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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

VICENTE C. PANGELINAN and JOSEPH C. WESLEY,
Plaintiffs-Appellees,

v.

**FELIX P. CAMACHO, Governor; John Weisenberger, Acting Attorney
General; Lawrence P. Perez, Director of the Department of Public Works;
Anthony C. Blaz, Acting Administrator of the Guam Economic Development
and Commerce Authority; Terezo R. Mortera, Director of Land
Management; Y'Asela A. Pereira, Treasurer of Guam; Government of Guam,**
Defendants-Appellees,

v.

GUAM RESOURCE RECOVERY PARTNERS,
Intervening Defendant-Appellant.

Supreme Court Case No. CVA10-001
Superior Court Case No. SP0212-00

OPINION

Cite as: 2011 Guam 9

Appeal from the Superior Court of Guam
Argued and submitted December 2, 2010
Hagåtña, Guam

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ORIGINAL

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BEFORE: KATHERINE A. MARAMAN, Presiding Justice¹; ALEXANDRO C. CASTRO, Justice *Pro Tempore*; and JOHN A. MANGLONA, Justice *Pro Tempore*.

MANGLONA, Justice *Pro Tempore*:

[1] This case stems from a series of agreements between the Government of Guam and numerous parties regarding the building of a facility on Guam that would convert solid waste into electrical power and is being appealed for the fourth time. In *Pangelinan v. Camacho*, 2008 Guam 4 (“*Pangelinan III*”) the court held that the entire 1996 Agreement was unenforceable, reversed the trial court’s grant of summary judgment and remanded the matter for further proceedings consistent with the Opinion. 2008 Guam 4 ¶ 20. Intervening Defendant-Appellant Guam Resource Recovery Partners (“GRRP”) appeals from the trial court judgment declaring the 1996 Agreement void in its entirety and enjoining performance of the agreement. On appeal, GRRP contends the inclusion of the language “for further proceedings” in *Pangelinan III* required the trial court to conduct a new trial or, at the very least, an evidentiary hearing because the mandate was general, not specific. For the reasons discussed below, we find no abuse of discretion and affirm the trial court’s judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] The factual and procedural background in this case have been fully discussed in *Pangelinan v. Gutierrez*, 2003 Guam 13 ¶¶ 2-10 (“*Pangelinan I*”), *Pangelinan v. Gutierrez*, 2004 Guam 16 ¶ 1 (“*Pangelinan II*”), and *Pangelinan v. Camacho*, 2008 Guam 4 ¶ 2 (“*Pangelinan III*”) and so we will not recite it fully here. This case stems from a series of agreements between the Government of Guam and numerous parties regarding the building of a facility on Guam that

¹ Then Chief Justice Robert J. Torres and Associate Justice F. Philip Carbullido were recused from this matter. Justice Maraman, as the senior member of the panel, was designated Presiding Justice.

would convert solid waste into electrical power. On the first appeal in *Pangelinan I*, this court held that the entire agreement was null and void because it violated 48 U.S.C.A. § 1423j and 5 GCA § 22401. *Pangelinan I*, 2003 Guam 13 ¶ 27. Then in *Pangelinan II*, we affirmed our holding in *Pangelinan I* that section 4.04 of the 1996 Agreement violated 48 U.S.C.A. § 1423j and 5 GCA § 22401 but amended our earlier decision and remanded the case for a determination on whether section 4.04 was severable from the 1996 Agreement. *Pangelinan II*, 2004 Guam 15 ¶ 1. On remand, the trial court was instructed to apply a two-part analysis for severability that tests, one, whether the illegal provision is the central purpose of the agreement and, two, whether the illegal provision is integral to the agreement. *Id.* at ¶ 18. In applying the test, the trial court concluded that section 4.04 was severable from the 1996 Agreement and held that the remaining portions of the 1996 Agreement were valid and enforceable. Subsequently, the matter was appealed for the third time in *Pangelinan III*. In *Pangelinan III*, the court determined that “section 4.04 is an essential part of the agreed exchange and, looking at the language of the 1996 Agreement, GRRP would not have entered into the 1996 Agreement without this provision, [because] it is integral and not severable.” *Pangelinan III*, 2008 Guam 4 ¶ 9. The court further clarified that this conclusion was reached “by looking at the law underpinning the second part of our *Pangelinan II* severability analysis and then applying this law to section 4.04 and the 1996 Agreement.” *Id.* Finally, the court held that the entire 1996 Agreement was unenforceable, reversed the trial court’s grant of summary judgment and “[remanded] this matter for further proceedings consistent with this Opinion.” *Id.* at ¶ 20.

