IN THE SUPREME COURT OF GUAM

TIMOTHY C.S.A. LUJAN,
Plaintiff-Appellant,

v.

RITA M.S. LUJAN,
Defendant-Appellee.

OPINION

Cite as: 2012 Guam 7

Supreme Court Case No.: CVA10-017
Superior Court Case No.: DM0605-02

Appeal from the Superior Court of Guam
Argued and submitted on May 25, 2011
Dededo, Guam

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

MARAMAN, J.:

[1] Plaintiff-Appellant Timothy C.S.A. Lujan appeals from a Decision denying his Motion to Modify Divorce Decree. He argues that the trial court erred in holding that the Final Decree of Divorce was non-modifiable under Guam law. He contends that his assumption of the parties' mortgage payments in the parties' Divorce and Property Settlement Agreement, which underlies the divorce decree, is an agreement to pay spousal support rather than a division of property, and it is therefore subject to modification.

[2] Conversely, Defendant-Appellee Rita M.S. Lujan argues that the provision in the parties' settlement agreement requiring Timothy Lujan to assume the mortgage payments is a non-modifiable provision related to the division of property. She also argues that even if the assumption of the mortgage was intended to be a form of spousal support, such support provision is part of a non-severable, integrated property settlement agreement, such that it is not subject to modification.

[3] For the reasons discussed below, we reverse the trial court's decision and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] In October 2002, Plaintiff-Appellant Timothy C.S.A. Lujan ("Tim") and Defendant-Appellee Rita M.S. Lujan ("Rita") separated after over twenty-one years of marriage, and Tim filed a Complaint for Divorce. The parties entered into a Divorce and Property Settlement Agreement on September 4, 2003.

[5] The settlement agreement was divided into six enumerated sections, labeled as follows: I. Statistical Facts; II. Separation of the Parties; III. Child Custody and Child Support; IV. Division of Community Property and Separate Property; V. Tim's Separate Debt; and VI. Miscellaneous. Record on Appeal ("RA"), tab 42 at 1-6 (Divorce & Prop. Settlement Agreement, Sept. 8, 2003).

[6] Under section III of the settlement agreement ("Child Custody and Child Support"), the parties agreed to share joint, legal custody of their minor daughter, with Rita having primary physical custody. Tim agreed to pay $755.92 per month in child support for their daughter until she reached age 18, after which Tim would deposit $300.00 per month into an account under their daughter's name until her twentieth birthday.

[7] Under section IV ("Division of Community Property and Separate Property"), the parties divided the marital property, agreeing to take as their separate property equal shares in the monetary value of Tim's various profit sharing, retirement, and 401k plans as of the date of the parties' divorce, including any future increases or losses in these plans, as well as equal shares in the parties' 2002 income tax return and the cash surrender value of certain life insurance policies. Tim was to take as his separate property a 1995 Ford truck, while Rita was to take as her separate property a 2002 Chrysler PT Cruiser, which was to be registered in her name immediately after the loan on the vehicle was paid in full, and household furniture and appliances.

[8] Under section V ("Tim's Separate Debt"), the parties agreed that Tim would assume as his separate debts: two mortgage loans, one with a monthly payment of $905.61 and a maturity date of April 18, 2021, and the other with a monthly payment of $468.43 and a maturity date of August 25, 2007; the balance owed on four different credit cards totaling $4,450.00; accounts payable to Takagi & Associates, Tim's employer, in the amount of $468.00 per month for six months per year for vehicle and homeowner's insurance; a loan payable to Takagi & Associates

in the amount of $468.00 per month for six months per year; life insurance premiums with AFLAC in the amount of $158.16 per month; life insurance premiums for three separate John Hancock policies; approximately $8,299.14 in medical bills; and the loan on the PT Cruiser with a monthly payment of $450.94.

[9] Under section VI ("Miscellaneous"), the parties agreed, *inter alia*, that title to their Barrigada residence shall pass by testate or intestate succession equally to their two children, and that Rita shall be entitled to exclusive physical possession of the residence for the rest of her life. The parties agreed that "[i]t is the intent of the Parties that Rita shall effectively have all of the benefits ordinarily enjoyed under a life estate in the home, although no deed therefor shall pass from Tim to Rita." *Id.* at 7. The settlement agreement also required that Rita be responsible for paying the premiums necessary to maintain her health insurance with Tim's employer for so long as COBRA[1] permits.

[10] Section VI further provided that "[i]n the event of a dispute over the meaning of this Agreement, no party shall be deemed to have been the drafter of the Agreement for the purpose of interpreting it." *Id.* Finally, section VI, paragraph 8 states:

> Tim's agreement to the terms of this Divorce and Property Settlement Agreement is contingent upon his ability to satisfactorily refinance all the parties' community debts into one mortgage loan. If Tim is unable through reasonable efforts to do this, this Divorce and Property Settlement Agreement shall be null and void, and the parties agree to continue negotiating in good faith to come to an agreement on all outstanding issues.

Id.

[1] According to the United States Department of Labor website, "The Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events." United States Department of Labor, http://www.dol.gov/dol/topic/health-plans/cobra.htm (last visited June 12, 2012).

[11] The trial court issued an Interlocutory Decree of Divorce on October 30, 2003, granting a divorce to Tim on the grounds of irreconcilable differences and incorporating verbatim the parties' settlement agreement. RA, tab 45 at 1 (Interlocutory Decree of Divorce, Oct. 30, 2003) ("The Divorce And Property Settlement Agreement is hereby incorporated into the Interlocutory Decree setting out the property division and matters pertaining to child custody and child support, a copy of which is attached hereto."). A Final Decree of Divorce was filed the same day, incorporating verbatim the Interlocutory Decree of Divorce. No appeal was taken from the final decree.

[12] On May 13, 2010, Tim filed a Motion to Modify Divorce Decree, asking the trial court to relieve him of the obligation to pay the mortgage on the parties' Barrigada residence and order Rita to make the payments instead. Alternatively, Tim requested that the court order Rita to take out a loan in her name and buy Tim out from the mortgage. As a last resort and in the event Rita was unable or unwilling to pay the mortgage or qualify for a loan in her own name, Tim asked the court to order the house sold and the proceeds divided equally between the parties.

