

**IN THE SUPREME COURT OF GUAM**

**CRAFTWORLD INTERIORS, INC.,**  
Plaintiff-Appellant

vs.

**KING ENTERPRISES, INC.,**  
Defendant-Appellee.

**OPINION**

**Supreme Court Case No.: CVA97-043**  
**Superior Court Case No.: CV0914-94**

**Filed: June 2, 2000**

**Cite as: 2000 Guam 17**

Appeal from the Superior Court of Guam  
Argued and submitted May 7, 1998  
Remanded June 25, 1998  
Resubmitted May 25, 1999  
Hagåtña, Guam

For Plaintiff-Appellant:  
William C. Bischoff, Esq.  
134 Chalan Santo Papa, Suite 202  
Hagåtña, Guam 96910

For Defendant-Appellee:  
Ana Maria G. Gabriel, Esq.  
Gayle & Teker  
A Professional Corp.  
330 Hernan Cortes Ave., Suite 200  
Hagåtña, Guam 96910

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice<sup>1</sup>; PETER C. SIGUENZA and, JANET HEALY WEEKS<sup>2</sup>; Associate Justice.

CRUZ, J.:

The Appellant, Craftworld Interiors, Inc. (hereinafter “Craftworld”), and the Appellee King Enterprises, Inc. (hereinafter “King”), entered into an agreement, the nature of which was the dispute in this case. Craftworld raises the following issues on appeal: (1) whether the trial court erred in its factual findings, and (2) whether the trial court erred in allowing the introduction of parol evidence to explain or supplement the terms of the agreement between the parties. We determine that the trial court did not err in its factual findings and that the parol evidence was appropriately introduced.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Craftworld, a manufacturer of rattan furniture among other goods, entered into an agreement with King, a furniture retailer, regarding some rattan furniture. Craftworld filed a complaint on June 21, 1994 after King stopped payment on a check issued to Craftworld as a result of that agreement regarding the rattan furniture. An oral agreement was entered into by the parties via Craftworld’s and King’s presidents, James Uy and Taro Lin<sup>3</sup>, respectively, for the sale of furniture. The dispute is whether the agreement was an outright sale of the goods or a consignment agreement.

Initially, Craftworld began to sell its furniture out of one of Lin’s furniture stores, but then the parties subsequently made the agreement which is now the subject of this litigation to have King sell the goods for Craftworld. Eight (8) invoices were prepared by Neri Fernandez, the manager for

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<sup>1</sup> Although the case was first heard in 1998, the signatures in this opinion reflect the titles of the Justices after remand to the trial court, at which time this matter was considered and determined.

<sup>2</sup> Justice Janet Healy Weeks resigned from the court after hearing oral arguments in this matter.

<sup>3</sup> Although the Appellee’s Brief spells Mr. Lin’s first name as “Taro,” in the trial transcript it is spelled as “Tallo.”

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King's store, listing the merchandise and prices totaling \$49,466.80. Each invoice was signed by Fernandez and under his signature it is noted, "Received the above goods in good order and condition and agree with the terms and conditions." Craftworld claims that this transaction was an outright sale of the furniture to King. Two post-dated checks were issued by King to Craftworld, one for 90 days and the other for 180 days following the date of the agreement, November 30, 1993. Two days after receiving the checks, Uy delivered to King a "Cash/Charge Sales Invoice." No one at King ever signed that document. The first check was cashed and cleared. However, King stopped payment on the second check after it claimed they were unable to sell the furniture.

A bench trial was held on June 10, 1996 and Craftworld attempted to exclude any evidence of a consignment sale as inadmissible parol evidence.<sup>4</sup> Craftworld also contended that it was a holder in due course of the second unpaid check. The trial court ruled in favor of King finding that Craftworld was not a holder in due course, that the parol evidence rule did not bar the introduction into evidence of oral agreements relating to the transaction, and that the doctrine of course of dealing established that the agreement was actually a consignment. The Judgment was entered and dated September 23, 1997, and a timely notice of appeal was immediately filed.