[3] After this court denied the Petition for Rehearing, the case returned to the trial court for the third time. On remand, the trial court in an order determined the 1996 Agreement was void

in its entirety and enjoined performance of the agreement. GRRP Excerpts of Record (“ER”) at ER099 (Order, Sept. 3, 2009). The trial court further held that there were “no factual issues of contractual intent which require a trial because the entire 1996 agreement is unenforceable.” *Id.* “Further proceedings are unnecessary.” *Id.* Judgment was entered thereafter and GRRP timely filed this notice of appeal.

III. JURISDICTION

[4] This court has jurisdiction over this appeal from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112-9 (2011)); 7 GCA §§ 3107, 3108(a) (2005).

IV. STANDARD OF REVIEW

[5] The interpretation by an appellate court of its own mandate is properly considered a question of law, reviewable *de novo*. *Laitram Corp. v. NEC Corp.*, 115 F.3d 947, 950 (9th Cir. 1997). Additionally, “an appellate court reviews the trial court’s actions on remand for an abuse of discretion.” *Town House Dep’t Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 17 (“*Town House*”).

V. ANALYSIS

[6] On appeal, GRRP argues that the language in *Pangelinan III* “for further proceedings consistent with this Opinion” is a general mandate and, therefore, the trial court was required to conduct a trial or, at the very least, an evidentiary hearing. In determining whether the trial court abused its discretion, we first address whether the court in *Pangelinan III* issued a general or specific mandate.

A. General or Specific Mandate

[7] GRRP asserts that the court’s inclusion of the language “for further proceedings” required the trial court to conduct a new trial or evidentiary hearing because the instruction

constitutes a general, and not a specific mandate. We previously held in *Town House* that “[b]ecause the case was remanded, the trial court necessarily was required to conduct further proceedings, even without specific directions given to that effect.” 2003 Guam 6 ¶ 14 (citing *Haeuser v. Dep’t of Law*, 2002 Guam 8 ¶ 16 which explains that “[E]very remanded case is remanded for further proceedings in accordance with the appellate court opinion”). The question we must now decide is what constitutes “further proceedings.”

[8] The parties in this case cite *Town House* in arguing for a precise definition of “further proceedings.” In *Town House*, the appellant argued that the trial court failed to hold further proceedings because neither a trial nor an evidentiary hearing was conducted. The holding in *Town House* made clear, however, that “further proceedings” need not be a trial, nor is the admission of new evidence always required. *Id.* at ¶¶ 20-21. Instead, the determinative question is what type of “further proceedings” the trial court was required to conduct based upon the instructions of the appellate court. *Id.* at ¶ 14.

[9] Further, in determining how to proceed on remand, the trial court “must examine both the mandate and the opinion and proceed in accordance with the views expressed therein.” *Id.* at ¶ 16. A determination of the type of “further proceedings” that was required of the trial court therefore requires a review of the Mandate and Opinion issued in *Pangelinan III*. An appellate court’s mandate and instructions upon remand may be either general or specific. *See id.* at ¶ 19. Some courts have found that “when an appellate court’s mandate reverses for further proceedings without more specific instructions, the mandate is a general mandate which requires the trial court to conduct an entirely new trial on all the issues of fact.” *Id.* at ¶ 19 (citing *First State Bank of Bishop v. Grebe*, 162 S.W.2d 165, 168-69 (Tex. Civ. App. 1942)).

[10] While a superficial reading of the language in *Pangelinan III* to conduct “further proceedings” may be read as a general mandate, the words “for further proceedings” cannot, however, be interpreted in isolation from the opinion as a whole. Moreover, we have previously clarified that a mandate is specific when “it is clear that the court remanded the case for a determination of only one issue.” *Town House* at ¶ 18-19. In *Town House*, the trial court was only required “to decide a particular issue” and “conduct further proceedings which were not inconsistent with the appellate court’s opinion.” *Id.* at ¶ 19. Similarly, in this case, after this court’s opinion in *Pangelinan III*, the single issue remaining upon remand was whether or not new evidence was needed in order to render a final judgment on the validity of the 1996 Agreement. Therefore, because the trial court was required to decide a particular issue on remand and in viewing the opinion as a whole, we conclude that the mandate issued in *Pangelinan III* was a specific mandate.

B. Requirement of New Trial or Evidentiary Hearing

[11] Having concluded that the mandate issued in *Pangelinan III* is a specific mandate, we next discuss whether the trial court was required to conduct a new trial or evidentiary hearing. On remand, the trial court held a status hearing to discuss this court’s mandate in *Pangelinan III*. The parties had opposing positions on the meaning of this court’s mandate and thus additional briefing on the issue was requested by the trial judge. After considering the briefs filed by all parties the trial court issued an order declaring the 1996 Agreement void in its entirety and enjoining performance of the agreement. ER at ER099 (Order). The court further held that the case did not require a new trial or the submission of additional evidence. *Id.*

[12] A specific mandate only requires the trial court to conduct further proceedings which are not inconsistent with the appellate court's opinion. *A.M. v. State*, 945 P.2d 296, 300-01 (Alaska 1997) (stating "a trial court [cannot] deviate from a specific mandate of the supreme court but may take actions not inconsistent with [the] decision."). Where a case is remanded without direction or restriction as to the method to be utilized for determining such an issue, "it is for the trial court to determine in its discretion whether the record before it is sufficient for this purpose or whether additional evidence should be taken to supplement the record." *In re Marriage of Becker*, 842 P.2d 332, 362 (Mont. 1992) (citing *Lovely and Laubach v. Burroughs Corp.* 548 P.2d 610, 612 (Mont. 1976)). Absent specific instructions to the contrary, a trial court has the discretion to determine the nature of the required further proceedings.

[13] At the status hearing on remand, the parties were ordered to fully brief their positions regarding the requirements of this court's mandate in *Pangelinan III*. The status hearing represented the third time the case had come before the trial court. Nonetheless, despite the trial court's familiarity with the facts of the case and prior to issuing a final judgment, the trial court considered the oral and written arguments of the parties. In so doing, the trial court conducted "further proceedings" not inconsistent with this court's specific mandate on remand.

[14] In determining whether the trial court should have considered evidence or conduct a hearing on remand, the appellate court reviews the specific issue that was remanded to determine if the trial court's proceedings allowed for sufficient resolution of the issue. Here, the only issue presented to the trial court upon remand was whether or not it was necessary to consider additional evidence prior to issuing a final judgment. The trial court had sufficient evidence from both the previous trial court proceedings as well as the three Supreme Court appeals to

render a final judgment without conducting a new trial or hold an evidentiary hearing. An abuse of discretion only occurs when a trial court's judgment is "not justified by the evidence" or "is clearly against the logic and effect of the facts." *People v. Tuncap*, 1998 Guam 13 ¶ 12 (internal citation omitted). Furthermore, an appellate court will not substitute its judgment for that of the trial court unless it has, "a definite and firm conviction [that] the trial court, after weighing relevant factors, committed clear error of judgment in its conclusion." *Id.* (quoting *United States v. Plainbull*, 957 F.2d 724, 725 (9th Cir. 1992)).

[15] The trial court's holding that the 1996 Agreement is null and void in its entirety and that Section 4.04 is not severable was not "clearly against the logic and effect of the facts." *Id.* This court twice declared that the Agreement is null and void in its entirety, twice declared that Section 4.04 was illegal, and recently declared that the section was not severable. The trial court relied upon these holdings, in addition to the substantial record and supplemental briefing and oral arguments presented at the final status hearing. Clearly the trial court "weigh[ed] the relevant factors." *Id.* Because the mandate in *Pangelinan III* did not specifically require the trial court to conduct a new trial or to hold an evidentiary hearing, it was within the trial court's discretion to determine the necessity of such proceedings. *Town House* at ¶ 22 (citing *Murray v. Murray*, 856 P.2d 463, 466 (Alaska 1993) (explaining that a remand for additional findings does not obligate the trial court to hear new evidence)). The trial court's consideration of additional briefing without conducting a new trial or holding an evidentiary hearing, is consistent with the specific mandate of *Pangelinan III* and thus, we find no abuse of discretion.

VI. CONCLUSION

[16] We find first that the mandate issued in *Pangelinan III* was a specific mandate that only ordered the trial court to take further judicial action. Further, the decision of whether or not to conduct a new trial or hold an evidentiary hearing was in the sound discretion of the trial court. The trial court took further judicial action and conducted further proceedings in holding a status hearing, requiring supplemental briefing, and taking into consideration the oral and written arguments of the parties prior to issuing a final judgment. We do not have a definite and firm conviction that the trial court committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors. Accordingly, the Judgment is **AFFIRMED**.

ALEXANDRO C. CASTRO

ALEXANDRO C. CASTRO
Justice *Pro Tempore*

JOHN A. MANGLONA

JOHN A. MANGLONA
Justice *Pro Tempore*

KATHERINE A. MARAMAN

KATHERINE A. MARAMAN
Presiding Justice