[13] Tim cited to several changed circumstances in support of his motion to modify, including the fact that the parties' children have grown up and that Tim has fulfilled all child support and other obligations toward his children, as well as the fact that he has remarried. Tim claimed that he "is no longer able to support his ex-wife Rita as well as his current wife Anna, in any fashion that any reasonable observer would say was fair or reasonable." RA, tab 52 at 2 (Mot. to Modify Divorce Decree, May 13, 2010). He then listed all of his monthly bills, including his monthly payments of $2,020.00 toward the mortgage on the parties' Barrigada residence, adding that there are nearly thirty years left on the mortgage.

[14] The trial court issued a Decision denying Tim's motion to modify the divorce decree, holding that contrary to Tim's contention, his assumption of the mortgage was not spousal support but rather was a "finite, binding and non-modifiable contractual provision forever disposing of the rights of the parties to the residence, and the debt thereon." RA, tab 65 at 4 (Dec., Sept. 22, 2010).

[15] Tim timely filed his Notice of Appeal.

II. JURISDICTION

[16] This court has jurisdiction over an appeal from an order made after final judgment pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 112-104 (2012)) and 7 GCA §§ 3107(b) and 25102(b) (2005).

III. STANDARD OF REVIEW

[17] "'A divorce decree incorporating a settlement agreement is simply a consent decree.'" *Blas v. Cruz*, 2009 Guam 12 ¶ 18 (quoting *Leon Guerrero v. Moylan*, 2000 Guam 28 ¶ 8). Decisions interpreting a consent decree and the agreements underlying them are reviewed *de novo*. *Leon Guerrero*, 2000 Guam 28 ¶ 8 (citing *Richardson v. Edwards*, 127 F.3d 97, 101 (D.C. Cir. 1997)); *Blas*, 2009 Guam 12 ¶ 11.

[18] The trial court's interpretation of a statute is a question of law reviewed *de novo*. *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 8 (citing *Apana v. Rosario*, 2000 Guam 7 ¶ 9).

IV. ANALYSIS

[19] There is essentially only one issue to be decided in this case; that is, whether Tim's agreement to assume the mortgage on the parties' residence as his separate debt constituted an agreement to pay spousal support, which is subject to modification at the trial court's discretion, or, rather, a non-modifiable division of the parties' property.

A. Characterization of the Settlement Agreement

[20] Guam law allows a husband and wife to contract with one another with respect to the support of each other and with respect to their property rights. Specifically, 19 GCA § 6111 provides:

> (a) Either husband or wife may enter into any engagement or transaction with the other, respecting property subject, in transaction between themselves, to the general rules which control the actions of persons occupying confidential relations with each other.
>
> (b) A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.
>
> (c) The mutual consent of the parties is a sufficient consideration for such an agreement.

19 GCA § 6111 (2005).

[21] Such "property settlement agreements" occupy a favored position in the law. *See Adams v. Adams*, 177 P.2d 265, 267 (Cal. 1947). The agreements are usually made with the advice of counsel after careful negotiations, and the courts prefer agreement rather than litigation. *Id.*

> When the parties have finally agreed upon the division of their property, the courts are loath to disturb their agreement except for equitable considerations. A property settlement agreement, therefore, that is not tainted by fraud or compulsion or is not in violation of the confidential relationship of the parties is valid and binding on the court.

Id. (citations omitted).

[22] "Where a party to a divorce action, represented by counsel, voluntarily executes a property settlement agreement which is approved by the court and incorporated into a divorce decree, such a decree may not be vacated or modified as to such property provisions in the absence of fraud or gross inequity." *Leon Guerrero*, 2000 Guam 28 ¶ 9 (citing *Hoshor v. Hoshor*, 580 N.W.2d 516, 522 (Neb. 1998)); *see also Hart v. Hart*, 2008 Guam 11 ¶¶ 6-7

(holding that after expiration of time for appealing a final decree of divorce, decree becomes a final judgment and trial court may not modify decree as to property matters); *Puckett v. Puckett*, 136 P.2d 1, 5 (Cal. 1943) ("A divorce decree adjusting the property rights of the parties is not subject to modification regardless of whether or not it is based upon the agreement of the parties." (citing *Leupe v. Leupe*, 130 P.2d 697 (Cal. 1942); *Dupont v. Dupont*, 48 P.2d 677, 677-78 (Cal. 1935))).

[23] While the trial court is generally without jurisdiction to modify a divorce decree as to the division of the parties' property, the court retains the authority to modify the decree as to spousal support. Title 19 GCA § 8405 provides:

> When a dissolution of marriage is granted, the tribunal shall . . . make such suitable allowance to the other spouse for that person's support, during that person's life or for a shorter period, as the Court may deem just, having regard to the circumstances of the parties respectively; and *the Court may, from time to time, modify its order in these respects.*

19 GCA § 8405 (2005) (emphasis added); *see also Dupont*, 48 P.2d at 677-78 (recognizing continuing authority of trial court to modify its orders relating to payment of alimony, but holding that with respect to right to a divorce and to determination of property rights, the right to modify or vacate decree no longer exists).

[24] Title 19 GCA § 8405 is derived from former California Civil Code section 139. The California cases construing section 139 hold that modification of support provisions in a divorce decree is available only when the support provisions are severable from the provisions dividing property. In *Adams*, the Supreme Court of California recognized that a husband and wife, upon separation, may agree to provide for support and maintenance in a variety of ways, which generally fall into three categories. 177 P.2d at 267. The first includes agreements in which the support provisions are in the nature of alimony, whether in lump sum or periodic payments, and

are "separable from the provisions that divide the property." *Id.* "If presented to a court in an action for divorce the court has the power to modify the provisions for alimony before or, if the provisions are incorporated in the decree, after judgment in accord with its power over alimony generally." *Id.* (citation omitted).

[25] The second category includes contracts in which the support provisions are not in the nature of alimony but are part of the parties' division of property, including agreements that provide solely for the payment of periodic or lump sums "in lieu of community property." *Id.* (internal quotation marks omitted). Such contracts must be treated like other property settlement agreements dealing solely with divisions of property, meaning that absent fraud or violation of the parties' confidential relationship, the payments cannot be modified after the decree without the consent of the parties. *Id.* (citing *Ettlinger v. Ettlinger*, 44 P.2d 540 (Cal. 1935); *Puckett*, 136 P.2d 1).

