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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

FIRST HAWAIIAN BANK,
Plaintiff-Appellee,

vs.

PERCY RAY MANLEY and VIRGINIA S. CRUZ
nka VIRGINIA S. MANLEY,
Defendants-Appellants.

Supreme Court Case No.: CVA04-014
Superior Court Case No.: CV1402-03

OPINION

Cite as: 2007 Guam 2

Appeal from the Superior Court of Guam
Submitted on January 16, 2006
Hagåtña, Guam

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ORIGINAL

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD[1], Associate Justice; ROBERT J. TORRES, JR., Associate Justice.

TORRES, J.:

[1] Defendants-Appellants Percy Ray Manley and Virginia S. Cruz nka Virginia S. Manley (the "Manleys") appeal from a Superior Court Judgment dismissing their counterclaim against Plaintiff-Appellee First Hawaiian Bank ("FHB") for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Guam Rules of Civil Procedure. The Manleys argue that the Superior Court erred in dismissing their counterclaim without providing them notice of hearing on FHB's motion to dismiss and giving the Manleys an opportunity to oppose the motion as required by Rule 5 of the Rules of the Superior Court of Guam. FHB maintains that the Superior Court judge's *sua sponte* dismissal of the counterclaim without oral argument was proper as the legal issues in this case had been briefed by both parties, and the Manleys had waived oral arguments on their respective motions to dismiss FHB's complaint and for partial summary judgment. Although the Superior Court judge may not have complied with the specific requirements of Rule 5, we cannot say that the dismissal of the counterclaim was in error.[2] Accordingly, the judgment of dismissal is affirmed.

I.

[2] FHB filed suit to recover the balance owed on a promissory note ("Note") signed by the Manleys. The Note, originally made payable to Pacific Financial Corporation, was secured by a

[1] At the request of the Manleys to waive oral argument, and without objection by First Hawaiian Bank, the court ordered that this case be submitted on the briefs. Order (Jan. 16, 2006). Associate Justice Frances M. Tydingco-Gatewood sat as a panel member at the time of the submission of this case on the briefs. Prior to the issuance of this Opinion, Justice Tydingco-Gatewood was sworn in as Chief Judge of the District Court of Guam.

[2] In its Judgment of Dismissal, the Superior Court also dismissed FHB's complaint because the promissory note at issue here was discharged in bankruptcy court on February 5, 2004. Neither party appeals the Superior Court's dismissal of FHB's complaint.

mortgage on real property owned by the Manleys and later assigned to FHB. Citibank, N.A. ("Citibank") also had a note with the Manleys secured by a mortgage lien on the same property, the mortgage of which was senior to FHB's mortgage. The Manleys defaulted on both notes, and as a result, Citibank and FHB proceeded to foreclose on the secured property. Citibank recorded a Notice of Default and Election to Sell Under Mortgage by Power of Sale. At its foreclosure sale, Citibank made a credit bid and recorded its Deed upon sale, thereby extinguishing the Manleys' ownership interest (subject to redemption) as well as FHB's junior mortgage. Thereafter, FHB recorded its Notice of Default and filed a complaint for breach of contract to collect the unpaid amounts due under the Note.

[3] The Manleys initially filed a motion to dismiss FHB's complaint which FHB opposed. The Manleys then filed an answer and counterclaim as well as a Reply to Opposition to Motion to Dismiss and a Motion for Partial Summary Judgment (on counterclaim). FHB subsequently filed a Reply to Counterclaim which included as an affirmative defense the assertion that the counterclaim failed to state a claim upon which relief could be granted. During the pendency of the Superior Court action, the Manleys filed a Chapter 7 bankruptcy petition with the United States District Court of Guam. The Note to FHB was eventually discharged by the order of the District Court. Although the Manleys waived oral arguments on both their motion to dismiss and their motion for partial summary judgment, the Superior Court scheduled a hearing on the motion for partial summary judgment, which was later rescheduled to April 7, 2004. Notice of the rescheduled hearing was sent by mail to the Manleys. The record however, does not reveal such hearing was held.

