan upon individual's death.

2. **Palauan Land Law—Clan Ownership—Transfer**

   Under Palauan custom, clan land may be transferred to an individual only upon approval of all adult "strong" members of the clan.

3. **Palauan Land Law—Clan Ownership—Transfer**

   Instrument purportedly limiting clan's transfer of its land to individual to a life estate was not effective where two "strong" members of the clan, the person the land was transferred to and the person entering the instrument in evidence in ownership dispute, had not approved the instrument, for the approval of all "strong" members was required.

4. **Deeds—Grantor's Interest**

   Deed of land to plaintiff by relatives of owner of the land, four or more years after owner's death, was not effective, because the relatives had no interest in the land.