[26] The third category includes contracts in which the husband or wife waives all support and maintenance, or all support and maintenance except as provided in the agreement, in consideration of receiving a more favorable division of the community property. *Id.* at 268.

[27] In the instant case, Tim argues that the provision in the settlement agreement obligating him to assume the mortgage on the parties' residence as his separate debt is a provision for spousal support "severable from all other obligations imposed by the Decree; including those provisions which divided the parties' community property rights." Appellant's Br. at 8-9 (Jan. 14, 2011). In other words, he argues that the provision assigning him the mortgage places the settlement agreement under the first *Adams* category, wherein the support provisions are "in the nature of alimony" and are "separable from the provisions that divide the property." *Adams*, 177 P.2d at 267.

[28] In response, Rita argues that the provision in the settlement agreement relating to Tim's assumption of certain community debts is simply a provision dividing the parties' property, and thus it is not subject to modification. Appellee's Br. at 9 (Feb. 14, 2011). She argues that section V of the settlement agreement ("Tim's Separate Debt") was merely intended to assign the parties' community debt and was not intended to create a support obligation. *Id.* at 10-11.

[29] Rita points to several facts in support of her argument, including: (1) the absence in the settlement agreement of any reference to spousal support or alimony, instead merely stating that Tim will take the mortgage "as his separate debt"; (2) the absence in the Interlocutory Decree of any reference to spousal support or alimony, instead stating unambiguously that the incorporated agreement was only intended to cover child custody, child support, and division of property; (3) the absence in the settlement agreement of any requirement that Tim make any payments directly to Rita; (4) the fact that both parties were represented by capable counsel, and that had the parties intended section V to be a provision for spousal support, it would have been relatively simple for the parties' counsel to use that language; (5) the absence in the settlement agreement of any statement that Tim's obligation to pay the loans would end when either he or Rita died, or when Rita remarried or her financial situation improved, which would normally be included in a provision for spousal support; and (6) the absence of any expectation that Tim would be allowed to deduct the mortgage payments from his income tax liability or that Rita would be obligated to declare the payments as income on her tax return. *Id.*

[30] This court applies contract principles to the interpretation of property settlement agreements. *Blas*, 2009 Guam 12 ¶ 11 (citing *Leon Guerrero*, 2000 Guam 28 ¶¶ 8-9; *Camacho v. Camacho*, 1997 Guam 5 ¶¶ 30-35). Thus, effect must be given to the mutual intention of the parties as it existed at the time of entering into the settlement agreement. *Leon Guerrero*, 2000

Guam 28 ¶ 8 (citing 18 GCA § 87102 (1992)). Because the settlement agreement was reduced to a writing, the intention of the parties is to be ascertained from the writing alone, if possible. *Id.* (citing *Camacho*, 1997 Guam 5 ¶ 32; *Boyett v. Boyett*, 799 S.W.2d 360, 362 (Tex. Ct. App. 1990)).

[31] "It is often difficult to determine, in a contract containing provisions for division of property and payments of 'support and maintenance,' whether the payments are part of the division of property or are in the nature of alimony." *Adams*, 177 P.2d at 267-68. Here, the determination is made all the more difficult by the complete absence of any express reference to "alimony" or "support and maintenance" or that the parties agreed to this arrangement in lieu of a different division of the community property. After review of the entire agreement, we are unable to ascertain the parties' intent from the writing alone.

[32] Several factors weigh in favor of a reading that the parties intended Tim's assumption of the mortgage to be a form of spousal support. First, in dividing their property (section IV of the agreement, "Division of Community Property and Separate Property"), Tim and Rita agreed to a more or less equal division of the community's assets. Each was to take as his or her separate property a fifty percent interest in Tim's various employee benefit plans and in several life insurance policies. Each was to take one of the parties' two vehicles, and each was to take fifty percent of the parties' 2002 income tax return. The only property listed under section IV that was not divided equally between the parties was the parties' respective personal property, and the household furniture and appliances, which were assigned solely to Rita. The parties' residence was not listed under the "Division of Community Property and Separate Property" section of the agreement. Instead, under section V ("Tim's Separate Debt"), the parties agreed that Tim would assume as his separate debt the two mortgage loans on the residence, and under

section VI ("Miscellaneous"), the parties agreed that they would continue to jointly own the home, with Rita being entitled to exclusive physical possession for her lifetime, and that title to the home would pass by testate or intestate succession equally to their two children.

[33] Setting aside the provisions relating to the parties' debts and their treatment of the residence, the parties' agreement resulted in a distribution of property that approximates the division that likely would have occurred had there been no agreement and rather only a determination made by the trial court itself. Title 19 GCA § 8411 provides that in the event of a no-fault divorce, "the community property *shall* be equally divided between the parties." 19 GCA § 8411(b) (2005) (emphasis added). Thus, the fact that the settlement agreement not only divided most of the assets equally but wherever an unequal division was made, it was made in favor of Rita, supports Tim's contention that his assumption of the mortgage payments was in fact a provision for spousal support. Absent a determination of fault, Tim was not obligated under Guam law to take a lesser share in the community property, which is essentially what he agreed to do by allowing Rita exclusive possession of the parties' residence and by assuming all of the community's debts as his own. Under normal circumstances, the trial court would likely have ordered the house sold and the proceeds, if any remain after payment of the community's obligations, divided equally between the parties. *See Babauta v. Babauta*, 2011 Guam 15 ¶¶ 36-38; 19 GCA §§ 6104(a), 8411(b)-(c) (2005). Additionally, the community would have been entitled to compensation for the reasonable value of Rita's exclusive use of the home prior to sale.

[34] Finally, the lack of any indication in the settlement agreement that Rita agreed to this arrangement in lieu of a different division of the community property supports an interpretation

that Tim's assumption of the mortgage was intended to be a provision for spousal support rather than a division of property.[2]

[35] On the other hand, the settlement agreement lacks many key provisions normally found in an agreement to pay spousal support. As Chief Justice Carbullido accurately points out in his dissent, the settlement agreement did not lay out any limits on Tim's obligation to pay the mortgage. The agreement did not indicate whether the death of either party, the remarriage of Rita, or the improvement of Rita's financial situation would end Tim's obligation to pay the mortgage. Further, there is no indication in the agreement that the parties should treat the mortgage payments as spousal support for income tax purposes.[3]

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[2] The fact that the settlement agreement failed to refer to the mortgage payments as spousal support is not conclusive of the parties' intent. *See Helvern v. Helvern*, 294 P.2d 482, 487 (Cal. 1956) ("'The labels adopted by the parties are not conclusive, since the agreement must be considered as a whole.'" (quoting *Fox v. Fox*, 265 P.2d 881, 883 (Cal. 1954) (en banc))). Neither is the fact that the payments are not made to Rita directly. *See, e.g.*, *In re Marriage of Garcia*, 274 Cal. Rptr. 194, 198 (Ct. App. 1990) ("It is permissible to include in a spousal support order a requirement that the payment of overdue or future debts, or a portion thereof, be made to third parties."); *In re Marriage of Chala*, 155 Cal. Rptr. 605, 608 (Ct. App. 1979) ("An order of spousal support is for [f]uture living expenses of the supported spouse. Payment of continuing obligations to third parties related to such needs is clearly a form of spousal support . . . ."). Chief Justice Carbullido argues that the holding in *Garcia* was premised on former California Civil Code section 4358, which provided that "upon a determination that payment of an obligation of a party would benefit either party or a minor child, the court may order one of the parties to pay the obligation, or any portion thereof, directly to the creditor." Cal. Civil Code § 4358 (1970) (repealed 1992); *see also* Cal. Fam. Code § 2023 (West 2012) (enacted in 1992, this section continues former Cal. Civil Code § 4358 without substantive change). Chief Justice Carbullido correctly points out that Guam has no similar statutory provision. We note, however, that California case law recognized payments to creditors as a form of spousal support long before section 4358's predecessor statute, California Civil Code section 137.6, was adopted. *See Gay v. Gay*, 79 P. 885, 888 (Cal. 1905); Cal. Civil Code § 137.6 (1967) (repealed 1969). California courts continued to cite to *Gay* for this proposition even after Civil Code section 137.6 and its successor statutes, Civil Code section 4358 and Family Code section 2023, were enacted. *See, e.g.*, *In re Marriage of Benjamins*, 31 Cal. Rptr. 2d 313, 317 (Ct. App. 1994); *In re Marriage of Epstein*, 592 P.2d 1165, 1170 (Cal. 1979), *superseded by statute on other grounds*, Cal. Civ. Code § 4800.2 (1983) (now Cal. Fam. Code § 2640 (West 2004)).

[3] Although the settlement agreement provided that "Tim, not Rita, shall be able to claim any applicable tax deductions on [the mortgage] payments," RA, tab 42 at 5 (Divorce & Prop. Settlement Agreement), we believe that by "any applicable tax deductions," the parties were referring to deductions for payment of mortgage interest, not deductions of the entire mortgage payment amounts from Tim's gross income. In his dissent, Chief Justice Carbullido argues that this provision of the settlement agreement supports a determination that Tim's assumption of the mortgage was intended to be a division of property rather than spousal support. Chief Justice Carbullido argues that if the mortgage payments had been spousal support, Rita would not have been able to claim any applicable tax deductions, and, thus, it was unnecessary for the parties to include a provision disallowing Rita from claiming these deductions. The fact that such a provision was included, he argues, demonstrates that the mortgage payments were not in lieu of spousal support.

[36] Moreover, we cannot ignore the possibility that there may have been consideration for Tim's assumption of the mortgage. Hypothetically, Tim could have agreed to assume the mortgage in exchange for Rita's agreement to abstain from pursuing an at-fault divorce action, which might have potentially resulted in Rita receiving a greater share of the community property. In fact, in Rita's counterclaim, she alleged extreme cruelty and adultery as grounds for divorce. RA, tab 17 at 3 (Answer & Countercl., Jan. 13, 2003). Thus, we are reluctant to find the mortgage provision to be a provision for spousal support or to allow modification of the agreement without knowing to any degree of certainty whether Rita abstained from further pursuit of an at-fault divorce and a greater share of the community property in exchange for Tim's assumption of the mortgage, for if she did, the mortgage payments are part of a division of property rather than an agreement to pay spousal support.

[37] Even if the parties' intent in having Tim assume the mortgage was to quell Rita's pursuit of an at-fault divorce, such intent is not clear from a plain reading of the settlement agreement alone. Likewise, the language in the Interlocutory Decree of Divorce wherein the court states that the divorce is granted "based upon the grounds of irreconcilable differences" and that the settlement agreement "set[s] out the property division and matters pertaining to child custody and child support," RA, tab 45 at 1 (Interlocutory Decree of Divorce), cannot factor into a plain-reading determination of the parties' intent because such language is not within the settlement agreement itself. Thus, although normally we are restricted to the four corners of a document

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We do not agree that this tax deduction provision was unnecessary if the mortgage payments were intended to constitute spousal support. Rather, if the mortgage payments were in fact spousal support and had the parties not indicated who would enjoy any applicable tax deductions, Rita arguably could have claimed that she was entitled to some if not all applicable tax deductions because essentially she was paying for the mortgage with her spousal support award. *Cf. In re Marriage of Garcia*, 274 Cal. Rptr. at 195-96, 200-01 (holding that spousal support order requiring husband to make mortgage payments in lieu of spousal support effectively compelled wife to devote her entire monthly support entitlement to payment of mortgage, and since wife, in effect, made the mortgage payments, she was not required to reimburse community for her exclusive occupancy of residence where rental value approximated mortgage payment).

when ascertaining the parties' intent, here, where the contract is not integrated, as discussed in greater detail below, and where the contract does not clearly identify the mortgage payments as either a division of property or as spousal support, we will allow the trial court on remand to consider extrinsic evidence, if any, of the parties' intent.[4] Should the trial court find that the mortgage payments were intended to be a phase of the property division rather than spousal support, the agreement is non-modifiable and Tim remains obligated to pay the mortgage. If, however, the trial court finds that the parties' intent was that the mortgage payments would be a form of spousal support to Rita, the trial court shall determine that Tim's assumption of the mortgage was a provision for spousal support subject to modification at the trial court's discretion.

B. Whether the Provisions for Support, If Any, Are Severable from Rather than Integrated with the Provisions for the Division of Property.

[38] In the event the trial court finds that Tim's assumption of the mortgage constituted a provision for spousal support, we address the issue of whether the support provisions are severable from rather than integrated with the provisions for the division of property because the ability to modify any support provision turns on the answer to this question.

[39] "When an order for support payments in a divorce decree is based on an agreement of the parties, the possibility of subsequent modification of the order without the consent of both

[4] We realize the dangers that such an approach may invite, particularly that it may tempt a party to fabricate the circumstances surrounding a settlement agreement. However, we find that under the unique circumstances of this case, such an approach is necessary in order to afford each party the opportunity to defend against the possibility of a mistaken classification of the mortgage payments, and we trust the trial court's ability to assess the credibility of the evidence. In the future, however, these situations can be avoided by the trial court engaging in a more in-depth inquiry to ascertain the intent of the parties. At the time of rendering the divorce decree, the trial court should determine clearly and concisely whether payments pursuant to a property settlement agreement are in effect and essence a phase of the property settlement or, instead, spousal support. *See Puckett*, 136 P.2d at 5-6. "The court could examine the agreement, the circumstances under which it was made, and the nature and value of the property as related to its division and the amount of the periodic payments giving consideration to the statutory rules on the subject." *Id.* at 6.

parties depends on the nature of the agreement." *Plumer v. Plumer*, 313 P.2d 549, 551 (Cal. 1957) (en banc). Prior to the *Adams* case, the California courts attempted to classify all separation agreements either as "property settlement" agreements or as "alimony" or "support and maintenance" agreements. *Id.* (citations and internal quotation marks omitted). If the underlying agreement was a "property settlement" agreement, any "support" provisions could not be modified without the parties' consent. *Id.* (citing *Ettlinger*, 44 P.2d at 542). If instead the agreement was for "'alimony' or 'support and maintenance,' the support order was modifiable upon a showing of changed circumstances." *Id.* at 551-52 (citation omitted).

[40] *Adams* recognized the possibility of hybrid agreements, which contain both provisions for division of property and provisions for support.[5] *Adams*, 177 P.2d at 267. The possibility of modifying an order for support based on such an agreement without the consent of both parties depends upon whether the provisions relating to the division of property and those relating to support are severable rather than integrated. *Plumer*, 313 P.2d at 552. If they are integrated, the order may not be modified absent an express provision for or agreement to such a modification. *Id.* (citing *Dexter v. Dexter*, 265 P.2d 873, 875 (Cal. 1954)).

[41] An agreement is "integrated" if the parties have agreed that the provisions for the division of property and the provisions for support constitute reciprocal consideration. *Id.* "The support provisions are then necessarily part and parcel of a division of property." *Id.* Factors deemed conclusive evidence that the parties intended an integrated agreement include: (1) a statement of the purpose of the parties to reach a final settlement of their rights and duties with respect to both property and support; (2) a statement that the property and support provisions are each

[5] Should the trial court determine that the mortgage payments constitute spousal support, the settlement agreement is a hybrid agreement as it contains both provisions for division of property and for support.

consideration for the other; and (3) an express waiver of all rights arising out of the marital relationship except those expressly set out in the agreement. *Id.* (citations omitted).

[42] The *Plumer* court found that, but for an express provision for modification in the parties' agreement in that case, the agreement clearly implied that the parties intended it to be integrated because the parties set forth as their purpose "'to effect final and complete settlement of their * * * rights * * * with reference to their marital status and to each other,'" and they released each other from all claims arising out of the marital relationship except as provided in the agreement. *Id.* at 553. The court held that it was not necessary for the parties to expressly recite an intent to have an integrated agreement when the agreement itself makes that intent clear. *Id.* (citing *Dexter*, 265 P.2d at 876); *see also Hough v. Superior Court*, 3 Cal. Rptr. 778, 780-81 (Dist. Ct. App. 1960) (finding an integrated agreement where the agreement expressly provided that payment to the wife and her waiver of other support and alimony "form an integral and inseverable part of the property division, and an inseverable part of the consideration for the property settlement," as well as that no modification or waiver of any of the terms of the agreement shall be valid unless in a writing signed by both parties).

[43] Rita contends that even if Tim's assumption of the mortgage payments was intended to be spousal support, the support provision is not subject to modification because it is part of a non-severable, integrated property settlement agreement. Appellee's Br. at 12. We disagree.

[44] Should the trial court find that the settlement agreement in the instant case is a hybrid agreement providing for both the division of property and the payment of spousal support via the mortgage payments, the agreement is modifiable because the support provisions are not integrated with the property division provisions. Nothing in the agreement indicates that the parties agreed that the provisions dividing property and the provisions for support constitute

reciprocal consideration. Furthermore, the agreement is entirely devoid of any indication, express or implied, of an intention that the agreement was to be a final, finite settlement forever disposing of the parties' rights and duties with respect to property and support or that the parties waived all rights other than those set out in the agreement. *See, e.g., In re Marriage of Wright*, 126 Cal. Rptr. 894, 895 (Ct. App. 1976) (internal footnote omitted) ("The stipulation does not conform to any integrated property settlement agreement we have ever seen: It disposes of the property and defines support obligations, but lacks entirely any statement of purpose, intent, finality or integration. In brief, whatever the stipulation is, it is not an 'unmodifiable integrated property settlement agreement.'"). In fact, section VI, paragraph 8 of the agreement provides:

> Tim's agreement to the terms of this Divorce and Property Settlement Agreement is *contingent* upon his ability to satisfactorily refinance all the parties' community debts into one mortgage loan. If Tim is unable through reasonable efforts to do this, this Divorce and Property Settlement Agreement *shall be null and void*, and the parties agree to *continue negotiating* in good faith to come to an agreement on all outstanding issues.

RA, tab 42 at 7 (Divorce & Prop. Settlement Agreement) (emphases added). The fact that the parties themselves agreed that they would continue negotiating the terms of the agreement in the event that Tim was unable to refinance all of the parties' community debts undermines any argument that the agreement was meant to be final and non-modifiable.[6]

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[6] Chief Justice Carbullido argues that section VI, paragraph 8 of the agreement is further evidence that the agreement is integrated and non-modifiable because the modification is subject to the mutual consent of the parties. We do not agree that this is necessarily the case. Instead, we read paragraph 8 as permitting modification of the agreement, with or without the mutual consent of the parties, if Tim is unable through reasonable efforts to satisfactorily refinance all of the parties' community debts into one mortgage loan.

[45] Because the agreement does not have any of the defining characteristics of an integrated agreement, it is not integrated,[7] and any provision for spousal support is subject to modification at the discretion of the trial court pursuant to 19 GCA § 8405.[8]

V. CONCLUSION

[46] We are unable to ascertain from the four corners of the settlement agreement the parties' intent in having Tim assume the mortgage as his separate debt. Because the parties' intent is not clear from the writing alone, we remand to the trial court to consider extrinsic evidence of the parties' intent. Should the trial court determine that the mortgage provision was intended to be a form of spousal support to Rita, the provision is modifiable because it is not integrated with the provisions dividing the parties' property. Any modification, however, is at the discretion of the trial court pursuant to 19 GCA § 8405.

[47] For the foregoing reasons, we **REVERSE** and **REMAND** for further proceedings consistent with this opinion.

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

[7] Extrinsic evidence is admissible to explain or supplement the terms of a written agreement where the agreement is not fully integrated. *See Craftworld Interiors, Inc. v. King Enters., Inc.*, 2000 Guam 17, at *3-6; 13 GCA § 2202 (2005).

[8] In her Appellee's Brief, Rita raises several arguments that go to the merits of Tim's Motion to Modify Divorce Decree. Because the trial court did not consider the merits of Tim's motion, rather denying it on the grounds that the agreement was a non-modifiable division of property, whether Tim is entitled to a modification of the divorce decree is not an issue before this court.

CARBULLIDO, C.J., dissenting:

[48] The trial court did not err in holding that Tim's assumption of the mortgage loans on the parties' Barrigada residence as his separate debt in the parties' Divorce and Property Settlement Agreement ("settlement agreement") was legally non-modifiable without the consent of the parties because the mortgage provision is a division of the parties' property rather than spousal support. *See Leon Guerrero v. Moylan*, 2000 Guam 28 ¶ 9 (citing *Hoshor v. Hoshor*, 580 N.W.2d 516, 522 (Neb. 1998)); *Adams v. Adams*, 177 P.2d 265, 267 (Cal. 1947). Even if Tim's assumption of the mortgage constituted a provision for spousal support, the mortgage provision is still non-modifiable because the provisions relating to the division of the parties' property and those relating to spousal support in the settlement agreement are integrated rather than severable. *See Plumer v. Plumer*, 313 P.2d 549, 552 (Cal. 1957). I would affirm the trial court's holding that the parties' settlement agreement is legally non-modifiable. Accordingly, I respectfully dissent.

[49] We are essentially presented with a single issue for review: whether Tim's agreement to assume the mortgage loans on the parties' residence as his separate debt in the settlement agreement constituted an agreement to pay spousal support, which is subject to modification at the trial court's discretion or, rather, a non-modifiable division of the parties' property. If we find, as I do, that the mortgage provision constitutes a division of property, the inquiry ends and the provision is not subject to modification absent fraud or gross inequity. *See Leon Guerrero*, 2000 Guam 28 ¶ 9 (citing *Hoshor*, 580 N.W.2d at 522). On the other hand, if we find that the mortgage provision constitutes spousal support, we must determine whether the spousal support provision and those for the division of property in the settlement agreement are severable or integrated. *See Plumer*, 313 P.2d at 552. The spousal support provision is subject to

modification only if it is severable from the provisions dividing real property, which I do not find to be the case here. *See id.*

I.

[50] The provision in the settlement agreement obligating Tim to assume the mortgage on the parties' residence as his separate debt is a provision dividing the parties' property and, thus, it is not subject to modification without the consent of the parties. *See Leon Guerrero*, 2000 Guam 28 ¶ 9 (citing *Hoshor*, 580 N.W.2d at 522); *Adams*, 177 P.2d at 267. The trial court is generally without jurisdiction to modify provisions relating to the division of property in a divorce decree. *See Adams*, 177 P.2d at 267. "Where a party to a divorce action, represented by counsel, voluntarily executes a property settlement agreement which is approved by the court and incorporated into a divorce decree, such a decree may not be vacated or modified as to such property provisions in the absence of fraud or gross inequity." *Leon Guerrero*, 2000 Guam 28 ¶ 9 (citing *Hoshor*, 580 N.W.2d at 522). Simply put, if a provision relates to the division of property, then it is generally non-modifiable.

[51] I disagree with the majority's finding that the parties' settlement agreement is ambiguous as to whether the provision relating to the parties' mortgage payments constitutes spousal support or a division of property. Rather, the parties' intent can be discerned from the four corners of the settlement agreement, which is a clear division of the parties' debts and property. The parties intended Tim's assumption of the mortgage loans on the parties' residence to be a division of the parties' property rather than spousal support.

[52] This court applies contract principles to the interpretation of property settlement agreements. *Blas v. Cruz*, 2009 Guam 12 ¶ 11 (citing *Leon Guerrero*, 2000 Guam 28 ¶¶ 8-9; *Camacho v. Camacho*, 1997 Guam 5 ¶¶ 30-35). We must give effect to the mutual intention of

the parties as it existed at the time the parties entered into the settlement agreement, and we must ascertain the parties' intention from the writing alone. *Leon Guerrero*, 2000 Guam 28 ¶ 8.

[53] For the reasons explained below, I would find that the provision in the settlement agreement requiring Tim to assume the mortgage as his separate debt is a provision for a division of property and not, as the majority concludes, a provision for spousal support.

