IN THE SUPREME COURT
TERRITORY OF GUAM

MARIE TAITANO CAMACHO,
Appellant,

vs.

ANTHONY ANGOCO CAMACHO,
Appellee.

Supreme Court Case No. CVA96-006
Superior Court Case No. DM0955-93

OPINION

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Appeal from the Superior Court of Guam
Argued and Submitted 29 January 1997
Agana, Guam

Appearing for the Appellant
Thomas Parker
Zamsky Law Firm
Suite 501, Bank of Guam Building
111 Chalan Santo Papa
Agana, Guam 96910

Appearing for the Appellee
Benjamin C. Sison, Jr.
Law Offices of Robert J. Torres
A Professional Corporation
173 Aspinall Avenue, Suite 206A
Agana, Guam 96910

BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and MONESSA G. LUJAN,[1] Associate Justices.

WEEKS, J.:

Appellant Marie Camacho appeals from a Decision and Order of the Superior Court, the Honorable Alberto C. Lamorena, III, presiding, finding that a separation agreement between Appellant and her husband, Appellee Anthony Camacho, had been rescinded by implication. Finding no reversible error, we affirm the Decision and Order of the trial court.

I. BACKGROUND

[1] Marie Camacho and Anthony Camacho have been married since 9 May 1987. They separated on 12 October 1993 and executed a separation agreement on 21 October 1993. The separation agreement specified how the Camachos' assets and liabilities were to be divided. According to the agreement, the Camachos' home is the separate property of Mrs. Camacho. The Camacho's community property consisted of two automobiles, an Acura Vigor and a Mazda Truck, and the household appliances and furniture. According to the separation agreement, the furniture, appliances, and the Acura Vigor were to go to Mrs. Camacho, and the Mazda Truck was to go to Mr. Camacho. Also under the agreement, Mrs. Camacho was to assume all of the community debts, and Mr. Camacho was to pay $1,000.00 per month in child support. The separation agreement was incorporated into a Judgment of Separate Maintenance, "binding between these parties," signed by Judge Lamorena, and filed on 21 October 1993 in case number DM0955-93. The judgment was prepared by counsel for Mrs. Camacho.

[2] Approximately two months after the Judgment of Separate Maintenance was filed, Mr. and Mrs. Camacho reconciled and resumed married life for nearly two more years, only to separate again on 14 August 1995. Mr. and Mrs. Camacho are in dispute as to what took place during the two year period of reconciliation. According to Mr. Camacho, they verbally agreed to disregard the separation agreement, and to carry on as though it never existed. Mr. Camacho claims that he helped pay the debts that Mrs. Camacho agreed to pay under the agreement, including the mortgage on the house, and that the parties jointly incurred new loans in order to pay these community debts. Mr. Camacho further claims that certain loan payments were being deducted directly from his paychecks.

[3] Mrs. Camacho, on the other hand, claims that, during the two year reconciliation period, the separation agreement was never discussed. She claims that Mr. Camacho has never contributed toward any mortgage payments on the house, which she claims has always been her separate property, and that the couple did not jointly incur new debts during the reconciliation period.

[4] After the couple separated for the second time in August of 1995, Mrs. Camacho filed for divorce with the Superior Court, on 17 October 1995. In her divorce complaint, Mrs. Camacho requested that the court grant the divorce and also that the court approve the separation agreement, executed and incorporated into a judgment two years prior. The divorce case, DM0924-95**,** was assigned to Judge Manibusan. Mr. Camacho's Answer to the divorce complaint included the defense that the separation agreement had been mutually rescinded by the parties through their actions during the reconciliation period. On 13 November 1995, Mrs. Camacho filed, in DM0924-95**,** an Application for Order to Show Cause ("OSC"), in which application she alleged that Mr. Camacho has wilfully and wrongfully refused to make child support payments in the amount provided for in the separation agreement.

[1] Justice Monessa G. Lujan participated in the decision in this case but passed away on 15 March 1997 before this opinion had been completed.

[5] Two hearings were conducted on the Application for Order to Show Cause before Judge Manibusan. At the first hearing, on 22 November 1995, Judge Manibusan heard the arguments from both sides, and issued a temporary child support order in the amount of $290.85 per month. Judge Manibusan scheduled another hearing to give Mrs. Camacho time to counter Mr. Camacho's affidavit regarding the alleged rescission of the separation agreement.

[6] At the second hearing, on 13 December 1995, Judge Manibusan refused to take any action to either approve or invalidate the separation agreement because, according to Judge Manibusan, the determination of that issue requires a trial. The judge instructed counsel for Mrs. Camacho that if he wanted an Order to Show Cause to enforce the Judgment of Separate Maintenance signed by Judge Lamorena in DM0955-93, then counsel would have to file an Application for OSC in that case before Judge Lamorena. Counsel for Mrs. Camacho agreed to do so.

[7] On 23 February 1996, Mrs. Camacho filed an OSC Application before Judge Lamorena in DM0955-93. Her application was nearly identical to the one filed before Judge Manibusan, and added only that under the separation agreement, she agreed to assume liability for certain jointly incurred debts. A hearing on this OSC Application was conducted before Judge Lamorena on 2 April 1996. At this hearing, Judge Lamorena heard arguments from both sides on the issue of whether the separation agreement had been mutually rescinded by implication. The validity of the Judgment of Separate Maintenance was never questioned by counsel or by the court at this hearing.

[8] In addition to her arguments in support of the validity of the separation agreement, Mrs. Camacho represented to the judge that she is only seeking payments to cover the periods of separation, not including the reconciliation period. Mrs. Camacho further stated that Mr. Camacho had made some child support payments pursuant to the temporary order of Judge Manibusan, in an amount totaling approximately $1,000.00. The court took the matter under advisement, and issued a Decision and Order, filed 11 September 1996.

[9] In its Decision and Order, the trial court held that the separation agreement is invalid because the actions of the parties subsequent to execution evidenced an intent to rescind the agreement. The Judge cited *Lo Vasco v. Lo Vasco*, 115 P.2d 562 (Cal. Dist. Ct. App. 1941) to support the conclusion that the agreement had been mutually rescinded. The court also rejected an argument from Mrs. Camacho that the agreement expressly provides that neither party may "alter, amend, or modify our marital property agreement contained in this instrument, except by an instrument in writing executed by both of us." According to Judge Lamorena, "[n]owhere does it state that a rescission, cancellation or termination of the Agreement has to be in writing" (*Camacho v. Camacho*, DM0955-93 (Super. Ct. Guam Sept. 11, 1996) at 2. The Decision and Order concludes that the separation agreement is invalid and that "the order [of Judge Manibusan] to reduce the child support to $290.85 is upheld until the time of the dissolution."[2] The Decision and Order makes no mention, however, of the effect of the invalid agreement upon the court's own prior judgment incorporating the agreement. Notice of appeal was timely filed.[3]

[2] Despite the fact that the 11 September Decision and Order disposed of all of the issues before the court, the last sentence of the Decision and Order sets a scheduling conference for 27 September 1996 at 10:30 a.m. It is unclear from the record why the court found it necessary to order this scheduling conference.

[3] The Court notes that Rule 4(a) of the Rules of Appellate Procedure for the Supreme Court of Guam specifies that filing of the notice of appeal is to be no later than thirty (30) days from the entry of judgment. Furthermore, Title 7 Guam Code Annotated § 3108 provides that final judgment must be filed before an appeal to this Court may be taken. Although the record does not indicate a final judgment in this case, Appellee has waived the separate judgment requirement by failing to object to this appeal on that ground. *Vernon v. Heckler*, 811 F.2d 1274, 1276 (9th Cir. 1987).

II. DISCUSSION

I.

[10] Appellant raises two arguments regarding the Judgment of Separate Maintenance which incorporated the terms of the separation agreement. Specifically, Appellant argues that, unlike a separation agreement, a Judgment of Separate Maintenance may not be rescinded by implication. In addition, Appellant argues that the trial court erred in lowering the child support amount incorporated into the judgment without proper notice or hearing. We need not address these two arguments, however, because we find the Judgment of Separate Maintenance in this case to be invalid.

[11] The provision within Guam law that authorizes the separate maintenance cause of action is Civil Code § 137, also codified at 19 GCA § 8402. With the exception of references to the prior code, this section appears in the Guam Code Annotated exactly as it was enacted into the Civil Code in 1953.

> **§ 8402. Alimony, Permanent Support.** When an action for dissolution of marriage is pending, the court may, in its discretion, require the husband or wife, as the case may be, to pay as alimony any money necessary to enable the wife, or husband, to support herself and her children, or to support himself and his children, or prosecute or defend the action. When the husband or wife willfully deserts the wife or husband, or when the husband or wife has any cause of action for dissolution of marriage as provided in §8203 of this Title [adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, or conviction of felony], he or she may, without applying for dissolution of marriage, maintain in the Superior Court an action against her or him for permanent support and maintenance of himself or herself or of himself and children or of herself and children. When the husband willfully fails to provide for the wife, she may, without applying for dissolution of marriage, maintain in the Superior Court an action against him for permanent support and maintenance of herself or of herself and children.
>
> During the pendency of any such action the court may, in its discretion, require the husband or wife, as the case may be, to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The court, in granting the husband or wife permanent support and maintenance of himself or herself, or of himself and children or herself and children, in any such action, shall make the same disposition of the community property and of the homestead, if any, as would have been made if the marriage had been dissolved by the decree of a court of competent jurisdiction. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court.

19 GCA § 8402 (emphasis added).

[12] As stated previously, 19 GCA § 8402 is re-codification of Guam Civil Code § 137, which was adopted from former § 137 of the California Civil Code. As is often the case with Guam code provisions, due to changes in California law, Guam Civil Code § 137 no longer has a counterpart in the California Civil Code. Irreconcilable differences are now grounds for both divorce and legal separation in California. Guam law, however, continues to require that divorce and separate maintenance actions be based upon allegations of adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, or conviction of felony. 19 GCA § 8203. In other words, unlike California, Guam has not moved to a "no fault" statutory scheme in the area of divorce and separation.

[13] Under Guam's statutory scheme, therefore, the requirements for maintaining a cause of action for separate maintenance are as follows: (1) there must be some alleged grounds for the action, generally the

same as for a divorce action; and (2) the cause of action must be for the purpose of obtaining spousal support. Both of these requirements are expressed in 19 GCA § 8402.

[14] In the instant case, neither of these two basic elements of a separate maintenance action are present. First, from the Complaint for Separate Maintenance, filed on 21 October 1993, that led to the Judgment of Separate Maintenance, there are no allegations of any grounds whatsoever for the action. In fact, the only statement of a reason for the separation is at the bottom of page one of the separation agreement, where it states that "[u]nhappy differences have arisen between us as a result of which we have agreed to separate and hereafter live permanently apart." Even if this were one of the grounds for divorce or separation provided in § 8203, which it is not, it still should have been in the complaint, or, at least, in the Judgment of Separate Maintenance.

[15] It is possible that the trial court in this case allowed judgment to be entered without any alleged grounds, based on Mr. Camacho's Appearance and Consent Declaration, filed with Mrs. Camacho's Complaint for Separate Maintenance. In the declaration, Mr. Camacho states, among other things, the following:

> I waive the time allowed by law to answer the Complaint, and consent that the Court enter a default and default judgment against me for a Separate Maintenance and/or other relief requested in the Complaint. I waive further notice of proceedings, and waive the filing of findings of fact and conclusions of law.
>
> I further stipulate and agree that there exists adequate grounds as stated in the Complaint for Separate Maintenance and other requested relief. I agree that this matter go forward as an uncontested Separate Maintenance without hearing, based on this consent. I waive any objections to entry of default and/or entry of default judgment which I may be able to raise under the Soldier and Sailor's Civil Relief Act.

[16] Clearly, from Mr. Camacho's consent declaration, he did not intend to contest any portion of Mrs. Camacho's Complaint against him for separate maintenance. The fact that Mr. Camacho consented, however, does not remove the statutory requirement that Mrs. Camacho allege one of the specified grounds for the action. Mr. Camacho's stipulation that adequate grounds exist "as stated in the Complaint for Separate Maintenance," is of no help because no grounds were stated in the complaint.

[17] Mr. Camacho's consent declaration, and the "unhappy differences" language of the separation agreement suggest that the parties may have had in mind a court approved separation by consent. Separation by consent, however, is only mentioned in Title 19 in order to make clear that such a separation is <u>not</u> a valid ground for a divorce or separate maintenance action. 19 GCA § 8210.

> **§ 8210. Separation by Consent; Not Desertion.** Separation by consent, with or without the understanding that one of the parties will apply for a dissolution of marriage, is not desertion.

As § 8210 indicates, parties may separate by consent without fear of being accused of desertion, and thereby creating grounds for divorce or separate maintenance. There is no need, however, for parties to come to court to effectuate this type of separation, and, for this type of separation, there is no need to comply with the requirements of § 8402.

[18] Under the facts of this case, the parties separated by consent and sought court approval of a separation agreement. Aside from "unhappy differences" stated in the separation agreement, however, there were no grounds for the action alleged in the complaint, in the agreement, or in the Judgment of Separate Maintenance.

[19] Secondly, the Complaint for Separate Maintenance does not include a request for court ordered support of Mrs. Camacho. In fact, page seven of the separation agreement contains a paragraph that expressly waives any claim of spousal support. In addition, the Judgment of Separate Maintenance states only that the "spouses are hereby authorized to live separate and apart from each other, that is, from bed and board, without dissolving their marital union," and that "[t]he Separation Agreement between the parties, dated OCTOBER 21, 1993, which provides for the division of their community and/or quasi-community property, community debts and/or liabilities, custody of the minor child, and child support, is hereby approved by the Court and made valid and binding between these parties." Nowhere in the judgment does the court order that Mr. Camacho separately support and maintain Mrs. Camacho, the very purpose of a separate maintenance judgment.

[20] Cases interpreting the source of Guam's separate maintenance statutory provision, former § 137 of the California Civil Code, have expressly held that a decree of separate maintenance cannot be entered independent of any need for support. *Solomon v. Solomon*, 257 P.2d 760, 763 (Cal. Dist. Ct. App. 1953). The court in *Solomon* considered a husband's request that the court grant a decree of separate maintenance primarily to resolve the property ownership rights of the parties. The husband did not request an amount for his own support. The court held as follows:

> The prayer is not for any certain amount of maintenance but that the court "grant a decree of separate maintenance" and further asks determination of right in the property and an accounting. This complaint seems predicated on the idea that there can be a "decree of separate maintenance" independent of any need for support, in the manner of a decree for separation from bed and board. However such a limited divorce is unknown in California, *O'Connor v. O'Connor*, 91 Cal.App.2d 147, 149, 204 P.2d 916; *Monroe v. Superior Court*, 28 Cal.2d 427, 431, 170 P.2d 473; 35 Cal. L. Rev. 153, and although there is some resemblance between separate maintenance and separation from bed and board, no cases have been found indicating that an action for separate maintenance without any need of support is permitted in California.

Solomon, 257 P.2d at 763 (emphasis added).

[21] While, arguably, a provision for child support might be deemed an indirect request for spousal support, the language of § 8402 seems too specific to allow such a broad interpretation. According to the language of § 8402, either spouse may, under certain specified circumstances, maintain an action against the other "for permanent support and maintenance of himself or herself or of himself and children or of herself and children." 19 GCA § 8402 (emphasis added). Nowhere in the section does it authorize a separate cause of action solely for support and maintenance of children. The California Legislature addressed this issue in 1941 by amending former California Civil Code § 137, from which the Guam provision was adopted, to include a separate cause of action for support and maintenance of children.[4] The law on Guam, however, 19 GCA § 8402, has never been amended in any manner.

[22] There are, of course, other sections of Title 19 that authorize causes of action for child support. 19 GCA §§ 4105, 8403, 8405, 8406. As the language of § 8402 indicates, however, the purpose of an action for separate maintenance is to protect a spouse against desertion or willful failure, on the part of the other spouse, to provide support to the complaining spouse. If there is no need for spousal support, there may still be a basis for a cause of action for child support, but there is no basis for an action for separate maintenance.

[4] Section 137 has since been repealed in California. The statutory basis in California for a cause of action for support and maintenance of children is now California Family Code § 4000.

[23] Thus, according to the provision of Guam law authorizing separate maintenance actions, the Judgment of Separate Maintenance, incorporating the separation agreement in this case is invalid. The consequence of this conclusion, is that this Court's inquiry is properly limited to the separation agreement itself, and whether the trial court erred in finding it to be rescinded by implication.

II.

[24] Appellant maintains that the trial court erroneously applied the law in arriving at the conclusion that the separation agreement had been rescinded by implication. We review the trial court's application of law *de novo*. *United States v. Michael R.*, 90 F.3d 340, 343 (9th Cir. 1996); *United States v. Sahhar*, 56 F.3d 1026, 1028 (9th Cir. 1995).

a. Application of Case Law on Rescission by Implication

[25] Appellant contends that the case the trial court relied upon, *Lo Vasco v. Lo Vasco*, 115 P.2d 562 (Cal. Dist. Ct. App. 1941), is inapplicable to the case at bar. We disagree.

[26] The trial court relied upon *Lo Vasco*, a California case, presumably because the Civil Code of Guam, which governs contracts including separation agreements, was adopted from the California Civil Code. *See* Forward to Volume I of Guam Civ. Code (1970). In *Lo Vasco*, a married couple executed a separation agreement and then reconciled for ten years. During the reconciliation period, the couple made loan payments and mortgage payments from family earnings, and otherwise failed to carry out the separation agreement. Furthermore, the parties in *Lo Vasco* physically destroyed the document containing the agreement. The *Lo Vasco* court held the separation agreement to have been mutually rescinded by the parties. Id. at 664. According to Appellant, because physical destruction of the separation agreement in the instant case never took place, the trial court's determination that the agreement had been rescinded was erroneous. We find this contention to be without merit. The *Lo Vasco* court cited destruction of the document as one factor among several factors leading to the conclusion that "[t]he evidence and the conduct of the parties rather conclusively show a rescission and cancellation of the separation agreement in question." *Id.*

[27] Appellant also argues that mutual rescission of a separation agreement by implication requires more than just a showing that the parties reconciled. Appellant correctly cites *In re Marriage of Broderick*, 257 Cal. Rptr. 397 (Cal. Dist. Ct. App. 1989), and several other California cases, to support this proposition. In *Broderick*, the court was asked to invalidate a quitclaim deed from a wife to her husband on the grounds that the parties to the deed had executed it during a separation but had subsequently reconciled. Rejecting this argument, the court held as follows:

> While it has been held that reconciliation and resumption of marital relations may cancel the executory provisions of a property settlement agreement (*Tompkins v. Tompkins* (1962) 202 Cal.App.2d 55, 59-60 [20 Cal. Rptr. 530]; *Harrold v. Harrold* (1950) 100 Cal.App.2d 601, 609 [224 P.2d 66]), it is well settled that proof of reconciliation alone does not abrogate the agreement (*Bluhm v. Bluhm* (1954) 129 Cal. App. 2d 546, 550 [277 P.2d 421]). To avoid the contract on this basis, there must be a clear indication that by reconciling the parties intended to annul the agreement and restore their earlier property rights. Such intent can be proven, for example, by the destruction of the document containing the agreement, execution of reconveyances or restoration of the control of the property to one who formerly exercised it. (*Plante v. Gray* (1945) 68 Cal.App.2d 582, 588 [157 P.2d 421]; 33 Cal.Jur.3d, Family Law, § 529, p.104.) This is particularly true where the parties have received or accepted the benefits of the settlement agreement. (*Bluhm v. Bluhm*, supra, 129 Cal.App.2d at p.550; see also *Crossley v. Crossley* (1950) 97 Cal.App.2d 627 [218 P.2d 132].) At any rate, the issue of whether the parties intended to abrogate their property agreement by resuming their mutual marital

> responsibilities constitutes a factual determination and the finding of the trier of fact will not be overruled if supported by the record. (*Tompkins v. Tompkins*, *supra*, 202 Cal.App.2d at p.59; see also *Morgan v. Morgan*, *supra* 106 Cal.App.2d at p.193.)

Broderick, 257 Cal. Rptr. at 401.

[28] Appellant appears to be correct in relying upon *Broderick* for the proposition that reconciliation of the parties alone is insufficient to support a finding of mutual rescission of a separation agreement. Neither *Broderick* nor any of the cases cited therein, however, undermines the holding in *Lo Vasco*, the case cited by the trial court. In *Lo Vasco*, more than just the reconciliation led the court to conclude that the agreement had been rescinded. Likewise, the trial court, in the instant case, relied not just upon the parties' reconciliation, but also upon a finding that community funds were used to pay debts assigned solely to Mrs. Camacho under the agreement, and upon a finding that, since executing the agreement, Mr. Camacho has obtained several loans in order to pay debts Mrs. Camacho agreed to pay.

[29] As in all of the cases cited by both parties, courts base the decision on this issue on a variety of facts that indicate the parties' intent that the separation agreement no longer be in force. The trial court, in the instant case, took this same approach, and thus did not, as Appellant contends, erroneously apply the law relating to separation agreements.

b. Interpretation of the Language of the Separation Agreement

[30] Appellant contends that the court erred in its interpretation of the language of the separation agreement, and in disregarding the express language of the separation agreement in favor of the intent of the parties. To support this argument, Appellant relies upon various sections of Title 18 of the Guam Code Annotated pertaining to contract interpretation. According to Appellant, the clause in the separation agreement that requires alterations, amendments, and modifications to be in writing should be interpreted to require also that a rescission of the agreement be in writing. This express language, Appellant argues, should have controlled the trial court's interpretation of the agreement. We find this argument unpersuasive.

[31] In its Decision and Order, the trial court specifically addressed the following provision contained within the settlement agreement: "We agree that we may not alter, amend, or modify our marital property agreement contained in this instrument, except by an instrument in writing executed by both of us." The trial court rejected Mrs. Camacho's argument that this language also requires that a rescission be in writing. The court reasoned that "[n]owhere does it state that a rescission, cancellation or termination of the Agreement has to be in writing." We agree with the trial court's interpretation of this provision.

[32] Title 18 of the Guam Code Annotated, Chapter 87, relates to the interpretation of contracts. The following sections of Title 18 are particularly applicable in this case:

> **§ 87104. Intention from language.** The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.
>
> **§ 87105. Interpretation of written contracts.** When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this Chapter.
>
> **§ 87110. Words in usual sense.** The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

> **§ 87111. Technical words.** Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

[33] With regard to the intent of the parties at the time of contracting, the intent that must be ascertained from the language of the contract is whether the clause that requires alterations, amendments, and modifications to be in writing includes complete rescission, termination, or cancellation of the agreement. It is clear from the four sections of Title 18, cited above, that in interpreting a clause of a contract to determine the intent of the contracting parties, whenever possible, the express language of the contract should control. The words of a contract should be given an ordinary meaning, unless they are technical words, such as legal terms of art.

[**34]** The words "alter," "amend," and "modify" are clearly terms of art, routinely used by lawyers to denote specific legal concepts. When contained within a written contract, as in the instant case, these terms should not be interpreted to include additional concepts with distinct legal definitions. Alteration or modification refers to a change in the terms of a contract and does not describe a complete abandonment of the contract. *See Honda v. Reed,* 319 P.2d 728 (Cal. Dist. Ct. App. 1958). The California Court of Appeals in *Honda,* construed a provision of the California Civil Code which provides that alterations of written contracts must be in writing. The *Honda* court described the distinction between abandonment of a contract by mutual consent and alteration of the contract as follows:

> Abandonment is not an "alteration" or modification of a contract. Abandonment of a contract terminates it and entirely abrogates so much of it as is unperformed. *Grant v. Aerodraulics Co.*, 91 Cal.App.2d at page 75, 204 P.2d at page 687, and cases there cited.
>
> A contract may be mutually abandoned by the parties at any stage of its performance or before any performance has been commenced, and by such abandonment each party is released from any further performance, or, as in the instant action, each party is released from any performance at all. *Martin v. Butter*, 93 Cal.App.2d 562, 566, 209 P.2d 636, and cases there cited; *Evans v. Rancho Royale Hotel Co.*, 114 Cal.App.2d 503, 508, 250 P.2d 283.

Honda, 319 P.2d at 731.

[35] Like the court in *Honda*, the trial court, in this case, found the parties, subsequent to executing their agreement, to have rescinded, or abandoned, the agreement. The court refused Mrs. Camacho's invitation to include rescission within the definition of "alter," "amend," or "modify" for purposes of interpreting the language in the agreement that requires alterations, amendments, and modification to be in writing. We find the trial court's interpretation of this language to be correct.[5]

III.

[36] Appellant contends that the trial court erred in failing to receive evidence to support its conclusion that the separation agreement had been rescinded by implication. Appellant's contention is essentially that

[5] In view of our approval of the trial court's interpretation of the language of the agreement, we may quickly dispose of Appellant's argument that the trial court disregarded the express language of the agreement in favor of the intent of the parties. The trial court focused upon the intent of the parties, as evidenced by their actions subsequent to execution of the agreement, only after it had determined that the provision in the agreement requiring written alterations, amendments, and modifications does not apply to a rescission. The trial court's somewhat misleading statement that "[i]nstead of looking at the technical language of the Agreement, we will look to the actual intent of the parties" may have caused some confusion on this point. When the trial court's Decision and Order is read as a whole, it is clear that this statement is intended to apply to the question of whether the parties, subsequent to executing the separation agreement, intended to rescind or cancel the agreement.

a trial, or at least an evidentiary hearing, should have been conducted to determine whether the separation agreement had been rescinded by implication. Such a question, Appellant argues, is a question of fact and cannot be determined without evidence of some kind.

[37] We review the factual determinations of the trial court with regard to rescission by implication of a separation agreement under the substantial evidence standard. *Estate of Zlacket*, 4 Cal. Rptr. 450, 453 (Cal. Dist. Ct. App. 1960); *Margolis v. Margolis*, 251 P.2d 396, 400 (Cal. Dist. Ct. App. 1952); *Morgan v. Morgan*, 234 P.2d 782, 784 (Cal. Dist. Ct. App. 1951); *Plante v. Gray*, 157 P.2d 421, 424 (Cal. Dist. Ct. App. 1945). Under this standard, factual findings of the trial court are upheld "unless there is an entire lack of substantial evidence in support thereof." *Plante*, 157 P.2d at 424. For example, the court in *Estate of Zlacket*, in upholding the validity of a separation agreement, held that "[t]here was substantial evidence upon which the trial court based its finding on the question involved and in that there was such substantial evidence we are without power to substitute our judgment for that of the trial court's, even if we were so inclined." *Estate of Zlacket*, 4 Cal. Rptr. at 453.

[38] Our review of the record reveals that certain factual assertions by Mr. Camacho remain undisputed. First, it is undisputed that Mr. and Mrs. Camacho reconciled for nearly two years subsequent to executing the separation agreement. Second, Appellant has not disputed that, subsequent to execution of the agreement, community funds have been used to pay debts assigned under the agreement to Mrs. Camacho. Finally, it is undisputed that, since the time the parties reconciled, Mr. Camacho has himself obtained new loans in order to pay some of these debts, and that repayment amounts on these loans are regularly deducted from Mr. Camacho's paychecks. These undisputed assertions led the trial court to conclude that the parties intended to rescind the separation agreement. We find these undisputed factual assertions, contained in affidavits and raised at hearings before the trial court, sufficient to satisfy the substantial evidence standard.

CONCLUSION

[39] For the foregoing reasons, the Decision and Order of the Superior Court is **AFFIRMED**.