[4] The Superior Court's Court Reporters Unit filed a Declaration indicating that the record below was devoid of any recording log of a hearing on April 7, 2004 even though a hearing was

scheduled by the Court. Declaration (Mar. 7, 2005). The record further discloses that on April 8, 2004, FHB filed its motion to dismiss the counterclaim under Rule 12(b)(6) of the Guam Rules of Civil Procedure. The Superior Court judge signed the Judgment of Dismissal, received by the court on April 8, 2004, although the judgment was predated April 7, 2004. The Judgment of Dismissal was entered on the docket on April 21, 2004 and the Manleys timely filed their Notice of Appeal.

II.

[5] We have jurisdiction over this appeal from a final judgment pursuant to 48 U.S.C. § 1424-1(a)(2) (Westlaw current through Pub.L. 110-25 (2007)), 7 GCA §§ 3107(b), and 3108(a) (2005).

III.

[6] Review of a dismissal for failure to state a claim is *de novo*. *See Kelson v. City of Springfield*, 767 F.2d 651, 653 (9th Cir. 1985); *see also Archbishop of Guam v. G.F.G. Corp.*, 1997 Guam 12 ¶ 9 (stating that determination of whether a party failed to state a claim is a question of law reviewed *de novo*).

IV.

[7] The Manleys challenge on appeal the judgment of dismissal entered by the Superior Court which ultimately dismissed their counterclaim. The Manleys assert that FHB was required to file a judicial foreclosure action as mandated by 7 GCA § 24101 in order to collect on its underlying debt. Further, the Manleys contend that FHB was not a "sold-out junior lienor" because FHB could have pursued its foreclosure before Citibank foreclosed. Finally, the Manleys maintain that the Superior Court erred in granting FHB's motion to dismiss without

providing notice of hearing and an opportunity to brief the issues in accordance with Rule 5 of the Rules of the Superior Court of Guam.

[8] FHB submits that the Superior Court's dismissal was proper because the Manleys had actual notice of FHB's legal position and all legal issues had been fully briefed by the parties when the dismissal was entered. FHB further claims that on April 7, 2004, without oral argument, the Superior Court *sua sponte* entered dismissal of the counterclaim, thereby making FHB's motion to dismiss moot because it was filed after the counterclaim had already been dismissed. Finally, FHB argues that 7 GCA § 24101 does not apply because FHB assumed the status of a "sold-out junior lienor" when Citibank foreclosed on the property and FHB was not required to exhaust its security since FHB's security was extinguished by Citibank.

A. Dismissal of Counterclaim Under Rule 12(b)(6)

[9] The Superior Court entered a judgment of dismissal dismissing the Manleys'counterclaim pursuant to GRCP Rule 12(b)(6), which allows a plaintiff to assert in a responsive pleading or in a motion that the defendant failed to state a claim upon which relief could be granted.[3] Dismissal under Rule 12(b)(6) is not proper unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355

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[3] Rule 12(b)(6) states in pertinent part:

> **(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted. . . . No defense or objection is waived by being joined to one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for which relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

Guam R. Civ. P. 12(b)(6).

U.S. 41, 45-46, (1957). When reviewing a claim under this standard, "we must, of course, take as true the material facts alleged" in the counterclaim, *Hospital Bldg. Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 740, (1976), construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party's favor. *Clegg v. Cult Awareness Network, et al.*, 18 F.3d 752, 754-55 (9th Cir. 1994). "[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Id.* In the case *sub judice* the Manleys filed their answer and counterclaim to which FHB replied raising as an affirmative defense that the counterclaim be dismissed for failure to state a claim upon which relief could be granted. The prayer for relief contained in FHB's reply also requested that the counterclaim be dismissed under Rule 12(b)(6). Clearly, under Rule 12(b)(6), FHB had the option of requesting that the counterclaim be dismissed in its reply instead of by motion. After filing its reply to the counterclaim, however, FHB also filed the April 8 motion to dismiss the counterclaim for failure to state a claim upon which relief could be granted.

[10] "When reviewing a judgment granting a [Rule] 12(b)(6) motion for relief from judgment, an appellate court must independently review the complaint to determine if dismissal was appropriate." *McGlone v. Grimshaw*, 620 N.E.2d 935, 939 (Ohio Ct. App. 1993). Further, "[t]he appellate court need not defer to the trial court's decision in [Rule] 12(b)(6) cases." *Id.* Such a dismissal cannot be upheld unless it appears "to a certainty that the plaintiff would be entitled to no relief under any state of facts that could be proved." *Halet v. Wend Investment Co.*, 672 F.2d 1305, 1309 (9th Cir. 1982). Therefore, we must determine on de novo review, whether the Manleys' counterclaim states a claim against FHB which would entitle them to relief.

[11] In reviewing the counterclaim, the Manleys essentially allege that FHB had notice of Citibank's position to foreclose on the property and FHB had a right to file a foreclosure action with the Superior Court but FHB failed to do so. Since the appraised value of the property was supposedly greater than the amount owed to Citibank and FHB, the Manleys complained that this failure by FHB caused them to lose their property and file for bankruptcy. The Manleys counterclaim sought (1) judgment dismissing FHB's claim, (2) judgment ordering FHB to pay them $125,025.00[4], (3) damages for pain and suffering, (4) punitive damages, and (5) such other relief as may be just.

[12] The statute which the Manleys apparently rely on, although not cited or referred to in their counterclaim, is 7 GCA § 24101 (2005), which states in pertinent part that "[a]ll actions for the foreclosure of a mortgage or other encumbrance upon real estate must be brought in the Superior Court." The Manleys recognize that in some situations, a junior lienor may not be required to proceed with a foreclosure action before suing on a mortgage note, but the Manleys maintain that this should be limited only to situations where the collateral has been sold without ample time and opportunity for the junior lienor to act. Otherwise, if the junior lienor had sufficient time and opportunity but failed to act, the Manleys believe the lienor has "become a self made sold out junior lienor" and should not be treated as one who is "innocent." Appellants' Opening Brief, p. 7 (June 20, 2005).

[13] FHB asserts that section 24101, originally enacted as section 726 of the Guam Code of Civil Procedure in 1953, is identical to section 726 of the California Code of Civil Procedure enacted in 1872. FHB argues that California case law allows for a suit on a mortgage note

[4] This amount was computed by the Manleys as the difference between what they assert is the appraised value of the house at $267,000.00 and Citibank's claim of $125,975.00.

without foreclosure when there has been foreclosure of a prior encumbrance and the security given has been extinguished. Citing *Roberto v. Aguon*, 519 F.2d 754 (9th Cir. 1975) and our decision in *O'Mara v. Hechonova*, 2001 Guam 13, FHB maintains that "decisions of California courts which predate the enactment of [t]erritorial [l]aws are controlling authority on issues of the statutory construction and effect of Guam laws and that California cases subsequent to the adoption of Guam codes while not binding are persuasive." Appellee's Brief, p. 9 (July 12, 2005). A closer examination of Guam's section 24101 and California's section 726 as originally enacted reveals, however, that the statutes are not identical and there is a significant difference between them. The latter provision provides in pertinent part that *"[t]here can be but one action* for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this chapter." Cal. Civ. Proc. Code § 726 (1872) (emphasis added). Section 24101 simply states that "[a]ny action for the recovery of any debt or the enforcement of any right secured by mortgage on real or personal property, must be in accordance with the provisions of this chapter"[5] and does not contain the "one action" limitation language found in California. 7 GCA § 24101 (2005). Moreover, while section 24101 requires foreclosure actions to be brought in the Superior Court, Guam law also allows for foreclosure of a mortgage by power of sale.[6] *See* 18 GCA § 36113 (2005).

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[5] Section 726 of the Guam Code of Civil Procedure was enacted in 1953 and provided the same language in section 24101.

