IN THE SUPREME COURT OF GUAM

THE ASSOCIATION OF APARTMENT OWNERS OF GUAM YAMANOI CONDOMINIUM,
Plaintiff-Appellee/Cross-Appellant,

v.

GUAM YAMANOI INC.,
Defendant-Appellant/Cross-Appellee.

Supreme Court Case No.: CVA17-009
Superior Court Case No.: CV0097-16

OPINION

Cite as: 2019 Guam 14

Appeal from the Superior Court of Guam
Argued and submitted on May 15, 2018
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] Guam Yamanoi, Inc. appeals from a Judgment and the denial of its motion to dismiss and its request to compel arbitration. The Association of Apartment Owners of Guam Yamanoi Condominium cross-appeals. We reverse and remand with directions.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In 1990, Guam Yamanoi, Inc. ("Yamanoi") substantially finished its development of a property that was divided so the first six floors of the building operated as a hotel and the upper six floors were condominium units (the "Property"). Yamanoi also formed the Association of Apartment Owners of Guam Yamanoi Condominium (the "Association"). On or about April 20, 1990, Yamanoi executed a Declaration of Horizontal Property Regime ("HPR") that, in part, governs the relationship between the hotel portion and the condominium portion of the Property, and the relationship between Yamanoi and the Association.

[3] Section 2.05.05 of the HPR provides for arbitration if a dispute arises between the parties. It mandates that "[a]ny controversy which shall arise between the parties regarding the rights, duties, or liabilities hereunder of either party shall be settled by binding arbitration." Record on Appeal ("RA"), tab 1, Ex. 1 at 18 (Decl. of Horizontal Property Regime, Apr. 23, 1990). Besides this arbitration provision, section 2.05.06 of the HPR provides that the rights and obligations set out in Article II "may be specifically enforced in any court" and this right "shall be in addition to and not in lieu of any other rights provided by law, in equity, or under the terms of this Declaration." *Id.* at 20. Furthermore, section 8.06 of the HPR generally provides for strict performance of the HPR and the decisions and Bylaws of the Association—with the failure

to comply constituting grounds for injunctive relief and recovery of costs and damages. *Id.* at 28-29.

[4] The Association sued Yamanoi, alleging that it had operated the units in the hotel portion of the Property as unlicensed condominium units. The Association sought a declaratory judgment, an expedited hearing, specific performance under the HPR, and attorney's fees and costs. On the same day that the Association filed its complaint, it also moved for summary judgment.

[5] Yamanoi moved to dismiss the complaint for failure to state a claim because the HPR contained an enforceable arbitration clause. Yamanoi also requested that "should Plaintiff proceed on its claims, that it do so in accordance with the arbitration clause of the [HPR]." RA, tab 13 at 7 (Mot. Dismiss Compl., Feb. 29, 2016).

[6] In its response to the Association's motion for summary judgment, Yamanoi argued that summary judgment was not proper because the motion was prematurely filed and lacked a sufficient evidentiary foundation for a proper decision. The Association did not respond to these arguments in its reply but instead argued that arbitration was not required. Briefing was not yet complete on Yamanoi's motion to dismiss, and the pleadings had not closed when the trial court heard argument on the motion for summary judgment.

[7] The trial court granted the Association's motion for summary judgment and held that the Association was entitled to attorney's fees and costs. Only after finding that summary judgment should be granted—on grounds unrelated to arbitration—did the court address the HPR's arbitration clause in its summary judgment decision. In doing so, the court found that arbitration was not warranted because summary judgment fulfilled what it called the "the basic purpose" of

arbitration: the "'speedy disposition' of the dispute." RA, tab 21 at 11 (Dec. & Order, Mar. 30, 2016).

[8] After the trial court entered judgment, inclusive of attorney's fees and costs, it entertained a hearing on Yamanoi's motion to dismiss. Following this initial hearing on the motion to dismiss, and upon Yamanoi's motion, the court vacated its award of summary judgment. In granting relief from the initial judgment, the court held that the Association was not entitled to attorney's fees because it had not prevailed "in the enforcement of rights" under the HPR. RA, tab 21 at 5 (Dec. & Order). Subsequently, the court again heard arguments on Yamanoi's motion to dismiss, ultimately denying the motion. The court reiterated that it had found summary judgment was warranted and that the arbitration provision did not otherwise prohibit the court from resolving the merits in this manner.

[9] Yamanoi sought permission to file an interlocutory appeal from this order, but judgment was re-entered by the trial court, mooting that petition. We treated Yamanoi's petition as a notice of appeal. The Association cross-appealed the trial court's denial of attorney's fees.

II. JURISDICTION

[10] We have jurisdiction over appeals from a final judgment entered in the Superior Court. *See* 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-29 (2019)); 7 GCA §§ 3107(b), 3108(a), 25102(a) (2005).

III. STANDARD OF REVIEW

[11] We review issues of contract interpretation, including the scope of an arbitration clause, *de novo*. *See Guam YTK Corp. v. Port Auth. of Guam*, 2014 Guam 7 ¶ 18; *Guam Hous. & Urban Renewal Auth. v. Pac. Superior Enters. Corp.*, 2004 Guam 22 ¶ 29 ("*GHURA*").

IV. ANALYSIS

A. The Trial Court Erred in Failing to Enforce a Valid Arbitration Agreement

[12] The Superior Court found that the Association's claims were within the scope of the arbitration clause and that the arbitration clause was valid. But the court refused to enforce this provision based upon the notion that an immediate grant of summary judgment satisfied what it considered the "basic purpose of arbitration"—specifically, the "'speedy disposition' of the dispute." *See* RA, tab 21 at 11 (Dec. & Order) (quoting *Aerojet-Gen. Corp. v. Am. Arbitration Ass'n*, 478 F.2d 248, 251 (9th Cir. 1973)). Yamanoi argues this was reversible error. We agree.

[13] "The resolution of '[w]hether a dispute is within the scope of an arbitration clause should be determined at the earliest possible moment . . . .'" *Brown v. Dillingham Constr. Pac. Basin Ltd.*, 2003 Guam 2 ¶ 12 (alteration in original) (quoting *J & K Cement Constr., Inc. v. Montalbano Builders, Inc.*, 456 N.E.2d 889, 894 (Ill. App. Ct. 1983)). "[A] court may not deny a party's request to arbitrate an issue 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" *GHURA*, 2004 Guam 22 ¶ 31 (quoting *Kiefer Specialty Flooring, Inc. v. Tarkett, Inc.*, 174 F.3d 907, 909 (7th Cir. 1999)). "In interpreting a written contract, 'the intent of the parties is ascertained from the writing alone,'" *id.* ¶ 30 (quoting *Ronquillo v. Korea Auto., Fire, & Marine Ins. Co.*, 2001 Guam 25 ¶ 10), but "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration," *id.* ¶ 31 (quoting *Gov't of Guam v. PacifiCare Health Ins. Co. of Micronesia, Inc.*, 2004 Guam 17 ¶ 26).

[14] The Guam International Arbitration Chapter ("GIAC") governs this dispute. *See* 7 GCA § 42A101(d) (2005) ("The provisions of this Chapter 42A apply to international commercial arbitration and domestic arbitration . . . ."); *see also Asia Pac. Hotel Guam, Inc. v. Dongbu Ins.*

Co., 2011 Guam 18 ¶ 10; *Rong Chang Co. v. M2P, Inc.*, 2012 Guam 1 ¶ 30. Under 7 GCA § 42A202,

> [a] court before which an action is brought in a matter which is the subject of an arbitration agreement *shall*, if a party so requests not later than when submitting his or her first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

7 GCA § 42A202(a) (2005) (emphasis added). This requirement is mandatory. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (finding that an analogous provision under the Federal Arbitration Act "leaves no place for the exercise of discretion by a [trial] court"); *C. Itoh & Co. (Am.) v. Jordan Int'l Co.*, 552 F.2d 1228, 1231 (7th Cir. 1977). Courts are not free to ignore section 42A202(a) on a whim. *See* 7 GCA § 42A105 (2005) ("In matters governed by this Chapter 42A, no court shall intervene except where so provided in this Chapter 42A or federal law."); *see also Southland Corp. v. Keating*, 465 U.S. 1, 7 (1984) ("Contracts to arbitrate are not to be avoided by allowing one party to ignore the contract and resort to the courts."). Rather, "courts must rigorously enforce arbitration agreements according to their terms." *Walthour v. Chipio Windshield Repair, LLC*, 745 F.3d 1326, 1329-30 (11th Cir. 2014) (quoting *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013)); *cf. Henry Schein, Inc. v. Archer & White Sales, Inc.*, -- U.S. --, 139 S. Ct. 524, 529-30 (2019) ("A court has 'no business weighing the merits of the grievance' because the 'agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious.'" (quoting *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986))).

[15] Because the GIAC substantively mirrors the Federal Arbitration Act ("FAA"), we have found that federal case law interpreting the FAA is especially persuasive where the GIAC applies. *See Asia Pac. Hotel*, 2011 Guam 18 ¶ 19. "The 'principal purpose' of the FAA is to

'ensur[e] that private arbitration agreements are enforced according to their terms.'" *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (alteration in original) (quoting *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)). The point of permitting parties to contractually "design[] arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute," which may also reduce costs and accelerate dispute resolution. *Id.* at 344-45. While the speedy resolution of disputes is *one* of the policy considerations favoring arbitration, it is not the overriding goal—ultimately, an "arbitration agreement is a contract and the court will not rewrite it for the parties." *Williams v. E.F. Hutton & Co.*, 753 F.2d 117, 119 (D.C. Cir. 1985); *see also Concepcion*, 563 U.S. at 345 (explaining that the overriding goal of the FAA was not to promote expeditious resolution but to "ensure judicial enforcement of privately made agreements to arbitrate" (quoting *Dean Witter*, 470 U.S. at 219)); *Southland Corp.*, 465 U.S. at 7. "When the parties' contract assigns a matter to arbitration, a court may not resolve the merits of the dispute even if the court thinks that a party's claim on the merits is frivolous." *Henry Schein*, 139 S. Ct. at 530.

[16] In light of this case law, the trial court's insistence that the speedy resolution of the dispute warranted ignoring the valid arbitration clause was reversible error. *See C. Itoh*, 552 F.2d at 1231 ("Considerations of *judicial* economy bear no relation to 'the making and performance of an agreement to arbitrate,' and to permit a [trial] court to deny a stay pending arbitration based on such discretionary considerations would . . . frustrate the strong federal policy in favor of arbitration . . . ." (emphasis added)). A trial court cannot simply vitiate an otherwise valid arbitration clause based on its own determination as to the most expeditious way to resolve a dispute. For a court "[t]o substitute [its] own notion of fairness in place of the explicit terms of [the parties'] [arbitration] agreement would deprive them of the benefit of their

bargain." *BP Expl. Libya Ltd. v. ExxonMobil Libya Ltd.*, 689 F.3d 481, 496 (5th Cir. 2012) (first, second and third alterations in original) (quoting *Universal Reinsurance Corp. v. Allstate Ins. Co.*, 16 F.3d 125, 130 (7th Cir. 1993)).

B. The Association's Claims for Specific Performance and Injunctive Relief are Arbitrable

[17] The trial court specifically found that the parties' dispute fell within the scope of the arbitration clause. The Association argues this determination was in error because its claims for specific performance and injunctive relief are outside the scope of the arbitration clause under sections 2.05.06 and 8.06 of the HPR. This argument is not persuasive.

[18] The parties have not separately raised the "gateway" question of who resolves the question of arbitrability. *See Henry Schein*, 139 S. Ct. at 529; *see also PacifiCare*, 2004 Guam 17 ¶ 27 ("The question of whether a claim or dispute is arbitrable is generally considered one for the courts, and not the arbitrators, unless the parties clearly and unmistakably reserved the question for arbitrators."). Here, "[b]ecause neither party argues that the arbitrator should decide this question, there is no need to apply the rule requiring 'clear and unmistakable' evidence of an agreement to arbitrate arbitrability." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 n.5 (2010). We therefore address the Association's arguments regarding the substantive question of whether the dispute is arbitrable. *See CardioNet, Inc. v. Cigna Health Corp.*, 751 F.3d 165, 171-72 (3d Cir. 2014) (stating that court may consider question where "neither party questions the propriety of the [court] determining whether the dispute is arbitrable").

[19] In interpreting a written contract, "the intention of the parties is to be ascertained from the writing alone, if possible," 18 GCA § 87105 (2005), and "[t]he language of a contract is to govern . . . , if the language is clear and explicit, and does not involve an absurdity," 18 GCA § 87104 (2005). "The whole of a contract is to be taken together, so as to give effect to every part,

if reasonably practicable, each clause helping to interpret the other." 18 GCA § 87107 (2005); *see also Torres v. Torres*, 2005 Guam 22 ¶ 17; *Wasson v. Berg*, 2007 Guam 16 ¶ 34. Because "contracts containing an arbitration provision must be construed in favor of arbitration," we also view carve-outs to a generally applicable arbitration provision to be limited in scope. *GHURA*, 2004 Guam 22 ¶ 35 (interpreting carve-out from arbitration clause narrowly). In reading sections 2.05.05, 2.05.06, and 8.06 together, and in the context of the entire agreement, we find the Association's interpretation of these provisions unjustified. *Cf. HRC Guam Co. v. Bayview II L.L.C.*, 2017 Guam 25 ¶ 61 (finding similarly where a party failed to appropriately read one contractual provision in concert with others).

[20] The interpretation of section 2.05.06 proffered by the Association effectively ignores the second sentence of this provision, which states that "[t]he right of specific performance shall be *in addition to and not in lieu of* any other rights provided . . . under the terms of this Declaration." RA, tab 1, Ex. 1 at 20 (Decl. of Horizontal Property Regime) (emphasis added). One of those rights is the right to have an arbitrator—rather than the courts—resolve any dispute between the parties. We must "give effect to all [of a contract's] provisions and to render them consistent with each other." *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995) (collecting cases). For this reason, we read section 2.05.06 as applying only to claims for temporary injunctive relief to maintain the status quo but not as exempting a party from binding arbitration over claims of permanent injunctive relief or specific performance that otherwise fall within the scope of section 2.05.05. *See Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1281-82, 1285 (9th Cir. 2009); *see also Positive Software Sols., Inc. v. New Century Mortg. Corp.*, 259 F. Supp. 2d 531, 538-39 (N.D. Tex. 2003); *Am. Dairy Queen Corp. v. Tantillo*, 536 F. Supp. 718, 723 (M.D. La. 1982).

[21] Section 8.06 of the HPR provides that failure to strictly comply with the HPR "shall be grounds for an action to recover sums due, for damages, or injunctive relief, or both." RA, tab 1, Ex. 1 at 29 (Decl. of Horizontal Property Regime). Under the Association's interpretation, this would exempt not only claims for injunctive relief from arbitration, but also claims for damages—an interpretation that would render the parties' arbitration agreement effectively meaningless. *See Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 47 ("[T]he law prevents us from interpreting a contract in such a way as to render parts of it surplus."); *see also Unified Interest v. PacAir Props., Inc.*, 2017 Guam 9 ¶ 31 ("The conclusion that a party's promise should be ignored as meaningless is at best a last resort." (quoting *Cobble Hill Nursing Home, Inc. v. Henry & Warren Corp.*, 548 N.E.2d 203, 206 (N.Y. 1989))). We therefore also reject the Association's interpretation of section 8.06.

[22] Even if we assumed these three relevant provisions were ambiguous on the matter, any "ambiguities regarding the question of '*whether* a particular merits-related dispute is arbitrable because it is within the scope of a valid arbitration agreement' are construed in favor of arbitration." *GHURA*, 2004 Guam 22 ¶ 31 (quoting *PacifiCare*, 2004 Guam 17 ¶ 26). Because courts must resolve "ambiguities as to the scope of the arbitration clause itself . . . in favor of arbitration," we find that neither section 2.05.06 nor section 8.06 allows the Association to avoid arbitration. *Volt*, 489 U.S. at 475-76; *see also GHURA*, 2004 Guam 22 ¶ 31; *Sumitomo Constr. Co. v. Zhong Ye, Inc.*, 1997 Guam 8 ¶ 14 ("When the demand for arbitration uses broad language, . . . arbitrators are given the necessary power to resolve the dispute. Consequently, any doubt as to the arbitrator's jurisdiction is resolved in favor of arbitration." (citations omitted)).

[23] Based on our holding, we need not reach the other arguments presented by the parties. *See Hemlani v. Hemlani*, 2015 Guam 16 ¶ 33.[1]

V. CONCLUSION

[24] For the reasons discussed above, we **VACATE** the Judgment, dated November 1, 2017, and the Decision and Order, dated March 30, 2016, and **REVERSE** the Decision and Order, dated April 10, 2017. We **REMAND** this case to the trial court for further proceedings not inconsistent with this Opinion, along with specific directions to dismiss the complaint or stay proceedings and to compel arbitration upon appropriate motion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice

[1] The Association argues that arbitration is not required because Yamanoi did not demand arbitration under the terms of the HPR. The Association did not raise this argument below, and it is therefore waived. *See Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 78 (stating that court will generally not consider an argument raised for first time on appeal (collecting cases)). But in any event, we have repeatedly found that such questions are not for the courts to resolve. *See GHURA*, 2004 Guam 22 ¶ 42; *PacifiCare*, 2004 Guam 17 ¶ 29.