Filed
Clerk of Court

IN THE SUPREME COURT OF GUAM

LLUMELLE RAMIRO, ANGELA DUENAS, and MARY PEDRO,
Plaintiffs-Appellants,

v.

CHARLES B. WHITE, JR. as Administrator for the Estate of ERNESTO CASTRO SALES,
Defendant-Appellee.

Supreme Court Case No.: CVA15-003
Superior Court Case No.: CV0998-13

OPINION

Cite as: 2016 Guam 6

Appeal from the Superior Court of Guam
Argued and submitted on August 13, 2015
Hagåtña, Guam

Appearing for Plaintiffs-Appellants:
William L. Gavras, *Esq.*
Law Offices of William L. Gavras
A Professional Corporation
101 Salisbury St.
Dededo, GU 96929

Vincent Leon Guerrero, *Esq.*
P.O. Box 12457
Tamuning, GU 96931

Appearing for Defendant-Appellee:
R. Todd Thompson, *Esq.*
Thompson, Thompson & Alcantara, P.C.
238 Archbishop Flores St., Ste. 801
Hagåtña, GU 96910

E-Received
2/12/2016 4:46:02 PM

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

TORRES, C.J.:

[1] Plaintiffs-Appellants Llumelle Ramiro, Angela Duenas, and Mary Pedro (collectively "Appellants-Beneficiaries") contend that Ernesto Castro Sales ("Decedent," represented by Charles B. White, Jr., Administrator for the Estate of Ernesto Castro Sales) expressed his intent to designate them as beneficiaries to all of his Coast360 accounts on his Membership Information Form dated March 31, 2007 (the "Instrument"). When interpreting the Instrument at trial, however, the court determined the document was ambiguous with respect to which accounts were included, considered extrinsic evidence to determine Decedent's intent and concluded that the Decedent did not intend to include the Appellants-Beneficiaries as beneficiaries on all of his accounts. Appellants-Beneficiaries contend the Instrument was unambiguous, and that the consideration of extrinsic evidence was improper. Accordingly, they ask this court to reverse the trial court's judgment, award them all accounts in existence at the time the Instrument was created, and to also award them subsequently created accounts. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Ernesto Castro Sales ("Decedent") banked with Coast360 Federal Credit Union ("Coast360"). On the day of his death, September 4, 2012, Decedent had two separate Coast360 membership accounts, specifically Account Numbers 8065 and 55180. Account 8065 was opened in May of 1989, and account 55180 was opened in July of 2004.

[3] Each account had several subaccounts that were "treated as separate accounts by Coast 360 [sic]." Record on Appeal ("RA"), tab 26 at 2 (Finds. Fact & Concl. L., Dec. 19, 2014); *see also* Transcript ("Tr.") at 24-25 (Bench Trial, July 10, 2014). At the time Decedent filled out the Instrument on March 31, 2007, account 55180 had at least four subaccounts, including: (1) 55180-001; (2) 55180-002; (3) 55180-003; and (4) 55180-004. Decedent updated accounts 8065 and 55180 on March 31, 2007, using the Instrument. On the Instrument, there is a mark that appears to be a circled "1" next to the "suffix" designation. The Instrument provided six lines below the suffix designation, enumerating different types of accounts with checkable boxes. Decedent did not mark any of the boxes, but hand-wrote a note to "Add Beneficiary All Account." RA, tab 17 at Ex. B (White's Ex. List, Instrument, Mar. 31, 2007); Tr. at 6 (Bench Trial, July 10, 2014) (the parties stipulated to enter all exhibits into evidence).[1]

[4] The second page of the Instrument provides three choices for designating which accounts the customer wishes the beneficiaries to receive on his death. The first and third choices permit the customer to designate specific amounts. The second choice, on the other hand, designates "All Accounts." *Id.* Decedent placed a line through the "All Accounts," and did not use the space to designate specific accounts. *Id.* at 16-19.

[5] The Chief Operations Officer of Coast360, Monica Pido, testified that the notation in the section of the form next to Decedent's initials under "suffix," appears as a circled "1." Tr. at 15 (Bench Trial, July 10, 2014). Hence, in her understanding, the Appellants-Beneficiaries were beneficiaries of Decedent's membership accounts 8065 and 55180 with a "suffix one." *Id.* Pido

[1] Appellants-Beneficiaries include a reproduction of the Instrument in their brief. Appellants' Br. at 9 (May 5, 2015). White clarifies that the reproduction of Appellants-Beneficiaries appears differently than the actual Coast360 Member Information form, and refers to the reproduction as a fabrication. Appellee's Br. at 4 (June 3, 2015) (citing RA, tab 17 at Ex. B (White's Exhibit List, Instrument)).

also testified her interpretation of "add beneficiaries on account" was meant to indicate "[a]ll accounts but specifically for suffix one." *Id.*

[6] After Decedent executed the Instrument, he opened accounts 55180-401, 55180-402, 55180-403, 55180-404, and 55180-405. The beneficiary sections in these new subaccounts were left blank. Decedent was asked multiple times in 2010 and 2012 by Coast360 representatives whether he wanted to designate beneficiaries for his after-acquired subaccounts for account 55180, and he repeatedly declined to do so. Decedent opened 55180-401 on June 12, 2010, and the Coast360 representative who opened the account testified she went over designating beneficiaries for that account, but the beneficiary section was left blank.

[7] Jessica Ann Benavente Madrazo was the Coast360 Member Relations Associate who assisted Decedent with Account 55180-402. Madrazo was asked at trial whether Decedent expressed any wishes to include beneficiaries on that account, and Appellants-Beneficiaries made a hearsay objection that was overruled. Following the objection, Madrazo testified Decedent did not give any indication of an intended beneficiary. Madrazo also attested that Decedent would come to Coast360 every two weeks and would request a printout for his account history for each visit.[2]

[8] Erin Meno, another Member Relations Associate at Coast360, testified she assisted Decedent with opening account numbers 55180-403, 55180-404, and 55180-405. When shown the Member Information Form for 55180-0403, Meno attested to the fact that she asked Decedent whether he wanted to include a beneficiary for the account, but noted the Membership Information form indicated no beneficiaries. Appellants-Beneficiaries objected to a previous

[2] Decedent was a Government of Guam, Department of Education auditor and "was particular with regard to his finances" and "was particular about maintaining his accounts." RA, tab 26 at 3-4 (Finds. Fact & Concl. L.) (citing Tr. at 35 (Bench Trial, July 14, 2014)).

similar question to Meno as speculative, and she testified that Decedent provided no information with respect to account ownership meant he did not want a joint or any other beneficiary at that time. The court's ruling on the objection is unclear, because defense counsel immediately rephrased the question. A similar question and response was elicited for 55180-404.[3] When questioned whether Meno recalled asking Decedent about beneficiaries when opening 5180-0405, she indicated she did recall asking, and that Decedent provided no beneficiaries. A leading objection was sustained to the question: "Finally, Ms. Meno, isn't it true that when an account member comes in, at any point in time he can always or she can always change who she wishes or he wishes to designate as a beneficiary on their account?" Tr. at 11 (Bench Trial, July 15, 2014). Meno was, however, permitted to state that a member could change their beneficiary at any time.

[9] Coast360 generated a summary printout ("Summary Report") dated March 31, 2007, the date of the Instrument, entitled "Mr. Ernesto Sales Updated Beneficiary for All Account Number 8065 and 55180." RA, tab 17 at Ex. K (White's Ex. List, Summ. Report, Mar. 31, 2007); Tr. at 15-17 (Bench Trial, July 10, 2014); RA, tab 1 at Ex. 1 (Summ. Report, Mar. 31, 2007). White, the Administrator of Decedent's Estate, found the Summary Report in Decedent's dining room when looking for relevant evidence of Decedent's assets.

[10] Shortly after the Decedent's death, Appellants-Beneficiaries Duenas and Ramiro went to Coast360 and were given a form listing five names as beneficiaries. A couple of months later, Duenas and Ramiro returned to Coast360 and were instructed by the bank to withdraw the

[3] Meno's testimony refers to 55180-040 and appears to leave off the last four, but this is presumably a mistake referring to 55180-0404. *See* Tr. at 9-10 (Bench Trial, July 15, 2014). This is supported by the reference to People's Exhibit "O," which was the Member Application for Member No. 55180, CU Jumbo Time Share 404. RA, tab 17 at Ex. O, (White's Ex. List, Member Info. Form for 55180-404, June 13, 2012).

balance from account 8065 consisting of $79,348.54, and to deposit it into account 55180-001. Coast360 issued checks in the amounts of $5,066.64 and $15,869.80 to Duenas.

[11] Funds were then transferred from the various subaccounts into 55180-001. In particular, $120,092.00 was transferred from 55180-0003 on June 4, 2013; $125,854.13 was transferred from 55180-0401 on June 12, 2013; $86,236.67 was transferred from 55180-0402 on June 12, 2013; $111,705 was transferred from 55180-0403 on June 13, 2013; $111,705.00 was transferred from 55180-0404 on June 13, 2013; $111,705.00 was transferred from 55180-0405 on June 13, 2013; and $126,732.00 was transferred from 55180-0004 on June 30, 2013).

[12] Appellants-Beneficiaries filed suit against White and Coast360 as defendants, seeking declaratory relief with respect to the "rights and interest of the parties in connection with the funds." RA, tab 1 at 3 (Compl., Aug. 16, 2013). Coast360 submitted a check to the Superior Court of Guam in the amount of $801,512.91, and was dismissed from the lawsuit. A bench trial followed, and the court considered extrinsic evidence to determine ambiguities regarding whether "Decedent intended to update[] just account 55180-001 as indicated by the language 'suffix 1' or to all subaccounts as indicated by the language 'Add Beneficiary All Account.'" RA, tab 26 at 6 (Finds. Fact & Concl. L.). Appellants-Beneficiaries "presented no witnesses to indicate Decedent's specific intent to add the five beneficiaries to all the subaccounts of 55180." *Id.* at 7. Appellants-Beneficiaries relied exclusively on only two exhibits: (1) the Instrument and (2) the accompanying Summary Report.

[13] The court concluded Appellants-Beneficiaries were entitled only to the assets within account 8065, all subaccounts under 8065, and Account No. 55180-001. The assets transferred into 55180-001 after Decedent's death, and any monies left over in the subaccounts under

Account No. 55180 that were not in account 55180-001 were provided to White as Administrator of Decedent's Estate.

[14] Judgment was entered, and Appellants-Beneficiaries timely appealed.

II. JURISDICTION

[15] This court has jurisdiction over appeals from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-114 (2015)); 7 GCA §§ 3105, 3107(b), 3108(a), 25102(a) (2005).

III. STANDARD OF REVIEW

[16] Different standards of review are applicable to "a trial court's factual findings based on parol evidence after the court has determined that the contract language is ambiguous." *Calomiris v. Woods*, 727 A.2d 358, 363 (Md. 1999). The initial determination of ambiguity is reviewed *de novo*, but "the clearly erroneous standard comes into play only after the trial court's finding of ambiguity is upheld." *Id.* We have said "[a] finding is clearly erroneous when although there is evidence to support it, the reviewing court . . . is left with the definite and firm conviction that a mistake has been committed" upon reviewing "the entire evidence." *Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 22 (citing *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

[17] Where a party fails to object to the trial court's admission of evidence, we review the issue for plain error. *See E.C. Dev., Ltd. v. Gen. Conference Corp. of Seventh-Day Adventist*, 2005 Guam 9 ¶ 55.

//

//

IV. ANALYSIS

A. Whether the Court Properly Determined that Decedent's Interlineations on the Instrument were Ambiguous

[18] Appellants-Beneficiaries argue the trial court erroneously determined that the Instrument was ambiguous. Appellants' Br. at 13 (May 5, 2015). As they believe the Instrument was unambiguous, they contend the trial court erred in considering extrinsic evidence. *Id.* at 13 (citing *Wasson v. Berg*, 2007 Guam 16 ¶ 17). White counters that the trial court correctly determined the Instrument was ambiguous, and properly looked to extrinsic evidence to interpret the Decedent's ambiguous instructions. Appellee's Br. at 13 (June 3, 2015).

[19] The question of whether a provision within an agreement is ambiguous is a question of law. *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 14 (citing *E.M. Chen & Assocs., Inc. v. Lu Island Dev., Inc.*, Civ. No. 93-00017A, 1993 WL 469348, at *3 (D. Guam App. Div. Oct. 21, 1993)). When a contract is "capable of two different reasonable interpretations" on its face, it is ambiguous. *Id.* However, "the intent of the parties to a contract is generally, and whenever possible, restricted by the plain meaning of the contract terms." *Wasson*, 2007 Guam 16 ¶ 10 (citing *Camacho v. Camacho*, 1997 Guam 5 ¶ 33; 18 GCA § 87104 (2005)).

[20] Under 6 GCA § 2511, an agreement reduced to writing is deemed to be the whole agreement of the parties containing all essential terms. 6 GCA § 2511 (2005). Consequently, no evidence of the terms other than the content of the writing is admissible unless: (1) "a mistake or imperfection of the writing is put in issue by the pleadings;" or when (2) "the validity of the agreement is the fact in dispute." *Id.* Moreover, evidence which "explain[s] an extrinsic ambiguity," or is admitted to "establish illegality or fraud" is admissible. *Id.*; *see also Torres v. Torres*, 2005 Guam 22 ¶ 28. Deeds, wills, and contracts between parties are included within the

term "agreement." 6 GCA § 2511. Extrinsic evidence is also permissible when interpreting ambiguous trust instruments:

> The written trust instrument creating a trust, if certain and definite in its contents, is the best evidence of the intention and meaning of the parties, and unless necessity arising from excusable inability to produce such instrument exists, secondary proof is not admissible. . . . [E]xtrinsic evidence is admissible to clarify the terms of a trust or remove ambiguities, particularly when there is a patent ambiguity in the trust instrument, such as any ambiguities regarding the settlor's intent to create a trust. Extrinsic evidence, under these circumstances, may be admitted but used only to explain, and not to contradict, the instrument.

76 Am. Jur. 2d *Trusts* § 635 (2015) (footnotes omitted). Thus, extrinsic evidence can be considered if we determine the Instrument at issue is ambiguous due to its trust-like nature as a payable on death instrument.[4]

[21] Moreover, Decedent's agreement with Coast360 (i.e., the Instrument) should be viewed as a whole "so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." 18 GCA § 87107 (2005); *see also Gov't of Guam v. Pacificare Health Ins. Co. of Micronesia*, 2004 Guam 17 ¶ 73 (an agreement "must be viewed as a whole, with each provision interpreted in light of each other, so as to give effect to every part, if reasonably practicable. When the intent is clear, the court must give effect to that intent." (citations and footnote omitted)).

[22] Here, the court considered extrinsic evidence upon finding the Decedent's intent was ambiguous as to whether "Decedent intended to update just account 55180-001 as indicated by

---

[4] Appellants-Beneficiaries refer to the Instrument as a "trust instrument." Appellants' Br. at 14 n.4. They contend the document resulted in a "Totten Trust" because it is payable to beneficiaries upon the death of the account holder. Black's Law Dictionary defines a "Totten Trust" as:

> A revocable trust created by one's deposit of money, typically in a savings account, in the depositor's name as trustee for another. A Totten trust is an early form of 'pay on death' account, since it creates no interest in the beneficiary unless the account remained at the depositor's death.

Trust, Black's Law Dictionary (10th ed. 2014).

the language 'suffix 1' or to all subaccounts as indicated by the language 'Add Beneficiary All Account.'" RA, tab 26 at 6 (Finds. Fact & Concl. L.). Appellants-Beneficiaries disagree and maintain that the form and structure of the Instrument, coupled with Decedent's interlineations, demonstrate Decedent intended the Instrument to apply to all the accounts listed on any of the lines, including all accounts with the suffix "1." Appellants' Br. at 13. Decedent is identified by his member numbers 8065 and 55180 at the top of the Instrument's first page. Appellants' Br. at 13; RA, tab 17 at Ex. B (Instrument). The next section provides six lines to identify one or more accounts to which the Instrument will apply, and Decedent hand-wrote "Add Beneficiary All Account." Appellants' Br. at 14; RA, tab 17 at Ex. B (Instrument). Taken together, Appellants-Beneficiaries believe the Instrument unambiguously mandates that they should be added as beneficiaries for all present and future subaccounts for accounts 8065 and 55180.

[23] Appellants-Beneficiaries also argue the court improperly relied on extrinsic evidence, specifically Pido's testimony, to find ambiguity within the Instrument. Appellants' Reply Br. at 4 (Aug. 17, 2015). They contend only the "modern approach" to contract interpretation permits an ambiguity to be found through extrinsic evidence, which is contrary to Guam's adherence to the "traditional approach." *See Wasson*, 2007 Guam 16 ¶ 13 ("[T]he modern approach does not require the court to make a threshold finding as a matter of law that some ambiguity exists." (citations omitted)). In *Wasson*, we adopted the traditional approach, requiring courts to look "to the four corners of the contract and determine whether, as a matter of law, any ambiguity exists." *Id.* ¶¶ 11, 17 (citations omitted). Appellants-Beneficiaries assert the court should consider extrinsic evidence only if presented with a facially ambiguous document and that there was no such ambiguity within the Instrument.

[24] White contends that Appellants-Beneficiaries fail to explain the significance of the circled numeral "1" next to the printed word "suffix." Appellee's Br. at 14. Although Appellants-Beneficiaries stress that the language "Add Beneficiary All Account" language is unambiguous, White urges that these words "must be read in conjunction with the interlineated text immediately above them – specifically, the circled numeral '1' next to the printed word 'suffix,' appearing directly below the listing of account number 55180." *Id.* at 13-14; RA, tab 17 at Ex. B (White's Ex. List, Instrument). The circled "1" next to "suffix," verified by the Decedent's interlineated initials, is a "stubborn fact" that cannot be ignored. Appellee's Br. at 14. Interpreting the circled "1" as mere surplusage is antithetical to principles of contract construction that require courts to "give significance to every word of a contract, when possible, and avoid an interpretation that renders a word surplusage." *See In re Tobacco Cases I*, 111 Cal. Rptr. 3d 313, 318 (Ct. App. 2010) (citation omitted); *see also* Appellee's Br. at 15.

[25] White analogizes this case to other jurisdictions which have permitted a court to look to extrinsic evidence concerning bank account ambiguities. Appellee's Br. at 17-18. For example, in *Kemp v. Rawlings*, a South Carolina probate court considered extrinsic evidence upon determining a latent ambiguity was present in decedent's will. 594 S.E.2d 845, 849 (S.C. 2004). The will bequeathed joint bank or joint savings accounts appellant and decedent "have." *Id.* The word "have" created an ambiguity regarding whether the accounts at issue "were the accounts they had at the time the will was executed, or whether he intended to leave any joint bank account to appellant." *Id.* The Supreme Court of South Carolina determined it was proper to admit extrinsic evidence of decedent's intent. *Id.*

[26] Likewise, in *Evans v. First National Bank of Bellville*, the main issue was whether certificates of deposit ("CDs") were covered by a time deposit signature card designating a joint

tenancy with a right of survivorship. 946 S.W.2d 367, 370 (Tex. App. 1997). Although the card appeared facially unambiguous, a latent ambiguity arose "when [the court] attempt[ed] to apply its language to three different CDs." *Id.* at 375 (footnote omitted). Because the time deposit signature card was ambiguous in application, extrinsic evidence demonstrating decedent's intent to create a survivorship account was permissible to determine which CDs were subject to the survivorship agreement at issue. *Id.* at 375.

[27] Similarly, *Parr v. Godwin* involved an incomplete signature card issue. 463 So. 2d 129, 133 (Ala. 1984). The incompleteness of the writing created an ambiguity because the "signature card was not intended to have any operative effect apart from the marking of an appropriate box indicating the nature of the account." *Id.* Accordingly, extrinsic evidence reflecting "a mistake on the part of Bank personnel in failure to mark the appropriate box on the card indicating an account held jointly with right of survivorship" was proper. *Id.*

[28] Like *Kemp*, *Evans*, and *Parr*, there was ambiguity with respect to Decedent's intent. Specifically, an ambiguity exists within the Instrument as to "whether Decedent intended to update just account 55180-001 as indicated by the language "suffix 1" or to all subaccounts as indicated by the language "Add Beneficiary All Account." RA, tab 26 at 6 (Finds. Fact & Concl. L.). This finding of ambiguity by the trial court was not dependent on Pido's extrinsic testimony. Therefore, when the Instrument is examined in its entirety, the trial court was correct in determining it was ambiguous. We must now determine whether the trial court's factual findings with respect to that ambiguity were clearly erroneous.

B. Whether the Trial Court's Factual Findings were Erroneous

[29] Appellants-Beneficiaries maintain that the trial court's interpretation of the Instrument was erroneous, yet they introduced little evidence at trial:

> Plaintiffs presented no witnesses to indicate Decedent's specific intent to add the five beneficiaries to all the subaccounts of 55180. Plaintiffs [had] only submitted two exhibits into evidence, which they argue demonstrates such intent. The first exhibit, Plaintiffs' Exhibit 1, is the March 31, 2007 member update form, which contains the ambiguous language. The second exhibit, Plaintiffs' Exhibit 2, is the March 31, 2007 summary report, on which Coast 360 [sic] representatives testified they do no [sic] rely. The fact that the Coast 360 [sic] representatives testified that they would have explained to the Decedent that he had the option to designate beneficiaries to the subaccounts, coupled with the fact that the beneficiary forms were left blank, leads the Court to conclude the Decedent did not possess the specific intent to include the beneficiaries as such on the 55180 subaccounts.

RA, tab 26 at 7-8 (Finds. Fact & Concl. L.); *see also* Appellants' Br. at 13. "It is against this backdrop that the trial court's judgment must be assessed." Appellee's Br. at 19.

1. Evidence demonstrating Decedent's intent

[30] A trial court's initial determination of ambiguity is reviewed *de novo*, but "the clearly erroneous standard comes into play only after the trial court's finding of ambiguity is upheld." *Calomiris*, 727 A.2d at 363. "A finding is clearly erroneous when although there is evidence to support it, the reviewing court . . . is left with the definite and firm conviction that a mistake has been committed" upon reviewing "the entire evidence." *Fargo Pac., Inc.*, 2006 Guam 22 ¶ 22 (citing *U.S. Gypsum Co.*, 333 U.S. at 395). In making this determination, "the reviewing court does not substitute its judgment for the trial court's." *Id.* (citing *People Flores*, 2004 Guam 18 ¶ 7). Instead, when "considering whether the evidence is sufficient to sustain the trial court's judgment," an appellate court must review "the evidence in the light most favorable to the successful party, resolve any controverted fact in favor of the successful party, and give the successful party the benefit of every reasonable inference from the evidence." *Id.* ¶ 23 (citing *Guam United Warehouse Corp. v. DeWitt Transp. Serv. of Guam, Inc.*, 2003 Guam 20 ¶ 41).

[31] Appellants-Beneficiaries argue the Summary Report, which states "Mr. Ernesto Sales Updated Beneficiary for All Account Number 8065 and 55180," can be considered part of an overall "trust instrument." Appellants' Br. at 15; RA, tab 17 at Ex. K (White's Ex. List, Summ. Report). To support this argument, they point to the fact that the document was dated March 31, 2007, the same date as the Instrument." Appellants' Br. at 15; RA, tab 17 at Ex. K (Summ. Report).

[32] White counters that Appellants-Beneficiaries mischaracterize the meaning and significance of the Summary Report. Appellee's Br. at 22. The trial court noted in its Findings of Fact and Conclusions of Law that Pido testified the printout was merely "internal comments that are used to assist our staff members." RA, tab 26 at 7 (Finds. Fact & Concl. L.); Tr. at 42 (Bench Trial, July 10, 2014). Appellants-Beneficiaries failed to present any contrary evidence. *See* RA, tab 26 at 7-8 (Finds. Fact & Concl. L.). No witnesses indicating Decedent's specific intent to add Appellants-Beneficiaries to the subaccounts of 55180 was presented during their case. *Id.* at 7-8. Only two exhibits, namely (1) the ambiguous member update form (i.e., the Instrument), and (2) the Summary Report, were introduced. *Id.* at 7-8. Furthermore, White highlights that Appellants-Beneficiaries presented no evidence that the Summary Report was part of the Instrument. Appellee's Br. at 23. The Summary Report was not executed or generated by Decedent.

[33] This court must review "the evidence in the light most favorable to the successful party, resolve any controverted fact in favor of the successful party, and give the successful party the benefit of every reasonable inference from the evidence." *Fargo Pac., Inc.*, 2006 Guam 22 ¶ 23 (citation omitted). The only evidence presented as to the nature of the Summary Report was bank employee testimony describing it as merely "internal comments." RA, tab 26 at 7 (Finds.

Fact & Concl. L.); Tr. at 42 (Bench Trial, July 10, 2014). Furthermore, evidence in the record shows that Decedent had the opportunity to designate beneficiaries when he opened those new accounts, yet declined to do so. RA, tab 26 at 2-3 (Finds. Fact & Concl. L.); Tr. at 45-46 (Bench Trial, July 14, 2014); Tr. at 8-11 (Bench Trial, July 15, 2014). Madrazo and Meno attested to their personal knowledge regarding whether Decedent wished to designate beneficiaries on after-acquired accounts and observations that the forms for these accounts did not enumerate beneficiaries. *See* Tr. at 44-45 (Bench Trial, July 14, 2014); Tr. at 8-11 (Bench Trial, July 15, 2014). Appellants-Beneficiaries presented no conflicting evidence. Appellee's Br. at 24.

[34] It was not clear error to determine the Summary Report was irrelevant to whether the Decedent intended to update just account 55180 as indicated by the language "suffix 1," or to all subaccounts as indicated by the language "Add Beneficiary All Account." We cannot substitute our judgment for the trial court's. *See Fargo Pac., Inc.*, 2006 Guam 22 ¶ 22 (citation omitted). Thus, the decision to award only Plaintiffs the assets in Account No. 8065, all subaccounts under 8065, and all assets within Account No. 55180-001 at the time of Decedent's death was not clearly erroneous. *See* RA, tab 26 at 2-3 (Finds. Fact & Concl. L.).

2. Admission of bank employee testimony

[35] When a party fails to object to a trial court action "at any point after the lower court issued its Decision and Order, or after the judgment was issued," then "[s]uch inaction, under general circumstances, amounts to a waiver of this issue." *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 77 (citations omitted). Accordingly, a plain error analysis is appropriate when a trial court admits testimony and where a party failed to object to such admission. *See E.C. Dev.*, 2005 Guam 9 ¶ 55. This court views a plain error analysis with deference to the trial court. *Id.* "'Only where there is such plain error apparent on the face of the

record that failure to review would result in a manifest miscarriage of justice should the appellate court analyze the evidence.'" *Id.* (quoting *Gutierrez v. Charfauros*, 2002 Guam ¶ 39; *People v. Perez*, 1999 Guam 2 ¶ 21).

[36] In addition to the allegation that the trial court improperly used bank employee testimony to find an *ambiguity* as discussed above, Appellants-Beneficiaries also contend it was clearly erroneous to use this testimony to establish that Decedent intended to include only subaccount 001 with respect to account 55180. Reply Br. at 4; Appellants' Br. at 17. In their view, the bank employee testimony regarding the meaning of the instrument should be rejected as it was "legal analysis and a usurpation of the function of the courts." Appellants' Br. at 18.

[37] Appellants-Beneficiaries never made an "ultimate outcome" objection to the testimony of Coast360 employees. Appellee's Br. at 25; *see also* Tr. at 14-16 (Bench Trial, July 10, 2014); Tr. at 44-46 (Bench Trial, July 14, 2014); Tr. at 8-11 (Bench Trial, July 15, 2014). Not only did Appellants' counsel fail to object to testimony regarding the Coast360 representatives, but he specifically asked Pido for her interpretation of the instruments on direct examination. Tr. at 15 (Bench Trial, July 10, 2014). Thus, Appellants-Beneficiaries waived the objection, and their challenge to the testimony on appeal must be reviewed under a plain error analysis.

[38] Appellants-Beneficiaries did not address whether admission of the bank employee testimony would result in a miscarriage of justice on appeal. *See E.C. Dev.*, 2005 Guam 9 ¶ 55. Appellants-Beneficiaries failed to establish that the trial court's consideration of the bank employees' testimony was a miscarriage of justice resulting in plain error.

//

//

V. CONCLUSION

[39] The trial court correctly determined that the Instrument was ambiguous. Moreover, viewing the entirety of the evidence, we are not left with the definite and firm conviction that the trial court's findings of fact were mistaken. Hence, the decision to award Appellants-Beneficiaries the assets in Account No. 8065, all subaccounts under 8065, and all assets within Account No. 55180-001 at the time of Decedent's death was not clearly erroneous. Finally, because Appellants-Beneficiaries did not address whether admission of the bank employee testimony would result in a miscarriage of justice, they have failed to establish plain error. For the foregoing reasons, we **AFFIRM** the trial court's judgment.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice