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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

DCK PACIFIC GUAM, LLC,
Petitioner-Appellant,

v.

**THOMAS MORRISON, in his capacity as Executive Director of the
Contractors License Board, and RICHARD QUIAMBAO, in his capacity
as Board Chairman of the Contractors License Board,**
Respondents-Appellees.

Supreme Court Case No. CVA10-005
Superior Court Case No. SP0118-09

OPINION

Cite as: 2010 Guam 16

Appeal from the Superior Court of Guam
Argued and submitted July 19, 2010
Hagåtña, Guam

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

MARAMAN, J.

[1] In the trial court, Petitioner-Appellant DCK Pacific, LLC (“Dck”) sought an alternative writ of mandate to review the Contractors License Board’s (“CLB”) decision fining Dck for failing to ensure that one of its subcontractors possessed a business registration and contractor’s license. Respondents-Appellees Thomas Morrison, in his capacity as CLB’s Executive Director and Richard Quiambao in his capacity as CLB’s Chair, moved to dismiss the Petition, citing, among other grounds, that a writ of mandate is not the proper vehicle to seek review of the CLB’s decision. The trial court granted Morrison and Quiambao’s motion to dismiss on procedural grounds. For the reasons set forth below, we reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On May 13, 2009, the CLB cited Dck for failing to ensure that its subcontractor, Rocky Mountain Fabricators, possessed a current business registration and contractor’s license. This failure, according to the CLB, is a violation of the contractors licensing law, which prohibits “[k]nowingly entering into a contract with an unlicensed contractor involving work *or* activity for the performance of which licensing is required under this Chapter[.]” 21 GCA § 70116(a)(17) (2005) (emphasis in original); ER at 1 (Citation, May 13, 2009). Dck acknowledged this failure but maintained that it was an administrative oversight, and not intentional. See Appellant’s Br. at 8-9 (May 25, 2010). After a hearing on the matter, the CLB issued a fine against Dck in the amount of \$70,000.00, but eventually reduced the fine to

\$20,000.00 because the failure was due to an oversight. *See* ER at 17 (Dep. of Quiambao, Nov. 10, 2009).

[3] Dck timely requested the CLB to reconsider the penalty pursuant to 5 GCA § 9235, arguing that the CLB regulations posted on the CLB website state that the penalty assessed in instances such as this shall be no more than \$10,000.00. The CLB took no action on the request, and Dck thereafter filed a Verified Petition for Alternative Writ of Mandate (“Petition”) on July 9, 2009. The face of the Petition stated that it was being brought pursuant to 5 GCA § 9241 to seek review of an administrative decision. The named respondents were Morrison, as CLB Executive Director, and Quiambao, as CLB Board Chair. The writ issued on August 3, 2009, commanding the respondents to return fine monies paid by Dck or to appear to show cause why it should not comply.

[4] On September 22, 2009, Morrison and Quiambao moved to dismiss the Petition on several grounds, including that a writ of mandate was not the proper vehicle by which Dck could obtain judicial review of the CLB’s decision. It was solely on this ground that the trial court granted the motion to dismiss on January 29, 2010. Judgment on the dismissal was entered on the docket, and Dck timely appealed.

II. JURISDICTION

[5] This court has jurisdiction over an appeal from a final judgment of the Superior Court pursuant to 48 USC § 1424-1(a)(2) (Westlaw through Pub. L. 110-120 (2007)); 7 GCA §§ 3107 (b) and 3108 (a) (2005).

III. STANDARD OF REVIEW

[6] Although a trial court's *denial* of a petition for writ of mandate is reviewed for abuse of discretion, *see Carlson v. Perez*, 2007 Guam 6 ¶ 15, a trial court's order granting a motion to *dismiss* a petition for writ of mandate is reviewed *de novo*. *See Royalty Carpet Mills, Inc. v. City of Irvine*, 125 Cal. App. 4th 1110, 1118 (Cal. Ct. App. 2005). In this case, the trial court did not deny Dck's Petition, but rather, granted Morrison and Quiambao's motion to dismiss the Petition. The appropriate standard of review as to this issue, therefore, is *de novo*.