[54] First, the settlement agreement contained detailed provisions under specific headings such as "Child Custody and Child Support," "Division of Community Property and Separate Property," and "Tim's Separate Debt." Although the labels are not conclusive of the parties' intent, considering the settlement agreement as a whole still indicates that the parties intended the mortgage provision to be a division of the parties' property. *See Helvern v. Helvern*, 294 P.2d 482, 487 (Cal. 1956). If the parties had intended the mortgage provision to be spousal support, surely they would have included some reference to spousal support or alimony in the settlement agreement. However, the settlement agreement contained no express reference to spousal support or alimony. Thus, finding the mortgage provision in the settlement agreement to be spousal support is too far a stretch of plain reading. Moreover, if the parties' had intended the mortgage provision to be spousal support, the parties' capable counsel would have used that language in the settlement agreement rather than stating that the mortgage would be "Tim's separate debt."

[55] Second, the Interlocutory Decree of Divorce, which incorporated verbatim the settlement agreement, provides additional support that the parties intended the mortgage provision to be a property division. The Interlocutory Decree made no express reference to spousal support or alimony. Instead, it unambiguously stated that the settlement agreement was only intended to cover property division, child custody, and child support: "The Divorce and Property Settlement

Agreement is hereby incorporated into the Interlocutory Decree *setting out the property division* and matters pertaining to child custody and child support, a copy of which is attached hereto." Excerpts of Record ("ER"), tab 1 at 1 (Interlocutory Decree of Divorce, Oct. 30, 2003).

[56] Third, the fact that the mortgage provision in the settlement agreement lacked key characteristics of standard provisions governing spousal support provides further evidence that the parties did not intend for Tim's assumption of the mortgage to be spousal support. Although spousal support payments may take a variety of forms, the mortgage provision is not in the general nature of spousal support because there is no limitation on Tim's obligation to pay the mortgage. In Guam, spousal support ends upon the death of the recipient of the spousal support. *See* 19 GCA § 8405 (2005) (emphasis added) ("When a dissolution of marriage is granted, the tribunal shall . . . make such suitable allowance to the other spouse for that person's support, *during that person's life or for a shorter period* . . . ."). Provisions providing for termination of spousal support upon death or remarriage, although not conclusive, are generally regarded as indicative of alimony. *Biagi v. Biagi*, 43 Cal. Rptr. 707, 713 (Dist. Ct. App. 1965) (citing *Fields v. Fields*, 94 Cal. App. 2d 56, 59 (Dist. Ct. App. 1949)). In contrast to standard provisions governing spousal support, the mortgage provision in the settlement agreement did not include any statement that Tim's obligation to pay the mortgage would end upon his death, Rita's death, Rita's remarriage, or Rita's improved financial situation. Rather, it provided that Tim was obligated to pay off the mortgage in full. Consequently, Tim or his estate would presumably still be obligated to pay off the mortgage in full regardless of whether Rita or Tim dies, Rita remarries, or Rita improves her financial situation.

[57] Fourth, tax implications further suggest that the parties did not intend the mortgage provision to be spousal support. *See* 26 U.S.C.A. § 71 (Westlaw current through Pub. L. 112-

104 (2012)) ("Gross income includes amounts received as alimony or separate maintenance payments."). If Tim's assumption of the mortgage were spousal support, Tim would have been able to deduct the mortgage payments from his income tax. *See* 26 U.S.C.A. § 215 (Westlaw current through Pub. L. 112-104 (2012)). Certainly, Tim would have taken advantage of any available deductions from his income tax. Instead, there is no indication of any expectation that Tim would be able to deduct the payments from his income tax as spousal support or that Rita would have to declare the payments as income on her tax return.

[58] The mortgage provision of the settlement agreement, however, states, "Tim, not Rita, shall be able to claim any applicable tax deductions on these [mortgage] payments." RA, tab 42 at 5 (Divorce and Prop. Settlement Agreement, Sept. 8, 2003). The settlement agreement was contingent upon refinancing the mortgage on the property to consolidate all the community debts, and Tim subsequently assumed the debts as his separate debt. The language that Tim could claim the tax deduction on the mortgage suggests that the applicable tax deduction the parties agreed he would claim was the mortgage interest on the property because he made the mortgage payments. If the mortgage provision constitutes spousal support, it is clear that there is no applicable tax deduction Rita could claim; instead, her tax implication would be to include the payment as gross income. Therefore, assuming the mortgage provision was in lieu of spousal support, it was not necessary for the parties to include a provision that Rita could not claim any tax deductions from the mortgage payments because there was no tax deduction available for her to claim. Rather, the inclusion of this provision in the settlement agreement further evidences that the mortgage payments were not in lieu of spousal support because the parties' intent in incorporating this language in the settlement agreement was to allow Tim to claim the mortgage interest as a tax deduction since he made the payments on the refinanced loan.

[59] Next, the majority concludes that the mortgage provision constitutes a provision for spousal support. Yet, the majority opinion recognizes the possibility that there may have been consideration for the mortgage provision in the agreement that Tim could have agreed to assume the mortgage in exchange for Rita's agreement to abstain from pursuing an at-fault divorce, which could have potentially resulted in Rita receiving a greater share of the community property. The majority points out that, in Rita's counterclaim, she alleged extreme cruelty and adultery as grounds for divorce and, thus, the majority is reluctant to conclude the mortgage provision is a provision for spousal support and accordingly reluctant to allow modification of the agreement without knowing to any degree of certainty if Rita abstained from pursuing an at-fault divorce in exchange for Tim's assumption of the mortgage. If there were evidence in the record to suggest this, then the majority would acknowledge that the mortgage provision is part of a division of property and not a provision for spousal support.

[60] In answering Rita's counterclaim, Tim denied the allegation of extreme cruelty, but admitted the allegation of adultery. *See* RA, tab 23 at 2 ¶ 9 (Pl.'s Am. Answer to Def.'s Countercl., Jan. 31, 2003). If Rita pursued the divorce on the ground of adultery, had the parties not settled their rights by agreement, the trial court, in its discretion, could have awarded Rita a greater share of the community property. This further supports my view that the parties did not intend the mortgage provision to be spousal support.