[6] Additionally, in *Paulino v. Biscoe*, we said "[a]t first glance, [Section 24101] mandates that any action for the foreclosure of mortgages must be brought before the Superior Court; however, this would be inconsistent with the statutory empowerment of the power of sale" allowed in 18 GCA § 36113. *Paulino v. Biscoe*, 2001 Guam 13 ¶ 20 n. 8.

[14] "In the absence of a statute to the contrary, a creditor secured by a . . . mortgage . . . may recover the full amount of the debt upon default [and] may realize the security or sue on the obligation or both." *Roseleaf Corp. v. Chierighino*, 378 P.2d 97, 98 (Cal. 1963). Some states have enacted a "one action" statute which provides that one who has taken a lien to secure a debt exhaust the security before having recourse to the general assets of the debtor. *See, e.g.*, Idaho Code Ann. § 6-101 (West 2007); Nev. Rev. Stat. § 40.430 (West 2006); Utah Code Ann. § 78-37-1 (West 2006). Some states have also enacted "fair-value" statutes which are designed to prevent creditors from buying at their own sales at deflated prices and realizing double recoveries by holding debtors liable for large deficiencies. *See Hatch v. Security-First Nat'l. Bank*, 120 P.2d 869, 872 (Cal. 1942); *Wheeler v. Ellis*, 27 A. 911-912 (N.J. 1893); *Cont'l. Bank & Trust Co. v. Gedex Realty Corp.*, 60 N.Y.S.2d 710, 712-713 (N.Y. Sup. Ct. 1946); *NW. Loan & Trust Co. v. Bidinger*, 276 N.W. 645, 648-650 (Wis.1937). For instance, Arizona, California, Georgia, Idaho, Michigan, Washington, and Wisconsin have adopted fair-value statutes which are primarily used in limiting deficiency judgments. *See, e.g.*, Ariz. Rev. Stat. Ann. § 33-814(A) (2007); Cal. Civ. Proc. Code § 580a (West 2007); § 726 (West 2007); Ga. Code Ann. §§ 44-14-161 (West 2006); Idaho Code Ann. §§ 6-108, 45-1512 (West 2007); Mich. Comp. Laws Ann. §§ 600.3170, 600.3280 (West 2007); Wash. Rev. Code Ann. § 61.12.060 (West 2007); Wis. Stat. Ann. § 846.165 (West 2007).

[15] The Guam Legislature has not provided mortgagors "with the same protections which the California Legislature has extended in its anti-deficiency laws. . . ." *Paulino,* 2000 Guam 13 ¶ 28. Although some courts have also limited actions for deficiency judgments to prevent double recoveries even in the absence of a statute, we do not need to address the merits of taking such

action here. *Investors Mortg. & Realty Co. v. Preakness Hills Realty Co.*, 31 A.2d 830 (N.J. Ch.1943); *Suring State Bank v. Giese*, 246 N.W. 556 (Wis. 1933).

[16] The rationale behind either the "one action" or "fair-value" limitation imposed by courts or legislatures does not apply to sold-out junior lienors such as FHB in this case. A junior lienor whose security is extinguished through a senior sale does not have the same protection available to a senior lien holder to ensure that a sale of the security realizes an amount equal to the claim or the fair market value of the property, whichever is less, by simply bidding in for that amount. Likewise a junior mortgagee should not be required to file a foreclosure action against a debtor in order to sue on the note when the security has been lost through no fault of the junior mortgagee.

[17] In *Roseleaf*, where a sold-out junior lienor's security was rendered valueless by the senior lienholder's non-judicial foreclosure, the Supreme Court of California held that the "one form of action" rule of section 726 of the California Civil Procedure Code did not apply to a sold-out junior lienor since "[t]here is no reason to compel a junior lienor to go through foreclosure and sale when there is nothing left to sell." *Roseleaf*, 378 P.2d at 99. The court stated that the junior lienor "is in no better position to protect himself than is the debtor; either would have to invest additional funds to redeem or buy in at the sale [and] [e]quitable considerations favor placing this burden on the debtor. . . ." *Id.* at 100. Similarly, in *Bank of America v. Graves*, a junior lienholder commenced a non-judicial foreclosure and later decided to postpone the sale after learning that the senior lienholder also instituted foreclosure proceedings on the same property. *Bank of America v. Graves*, 59 Cal. Rptr. 2d 288, 290, (Cal Ct. App. 1996). The court recognized that a sold-out junior lienholder was not subject to the one form of action rule as explained in *Roseleaf*. *Id.* at 290-292. The court reasoned on the basis of public policy, that a

junior lienholder must be allowed to pursue its options when borrowers default, that is (1) it could foreclose on its junior lien which would require it to invest additional funds to bring the senior lien current as well as keep its lien current or (2) it could postpone its foreclosure sale and allow itself to be foreclosed out. *Id.* at 293; *See also Cohen v. Mashall,* 239 P. 1050 (Cal. 1925).

[18] We agree with the reasoning in *Roseleaf* and *Graves* that a junior lienholder whose security may be lost through a senior sale is different from a selling senior lienholder. The junior lienholder should not be required to invest additional funds to redeem or buy in at sale and then subsequently file a judicial foreclosure action. The Manleys simply argue in their counterclaim that FHB knew Citibank was foreclosing and FHB should not be allowed to file an action to collect on the Note because it did not file a foreclosure action pursuant to Section 24101.[7] Interestingly, after the counterclaim was filed, the Note was discharged in bankruptcy and FHB can no longer pursue collection on the Note from the Manleys. Thus, this portion of the Manleys' request for relief in the counterclaim is moot.

[19] In addition, the Manleys seek damages for FHB's failure to timely file a foreclosure action. However, the Manleys fail to cite any authority or statute, and we have found none, to show that FHB had a duty to foreclose on its lien even after Citibank instituted foreclosure proceedings. At the time FHB recorded its Notice of Default, its security was lost by Citibank's sale. The Manleys also do not provide any authority to show that FHB had a duty to bid at Citibank's foreclosure sale, even assuming FHB was aware the property was appraised at $267,000.00. Equitable considerations favor placing the burden of investing additional funds or

[7] There is simply no evidence that the extinguishment of the security was the fault of FHB and in the event the security is lost through the fault of the junior lien holder, the result may be different. *See*, e.g., *Bank of America v. Graves*, 59 Cal. Rptr. 2d 288 (Cal Ct. App. 1996); *City Consumer Serv., Inc. v. Peters*, 815 P.2d 234 (Utah 1991).

buying in at a foreclosure sale on the debtor, not the junior mortgagee. *Roseleaf*, 378 P.2d at 100.

[20] Therefore, taking the allegations in the counterclaim as true, it appears beyond doubt that the Manleys can prove no set of facts in support of their claim which would entitle them to relief. Thus, we find that dismissal of the counterclaim for failure to state a claim upon which relief could be granted was proper.

B. Rule 5

[21] Although we have determined that dismissing the counterclaim for failure to state a claim upon which relief could be granted was proper, we still address the Manleys' argument regarding the Superior Court's failure to comply with Rule 5 of the Rules of the Superior Court of Guam in dismissing the counterclaim.[8]

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[8] Rule 5, entitled "Motion Practice" provides:

A. Calendaring and Service.

(1) A motion shall be served not later than twenty-one (21) days before the time set for hearing.

(2) The motion shall be heard if it is supported by a memorandum containing citations, analysis and explanation.

B. Responses to Motions.

(1) Procedure. Non-moving parties shall not later than fourteen (14) days before the hearing serve all other parties either:

(a) A written opposition containing citations, analysis and explanation; or

(b) A notice of non-opposition; or

(c) A joinder in the motion.

(2) Failure To File. Absent good cause shown, failure to file one of the papers required by B. supra has the same effect as filing a notice of non-opposition. If a party is prejudiced by failure to file such failure is sanctionable pursuant to Rule 11 of these rules.

Guam Ct. R. 5.

[22] We have held that the Superior Court "has a duty to analyze the merits of the motion before rendering its decision." *Mano v. Mano*, 2005 Guam 2 ¶ 14, (quoting *Quitugua v. Flores*, 2004 Guam 19 ¶ 28). We also expressed our concern in *Fargo Pacific, Inc. v. Korando Corp.*, 2006 Guam 22 ¶¶ 57-60 where the Superior Court failed to comply with Rule 5 by signing a judgment without providing notice to the other party.

[23] The Ninth Circuit in applying Rule 12(b)(6) has held that a trial court may dismiss a claim *sua sponte* under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Wong v. Bell*, 642 F.2d 359, 361-62 (9th Cir. 1981) (citing 5 Charles Alan Wright & Arthur Q. Miller, *Federal Practice and Procedure* § 1357 1st ed. 1969). *Omar v. Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987). The Ninth Circuit also held that in dismissing a claim *sua sponte*, the trial court must give notice of its *sua sponte* intention to invoke Rule 12(b)(6) and afford the parties "an opportunity to at least submit a written memorandum in opposition to such motion." *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979). However, notice is not required where the claimant cannot possibly win relief. *Omar*, 813 F.2d at 991 (*citing Wong,* 642 F.2d at 362).

[24] In this case, the Manleys waived oral arguments for the hearing scheduled on April 7, 2004, which was set to address the motion for partial summary judgment filed by the Manleys. FHB maintains that the Manleys did not appear at the scheduled hearing on April 7, 2004 and the Superior Court without oral argument dismissed their counterclaim. However, there is nothing in the record to show a hearing actually took place or that the court *sua sponte* dismissed the counterclaim.[9] There is no minute entry of a hearing on April 7, 2004. The judgment of

[9] *See* Declaration (Mar. 7, 2005).

dismissal was predated April 7, 2004 and received by the Superior Court on April 8, 2004, along with FHB's motion to dismiss the counterclaim.[10]

[25] Without a record of any hearing on April 7, 2004 or any other evidence on record, we cannot determine whether the Superior Court dismissed the counterclaim *sua sponte* on April 7, 2004 or whether the Superior Court actually considered FHB's motion to dismiss filed on April 8, 2004. The dismissal of the counterclaim under Rule 12(b)(6) was nevertheless raised before the court at an earlier date, and the Manleys had notice of FHB's position on the counterclaim because FHB asserted such defense in its reply to the counterclaim. Since Rule 12(b)(6) allows a party to request dismissal by pleading or by motion, the result is the same whether such request is made in either form. *McGlone v. Grimshaw*, 620 N.E.2d 935, 938 (Ohio Ct. App. 1993). Nothing in the rule prohibits a court from ruling on a request made in a responsive pleading. If the court ruled *sua sponte* on the request made by FHB in its responsive pleading, then there was no need to provide notice of hearing on FHB's motion to dismiss the counterclaim. The motion to dismiss would be moot.

[26] While we cannot certainly determine whether the Superior Court was in contravention of Rule 5 by not setting a hearing and not affording the Manleys an opportunity to respond to FHB's motion, we cannot say that dismissal of the counterclaim was in error because it is apparent that the Manleys cannot possibly win relief under the claims which they allege. Notice is not required where the claimant cannot possibly win relief. *Omar*, 813 F.2d at 991.

[27] Whether we construe that the Superior Court dismissed the counterclaim *sua sponte* by responsive pleading or on motion by FHB, the result would remain the same. That is, the

[10] The motion to dismiss was also predated April 7, 2004 and received by the court on April 8, 2004.

Manleys cannot possibly win relief under the claims alleged in their counterclaim. The Superior Court's dismissal was proper.

V.

[28] We hold that based on *de novo* review, the Manleys in their counterclaim have failed to state a claim upon which relief can be granted. The counterclaim does not appear beyond doubt to allege facts demonstrating the Manleys are entitled to the relief which they seek.

[29] Accordingly, we **AFFIRM** the Superior Court's judgment of dismissal.

Robert J. Torres

ROBERT J. TORRES, JR.
Associate Justice

F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice