

judgment of the trial judge. Accordingly, the error was not harmless and the judgment cannot stand.

For these reasons, the judgment of the trial court is reversed and the case remanded for a new trial.

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**NAURU LOCAL GOVERNMENT COUNCIL,  
Plaintiff-Appellant/Cross-Appellee**

v.

**UNITED MICRONESIAN DEVELOPMENT ASSOCIATION, INC.,  
Defendant-Appellee/Cross-Appellant**

Civil Appeal No. 393

Appellate Division of the High Court

May 23, 1985

Appeal and cross-appeal from judgment of trial court in breach of contract action. The Appellate Division of the High Court, Munson, Chief Justice, held that notice of appeal was timely, concluded that a valid and enforceable contract existed between the parties, and that buyer breached contract by repudiation, but trial court erred in ascertaining damages, and therefore trial court judgment was affirmed in part and reversed in part.

**1. Appeal and Error—Notice and Filing of Appeal**

Generally, a late filing of a notice of appeal does not vest the Appellate Division with jurisdiction to hear the appeal.

**2. Appeal and Error—Notice and Filing of Appeal—Excuse for Late Filing**

Where the delay in the timely filing of a notice of appeal is caused or assisted by an officer of the Court, the Court may assume the appellate jurisdiction.

**3. Appeal and Error—Notice and Filing of Appeal—Excuse for Late Filing**

Where there was confusion and extensive doubt, due to several procedural irregularities, whether a notice of appeal to the Appellate Division was timely filed, in the interests of justice the appeal was deemed timely, where some of the responsibility for the confusion as to applicable dates was with the Appellate Division itself.

**4. Contracts—Terms—Mutual Agreement**

In a breach of contract action, trial court properly concluded that a valid contract had been formed, where two parties exchanged a preliminary series of letters and telexes regarding the possibility of an agreement, proposal of one party by telex was fairly detailed in terms pro-

NAURU LOCAL GOVERNMENT COUNCIL v. UMDA

posed and was of sufficient detail to create an enforceable contract, and acceptance of these terms by the other party was unequivocal.

**5. Contracts—Breach—Technical Breach**

In action for breach of contract involving the sale and delivery of rice, fact that first delivery of rice was received four months late, and fact that supplier of rice had on hand quantities of rice far in excess of the contract amount, did not demonstrate that the parties did not intend to be governed by their contract, since the acceptance and payment for the late delivery excused any technical breach in the delivery, and the fact that supplier had quantities of rice on hand due to a different agreement was irrelevant.

**6. Contracts—Agreement To Contract in Future**

In a breach of contract action, fact that parties intended to be bound by a formal contract yet to be drafted did not definitively prevent a trial court finding that binding obligations, and a contract, in fact already existed between the parties.

**7. Contracts—Mistake—Unilateral Mistake**

Generally, a unilateral mistake will not relieve a party from its obligations under a contract, unless the other party knew or had reason to know of the mistake.

**8. Contracts—Mistake—Unilateral Mistake**

Party to a contract who makes a unilateral mistake bears the "substantial burden" of proving the other party knew or had reason to know of the mistake in order to relieve the mistaken party from its obligations under the contract.

**9. Contracts—Mistake—Unilateral Mistake**

In action for breach of contract involving the sale and delivery of rice, where distributor of rice made unilateral mistake of assuming it was the only distributor of Australian rice in the Trust Territory, the distributor did not sufficiently carry its burden of showing that the supplier was aware of distributor's unilateral mistake, so as to relieve supplier from its obligations under the contract, by evidence of statements of distributor's Assistant General Manager, and therefore trial court's implicit finding that supplier was not privy to distributor's unilateral mistake was not erroneous.

**10. Contracts—Repudiation—Generally**

Contract involving the sale and delivery of rice was effectively repudiated by the purchasing party, where purchasing party first informed seller of its intent not to buy rice for four months, and then that it would purchase no more rice under the contract.

**11. Contracts—Repudiation—Generally**

A repudiation of a contract, unlike a renunciation, does not relieve the party in breach of its obligations, but gives the other party a claim for breach of contract.

**12. Contracts—Repudiation—Effect**

Buyer of rice under contract was not relieved of its contractual obligations by the failure of seller to continue deliveries after buyer effectively repudiated the contract, since seller was clearly relieved of its obligations once buyer repudiated, and in fact may have been liable itself for shipping costs of any further deliveries for failure to mitigate damages.

**13. Contracts—Breach—Damages**

Generally, a party not in breach of the contract is entitled either to be put in a position as if the contract had been completed or to be restored to the position in which he or she was before the contract.

**14. Contracts—Breach—Damages**

In action for breach of contract involving the sale and delivery of rice, seller who was not in breach was entitled to recover the purchase price of the amount of rice the buyer had agreed to purchase, the profit margin, and additional damages flowing from the breach, but not those costs which it would have incurred in the course of the contract nor those losses which could have been avoided by reasonable efforts to mitigate its damages.

**15. Contracts—Breach—Damages**

Damages in a breach of contract action must be established with a reasonable certainty.

**16. Evidence—Best Evidence Rule**

The best evidence rule applies not when a piece of evidence sought to be introduced has been recorded, but when it is the content of the written instrument itself which is sought to be proved.

**17. Evidence—Best Evidence Rule**

The best evidence rule does not prohibit the introduction of testimonial evidence to establish damages even though there may be documentary evidence of these facts.

**18. Contracts—Breach—Damages**

In action for breach of contract involving the sale and delivery of rice, where seller failed to take action to sell the rice and reduce its damages, seller was denied recovery of the costs of the rice.

**19. Contracts—Breach—Damages**

In action for breach of contract involving sale and delivery of rice, seller was entitled to damages for lost profits.

**20. Contracts—Breach—Damages**

In action for breach of contract involving sale and delivery of rice, seller was not entitled to recovery as damages of costs related to storage of the rice, since seller should have, under the circumstances, sold the rice in order to mitigate its damages.

NAURU LOCAL GOVERNMENT COUNCIL v. UMDA

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Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate  
Justice*, and HEFNER\*, *Associate Justice*

MUNSON, *Chief Justice*

I. BACKGROUND

In the early 1970's United Micronesian Development Association, Inc. (UMDA) became interested in distributing Australian rice in the Trust Territory. UMDA met on several occasions with representatives of the Nauru Cooperative Society (Nauru) regarding the purchase through Nauru of rice exported by the Ricegrowers Cooperative Mills Limited of Australia (Ricegrowers, Ltd.). Several telexes were exchanged in 1973 and 1974 regarding terms and conditions. On October 18, 1974, UMDA's general manager Russell Curtis sent a letter to Nauru which read in part:

"[W]e are pleased to confirm our acceptance of the terms and conditions as specified in your telex of 8th October 1974. . . . In addition, we would appreciate your reconfirmation that UMDA is the exclusive distributor in the Trust Territory of the Pacific Islands for rice allocated to [Nauru] for this area."

Plaintiff's Exhibit 3. The referenced telex of October 8, 1974, is reprinted in the Appendix. By the terms of Nauru's telex of October 8th and of UMDA's telex of October 2, 1974 (Plaintiff's Exhibit 4), Nauru was to ship the rice at six week intervals beginning with 140 metric tons and gradually increasing the tonnage by specified increments

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\* Chief Judge, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

until 600 metric tons was regularly being shipped. The quoted prices included a 2½% commission for Nauru.

On February 18, 1975, Nauru entered into a contract with Ricegrowers, Ltd. for the delivery of 600 metric tons of rice at six week intervals. On or about March 30, 1975, UMDA received its first delivery of 140 metric tons. Before the next delivery was made, UMDA telexed Nauru the following:

REGRET BUT FOR NEXT FOUR MONTHS UMDA MUST  
WITHDRAW FROM DISTRIBUTING AUSTRALIAN RICE  
AND SUGAR X LETTER FOLLOWS

Defendant's Exhibit K. On May 28, 1975, UMDA wrote Nauru and notified them that based on UMDA's discovery that it was not the "exclusive distributor in the Trust Territory for Australian Rice" and based on UMDA's poor "working capital position," UMDA would discontinue its distribution of Australian rice. Plaintiff's Exhibit 8.

On May 6, 1977, Nauru filed this action against UMDA for breach of contract seeking damages for lost profits and for expenses incurred in preparing to meet its contractual obligations. In addition to shipping and storage costs, Nauru sought to recover the purchase price, plus 2½% profit, of 940 metric tons of rice which it claimed had spoiled in storage in the Solomon Islands; damages on this spoilage alone amount to \$337,225.00,<sup>1</sup> far and away the largest part of Nauru's claim. In its answer of May 23, 1977, UMDA denied that the exchange of telexes created contractual obligations and further denied the existence of a contract for lack of consideration in Nauru's failure to provide UMDA with an exclusive distributorship of Australian rice.

Trial was had on July 17, 1979, before the Honorable Associate Justice Ernest Gianotti. The trial judge found that the parties had entered into a contract which was

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<sup>1</sup> All monetary figures are in U.S. dollars unless otherwise noted.

breached by UMDA; however, he had questions regarding damages. First, he was unsure of the exchange rate between Australian dollars, on which the contract was based, and U.S. dollars, in which damages were sought. Second, he found the testimony unclear "as to the amount of rice shipped or the dollar amount of rice received by Defendant." Accordingly, the trial judge awarded to Nauru "the value in U.S. dollars of rice actually received by defendant and not previously paid for, based upon the contract price of three hundred fifty dollars . . . per metric ton." Nauru's motion to amend the findings of fact and conclusions of law and/or allow the introduction of new evidence was denied.

## II. ISSUES ON APPEAL

Nauru appeals the judgment raising the following issues:

1. Whether there was sufficient evidence to support the claims of UMDA; and
2. Whether the trial court erred in not taking judicial notice of currency exchange rates.

UMDA cross-appeals on the following:

1. Whether there was sufficient evidence to support the trial court's conclusion that UMDA breached a contractual obligation.

## III. JURISDICTION

In its brief, UMDA raises a preliminary issue of jurisdiction. UMDA argues, and has so argued throughout the pendency of this appeal, that Nauru's Notice of Appeal was not filed within the time prescribed under the Rules of Appellate Procedure. UMDA's motion to dismiss the appeal on this ground was denied by the Chief Justice sitting alone pursuant to 5 TTC § 52. UMDA now asks this panel to reconsider the issue.

The matter is complicated by several procedural irregularities. On October 5, 1979, Nauru moved to amend the

trial court's findings and judgment. This motion was timely filed and under Appellate Rule 3 tolled the time in which a notice of appeal was to be filed. The record reflects that UMDA subsequently filed a Motion to Dismiss Plaintiff's Motion to Amend Findings and Judgment; this motion does not appear in our files. A hearing on UMDA's motion was held on July 7, 1980, at which time the trial court granted the motion for the failure of Nauru to appear. The order was served on July 7, 1980, by mail giving Nauru until August 11, 1980, to file a notice of appeal (August 9, the last day, falling on a Saturday). Rule of App. Proc. 6(a); Rule of Civ. Proc. 6(e).

Nauru contends, however, that the trial judge held a hearing on Nauru's motion to amend the findings and judgment on July 24, 1980. If this is the case, the last day to file a notice of appeal would then have fallen on August 25, 1980 (day 30, August 23, falling on a Saturday). The problem lies in the fact that no order was issued regarding the disposition made at the hearing. Further complicating matters is the fact that the transcript of the proceedings is dated *May 24*, 1980, not *July 24*, 1980. If the hearing was actually held on May 24, 1980, then the thirty day period to notice the appeal began with the service of the order of July 7, 1980.

[1, 2] At the hearing held on May 23, 1983, on UMDA's motion to dismiss the appeal, these complications were discussed extensively. After a review of the appointment calendars of the trial judge and of one or both counsel, counsel for UMDA conceded that the final hearing date was held on July 24, 1980. However, we need not make this finding here. We are convinced that there exists sufficient doubt as to the actual date of the final hearing on these motions and that some of the responsibility for the confusion rightly lies with the Court. As a general matter, this Court has strictly interpreted the filing deadlines and has held that

a late filing of a notice of appeal does not vest this Court with jurisdiction to hear the appeal. *Aguon v. Rogomar*, 2 T.T.R. 258 (1961); *You v. Gaameu*, 2 T.T.R. 264 (1961); *Ngodrii v. Trust Territory*, 2 T.T.R. 142 (1960). However, we have held that where the delay in the timely filing of the notice is caused or assisted by an officer of the Court, the Court may assume jurisdiction. *Milne v. Tomasi*, 4 T.T.R. 488 (1969); *Ngiralois v. Trust Territory*, 3 T.T.R. 637 (1968). Accordingly, in the interests of justice, we will assume that a final hearing was held on July 24, 1980, giving Nauru until August 25, 1980, to notice the appeal.

[3] The notice of appeal was dated August 20, 1980, but was not received on Saipan until August 28, 1980. Again some confusion exists. There is some evidence that a filing by Nauru was attempted on August 20, 1980, on Majuro but was refused for the reason that the case file was transferred to Saipan following the change of trial venue. Due to the harsh injustice which would result were we to deny jurisdiction based on an inadvertent error on the part of a court officer, we will consider the notice to have been filed on August 20, 1980. Accordingly, the notice was timely giving this Court jurisdiction over the appeal.

#### IV. DISCUSSION

The Appellate Division of this Court freely reviews the trial court's conclusions of law but only sets aside findings of fact which are "clearly erroneous." 6 TTC § 352(2).

##### A. The Contract

[4] Nauru and UMDA exchanged a series of letters and telexes regarding the possibility of an agreement to distribute Australian rice. Nauru's telex of October 8, 1974 (Exhibit 1), is fairly detailed in the terms proposed to UMDA (see Appendix). The proposal includes cost and



freight charges, tonnage, location and intervals of deliveries, denomination of currency, details of payment, profit margin and termination provisions. The text of the proposal is of sufficient detail to create an enforceable contract. The acceptance is unequivocal: "we are pleased to confirm our acceptance of the terms and conditions as specified in your telex of 8 October 1974." (Exhibit 3.) The trial court concluded that a valid contract had been formed; this conclusion is justified.

[5] In an effort to demonstrate that the parties did not intend that their business relationship be governed by the terms set forth in the telex of October 8, 1974, UMDA identifies events in the rice transaction which occurred contrary to the terms of the telex. For example, the first delivery of rice was received four months after the date set forth in the telex. Also, UMDA notes that the quantities of rice received by Nauru under its contract with Ricegrowers, Ltd. were far in excess of those promised UMDA. These arguments are meritless. Regarding the delay in the initial shipment, UMDA's acceptance of and payment for the delivery excused any technical breach by Nauru. *Restatement of Contracts 2d* (hereinafter *Restatement*) at § 246. As to Nauru's contract with Ricegrowers, Ltd., the quantities received by Nauru under that agreement are irrelevant. Of the 600 metric tons it received, Nauru shipped only 140 metric tons to UMDA as called for by the terms of the telex. Accordingly, we agree with the trial court that these events do not evidence an absence of intent by either party to enter into a contract per the terms of the October 8 telex.

[6] UMDA also contends that the parties intended to be bound by a formal contract yet to be drafted and thus did not intend the exchange of telexes to create binding obligations. In its letter of October 18, UMDA wrote:

“For all practical purposes, we would like to assume that telex exchange as an agreement until a more formal one is drawn up.”

Under § 27 of the *Restatement*, “[m]anifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof.” It is reasonable to conclude that UMDA intended to enter into a contract based on the terms suggested by Nauru.

## B. The Breach

### 1. Mistake

The trial court concluded that UMDA breached its contract with Nauru. While UMDA concedes that it refused to accept further delivery, it argues that it was under no obligation as there was a misunderstanding of the exclusive distributorship which Nauru could offer. Under § 20 of the *Restatement*, such a material misunderstanding of which neither party is aware nullifies the mutual assent relieving the parties of their obligations under the contract.

[7, 8] We are not convinced that there was a misunderstanding of terms; rather, it appears that UMDA was *mistaken* as to a material fact. Throughout the negotiations, UMDA desired to be Nauru’s “sole representative for Australian rice throughout the Trust Territory” (Exhibit B) and to be the “exclusive distributor . . . for rice allocated to [Nauru] for this area.” Exhibit 3. There was no misunderstanding that UMDA would be the only distributor of Australian rice *allocated to Nauru*, however, UMDA was mistaken in its belief that there were no other distributors of Australian rice in the Trust Territory. As a general matter, a unilateral mistake will not relieve a party from its obligations under a contract, unless the other party knew or had reason to know of the mistake. J. Cola-

mari and J. Perillo, *Law of Contracts* § 9-77 (1977). The mistaken party bears the “substantial burden” of demonstrating a mistake about which the other party was aware. *Restatement* § 153, comment (c).

[9] UMDA was able to show only that Nauru was aware that there were other distributors of Australian rice in the Trust Territory. Reporter’s Transcript 44, 47–48. However, they were not able to adequately demonstrate that Nauru *knew* that UMDA wanted a sole distributorship of *all* Australian rice. UMDA was only able to offer the testimony of its Assistant General Manager who said that he told Nauru of UMDA’s intentions. Transcript at 74. While this testimony does create some question as to Nauru’s knowledge, it does not carry UMDA’s burden on this matter. Rather, UMDA should bear the risk of the mistake more appropriately under § 154 of the *Restatement* which assigns the risk of mistake to a party who “is aware at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient.” We conclude that the trial court’s implicit finding that Nauru was not privy to UMDA’s mistake was not clearly erroneous.

## 2. Repudiation

What is the legal effect of UMDA’s decision to no longer accept delivery of Nauru’s rice? UMDA argues that as Nauru agreed to terminate the agreement, the contract was renounced and rescinded by mutual agreement relieving UMDA of any obligation to accept or pay for Nauru rice. This position relies on a mischaracterization of the facts and is wholly unconvincing.

[10, 11] On May 3, 1975, UMDA informed Nauru of its intent not to purchase rice for four months. On May 28, 1975, UMDA informed Nauru that it would purchase no more rice under the contract. These communications to

Nauru amounted to a repudiation of the contract. See *Law of Contracts*, supra p. 9 at § 11-30 and § 12-2. A repudiation, unlike a renunciation, does not relieve the party in breach of its obligations, but gives the other party a claim for breach of contract. *Restatement* § 243.

[12] UMDA also argues that it was relieved of its obligations by the failure of Nauru to continue deliveries after the repudiation; this is absurd. Clearly, Nauru was relieved of its obligations under the contract once UMDA communicated its intent to no longer pay for the rice. *Restatement* § 237. As Nauru argues, had it continued to deliver rice to UMDA, Nauru may well have been liable for the shipping costs for failure to mitigate damages.

In summary, UMDA breached its contract making it liable in damages for that breach.

### C. Damages

Nauru attempted to demonstrate damages in excess of \$450,000.00 (Aus.) without producing any documents, as to such. UMDA produced no documents as to damages nor did it significantly discredit Nauru's testimony. The trial court found Nauru entitled only to payment for the rice accepted by UMDA but not yet paid for, but did not elaborate nor make findings as to the amount of rice received.

[13, 14] As a general matter, party not in breach is entitled either to be put in a position as if the contract had been completed or to be restored to the position in which he or she was before the contract. *Restatement* § 344. These rules are not inflexible but may be adopted as justice requires. *Id.*, comment (a). Nauru has chosen to recover the benefit of the bargain and is entitled to reimbursement for those losses which were foreseeable by UMDA as the probable result of the breach. *Restatement* § 351. In specifics, Nauru may recover the purchase price of that amount of rice UMDA had agreed to purchase, the 2½% profit mar-

gin, plus additional damages flowing from the breach. However, it cannot recover costs which it would have incurred in the course of the contract nor those losses which could have been avoided by reasonable efforts to mitigate its damages. *Restatement* §§ 347, 350.

[15-17] Nauru's damages must also be "established with a reasonable certainty." *Restatement* § 352. UMDA complains that testimony alone as to damages is inadequate where receipts or other documents would provide the "best evidence" of the losses. UMDA's argument is misplaced. The "best evidence" rule applies not when a piece of evidence sought to be introduced has been recorded, but when it is the content of the written instrument itself which is sought to be proved. *R&R Associates, Inc. v. Visual Scene, Inc.*, 726 F.2d 36, 38 (1st Cir. 1984). Thus, the best evidence rule does not prohibit the introduction of testimonial evidence to establish damages even though there may be documentary evidence of these facts. *Id.*; *Sayen v. Rydzewski*, 387 F.2d 815 (7th Cir. 1967); *Atlantic Aviation Corp. v. United States*, 456 F. Supp. 121, 123-24 (D. Del. 1978), *aff'd*, 605 F.2d 1197 (3rd Cir. 1979). See generally IV *Wigmore on Evidence* §§ 1173-1174 (Chadbourn rev. 1972). The testimony offered as proof was given by W. S. Pickering who is Chief Purchasing Agent for Nauru and who was well acquainted with the Nauru-UMDA agreement. Pickering's testimony respecting damages was specific, consistent and unchanged through cross-examination. The rejection by the trial court of the claimed damages was more likely due to questions regarding the claims on which recovery can be had rather than to a concern as to the credibility of evidence.

[18] Nauru purchased 1162 metric tons of rice prior to UMDA's breach (Transcript at 33) and seeks to recover the cost of 940 metric tons. UMDA complains that Nauru failed to take action to sell the rice and reduce its damages.

Nauru sold \$96,000.00 of the rice which was "in the pipeline" (Transcript at 37), or about 205 tons (note 4 *infra*). Other than that, by the testimony of its own Chief Purchasing Agent, W. S. Pickering, Nauru took no steps to sell the rice to UMDA, to inform UMDA of the rice in storage, or to sell the rice elsewhere. Transcript at 110-11. Rather, the rice was left to spoil in storage. These actions are unreasonable and operate to deny to Nauru recovery of the costs of the rice.

[19] In addition to recovery of the cost of the rice actually purchased, Nauru seeks its lost profits under the contract. Since one purpose of contract damages is to give the party not in breach the benefit of its bargain, lost profits are recoverable in an action of this nature. Important to our calculations here is the six-month termination clause<sup>2</sup> agreed upon by the parties. Placing the effective repudiation date at May 3, 1974,<sup>3</sup> based on the size of the deliveries and on the intervals of the shipments as specified in the telex of October 8, 1974, Nauru could have sold to UMDA 1540 metric tons of rice in the six months following the repudiation. Of this amount 205 tons<sup>4</sup> were sold to Trans-Atoll Corporation, leaving a balance of 1335 tons. A 2½% profit on 1335 tons sold at \$350.00 (Aus.) /ton is \$11,681.25 (Aus.). Accordingly, based on the facts in the record, Nauru is legally entitled to recover from UMDA for lost profits in the amount of \$11,681.25 (Aus.), or calculated at the exchange rate of May 3, 1975 (see note 4, *supra*), \$15,594.47 (U.S.).

<sup>2</sup> See paragraph 7 of Nauru's telex of Oct. 8, 1974, reprinted in Appendix, which reads:

"Any agreement entered into between UMDA and [Nauru] is cancellable upon six months notice by either party."

<sup>3</sup> The resulting lost profit is the same whether the effective repudiation is set at May 3 or at May 28.

<sup>4</sup> Nauru presented testimony to the effect that they sold to Trans-Atoll Corporation \$96,000.00 worth of rice; no tonnage figures were given. At the exchange rate on May 3, 1975 (Appendix to Appellant's Reply Brief), this equals \$71,910.00 (Aus.), or 205 tons at \$350.00(Aus.)/ton.

[20] Regarding Nauru's claim for recovery of costs related to storage, it cannot recover. First, Nauru stored rice in the Solomon Islands due to Nauru's contract with Ricegrowers, Ltd. under which Nauru purchased larger quantities than UMDA would take for an initial period of five months. Thus, Nauru cannot recover for this storage for it is a cost Nauru assumed under its contract with UMDA. As for the storage after the May 3 breach, the damages are speculative. Nauru should have disposed of the rice; therefore, the length of time the rice would have stayed in storage is not certain. Accordingly, Nauru cannot recover these costs.

Nauru also seeks to recover costs incurred for handling, wharfage, stevedoring and warehouse insurance. For the same reasons, these costs are not recoverable for they would have been incurred by Nauru in its performance of the contract. Any costs above and beyond what would have been undertaken had the contract been performed are uncertain and for that reason not recoverable.

Lastly, Nauru seeks recovery of the costs of storing the rice in Australia. Again, it is not clear that this cost would not have been incurred had the contract been fully performed. It is not recoverable.

## V. CONCLUSION

The trial court was correct in its conclusion that a valid and enforceable contract was created between Nauru and UMDA for the sale of specified quantities of rice. The conclusion that UMDA breached the contract by repudiation is also supported by the evidence. However, the trial court's determination that Nauru could recover only for the amount of rice actually received and not paid for by UMDA is in error. Rather, Nauru may recover that amount which it reasonably expected to receive had UMDA fulfilled its obligations, less, of course, Nauru's costs which would have

been incurred under its performance. Also, Nauru may recover any additional damage which was a reasonably foreseeable result of the breach. The evidence in the record supports a finding that Nauru suffered recoverable losses in the amount of \$15,594.47. Accordingly, on remand, no further evidence need be heard. The matter is affirmed in part, reversed in part and remanded only for entry of judgment in accordance with this opinion.

APPENDIX

8/10/74

UMDA Saipan

From Nauruagent Melbourne

OM 68/10

1. Your telex of 10/2/74 refers.
2. We are prepared to reduce our nett C. and F. price to you per quotations indicated in paragraph 4 and further agree that tonnages purchased by you will commence at the 150 metric tonne level and progressively increase till the full 600 metric tonnes being made available through Ricegrowers is taken up by you and thereafter purchased regularly on a combined 600 tonnes shipment basis per voyage of vessels *Eigamoiya* and *Weser Dispatcher*.
3. While retaining the 30 percent/70 percent ratio requested by you we have slightly amended the proposed tonnages on each vessel to conform to a 17.5 metric tonne load per container as follows:
  - A. To Majuro per *Eigamoiya* commencing Voyage No. 47 ETD Melbourne approximately 15 November.  
Voyage 47. 35 tonnes. Sailing date approx. Nov. 15.  
Voyage 48. 70 tonnes. Sailing date approx. Dec. 20.  
Voyage 49. 105 tonnes. Sailing date approx. Jan. 28.  
Voyage 50. 140 tonnes. Sailing date approx. March 3.  
Voyage 51. 175 tonnes. Sailing date approx. April 15.  
Subsequent voyages 175 metric tonnes each voyage.
  - B. To Ponape and Truk per vessel *Weser Dispatcher* commencing with Voyage No. 6 ETD Melbourne approximately 23rd November.



Voyage 6. 105 tonnes. Sailing date approx. 23 Nov.  
 Voyage 7. 175 tonnes. Sailing date approx. 30 Dec.  
 Voyage 8. 210 tonnes. Sailing date approx. 2 Feb.  
 Voyage 9. 335 tonnes. Sailing date approx. 20 March.  
 Voyage 10. 480 tonnes. Sailing date approx. 30 April.  
 Subsequent voyages 420 tonnes each voyage.

4. Subject to your acceptance of tonnages and shipments outlined in item 3(A) and (B) and to changes without notice in freight/bunkering rates and/or variations in Ricgrowers Cooperative Mill prices we now offer our firm quotations for Pacific Island Calrose Rice in container lots of 17.5 metric tonnes.
  - A. Cost and Freight Majuro/Ponape/Truk
 

5 kg bags (4 x 5 bags per outer)	Dlrs. 332.80 nett per metric tonne
10 kg bags	Dlrs. 327.80 nett per metric tonne
25 kg bags	Dlrs. 322.80 nett per metric tonne
  - B. Cost and Freight Saipan
 

5 kg bags (4 x 5 bags per outer)	Dlrs. 369.65 nett per metric tonne
10 kg bags	Dlrs. 364.65 nett per metric tonne
25 kg bags	Dlrs. 359.65 nett per metric tonne
5. For vitamin enriched rice please add Dlrs. 5-00 per tonne C. and F. all stipulated ports.
6. Please note that all prices are expressed in Australian currency and that payment terms are irrevocable letters of credit to be established in favour of Nauru branch of The Bank of New South Wales.
7. Any agreement entered into between UMDA and NCR is cancellable upon six months notice by either party.
8. All prices quoted include our commission of 2-1/2 percent which is minimum we can operate on. Also 2-1/2 percent buying commission for supply of rice was agreed upon when Mister Song was in our offices during August 1973.

9. Your advice by no later than 11 October would be appreciated.  
. . . W. S. Pickering  
Chief Buyer.  
ENDS

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**TRUST TERRITORY OF THE PACIFIC ISLANDS,  
Plaintiff-Appellee**

**v.**

**HERBERT RODRIQUEZ and RAY IRIARTE,  
Defendants-Appellants**

**Criminal Appeal No. 103**

**Appellate Division of the High Court**

**August 1, 1985**

Appeal by two defendants from their convictions for Attempted Murder in the Second Degree and Murder in the Second Degree. The Appellate Division of the High Court, Hefner, Associate Justice, held that felony-murder rule was inapplicable to two escaping prisoners where a third escaping prisoner had actually injured a policeman and killed a radio announcer while in the act of escape, since Second Degree Murder statute only applies to the felon who actually kills another while perpetrating a felony, and not the other participants in the felony, and therefore convictions of two defendants were reversed.

**1. Homicide—Murder in Second Degree—Felony Murder**

Charge of second-degree murder based on felony-murder rule against two prisoners escaping from prison was erroneous, where charge was based on a shooting by a third escaping prisoner in which a police officer was injured but not killed, since without a homicide the felony-murder rule is not applicable. (11 TTC § 752)

**2. Homicide—Murder in Second Degree—Felony Murder**

Second-degree murder statute was not properly applied against two prisoners who were in the act of escaping from prison when a third escaping prisoner shot and injured a police officer, since language of felony-murder provision makes it clear that only the person who actually kills another while perpetrating a felony is liable, and not other participants in the felony. (11 TTC § 752)

**3. Criminal Law—Attempt**

Criminal statute defining “attempts” does not permit or allow any transferred intent or vicarious criminal liability; a bystander to an attempted crime is not included in the coverage of the statute. (11 TTC § 4)