IV. DISCUSSION

A. Judicial Review of the CLB's Administrative Decision

[7] Those who are adversely affected by a decision of the CLB may appeal to the Superior Court "in the manner provided in the Administrative Adjudication Law." 21 GCA § 70118 (2005). Under Guam's Administrative Adjudication Law ("AAL") a party adversely affected by an agency decision may seek judicial review "by filing a petition in the Superior Court for a writ of mandate in accordance with the provisions of the Code of Civil Procedure." 5 GCA §§ 9240, 9241 (2005).

[8] In their motion to dismiss the Petition filed in the trial court, Morrison and Quiambao argued, in part, that the Petition should be dismissed because an alternative writ was not the proper means to obtain judicial review of the CLB's decision. Based on this argument the trial court eventually granted the motion to dismiss the Petition. In its decision and order, the trial court relied on dicta in *Limtiaco v. Guam Fire Department*, 2007 Guam 10 ¶ 15, and reasoned that a writ of mandamus is appropriate "in situations where agencies are required to act pursuant to an order or rule," and is not appropriate in "situations where an agency requires some exercise

of judgment.” ER at 36-37 (Dec. & Order, Jan. 29, 2010). The trial court found that, because the CLB’s decision to fine Dck involves a “substantial measure of discretion,” Dck is not entitled to the relief sought in the Petition for Writ of Mandate. *Id.* at 37. The trial court went on to find that the Petition was improperly titled and the relief was improperly sought. *Id.* Further, the trial court pointed out that the Petition did not allow for the preparation of the record. *Id.* This court reviews *de novo* the decision of the trial court to dismiss the Petition. *See Royalty Carpet Mills, Inc.*, 125 Cal. App. 4th at 1118.

[9] The AAL, which governs hearing and review procedures according to the contractors licensing law, provides that judicial review may be had by filing a writ of mandate in accordance with the provisions of the Code of Civil Procedure. The AAL further provides that the agency shall prepare and deliver to the petitioner the complete record of the proceedings or such parts of the record as may be designated by the petitioner.¹

[10] Guam’s Code of Civil Procedure distinguishes writs of mandate and writs of review. Guam law provides that “[a] writ of review may be granted by any court, when an inferior

¹ The AAL states:

Judicial review may be had by filing a petition in the Superior Court for a writ of mandate in accordance with the provisions of the Code of Civil Procedure. Except as provided in this Section any petition shall be filed within thirty (30) days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. Within thirty (30) days after request therefor and payment of the expenses of preparation and certification by the petition, the agency shall prepare and deliver to the petitioner the complete record of the proceedings or such parts of the record as are designated by the petitioner. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decisions by the hearing officer, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within ten (10) days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed may be extended until five (5) days after its delivery to him. The agency may file with the court the original of any document in the record in lieu of a copy.

5 GCA § 9241 (2005).

tribunal, board, or officer, exercising judicial functions, has exceeded [its] jurisdiction and there is no appeal . . . [or] plain, speedy, or adequate remedy” available to the petitioner. 7 GCA § 31102 (2005). Further, the law provides that a *writ of mandate* “may be issued by any court to . . . any inferior tribunal, corporation, board, or person to compel the performance of an act [that] the law specifically enjoins . . . or to compel the admission of a party to the use and enjoyment of a right or office to which [such party] is entitled[.]” 7 GCA § 31202 (2005).

[11] Dck’s Petition, in its prayer for relief, sought a writ of mandate requiring Morrison and Quiambao to vacate the penalty assessed against Dck or to show cause for non-compliance. ER at 27 (Petition, July 9, 2009). The writ issued below commanded the respondents to refund the fine Dck had already paid or to appear to show cause why it should not. ER at 23 (Alternative Writ of Mandate, Aug. 3, 2009). The procedures Dck followed in pursuing the writ appear to be more in line with those governing alternative writs of mandate rather than those governing writs of review. *Compare* 7 GCA §§ 31101-31111 and 7 GCA § 31201-31215. However, the Petition makes clear that what Dck was seeking was judicial review of an administrative decision pursuant to the AAL, 5 GCA § 9241. *See* ER at 25 (Petition).

[12] The trial court agreed with Morrison and Quiambao’s argument that the proper vehicle for obtaining judicial review of the CLB’s decision is by seeking a writ of review and not a traditional writ of mandate. The only case cited on this point by the trial court in its decision and order is *Limtiaco*, 2007 Guam 10. That case, however, does not control the analysis in the instant case. *Limtiaco* did not determine how judicial review of an agency decision is obtained. It pointed out that there is contradictory authority on the issue but concluded that the “decision is not before us.” *Limtiaco*, 2007 Guam 10 ¶ 15 n.4. As such, *Limtiaco* does not stand for the

proposition that Dck should have filed a petition for writ of review rather than writ of mandate in order to obtain review of the CLB's decision.

[13] Our decision in *Carlson v. Perez*, 2007 Guam 6, is more pertinent to the discussion in this case. In *Carlson*, petitioners filed a writ of mandate seeking to have their employer reinstate them. This court ruled against the petitioners in part because they directed the writ against their employer, when they should have directed the writ against the Civil Service Commission ("CSC") seeking review of the CSC's decision regarding their termination. *Carlson*, 2007 Guam 6 ¶ 72. In the *Carlson* case, the court noted that the petitioners there "did not even vaguely reference that the Superior Court should review the decision of the CSC." *Id.* at ¶ 56. Further, the court stated that "[t]here was no visible intention on the part of [the petitioners] to seek Superior Court review of the decision of the CSC" and that "[t]he face of the Petition does not indicate or even suggest an appeal of the CSC's decision." *Id.*

[14] Hence, the fact that the parties in *Carlson* denominated their petition a writ of mandamus rather than a writ of review was not the reason their efforts were unsuccessful. In fact, the *Carlson* court said as much in a footnote to the opinion: "Indeed if the Petition had named the CSC as a party and requested review of the CSC decisions, we would have treated it as an appropriate Petition for Judicial Review notwithstanding its label as a Petition for a Writ of Mandate." *Id.* ¶ 67 n.24. The formal title of the writ, therefore, is not determinative of its propriety as much as its contents and the prayer for relief. Further, Guam law allows a writ of mandate to be denominated a writ of review, suggesting that the title of a writ does not control whether and what relief may be granted. *See* 7 GCA § 31201 (2005). In the present case, Dck

made very clear in its Petition that it was seeking review of CLB's decision and an order vacating the penalty it assessed. *See* ER at 23, 25 (Petition). It is distinguishable from *Carlson*.

[15] Although *Carlson* is instructive in this regard, it is not controlling on the more general issue of how a party may properly go about seeking review of an agency decision. Indeed, the holding in *Carlson* is too narrow to control the question presented in this case. Cases such as *Carlson* and *Limtiaco* deal specifically with decisions of the CSC, and the CSC's enabling legislation dictates the procedures for seeking review of its decisions. *See Carlson*, 2007 Guam 6 ¶ 60, citing 4 GCA §§ 4105(b), 4403(b), and 4406 (2005). This court has also spoken on the issue of how to appeal an agency's *personnel* decision. *See Perez v. Judicial Council of Guam*, 2002 Guam 12 ¶ 12 (addressing how a classified court employee may obtain review of Judicial Council's personnel decisions); *see also Carlson*, 2007 Guam 6 ¶ 65 (holding that the proper way for classified employees of the government of Guam or any of its instrumentalities, corporations, or agencies to use the right of judicial review of CSC decisions is by filing a "Petition for Judicial Review"). The CLB decision Dck attempted to obtain review of is not a CSC decision or an agency's personnel decision, and Dck is therefore not bound by the appeal procedures announced in the foregoing cases.

[16] In clarifying and distinguishing *Bondoc v. Worker's Compensation Commission*, 2000 Guam 6 – a case that allowed a writ of review to be treated as a writ of mandamus – the *Carlson* court stated that "where the agency's specific legislation directs how the agency action is to be judicially reviewed, then that agency's law should govern how one is to seek judicial review of the agency action." *Carlson*, 2007 Guam 6 ¶ 59; *see also id.* ¶¶ 58, 66. The contractors licensing law provides that judicial review is to be had in accordance with the procedures set out

in the AAL, which directs that review is had by filing a writ of mandate. *See* 21 GCA §§ 70117, 70118 (2005); 5 GCA § 9241 (2005).

[17] Section 9241 of the AAL is substantially similar to section 11523 of California's Administrative Procedures Act. *See* CAL. GOV'T CODE § 11523 (West 2006).² Case law from our court as well as from California have found that the court is not constrained by the formal denomination of a writ in determining what procedures and remedies to actually invoke, but rather is guided by the contents of the petition and the particular relief sought. *See Carlson*, 2007 Guam 6 ¶ 67 n.24; *Allen v. Humboldt County Bd. of Supervisors*, 220 Cal. App. 2d 877, 882 (Cal. Ct. App. 1963) ("Such use of the writ of mandate to review administrative action invokes the remedy of 'administrative mandamus' . . . rather than the traditional action in mandamus").

[18] Further, the law is clear that mandamus may lie to compel a ministerial act or to address a right to office, but cannot lie to compel the exercise of discretion in a particular manner. *See* 7 GCA § 31202; *see also Sorensen Televisions Sys., Inc. v. Super. Ct.*, 2006 Guam 21 ¶ 13; *Guam Fed'n of Teachers v. Perez*, 2005 Guam 25 ¶¶ 23-24; *see also Miller Family Home, Inc. v. Dep't of Soc. Servs.* 57 Cal. App. 4th 488, 491 (Cal. Ct. App. 1997) (Although traditional mandamus will not lie to force an agency to exercise its discretion in a particular manner, it will lie to

² California cases dealing with petitions for review of administrative decisions which are governed by § 11523 have largely dealt with ancillary issues such as what statutes of limitations are applicable to the particular relief sought or whether a particular agency falls within the purview of California's Administrative Procedure Act. *See, e.g., Capitol Racing v. California Horse Racing Bd.*, 161 Cal. App. 4th 892 (Cal. Ct. App. 2008); *Cockshott v. Dep't of Forestry & Fire Protection*, 125 Cal. App. 4th 235 (Cal. Ct. App. 2004); *Fair Employment & Hous. Comm'n v. Super. Ct.*, 115 Cal. App. 4th 629 (Cal. Ct. App. 2004). These cases, however, do not speak to the specific issue before us, which is how to title a writ seeking such review of a board's decision and whether an improper title would be fatal to the petition for review.

correct abuses of discretion, and to force a particular action by the agency, when the law clearly establishes the petitioner's right to such action.).

[19] The trial court in the instant case made a determination that the challenged action of the CLB in this case involved a "substantial measure of discretion," and implicitly likened the CLB's actions to a judicial function. ER at 37 (Dec. & Order). Although the trial court appears to have considered the nature of the challenged action and the relief sought in determining which writ procedure would be appropriate under the circumstances, it ultimately concluded that Dck's Petition failed because it was denominated a petition for writ of mandate. This determination was in error, especially when the statute instructs the aggrieved party to bring a "writ of mandate" and allows a writ of mandate to be denominated a writ of review, indicating that the title of a writ does not control whether and what relief may be granted. *See* 7 GCA § 31201.

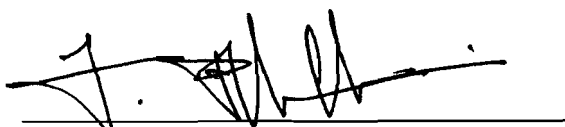
V. CONCLUSION

[20] The court herein clarifies that when a challenge brought by way of a petition for writ in accordance with the AAL clearly seeks the review of a judicial function, rather than seeking to compel a ministerial act or a right to office, then the filing of such petition shall invoke the procedures set forth for writs of review, whether or not the document is formally titled "Writ of Review." *See* 7 GCA §§ 31101-31111. Similarly, where a petition involves compelling the performance of a ministerial act or to a right to office, then the filing of such would invoke the procedures set forth for traditional mandamus. *See* 7 GCA § 31201-31215

[21] In this case, it was quite clear from the Petition and the writ that Dck sought a review of the CLB's decision. The trial court, therefore, should have treated Dck's Petition as proper and proceeded to address the matter on the merits according to the procedures set forth in 7 GCA §

31102-31111. The trial court's reliance on *Limtiaco* and its grant of Morrison and Quiambao's motion to dismiss Dck's Petition as being improperly titled was erroneous as a matter of law. Accordingly, the trial court's Judgment is **REVERSED** and the matter is **REMANDED** for proceedings consistent with this Opinion.

[22] The issue of whether Dck's Petition should have named the CLB, either instead of or in addition to Morrison and Quiambao in their official capacities, was a matter raised by Morrison and Quiambao in their Appellees' Brief, and for the first time on appeal. However, because this matter is remanded to the trial court for proceedings on the merits, this issue is left for the trial court to address in the first instance.



F. PHILIP CARBULLIDO
Associate Justice



KATHERINE A. MARAMAN
Associate Justice



ROBERT J. TORRES
Chief Justice