[61] In the majority opinion, the majority states, "The fact that the settlement agreement failed to refer to the mortgage payments as spousal support is not conclusive of the parties' intent," and cites *Helvern* to support this proposition. *See* ¶ 35 n.2 of the majority opinion (citing *Helvern*, 294 P.2d at 487). While the court in *Helvern* noted that "[t]he labels adopted by the parties are not conclusive, since the agreement must be considered as a whole," *Helvern*, 294 P.2d at 487,

the court reviewed the entire agreement at issue, which included provisions for alimony and property division provisions, to determine whether the agreement was an integrated agreement. *Id.* at 487-89. Unlike the agreement in *Helvern*, the settlement agreement in this case did not include specific provisions for spousal support or alimony. The majority also finds it irrelevant that the payments are not made directly to Rita because a spousal support order may include a requirement that payment be made to a third party. The majority cites *In re Marriage of Garcia*, 274 Cal. Rptr. 194 (Ct. App. 1990), to further support its conclusion that the mortgage provision constitutes spousal support. In that case, however, the holding was premised on a California statute, which provides that "the court may order one of the parties to pay the obligation . . . to the creditor." Cal. Civ. Code § 4358 (1993), *repealed by* Stats. 1992, c. 162 (A.B.2650), § 3, operative Jan. 1, 1994. We have no similar statutory provision.

[62] Finally, in considering whether the settlement agreement could be modified, the parties included express language allowing for modification of child support, but did not include a similar provision for modification of the mortgage provision, simply because the parties did not intend for the mortgage provision to be spousal support.

[63] In sum, the agreement here is devoid of any indication of intent to provide for spousal support. Thus, absent fraud or gross inequity, a trial court does not have jurisdiction to modify a provision in a divorce decree without the parties' consent if the provision constitutes a division of real property. *Leon Guerrero*, 2000 Guam 28 ¶ 9 (citing *Hoshor*, 580 N.W.2d at 522). Because I would find that Tim's agreement to assume the mortgage on the parties' residence as his separate debt in the settlement agreement constituted a division of the parties' property, the mortgage provision is not subject to modification.

II.

[64] Even if the provision in the settlement agreement obligating Tim to assume the mortgage on the parties' residence as his separate debt was intended to be spousal support, the spousal support provision would still be non-modifiable because it is integrated with the property division provisions in the settlement agreement. *See Plumer*, 313 P.2d at 552. Unlike provisions relating to the division of property, those relating to spousal support in a divorce decree are subject to modification at the trial court's discretion. *See* 19 GCA § 8405.

[65] Spousal support provisions in a divorce decree are not automatically modifiable. *See, e.g.*, *Adams*, 177 P.2d at 267. Assuming that the settlement agreement is a hybrid agreement, which contains both provisions for spousal support and provisions for property division, spousal support provisions are subject to modification when the support provisions and the provisions dividing property are severable rather than integrated. *Plumer*, 313 P.2d at 552 (citing *Dexter v. Dexter*, 265 P.2d 873, 875 (Cal. 1954)). When the provisions for spousal support and those for property division are integrated in a hybrid agreement, the agreement may not be modified absent an express provision for or agreement to such a modification. *Id.* An agreement is integrated when the parties have agreed that the provisions for the division of property and those for spousal support constitute reciprocal consideration, which a court determines by looking at the pertinent provisions of the agreement. *Id.*

[66] There is no evidence that the mortgage provision in the settlement agreement was intended to be handled separately from the remaining provisions dividing the parties' property. With no evidence to the contrary, we must assume that the parties negotiated all the provisions of the settlement agreement together. The mortgage provision cannot be modified without affecting the property division provisions in the settlement agreement. If Tim had not agreed to assume

the mortgage as spousal support, then he would have had to give up more in the division of property provisions. Furthermore, if the parties had equity in the Barrigada residence at the time of their divorce, Rita was willing to give up her claims to it in exchange for the right to live in the residence rent free for the remainder of her life. The majority cites the language from section VI, paragraph 8 of the agreement, which states that the agreement is contingent on Tim's ability to refinance the community debts into one mortgage loan and, if refinancing is unsuccessful, the parties may continue to negotiate the terms of the agreement. The majority notes that such provision and the fact that the parties agreed to continue negotiations undermines any argument that the agreement was intended to be final and non-modifiable. This provision however, has no implication on the trial court's discretion to modify the agreement, but instead is further evidence that the agreement is integrated and non-modifiable because the modification is subject to the mutual consent of the parties. Consequently, if this court allows for the modification of the mortgage provision, it will unfairly upset the balance reached by the parties through their negotiations.

III.

[67] Based on a plain reading of the settlement agreement and the parties' intentions as expressed within the four corners of the agreement, Tim's assumption of the mortgage as his separate debt constituted a non-modifiable division of the parties' property. When we are faced with a dispute over whether a provision is modifiable, as here, where the parties provided unambiguous language in their agreement and then nearly seven years after the parties' divorce had become final, one of the parties becomes dissatisfied with the results of the past agreement, it is imprudent precedent for this court to allow the agreement to be modified. Even if this court finds that the mortgage provision in the settlement agreement constituted spousal support, the

provision is still non-modifiable because it is integrated with the provisions dividing the parties' property. "It is not necessary that the parties expressly recite such an intent, when the agreement itself makes the intent clear." *Biagi*, 233 Cal. App. 2d at 631. Tim accepted the benefits of his bargain and now seeks to be relieved of the burdens. Moreover, the majority's conclusion is not premised on any rule of law; instead, the majority speculates on how the parties' property would have been divided. Furthermore, the majority opinion acknowledges the possibility that Tim assumed the mortgage in consideration for Rita doing something else. In my opinion, the parties' intent can be ascertained from the writing alone and, therefore, extrinsic evidence is inadmissible to prove the parties' intent. Public policy favors the stability of binding agreements dividing marital property and settling rights and obligations of support with finality. Because such agreements occupy a favored position in the law and courts prefer agreement over litigation, the settlement agreement in this case should not be disturbed. *See Adams*, 177 P.2d at 267. Doing so would not give effect to the mutual intention of the parties as it existed at the time the parties entered into the settlement agreement.

[68] For the foregoing reasons, I would **AFFIRM** the trial court's holding.

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice