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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

**JOSEPH T. DUENAS, as Administrator for
the Estate of Rosario T. Quichocho,**
Plaintiff-Appellee,

v.

**GEORGE AND MATILDA KALLINGAL, P.C., GJADE, INC.,
FORTUNE JOINT VENTURE dba FORTUNE VENTURES,**
Defendants-Appellants.

Supreme Court Case No. CVA13-003
Superior Court Case No. CV1440-07

OPINION

Cite as: 2013 Guam 28

Appeal from the Superior Court of Guam
Argued and submitted July 9, 2013
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

TORRES, J.:

[1] Defendants-Appellants George and Matilda Kallingal, P.C. (“KPC”) and Fortune Joint Venture (“FJV”) bring this appeal of the trial court’s decisions regarding a commercial lease dispute with Plaintiff-Appellee Joseph T. Duenas, administrator of the estate of Rosario T. Quichocho. KPC and FJV argue the trial court failed to establish the proper method of determining damages prior to making its rulings regarding damages. For the reasons set forth below, we dismiss the appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case is on its second appeal after remand to the trial court pursuant to this court’s opinion in *Duenas v. George & Matilda Kallingal, P.C.*, 2012 Guam 4. *Duenas* has an extensive factual background that will be briefly summarized here.

[3] In December 1993, GJADE, Inc., a Guam corporation consisting of Gregorio and Josephina Quichocho and their son Anthony Quichocho, entered into a joint venture agreement with Defendant-Appellant George and Matilda Kallingal, P.C. (“KPC”), a Guam corporation consisting of Drs. George and Matilda Kallingal, to form Fortune Joint Venture (“FJV”) for the purpose of financing and constructing an all concrete commercial building project for lease. In June 1994, Rosario T. Quichocho, who is represented here by Plaintiff-Appellee Joseph T. Duenas, the administrator of her estate, leased property to GJADE for the project.

[4] Rosario stopped receiving rent in 1999. In 2007, she filed a complaint against KPC, GJADE, and FJV, seeking, *inter alia*, a declaration of termination of the lease and all past due rent and real property taxes. KPC filed a counterclaim, seeking the execution of a new lease.

[5] In *Duenas*, we ruled, *inter alia*:

Because we have concluded that FJV and KPC are to pay rent under the terms of the original lease, the issue of how to measure damages for possession of the property post-termination of the lease is moot. We remand the matter back to the trial court to calculate the damages in accordance with this opinion.

Id. ¶ 39. In addition, we held that “KPC is entitled to a new lease, and the rental obligations under the new lease shall reflect the same terms that existed under the original lease,” and “the issue of how to measure damages . . . is moot.” *Id.* ¶ 51. We remanded to the trial court such that it could have Rosario provide a new lease with the same terms for KPC to sign.

[6] The trial court ordered the parties to present briefs discussing their views regarding our decision. After considering the parties’ respective positions, the trial court issued an order giving KPC ninety days to decide whether it would accept a new lease provided by Duenas.¹ The court stated: “[I]t is this Court’s interpretation that at the time the new lease [is] executed, damages can be calculated in accordance with the Supreme Court’s opinion. . . . Likewise, the issue of post-termination damages cannot be addressed at this time.” RA, tab 270 at 4 (Dec. & Order, Oct. 9, 2012).

[7] KPC states it “allowed the 90 days to lapse.” Appellants’ Br. at 11 (Apr. 1, 2013). On January 16, 2013, the trial court issued a judgment stating that KPC’s “refusal to execute the new lease agreement confirmed the termination of all its rights to the property subsequent to November 7, 2007.” RA, tab 273 at 3 (Judgment Re George & Matilda Kallingal, P.C. and Fortune Joint Venture, Jan. 18, 2013).

[8] The January 18, 2013 judgment was entered on the docket on January 25, 2013. KPC and FJV filed a notice of appeal.

¹ “The new lease shall reflect the same terms that existed under the original lease.” RA, tab 270 at 1 (Dec. & Order, Oct. 9, 2012).

II. JURISDICTION

[9] KPC and FJV seek to appeal the trial court's rulings ordering Duenas to present KPC with a new lease, RA, tab 270 (Dec. & Order, Oct. 9, 2012), and terminating all of KPC's rights to the property after November 7, 2007, RA, tab 273 (Judgment, Jan. 18, 2013). *See* Appellants' Br. at 4-17.

[10] KPC and FJV state that this court has jurisdiction over this appeal as an appeal from a final judgment under 7 GCA §§ 3107, 3108(a), and 25102(a). Appellants' Br. at 4. Duenas disputes this assertion and questions whether the "Judgment" disposed of all claims raised by the parties. Appellee's Br. at 3 (Apr. 29, 2013). Duenas contends the "claims for post-termination damages were not addressed by the trial court." *Id.*

[11] Jurisdictional issues may be raised by any party at any time or *sua sponte* by the court. *People v. Angoco*, 2006 Guam 18 ¶ 7; *Rojas v. Rojas*, 2007 Guam 13 ¶ 5. The jurisdictional statutes outlining this court's appellate jurisdiction are to be strictly interpreted. *People v. Natividad*, 2005 Guam 28 ¶ 1.

[12] The Guam Legislature limited the appellate review of this court, generally, to final determinations. *Angoco*, 2006 Guam 18 ¶ 11; *People v. Quenga*, 1997 Guam 6 ¶ 3 ("The Guam legislature incorporated the finality rule when it set the parameters of this Court's jurisdiction in 7 GCA § 3108(a)."). It provided two methods for this court to have jurisdiction over an appeal. *See* 7 GCA § 3108 (2005). First, with 7 GCA § 3108(a), the Legislature incorporated the final judgment rule into Guam law. *Angoco*, 2006 Guam 18 ¶ 10. Second, by enacting section 3108(b), the Legislature created a limited discretionary appeal route, which provides an exception to the final judgment rule. *See Quenga*, 1997 Guam 6 ¶ 4.

[13] Also relevant is 7 GCA § 25102, which states:

An appeal in a civil action or proceeding may be taken from the Superior Court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment other than as provided in subdivisions (h), (i) and (j); . . .

(b) From an order made after a judgment made appealable by subdivision (a);

. . . .

7 GCA § 25102 (2005). We consider each below.

A. Final Judgment

[14] The final judgment rule mandates that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits. *Angoco*, 2006 Guam 18 ¶ 10. “Generally limiting appellate review to final judgments reduces an appellate court’s interference with a trial judge’s pre-judgment decisions, minimizes a party’s ability to harass opponents through multiple appeals, and promotes the efficient administration of justice.” *Id.* ¶ 11.

[15] This court has jurisdiction over “appeals arising from judgments, final decrees, or final orders of the Superior Court.” 7 GCA § 3107(b) (2005). While 7 GCA § 3107(b) confers jurisdiction over “final orders,” such jurisdiction must be viewed in light of 7 GCA § 3108(a), which creates the availability of appellate review only “upon the rendition of final judgment in the Superior Court from which appeal or application for review is taken.” 7 GCA § 3108(a); *see also A.B. Won Pat Guam Int’l Airport Auth. v. Moylan*, 2004 Guam 1 ¶ 9 (citing *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16 ¶ 3). Section 3108(a) is a codification of the final judgment rule, which mandates “that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits.” *Flanagan v. United States*, 465 U.S. 259, 263 (1984) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981)). Guam law defines

a final judgment as “the final determination of the rights of the parties in an action or proceeding.” 7 GCA § 21101 (2005); *Moylan*, 2004 Guam 1 ¶ 21. “In other words, to appeal an order as a final judgment, the order must have the effect of disposing of the case and must be reduced to a final judgment.” *Angoco*, 2006 Guam 18 ¶ 10.

[16] Neither the trial court’s October 2012 order (including our decision in 2012 Guam 4) requiring Rosario to provide a new lease nor the trial court’s January 2013 judgment divesting KPC of all of its rights to the property after November 2007 is a final judgment because neither document has the effect of disposing of the case. The parties were to effectuate the new lease so that damages could be calculated from the time the original lease was terminated. *See Duenas*, 2012 Guam 4 ¶¶ 39, 51; RA, tab 270 at 4 (Dec. & Order, Oct. 9, 2012). Because KPC refused to execute the new lease, the issue of the amount of post-termination damages remains; therefore, the trial court has not entered a final judgment under 7 GCA §§ 3108(a) or 25102.

[17] It is the policy behind limiting appellate review to final judgments that supports our refusal to hear the appeal. The trial court is allowed to make its decisions without interference, and the interruption of the administration of justice by unsuitable appeals invades the efficiency of the court. *See Angoco*, 2006 Guam 18 ¶ 11. KPC and FJV’s attempt to appeal is clearly interrupting the trial court’s ability to decide on the issue of damages—unnecessarily prolonging the determination in a case that began nearly five years ago—when KPC and FJV could readily appeal the final judgment once issued.

[18] We also address briefly, for completeness, Duenas’s statements in his brief that ‘he would be prepared to waive or dismiss the claims against KPC for post-termination damages’ Appellee’s Br. at 4. But if this court chooses to remand to the trial court to “adjust the equities,”

as KPC and FJV would like us to do, “[Duenas] would want the right to reassert these claims[.]”
Id.

[19] *In re Marriage of Ben–Yehoshua* recognized “that subject matter jurisdiction cannot be conferred upon a court by consent, waiver or estoppel.” 154 Cal. Rptr. 80, 83 (Ct. App. 1979); *see also In re S.W.*, 56 Cal. Rptr. 3d 665, 669 (Ct. App. 2007). In addition, section 3108(a) creates the availability of appellate review only “upon the rendition of final judgment in the Superior Court from which appeal or application for review is taken.” 7 GCA § 3108(a); *Angoco*, 2006 Guam 18 ¶ 10 (citations omitted). As discussed above, we strictly interpret the statutes outlining our appellate jurisdiction. *Natividad*, 2005 Guam 28 ¶ 1.

[20] Duenas appears to be attempting to waive his claims for damages in order to give this court jurisdiction to make a ruling on the appeal. However, that waiver is conditional. Since subject matter jurisdiction cannot be granted to a court by waiver—let alone a conditional one—and we strictly construe our jurisdictional statutes, we refuse to consider Duenas’s “offer” to waive the damages.

B. Interlocutory Appeal

[21] Title 7 GCA § 3108(b) allows immediate appellate review in cases when provided by law, and at the exercise of our discretion in limited circumstance when one of three conditions is present. The Supreme Court has discretion to permit interlocutory review when resolution of the legal issues: (1) materially advances the termination of the litigation or clarifies further proceedings therein, (2) protects a party from substantial and irreparable injury, or (3) clarifies issues of general importance in the administration of justice. 7 GCA § 3108(b). This court’s policy is “to strictly limit the exercise of interlocutory review.” *People v. San Nicolas*, 1999 Guam 19 ¶ 11. “The limitations on interlocutory appeals ensure that such appeals are granted

only when the necessity of immediate review outweighs [the] general policy against piecemeal disposal of litigation.” *Sky Enter. v. Kobayashi*, 2002 Guam 24 ¶ 21 (alteration in original) (citation omitted).

[22] The Guam Rules of Appellate Procedure require a party to file a petition for discretionary interlocutory appeals. Guam R. App. P. 4.2(a)(1). The petition must comply with the time standards and include, *inter alia*, a memorandum of points and authorities stating under which of the three subsections of section 3108(b) the appeal falls. Guam R. App. P. 4.2(a)(2)-(b). KPC and FJV did not file a petition for interlocutory review; therefore, this method cannot be used to provide this court with jurisdiction.

C. Supervisory Jurisdiction

[23] The Supreme Court has “supervisory jurisdiction over all inferior courts in Guam” under 7 GCA § 3107(b). We exercise use of this extraordinary supervisory power with care. *See State v. Fields*, 686 P.2d 1379, 1386 (Haw. 1984). “The language in this section was intended to allow us to address extreme cases, such as when the Superior Court is acting in excess of its powers.” *Angoco*, 2006 Guam 18 ¶ 29 (citing *Topasna v. Superior Court*, 1996 Guam 5 ¶ 5).

[24] We find no legally significant reason to exercise supervisory jurisdiction. This case is a relatively straightforward contract damages dispute, and the trial court is not acting in excess of its jurisdiction. Further, in *Angoco*, we noted:

Our strong commitment to prudential rules shaping the exercise of our jurisdiction should result in a sparing use of this extraordinary supervisory power. We will therefore not use our supervisory power to circumvent the limits on our jurisdiction set forth by the Legislature or to be a substitute for appeal.

2006 Guam 18 ¶ 29. We are not convinced this case is one which necessitates such an extraordinary use of our supervisory jurisdiction, or one requiring circumventing the limits set forward by the Legislature.

III. CONCLUSION

[25] The trial court has not entered a final judgment capable of appeal under 7 GCA §§ 3108(a) or 25102 because it must still determine the amount of post-termination damages, if any, each party is owed. KPC and FJV also did not file a petition for interlocutory review, and it would not be appropriate for this court to exercise supervisory jurisdiction in this case. Accordingly, we **DISMISS** KPC and FJV's appeal and **REMAND** the case to the trial court for further proceedings not inconsistent with this opinion.

Original Signed : **Robert J. Torres**
By

Original Signed : **Katherine A. Maraman**
By

ROBERT J. TORRES
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

Original Signed : **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Chief Justice

I do hereby certify that the foregoing
is a full true and correct copy of the
original on file in the office of the
clerk of the Supreme Court of Guam.

DEC 02 2013

By: **Charlene T. Santos**
Deputy Clerk
Supreme Court of Guam