Because neither party included the invoices at issue in the Excerpts of Record, the only material upon which this court had to make an independent analysis was the trial court's decision. We determined that the trial court's Decision and Order did not adequately provide factual and legal findings supporting its decision such that the issues before appeal could be determined. Accordingly, this court remanded the case pursuant to Guam Rule of Civil Procedure 52(a), in order for the trial court to prepare Findings of Fact and Conclusions of Law to aid this court in the appeal. *Craftworld Interiors, Inc. v. King Enters.*, CVA97-043 (Order June 25, 1998). The court below then filed such Findings of Fact and Conclusions of Law on May 24, 1999.

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<sup>4</sup> Such evidence was primarily oral testimony and a letter prepared by a manager of King.

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## ANALYSIS

The standard of review for conclusions of law is *de novo*. *GEDA v. Island Equip., Inc.*, 1998 Guam 7, ¶ 4. Findings of fact made by a trial court after a bench trial shall not be set aside unless clearly erroneous. Guam R. Civ. P. 52(a); *see also Yang v. Hong*, 1998 Guam 9, ¶ 4. Clear error was described in *Yang* as follows:

A finding is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below committed a mistake. The appellate court accords particular weight to the trial judge's assessment of conflicting or ambiguous evidence. The applicable standard of appellate review is narrow; the test is whether the lower court rationally could have found as it did, rather than whether the reviewing court would have ruled differently.

*Yang*, 1998 Guam 9 at ¶ 7 (citation omitted). In other words,

If the [trial] court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. An appellate court must accept the lower court's findings of fact unless upon review the appellate court is left with the definite and firm conviction that a mistake has been committed.

*Haeuser v. Department of Law, Gov't of Guam*, 1999 Guam 12, ¶ 14 (citations omitted).

The issues in this case were defined by the parties as an appeal on the factual findings of the trial court and whether the trial court correctly admitted parol evidence. However, both Craftworld and King also make substantive arguments as to the evidence admitted and the conclusion which the trial court made that the agreement was not a straight sale, but rather a consignment agreement. This court need not get to the merits of the legal conclusions that the trial court made as a result of its factual findings. The only legal question this court is faced with is the admissibility of parol evidence.

### 1. Factual Findings

The standard of review for findings of fact, then, is very deferential to the determinations of the trial court. Given this standard, when faced with a party alleging error in the findings of fact or

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conclusions of law contained in a lower court's opinion, appellate courts generally determine that the findings or conclusions are adequate enough to affirm. *See, e.g., In re Allied Supermarkets, Inc.*, 951 F.2d 718, 726 (6<sup>th</sup> Cir. 1991) (citation omitted); *In re Bradford*, 112 B.R. 347 (B.A.P. 9<sup>th</sup> Cir. 1990) ("When a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error.") (citing *Anderson v. Bessemer City*, 470 U.S. 564, 574, 105 S.Ct. 1504, 1511 (1985)); *County of Canyon v. Wilkerson*, 848 P.2d 435, 439-40 (Idaho Ct. App. 1993) (holding that deference should be given to the trial court's assessment of witness credibility).

The situation in *Hawaiian Trust Co. v. Cowan*, 663 P.2d 634 (Haw. App. 1983), is somewhat similar to the instant case. In *Hawaiian Trust*, the appellants alleged that certain findings were clearly erroneous in that they were not supported by the evidence yet the appellants failed to include trial transcripts in the record. By determining that the documentary evidence alone was insufficient in the absence of transcripts to determine whether clear error had been committed, the reviewing court was "[t]herefore ... compelled to leave the trial court's findings and conclusions undisturbed." *Id.* at 638.

Similarly, Craftworld, though alleging error, has not provided the invoices at issue in its Excerpts of Record. Moreover, Craftworld did not make clear arguments as to which of the trial court's factual determinations were clearly erroneous whereby this court could consider whether errors had indeed occurred. This court, then, must make its decision based solely on the trial court's assessment of the evidence produced at trial and the credibility of the witnesses' oral testimony at trial, to which we must give a high degree of deference. There was evidence upon which the trial court could have based its factual findings. We therefore determine that trial court's factual findings are not clearly erroneous.

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## 2. Parol Evidence

For the parol evidence rule to apply it must first be established that there is a written agreement which was intended to be the final and complete embodiment of the parties' agreement. The trial court found that there was an oral agreement between the parties and that the invoices dated November 30, 1993 were the written confirmation of that agreement, satisfying the Statute of Frauds, Title 13 GCA § 2201 (1993). The issue is whether the trial court erred in allowing the introduction of parol evidence to alter or amend the written agreement. The parol evidence rule is as follows:

§2202. Final Written Expression: Parol or Extrinsic Evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- (a) By course of dealing or usage of trade (§1205) or by course of performance (§2208); and
- (b) By evidence of consistent additional terms unless the court find the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

13 GCA § 2202 (1993). The analysis is two-fold: (1) whether the parties have intended the writing to be the final and complete embodiment of their agreement, and (2) whether the parol evidence contradicts the terms of the writing, for then it is inadmissible to do so; parol evidence is only admissible to supplement or explain omissions or ambiguities. *See Enrico Farms, Inc. v. H.J. Heinz Co.*, 629 F.2d 1304, 1306 (9<sup>th</sup> Cir. 1980). The trial court cited the case of *Century Ready Mix Co. v. Lower & Co.*, 770 P.2d 692, 697 (Wyo. 1989), for the proposition that the burden of proof is on the party seeking to establish that the agreement was fully integrated. However, *Century* also held that the opposing party must establish the usage of trade argument in return. *Id.*

Unfortunately, as has been stated above, the invoices were not made part of the record on appeal; therefore, their sufficiency as a complete and integrated writing is a difficult determination for this court to make. Without any documentary evidence, the only basis on which to determine the

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intent of the parties is the trial transcript. Again, this court must give deference to the trial court's opportunity to judge the credibility of the witnesses. *See also Magnuson v. Video Yesteryear*, 85 F.3d 1424, 1427-28 (9<sup>th</sup> Cir. 1996). There was evidence produced at trial that the agreement was a consignment; the trial court then enumerated in its Decision and Order that the agreement was an oral consignment sale. Clearly, the court must have concluded that Craftworld had not met its burden of proof that the invoices were a complete and integrated expression of its agreement with King. Based on that finding, the court allowed in the parol evidence to explain the missing or ambiguous terms of the agreement. The trial court construed the insertion of "90 and 180 days" on the invoice below the box labeled "Terms" to be ambiguous. Furthermore, it construed the checks which were dated for 90 and 180 days after November 30, 1995 to be non-indicative of a sale and instead indicative of a consignment agreement. In light of the factual determinations made by the trial court and the deference to be given those determinations, the trial court's conclusion to admit such parol evidence is not improper.

Craftworld cites the case of *Battista v. Radesi*, 491 N.Y.S.2d 81, 82 (App. Div. 4<sup>th</sup> Dept. 1985), in which the court excluded parol evidence because the invoices which constituted the "writing" were complete and final, including the parties' names, date, payment terms, description, the price of each item purchased, and the total shipment cost. However, in this case the trial court did not find that the writings, i.e., the invoices, were a complete and final expression of the parties' intentions, whereas the *Battista* court determined the writing in question to be fully integrated.

Since the trial court already determined that the parol evidence rule did not operate to bar extrinsic evidence concerning a consignment arrangement, the discussion and arguments concerning course of dealing, whereby the trial court also allowed extrinsic evidence to be heard, are superfluous. Nevertheless, although the trial court made the determination that Craftworld did not meet its burden of proving that the writing was the complete and integrated agreement, it went on to use subsection (a) of section 2202 as a further basis for bringing in extrinsic evidence of the prior oral agreement to explain or supplement the written agreement, in this case the invoices. The trial

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court's use of the concept of course of dealing to allow the admission of all extrinsic evidence was poorly analyzed. Title 13 GCA § 1205(1) (1993) defines course of dealing as: "a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct." 13 GCA § 1205(1). The trial court found that, based on the evidence produced at trial, the conduct between the parties established a common basis for an understanding which would constitute a course of dealing. However, although the presidents of the parties had a "relationship," the facts do not seem to support such a relationship in which there were prior and continuous dealings constituting a course of dealing argument.

A single transaction cannot constitute a course of dealing. *Kern Oil and Refining Co. v. Tenneco Oil Co.*, 792 F.2d 1380, 1385 (9<sup>th</sup> Cir. 1986) (citation omitted). The agreement at issue was the first transaction of the kind between the parties, there is no evidence that any previous purchase orders or invoices were ever issued, and although Craftworld had previously been selling furniture out of King's store, that "transaction" was different in character from this one. The nature of the agreement had to have changed based on the fact that first Craftworld was renting space from King, and then the invoices were drafted and the furniture, whether as a straight sale or on consignment, was to be sold by King. However, whether a course of dealing exists between the parties is normally a question of fact. *Insurance Serv. of North America v. NNR Aircargo Serv. (USA), Inc.*, 201 F.3d 1111, 1113 (9<sup>th</sup> Cir. 2000); *In re CFLC, Inc.*, 209 B.R. 508, 513 n.8 (B.A.P. 9<sup>th</sup> Cir. 1997). Nevertheless, even if deference is given to the trial court's factual finding of course of dealing, the trial court's previous determination that the writing was not fully integrated negated any need for the course of dealing analysis because the parol evidence could already be properly admitted to supplement or explain the writing on that basis.

As an aside, the trial court also considered parol evidence in making its determination that Craftworld was not a holder in due course. Guam law provides the requirements for one to obtain the status of a holder in due course and its concomitant protections:

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- Holder in Due Course.** (1) A holder in due course is a holder who takes the instrument
- (a) For value; and
  - (b) In good faith; and
  - (c) Without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.
- (2) A payee may be a holder in due course.
- (3) A holder does not become a holder in due course of an instrument:
- (a) By purchase of it at judicial sale or by taking it under legal process; or
  - (b) By acquiring it in taking over an estate; or
  - (c) By purchasing it as part of a bulk transaction not in regular course of business of the transferor.
- (4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

13 GCA § 3302 (1993). It is clear that Craftworld was the payee of the check in question; however, in order to be a holder in due course, it must be shown that Craftworld took the check for value, in good faith, and without notice of any claims or defenses. *Id.* Craftworld argues that the court erred in admitting parol evidence to prove the nature of the contract—consignment agreement versus a contract for sale of goods. The parol evidence rule, as it applies to the holder in due course analysis, has not been found to be applicable to vary the terms of the negotiable instrument itself but instead to establish whether the holder took the instrument for value, in good faith, and without notice of claims and defenses. *First Int’l Bank of Israel, Ltd. v. L. Blankstein & Son, Inc.*, 452 N.E.2d 1216 (N.Y. 1983). The trial court made a finding that it believed that Craftworld was not a holder in due course because it took the check with notice of a defense— that the check was intended as security as part of a consignment transaction. Thus, it was proper for the trial court to consider evidence of the nature of the agreement as it went to the proof of Craftworld’s holder in due course status. Moreover, given the trial court’s determination that this was a consignment agreement and not a straight sale, then its determination that Craftworld was not a holder in due course seems proper.

## CONCLUSION

The standard of review for factual findings is very high; this necessarily makes the standard

of review for legal questions, based on the court's factual findings, high as well. The absence of the invoices from the record makes it difficult to dispute the trial court's factual determinations which support the court's subsequent legal conclusion of admitting parol evidence for purposes of explaining and supplementing the written agreement. This court does not believe that clear error was committed on the basis of the record before us, and therefore the factual findings will not be disturbed. Based on the factual findings made by the trial court, the legal conclusions as to the admissibility of parol evidence to explain and supplement the agreement were proper as well. Although the relationship between the parties does not seem to establish a course of dealing, the admission of the prior oral agreements on the basis that the writing was not fully integrated dismisses any need to turn to course of dealing to supplement or explain the terms of the written agreement.

Accordingly, the decision of the trial court is **AFFIRMED**.