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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

DAVID G. BANES,
Petitioner,

v.

SUPERIOR COURT OF GUAM,
Respondent,

OXANA GALKINA BANES,
Real-Party-in-Interest

Supreme Court Case No. WRP12-002
Superior Court Case No. DM0377-11

OPINION

Cite as: 2012 Guam 11

Appeal from the Superior Court of Guam
Argued and submitted May 15, 2012
Hagåtña, Guam

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

CARBULLIDO, C.J.:

[1] Oxana G. Banes (“Oxana”) filed a Complaint for divorce and the nullification of a prenuptial agreement. David G. Banes (“David”), a resident of Saipan, filed his Motion to Dismiss for lack of personal jurisdiction. The Superior Court of Guam issued a decision denying David’s Motion, holding that it had personal jurisdiction over David. David then filed a Petition for Writ of Prohibition in this court, arguing that the trial court did not have personal jurisdiction over him and sought to prevent the trial court from proceeding to hear the divorce case in Guam. Verified Pet. Writ Prohibition (“Pet.”) (Feb. 8, 2012). We hold that the trial court did not have personal jurisdiction over David and order the writ of prohibition to issue to the Superior Court, prohibiting it from proceeding with the case.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

[2] David and Oxana met in Saipan in 1999. Before their marriage, the two negotiated a Prenuptial Agreement (“Agreement”) in Saipan, and each party was represented by independent counsel. This Agreement included a provision governing choice of law, stating that the Agreement was made in the Commonwealth of the Northern Mariana Islands (“CNMI”) and that it “shall be construed under and in accordance with” CNMI laws. Record on Appeal (“RA”), tab 3, Ex. A ¶ 26 (Prenuptial Agreement, Jan. 31, 2003). Additionally, this provision states: “[T]his Prenuptial Agreement shall in no way be affected by or modified because of a change in domicile of either party.” *Id.* David and Oxana married on March 27, 2003 in the CNMI Superior Court. They lived in Saipan for the duration of their marriage. They opened a joint

¹ For purposes of this opinion, the facts in the petition are presumed to be true.

savings account at the First Hawaiian Bank in Saipan, which was their “Marital Fund.” RA, tab 3 ¶ 7 (Aff. David G. Banes, Aug. 22, 2011).

[3] On or about May 24, 2008, David told Oxana he wanted a divorce, and soon thereafter, Oxana moved out. The two separated and stopped cohabitation as of June 7, 2008, at which time there was an “irreparable breakdown of the marital relationship.” *Id.* ¶ 10. Oxana then moved to Guam in July 2008. To accommodate Oxana’s living situation in Guam during their separation period, David purchased a condominium in Tamuning, Guam, on August 20, 2008. Having never met the broker nor negotiated the sale price, David purchased the condominium, site unseen, by placing money into escrow with Pacific American Title Company in Saipan. He signed the deed in Saipan upon receiving it via mail.

[4] While the two were separated, Oxana had a green card, but was not a U.S. citizen. During their separation, David asked Oxana several times for a divorce, but Oxana avoided the topic. Around April or May of 2011, Oxana finally obtained U.S. citizenship and subsequently filed for divorce in Guam.

[5] Oxana filed for divorce in Guam in May 2011. Soon thereafter, because David contends that the divorce should be heard in the CNMI courts, he filed an action for divorce in the CNMI courts. David also filed a Motion to Dismiss for lack of personal jurisdiction in the Guam court. Oxana moved to dismiss David’s complaint for divorce, which the CNMI court denied. The CNMI Superior Court later granted David’s request for a divorce. Meanwhile, the Guam court denied David’s Motion to Dismiss, asserting it had personal jurisdiction over him. David timely filed this Writ of Prohibition. On the same day, David filed a petition for interlocutory appeal. On February 13, 2012, we stayed the interlocutory appeal in the interest of judicial economy.

II. JURISDICTION

[6] This court has original jurisdiction to consider writs of prohibition pursuant to 48 U.S.C.A. § 1424-1(a)(3) (Westlaw current through Pub. L. 112-142 (2012)) and 7 GCA § 3107(b) (2005); *see also Guam Police Dep't v. Superior Court*, 2011 Guam 8 ¶ 6. Additionally, the Supreme Court of Guam has jurisdiction over writs pursuant to 7 GCA, Chapter 31 and the Guam Rules of Appellate Procedure (“GRAP”) Rule 24.

III. STANDARD OF REVIEW

[7] We are essentially reviewing the trial court’s decision regarding personal jurisdiction over a nonresident defendant, which is an issue implicating constitutional due process. *See PCI Commc’ns, Inc. v. GST PacWest Telecom Haw., Inc.*, 1999 Guam 17 ¶ 15. As such, the issue of personal jurisdiction herein is reviewed *de novo*. *Id.*

IV. ANALYSIS

[8] David argues that the Guam court lacks personal jurisdiction over him in the matter of Oxana’s divorce filing in Guam. *See* Pet. at 7. Under the *PCI Communications* three-part test, Oxana had the burden to show: (1) that David, as a nonresident of Guam, performed some act by which he purposefully availed himself to the forum; (2) the divorce claim arose out of David’s contact with the forum; and (3) that it was reasonable for the Guam court to assert jurisdiction over David. *See PCI Commc’ns v. GST Pacwest Telecom Hawaii, Inc.*, 1999 Guam 17 ¶ 23. David contends the trial court erred when it found jurisdiction over him based solely on his ownership of the Guam condominium. *See* Pet. at 7. David argues the trial court erred for failing to address the second and third prongs of the *PCI Communications* three-part test, and the second and third issues remain the “crux of this Writ.” *Id.* at 5, 6.

[9] As a threshold matter, we address whether a writ of prohibition will lie to prohibit the trial court from proceeding in the underlying action if we find it lacks personal jurisdiction over David.

A. Whether a Writ of Prohibition Should Issue

[10] Title 7 GCA Chapter 31, Article 3 governs a petition for writ of prohibition in Guam. *See* 7 GCA § 31301 *et seq.* (2005); *Gray v. Superior Court*, 1999 Guam 26 ¶ 12. The section defining a writ of prohibition provides that a writ of prohibition “arrests the proceedings of any tribunal . . . exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal.” 7 GCA § 31301. The writ may be issued “by any court except police or commissioner’s courts, to an inferior tribunal . . . in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law.” 7 GCA § 31302 (2005).

[11] Guam’s writ of prohibition statutes are based on California’s parallel statutes—7 GCA § 31302 is based on California Code of Civil Procedure section 1103. *See generally* 7 GCA § 31302.² When Guam statutes are based on nearly identical California statutes, California case law is persuasive, absent any compelling reason to deviate from California’s interpretation. *See Castino v. G.C. Corp.*, 2010 Guam 3 ¶ 22.

² Title 7 GCA § 31302 provides:

§ 31302. When and Where Writ Issued.

It may be issued by any court except police or commissioner’s courts, to an inferior tribunal or to a corporation, board, or person in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

7 GCA § 31302 (2005).

Nearly identical language is found in California Code of Civil Procedure section 1103, providing:

A writ of prohibition may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

Cal. Civ. Proc. Code § 1103(a) (West 2012).

1. Plain, Speedy, and Adequate Remedy at Law Standard

[12] It is well settled that a writ of prohibition will not issue when the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. *See Topasna v. Superior Court*, 1996 Guam 5 ¶ 5 (“Writs of prohibition may be issued only ‘where there is not a plain, speedy, and adequate remedy in the ordinary course of law.’”); *Santa Ynez Mercury Corp. v. Superior Court*, 79 P.2d 185, 186 (Cal. Ct. App. 1938); *Hamberger v. Police Court*, 106 P. 894, 895 (Cal. Ct. App. 1909) (“The writ of prohibition will not issue to an inferior tribunal or officer, acting without or in excess of the jurisdiction of such tribunal or offer, unless the aggrieved party be without a plain, speedy, and adequate remedy in the ordinary course of law.”). *See generally* 7 GCA § 31301. The issuance of the writ of prohibition is a “drastic remedy to be used in extraordinary situations.” *Topasna*, 1996 Guam 5 ¶ 5 (internal quotation marks and citation omitted). “In determining whether to grant a writ of prohibition, we must first decide whether [the petitioner] has another adequate remedy at law.” *Guam Police Dep’t v. Superior Court (Lujan)*, 2011 Guam 8 ¶ 19 (determining whether an appeal after final judgment would provide an adequate remedy at law to protect a governmental entity’s interests of sovereign immunity).

[13] According to David, interlocutory appeal would be an inadequate remedy. *See* Pet. at 9. Following California precedent, David cites *Jardine v. Superior Court*, 213 Cal. 301 (1931), for the proposition that a writ will lie in cases alleging the lack of personal jurisdiction. *See* Pet. at 9 (citing *Jardine v. Superior Court*, 213 Cal. 301, 305 (1931) (noting that the “delay and expense of a protracted trial” are among relevant factors to determine whether a writ should lie)). He also cites *Department of Public Works v. Superior Court* and *Jackson v. Superior Court*, which both mentioned the unnecessary waste of resources while awaiting the resolution of proceedings. *See* Pet. at 9; *see also Dep’t of Pub. Works v. Superior Court*, 239 P. 1076, 1080 (Cal. 1925) (“[W]e

are disposed to issue the writ to the end that the petitioners be not put to the expense and annoyance of perfecting a voluminous return and attending what would undoubtedly be a protracted hearing”); *Jackson v. Superior Court*, 10 Cal. 2d 350, 353 (1937) (holding that remedy is neither speedy nor adequate due to the “voluminous record to prepare” and “considerable time would elapse before appeal could be perfected and decided”). But none of the above cited cases specifically discussed that a writ of prohibition will lie in cases involving disputes of *personal* jurisdiction.³ These three cited cases stand for the proposition that when voluminous records are involved, waiting for a trial to proceed would be inefficient and, thus, waiting for an appeal after final judgment would not be a speedy remedy. David’s above citation to *Jardine* nonetheless supports his argument because *Jardine* indicated that a petitioner may use a writ of prohibition to object to a court’s finding of personal jurisdiction over a nonresident defendant. *See Jardine v. Superior Court*, 213 Cal. 301, 305 (1931) (“[W]e are compelled to overrule them in so far as they purport to hold that an objection to jurisdiction over the person of a defendant cannot be raised by an application for a writ of prohibition.”).

[14] David also relies on other non-California jurisdictions that he claims have issued a writ of prohibition regarding personal jurisdiction issues because the petitioner would have been subjected to “unreasonable delay and expense.” Pet. at 9. David relies on *Canaday v. Superior Court*, 116 A.2d 678 (Del. 1955), noting that appeal from final judgment is an inadequate remedy because it subjects the petitioner to unreasonable delay and expense; *Hammond v. District Court*, 228 P. 758 (N.M. 1924), stating that, in a case involving lack of personal

³ David cites *Guam Police Department v. Superior Court (Lujan)*, 2011 Guam 8, in which this court decided a writ of prohibition was appropriate to deliver a speedy determination on the issue of lack of *subject matter* jurisdiction—due to sovereign immunity—because this court found that an appeal after final judgment would not be an adequate remedy in that case. *See* Pet. at 8; *Lujan*, 2011 Guam 8 ¶ 23. In that case, we expressed the concern that “appeal after final judgment is not a plain, speedy, and adequate remedy for GPD to protect its important sovereign immunity right from suit.” *Id.* ¶ 26. Protecting sovereign immunity is not implicated in this case.

jurisdiction, a remedy is inadequate where an appeal from a judgment would be extremely costly; and *State ex rel. Ellan v. District Court*, 33 P.2d 526 (Mont. 1934), granting writ of prohibition reasoning that a nonresident should not have to face a delay and expense for trial, only to have the final judgment on appeal declared void because the trial court lacked personal jurisdiction.⁴ *See id.* at 9-10. *Canaday* noted that when a:

[T]rial court is erroneously assuming *personal* jurisdiction over a defendant who has not been, nor cannot be, subjected to the court's jurisdiction, the defendant may successfully petition for a writ of prohibition to end the matter, . . . even though the petitioner ultimately would have the right to a review of the jurisdictional question by way of appeal.

Canaday, 116 A.2d at 683 (emphasis added). The *Canaday* court further held that even though the defendant could wait to appeal after completion of all proceedings, “[s]uch remedy, however, is held not to be adequate for the reason that it subjects the petitioner to unreasonable delay and expense in defending an action which later will be declared a nullity”—precisely for lack of jurisdiction. *Id.* Thus, *Canaday* supports David’s proposition that a writ of prohibition will lie in cases that specifically allege lack of personal jurisdiction.

[15] Applying the facts of this case, the unreasonable delay and expense for David is that he would be forced to wait until the end of the Guam divorce matter to appeal, after undergoing discovery, a trial, and potentially a delay of many years. *See Pet.* at 10. He argues that even more delay and expense can be attributed to the unique fact that the CNMI court has a parallel divorce proceeding pending, which means both parties will have to undergo the expense of litigation in two separate forums. *See id.* at 10-11. Facing final judgment in Guam while another divorce matter is concurrently proceeding in the CNMI, and the potential for inconsistent

⁴ Also, David argues that federal courts have permitted writs of prohibition when an appeal from a trial court would cause undue delay. *Pet.* at 10. However, he cites to cases that involve writs of mandamus rather than writs of prohibition. *See id.* (citing *Madden v. Myers*, 102 F.3d 74 (3d Cir. 1996); *Rosenfeld v. United States*, 859 F.2d 717 (9th Cir. 1989)).

interpretations of the CNMI law provided by the choice of law provision in the Prenuptial Agreement are among the problems that David cite as “irreparable harm.” *Id.* at 11. Nevertheless, David recognizes that these hardships do not automatically constitute an inadequate remedy warranting a writ of prohibition to issue. *See id.*; *see also Jollie v. Superior Court*, 237 P.2d 641, 643 (Cal. 1951) (noting that a “large expenditure of time and money” is insufficient to show that appeal is an inadequate remedy).

2. Whether an Interlocutory Appeal Suffices as an Adequate Remedy

[16] We must also determine whether an interlocutory appeal would serve as an adequate remedy that would protect David’s due process interests of not litigating in a forum that lacks personal jurisdiction over him. Often times, case law concerning writ usage will not specifically distinguish whether an appeal after final judgment or an *interlocutory* appeal suffices as a plain, speedy, and adequate remedy. The Supreme Court of California, however, elaborated that “when writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner.” *Powers v. City of Richmond*, 893 P.2d 1160, 1177 (Cal. 1995) (discussing whether an appeal after final judgment serves as a plain, speedy, and adequate remedy in the context of a writ of mandate, which is also an extraordinary writ proceeding); *see also La Société Francaise d’Épargnes et de Prévoyance Mutuelle v. District Court*, 53 Cal. 495, 540 (1879) (noting that an interlocutory order appointing a receiver of the property of a corporation “may undoubtedly be reviewed on an appeal after final judgment, which affords a plain, speedy, and adequate remedy” in the context of a writ of certiorari). This proposition suggests that a court may recognize an appeal after a *final* judgment as an adequate remedy, which functions to protect a litigant’s interests in lieu of issuing a writ. While the

authority does not clarify whether an *interlocutory* appeal—absent final judgment—is equally adequate, it is arguable that an interlocutory appeal does not provide the same degree of adequacy as a remedy.

[17] Indeed, recognizing the distinctions between various types of appeals, the Supreme Court of California noted that just because there is an appeal, this does not automatically mean a writ of prohibition should not issue. *See Havemeyer v. Superior Court*, 24 P. 121, 139 (Cal. 1890). In interpreting the California Code of Civil Procedure section 1103, on which Guam’s nearly identical writ of prohibition statute is based, the *Havemeyer* court noted that “[t]he [writ of prohibition] statute does not say that the writ will not issue in any case where there is an appeal. There must not only be a right of appeal, but the appeal must furnish an adequate remedy, in order to prevent the issuance of the writ.” *Id.* It is worth noting that *Havemeyer* also referenced several cases that refused to issue the writ of prohibition because there had been “a right of appeal” available and wherein the appeal “afforded a complete and adequate remedy for the threatened excess of jurisdiction.” *Id.* The court ultimately held that the fact that the petitioners *could have* appealed from an order “does not preclude them from having the writ of prohibition.” *Id.* at 140.

[18] Insofar as *Havemeyer* characterizes a right of appeal to be a plain, speedy, and adequate remedy, *Havemeyer*, 24 P. at 139, a litigant does not have an absolute right to an interlocutory appeal in Guam. *See People v. Quenga*, 1997 Guam 6 ¶ 4. The Supreme Court of Guam has discretion to review interlocutory appeals under limited circumstances. *See id.* Title 7 GCA §3108(b), which governs interlocutory appeals, provides:

(b) Interlocutory review. Orders other than final judgments shall be available to immediate appellate review as provided by law and in other cases only at the discretion of the Supreme Court where it determines that resolution of the questions of law on which the order is based will:

- (1) Materially advance the termination of the litigation or clarify further proceedings therein;
- (2) Protect a party from substantial and irreparable injury; or
- (3) Clarify issues of general importance in the administration of justice.

7 GCA § 3108(b) (2005). Thus, interlocutory appeal is not a right, which suggests that it falls short of a plain, speedy, and adequate remedy under *Havemeyer*.

[19] Furthermore, this court has recognized that failure to seek interlocutory review, even when interlocutory appeal might have been the better procedure, does not necessarily preclude a court from issuing a writ of prohibition. *See Long-Term Credit Bank of Japan v. Superior Court (Nomoto)*, 2003 Guam 10 ¶ 15 n.6. In *Nomoto*, this court noted that an appeal after final judgment was an inadequate remedy at law when seeking to recuse a trial judge. *See id.* Even though the court acknowledged the petitioners should have sought an interlocutory appeal as the preferred procedural route, it noted, “a failure to seek interlocutory review does not preclude consideration of the instant Petition [for writ of prohibition].” *Id.* Hence, despite the fact that the petitioners in that case sought a writ of prohibition instead of the preferred procedure of interlocutory appeal, this court nonetheless decided the petition on the merits, clarifying the legal issue of judicial recusal. *See id.* ¶¶ 27-48. The availability of an interlocutory appeal, therefore, does not prevent the issuance of the writ, particularly when the interlocutory appeal is discretionary and not a matter of right.

3. Other Authority Allowing a Writ of Prohibition to Issue for Lack of Personal Jurisdiction

[20] Other courts have allowed a writ of prohibition to lie when there is a lack of personal jurisdiction over a nonresident defendant. *See, e.g., McArthur v. Superior Court*, 1 Cal. Rptr. 2d 296, 300 (Ct. App. 1991) (issuing a writ of prohibition to prevent further litigation of custody and child support proceedings in California court over an Ohio defendant); *see also State ex rel.*

Stone v. Court of Common Pleas, 470 N.E.2d 899, 901-02 (Ohio 1984) (affirming a court of appeal’s decision allowing the issuance of a writ of prohibition because the trial court lacked personal jurisdiction over a non-resident father in paternity action); *Zappitello v. Moses*, 458 N.W.2d 784, 786 (S.D. 1990) (noting that in cases involving interstate custody disputes, when a lower court “lacks subject matter or personal jurisdiction and the applicant has no plain, speedy, and adequate remedy in the ordinary course of law against the [lower] court’s erroneous assumption of jurisdiction, the Supreme Court may issue a writ of prohibition”); *Pries v. Watt*, 410 S.E.2d 285, 288-89 (W. Va. 1991) (issuing a writ of prohibition when it found that the lower court lacked personal jurisdiction over a nonresident defendant in a case involving the modification of spousal support).

[21] In the *McArthur* case cited above, the ex-husband, an Ohio resident, petitioned for a writ of prohibition when his ex-wife requested a modification of child support and visitation rights in the Superior Court of California. *See McArthur*, 1 Cal. Rptr. 2d at 297. He made a special appearance to contest jurisdiction, and the trial court held it had personal jurisdiction over him. *Id.* Even though the Ohio court did not concurrently have a pending proceeding at that time, the California Court of Appeal decided that if the ex-husband’s resident forum of Ohio did in fact have jurisdiction over the ex-wife’s modification request, it should be addressed in Ohio. *Id.* at 299. Ultimately, the California court held that extraordinary relief was warranted and, thus, a writ of prohibition is appropriate when there is a lack of personal jurisdiction over the nonresident defendant. *Id.* at 300-01.

[22] We hold that a writ of prohibition may issue in this case because a discretionary interlocutory appeal of the denial of a motion to dismiss for lack of personal jurisdiction is not an

adequate remedy as it is not an appeal as of right. We will now consider the merits of David's writ of prohibition regarding the trial court's jurisdiction.

B. Jurisdiction over Both Spouses to Determine Property Rights

[23] A court must have personal jurisdiction over both spouses in order to adjudicate property division. *See Estin v. Estin*, 334 U.S. 541, 548-49 (1948). The *Estin* opinion stands for the proposition that a court must have personal jurisdiction over a defendant when determining personal rights, which in that case, was a determination of alimony. *See id.* at 549 (noting that Nevada lacked the power to "exercise an *in personam* jurisdiction over a person not before the court" and that it had "no power to adjudicate respondent's rights in the New York judgment" regarding alimony). As a result, the *Estin* court also held that a forum may, by decree, give effect to dissolve marital status, but may not give effect to the issue of alimony when there is a foreign defendant over which it has no personal jurisdiction. *Id.* "[A] court cannot adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant." *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418 (1957).

[24] David does not dispute that the trial court had jurisdiction over the dissolution of marital status.⁵ Indeed, a court may have jurisdiction to issue a divorce judgment absent any showing of personal jurisdiction over the defendant. *See, e.g., Miller v. Miller*, No. 90-00015, 1990 WL 320352, at *2 (D. Guam App. Div. 1990) (affirming the trial court's divorce judgment, which terminated the marital relationship, even though the trial court did not have personal jurisdiction over the defendant, a nonresident of Guam). A California Court of Appeal has held that a court must have personal jurisdiction to adjudicate matters beyond mere dissolution of marriage, i.e.,

⁵ The record reveals that the CNMI court has granted the dissolution of marriage. RA, tab 7 at 7 (Proposed Order Granting Pet'r's Mot. Judgment on the Pleadings).

adjudication of the parties' personal rights and obligations. *See Muckle v. Superior Court*, 125 Cal. Rptr. 2d 303, 308 (Ct. App. 2002). The court in *Muckle* clarified:

[T]he court must have jurisdiction over the parties to adjudicate personal rights and obligations (personal jurisdiction) Once the court has met these jurisdictional requirements it may determine not only the marital status, but also the personal right and obligations of the parties, including custody and support of minor children of the marriage, spousal support, settlement and division of the parties' property rights, and the award of costs and attorney fees.

Id. (internal citations omitted). Here, Oxana's Complaint sought to set aside the Prenuptial Agreement, obtain spousal support, and divide the marital property and debts.

[25] Thus, the trial court must have personal jurisdiction before setting aside a Prenuptial Agreement, ordering spousal support, and dividing marital property, which are considered personal claims or obligations.

C. Whether Guam Has Personal Jurisdiction over David in Oxana's Divorce Matter

[26] As the plaintiff in Guam, Oxana has the burden of establishing jurisdiction. *See Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995). In California, when a "defendant moves to quash service for lack of personal jurisdiction, the burden is on the plaintiff to establish jurisdiction by a preponderance of the evidence." *Roy v. Superior Court*, 25 Cal. Rptr. 3d 488, 492 (Ct. App. 2005) (citation omitted). In federal court, when a defendant "raises the jurisdictional objection by motion, the plaintiff can defeat it with no more than a *prima facie* showing." *Id.* Thus, regardless of the type of burden imposed, the burden remains on the plaintiff to show there is jurisdiction over the nonresident defendant.

[27] To establish personal jurisdiction, the plaintiff must first identify a statute asserting personal jurisdiction over the defendant; and then, the plaintiff must show that exercising jurisdiction over the defendant fulfills the constitutional principles of due process. *See PCI Commc'ns*, 1999 Guam 17 ¶ 15. Here, the crux of David's petition is that the Guam court did

not have personal jurisdiction over him because he did not have sufficient minimum contacts with the forum jurisdiction. *See id.* ¶¶ 17, 18. David concedes that the first element of statutory jurisdiction is met by 7 GCA § 14109, which serves as Guam’s long-arm statute—the scope of which allows the courts of Guam to exercise jurisdiction “on any basis not inconsistent with the Organic Act or the Constitution of the United States.” 7 GCA § 14109 (2005). Due to this broad-reaching statutory language, the effect is that the jurisdictional analysis merges into a single step. That is, a court analyzing personal jurisdiction under Guam’s long-arm statute, simultaneously analyzes the issue of constitutional due process.

[28] Principles of Fourteenth Amendment due process require a nonresident defendant to have minimum contacts with the forum “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *PCI Commc’ns*, 1999 Guam 17 ¶ 17 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Only if minimum contacts exist will the nonresident defendant be subject to general (i.e., unlimited) or specific (i.e., limited) jurisdiction. *See id.* ¶ 18 (citations omitted).

1. General Jurisdiction

[29] Oxana alleges jurisdiction by virtue of David’s ownership of real property in Guam. *See Answer & Opposition Br.* (“Opp’n”) at 10 (Mar. 14, 2012). It is David’s argument that such a singular contact does not constitute continuous or systemic contact with the forum jurisdiction. *See Pet.* at 13. Indeed, the trial court did not assert it had general jurisdiction over David. *See RA*, tab 8 (Dec. & Order, Jan. 9, 2012). Oxana argues that this is a mischaracterization of the trial court’s decision because although the trial court did not specifically refer to “general jurisdiction” over David, it likewise refrained from stating its holding in terms of “specific jurisdiction.” *Opp’n* at 10. Because the decision stated that David “availed himself of the

privileges of ownership of property on Guam and also the burdens associated with owning property related to the marriage here,” Oxana contends that this portion of the decision indicates the trial court asserted general jurisdiction over David. *See id.* at 10-11 (citing RA, tab 8 at 1 (Dec. & Order, Jan. 9, 2012)). Moreover, Oxana alleges that general jurisdiction exists because he “has engaged in real property ownership in Guam, paid real property taxes to Guam, owed a legal duty to the co-owners of the condominium for common area fees, and therefore been subject to *continuous and systematic* relations with the forum jurisdiction (Guam).” *Id.* at 11 (emphasis added).

[30] Oxana also contends that a “‘substantial connection’ between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State.” *Id.* at 9 (citing *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1986) (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 476 (1985))). Oxana relates this legal proposition to the fact that David has not denied the condominium purchase was a “volitional act” and that it was “purposefully directed to Guam as the indisputable intention . . . to purchase property in Guam.” *Id.* at 10. Oxana also cites a Georgia case, *Abernathy v. Abernathy*, 482 S.E.2d 265 (Ga. 1997), for the proposition that “the ‘minimum contacts’ standard does not foreclose the exercise of state court jurisdiction over a true in rem action . . . or ‘when claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant.’” *Id.* at 12 (citing *Abernathy v. Abernathy*, 482 S.E.2d 265, 268 (Ga. 1997)).

[31] While Oxana does not analyze how *Abernathy* applies to this case, it is presumable that Oxana attempts to argue that the marital property in dispute, including the Guam condominium, constitute “property . . . the source of the underlying [division of marital property] controversy.”

See id. This argument is not persuasive, however, because Oxana fails to elaborate on how the Guam condominium constitutes the source of the division of marital property issue. That is, although the marital property division may involve consideration of the Guam condominium, the condominium is not convincingly characterized as the *source* of the controversy.

[32] Finally, citing a Texas case, Oxana argues that purposefully availing oneself to the privilege of property ownership is sufficient to establish “minimum contacts.” *Id.* at 13 (citing *Goodenbour v. Goodenbour*, 64 S.W.3d 69 (Tex. Ct. App. 2001)). Accordingly, Oxana references that by virtue of owning the condominium in Guam and all costs associated, David has made substantial and systematic contacts with Guam. *See id.*

[33] In reply, David notes that the trial court never made any assertion of general jurisdiction. *See Reply Br.* at 3-4 (Mar. 28, 2012). Rather, its conclusion was that David “purposefully and voluntarily” assisted Oxana after their separation in 2008 by accommodating her with a dwelling place in Guam. *See RA*, tab 8 at 1 (Dec. & Order, Jan. 9, 2012). Immediately following this conclusion, the trial court began to discuss the “purposeful availment” prong of the *specific* jurisdiction test. *Id.* David contends that the trial court was discussing the *specific* jurisdiction test when it decided he had “not only availed himself of the privileges of ownership of property on Guam, but also the burdens associated with owning property related to the marriage here.” *Id.*; *see also Reply Br.* at 5. Furthermore, David argues that the trial court did not specify either general or specific jurisdiction was met when it decided: “Based on these factors jurisdiction over [David] comports in the Court’s constitutional notions of fair play and substantial justice” because compliance with “fair play and substantive justice” applies to both general and specific jurisdiction. *See Reply Br.* at 5 (citing *PCI Commc’ns*, 1999 Guam 17 ¶ 17)); *RA*, tab 8 (Dec. & Order, Jan. 9, 2012).

[34] David further argues that general jurisdiction is a very high standard that is rarely found by courts—so infrequent that by 1993, the U.S. Supreme Court had upheld general jurisdiction “only once.” *See id.* at 6, 7 (internal quotation marks omitted) (quoting *Amoco Egypt Oil Co. v. Leonis Navigation Co.*, 1 F.3d 848, 851 n.3 (9th Cir. 1993)). Thus, David argues that the extent of his “continuous and systematic” activities in the forum is “maintaining” the condominium, which is no reason to justify the trial court’s general jurisdiction over him. *See id.* at 10 (citing *Mariano v. Surla*, 2010 Guam 2 ¶ 24).

[35] General jurisdiction may occur when the defendant’s activities within the forum are so substantial and continuous and systematic that would warrant the forum to exercise personal jurisdiction over claims that arise anywhere, even those claims that are unrelated to the defendant’s forum activities. *See PCI Commc’ns*, 1999 Guam 17 ¶¶ 18, 19. It is such that a “defendant’s contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction.” *Vons Cos. v. Seabest Foods, Inc.*, 926 P.2d 1085, 1092 (Cal. 1996). For example, a California Court of Appeal has held that general jurisdiction does not exist when the only contacts in a forum state are few, sparse commercial sales in that state. *See, e.g., Luberski, Inc. v. Oleificio F.LLI Amato S.R.L.*, 89 Cal. Rptr. 3d 774, 778 (Ct. App. 2009) (finding no general jurisdiction because Italian defendant’s contacts with the forum state, California, were only a history of shipping olive oil to a few customers in California, which the court found “does not represent substantial, continuous, and systematic contacts”). Indeed, in the seminal case of *Helicopteros Nacionales de Colombia, S.A. v. Hall*, the U.S. Supreme Court held that sending a chief executive officer to Texas for a contract negotiation session, purchasing helicopters, equipment, and training services from defendant Bell

Helicopter's facilities in Texas could not be described as continuous and systematic contacts.

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416-17 (1984).

[36] We find that David's purchase of the single Guam condominium unit does not constitute an activity or contact that is continuous and systematic enough to establish general jurisdiction over him. The next step is to analyze whether the trial court had specific jurisdiction over David.

2. Specific Jurisdiction Under the *PCI Communications* Three-Part Test

[37] In Guam, to exercise specific jurisdiction, the plaintiff must show that the following three elements are met with regard to the nonresident defendant:

1. The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws.
2. The claim must be one which arises out of or results from the defendant's forum-related activities.
3. Exercise of jurisdiction must be reasonable.

PCI Commc'ns, 1999 Guam 17 ¶ 23. Applying the first prong of the *PCI Communications* test, the trial court found that David's purchase of the condominium sufficed to show he acted "purposefully and voluntarily," thus submitting to the "burdens associated with owning property related to the marriage." RA, tab 8 at 1 (Dec. & Order, Jan. 9, 2012). Neglecting to address the second prong of causation, the trial court erred when it did not assess how the divorce matter arises out of the condominium contact. The trial court also did not address the third prong of whether exercising jurisdiction is reasonable. The following discussion will address each prong in turn.

a. Purposeful Availment

[38] The purpose of the first prong of purposeful availment is to give the defendant notice that he would be subject to suit in the foreign forum. See *World-Wide Volkswagen Corp. v.*

Woodson, 444 U.S. 286, 297 (1980). *World-Wide Volkswagen* provides that the purpose of the fairness test is “to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on the customers, or, if the risks are too great, severing its connection with the State.” *Id.* Accordingly, David argues that his ownership of property in Guam provides him notice that he is subject to lawsuits “regarding the incidents of ownership of property.” Pet. at 15. That is, he must be aware he is liable for suits regarding accidents to his property. *See id.* David cites examples of the types of lawsuits of which he would be on notice, including: suits to quiet title on the property, suits over condominium fees, suits regarding potential nuisance. *See id.* Having such notice, he has the choice to obtain insurance to protect his property against risks—or decide that such a risk is too burdensome to bear, at which point, according to *World-Wide Volkswagen*, he could sever such connection with the forum. *See id.* David argues that he had no reasonable expectation that his ownership of the Guam condominium would hale him into Guam court regarding matters unrelated to the real property, namely: determination of spousal support and marital property rights and determining the validity of the Prenuptial Agreement negotiated and executed in the CNMI, which is governed by CNMI law. *See id.*

[39] In response, Oxana cites the Ninth Circuit case of *Roth v. Marquez* for the proposition that the intent of the purposeful availment requirement is to “ensure[] that a defendant ‘will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or third person.’” *Roth v. Marquez*, 942 F.2d 617, 621 (9th Cir. 1991); *see also* Opp’n at 15. Not analyzing anything further, Oxana incorporates her prior argument regarding general jurisdiction for the purposes of discussing purposeful availment in general. *See id.*

[40] A purposeful business transaction can be considered “one in which the defendant has engaged in some form of affirmative conduct allowing or promoting the transaction of business within the forum state.” *Nusbaum & Parrino, P.C. v. Collazo De Colon*, 618 F. Supp. 2d 156, 162 (D. Conn. 2009) (citations and internal quotation marks omitted). Furthermore, the sole presence of property in a forum state does not entitle that state to jurisdiction over a defendant. *See Shaffer v. Heitner*, 433 U.S. 186 (1977); *see also Kahn v. Superior Court*, 251 Cal. Rptr. 815, 821 (Ct. App. 1988). The U.S. Supreme Court in *Shaffer* intimates that mere presence of real property in the forum state is insufficient to show the nonresident defendant purposefully availed himself such that he “expected to benefit from the State’s protection of his interest.” *Shaffer*, 433 U.S. at 208.

[41] Similarly here, David’s purchase of the Guam condominium alone does not prove that David has availed himself of Guam’s benefit and protections regarding his interest that involve disputes unrelated to the real property itself. As mentioned above, *Shaffer* stated that “when *claims to the property itself are the source* of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction.” *Id.* at 207 (emphasis added). This proposition suggests that when a claim does not arise out of or concern the real property itself—for example, divorce rather than property damage—the forum state’s jurisdiction over the nonresident defendant is not so clear-cut. We agree with David that the divorce action herein is unlike suits to quiet title to the property, suits over condominium fees, or suits regarding potential nuisance, where the property itself is the source of the claim. *See Pet.* at 15. That is, if there happens to be a claim to ownership of the Guam condominium, it would be part of the division of marital property in the underlying domestic suit, rather than those types of suits enumerated above.

[42] Therefore, we do not find that David’s condominium purchase is considered purposeful availment. The next factor to analyze is the connection between David’s Guam related activities and the divorce action, which the trial court did not do.

b. Causation

[43] The second prong concerns the causal relationship between the defendant’s forum-related activities and the litigated claim. *See PCI Commc’ns*, 1999 Guam 17 ¶ 23. David contends that the “divorce action does not arise out of David’s ownership of the Guam condo.” Pet. at 16 (emphasis omitted). He cites case law that he believes serves as examples of such causal connections that are considered “obvious.” *See id.* In *PCI Communications*, David alleges it was obvious that Guam had jurisdiction over Hawaiian defendant GST because the substantial contractual agreement between PCI and GST was signed in Guam. *See id.* (citing *PCI Commc’ns*, 1999 Guam 17 ¶ 30). David cites to the fact that, in *Mariano v. Surla*, 2010 Guam 2, the foreign defendant received a \$5,000.00 check from the plaintiff while in Guam, opened and deposited money into bank account in Guam, promised to invest money, but then withdrew money from the Guam bank account—asserting that these are obvious factors going toward the causation between the Guam forum and the fraud and conversion claims arising therefrom. *See* Pet. at 17; *see also Mariano v. Surla*, 2010 Guam 2 ¶ 26.

[44] Unlike the cases cited, David argues that the ownership of the condominium and the divorce matter does not have any such obvious causal relationship. *See* Pet. at 17. David contends that because “Oxana seeks to have David declared in breach of the [Prenuptial Agreement] contract, her claims arise out of his alleged breach,” and if David did in fact breach the contract, “he did so in the first years of their marriage in the CNMI.” *Id.* David cites the Missouri case of *State ex rel. Gleeson v. Smith*, which has similar factual circumstances. *See id.*

at 18. The couple in *Smith* had been married and lived in Illinois. See *State ex rel. Gleeson v. Smith*, 2008 WL 4051029, at *1 (Mo. Ct. App. Nov. 25, 2008). Upon separation, the wife moved to Missouri, and the husband paid the down-payment, signed a loan, made mortgage payments, and made some assessment payments for a Missouri condominium purchased for the wife. *Id.* The appellate court decided that in order to determine spousal support, attorney's fees and costs, and property rights, the court had to have personal jurisdiction over the defendant. *Id.* at *2 ("Lack of personal jurisdiction precludes consideration of orders pertaining to maintenance, child support, and attorney's fees."). The court also established that "Husband's purchase and financing of real estate in Missouri or lease of vehicles in Missouri will subject Husband to Missouri jurisdiction for causes of action arising from his ownership of said real estate or lease of said vehicles." *Id.* at *5.

[45] This case has even less of a causal connection than did the factual scenario in *Smith*. That is because the husband in *Smith* even leased vehicles for the wife's use in Missouri, took out a loan, made mortgage payments on the condominium, and paid condominium assessments. *Id.* at *1. Here, there existed no such further purposeful activities beyond the purchase of the condominium and David's payment of real property taxes and monthly common area fees for the condominium.

[46] Thus, because the *Smith* court limited the trial court's jurisdiction to solely the dissolution of marriage, David argues the Guam court likewise lacks jurisdiction over the portions of the lawsuit determining property rights and interpretation of the Prenuptial Agreement. See Pet. at 19. The allegations of breach of the Prenuptial Agreement are based out of the CNMI contacts rather than the sole Guam contact of the condominium purchase. To that effect, David argues:

To the extent [Oxana's] claim is based on their marriage and allegations of adultery, extreme cruelty, or irreconcilable differences, these grounds would have

arisen out of the time David and Oxana lived together as man and wife on Saipan, all of which occurred prior to the acquisition of the Guam condo and while they lived together as husband and wife on Saipan.

Id. at 20. Therefore, Oxana’s claim does not arise from his activities in the forum, namely, the condominium purchase.

[47] Oxana dismisses *Smith* as a case that is not on point for our purposes. *See* Opp’n at 13. She states that it did not address the general jurisdiction, but rather focused on Missouri’s long-arm statute, which is “much more narrow than Guam’s long arm statute.” *See id.* (internal quotation marks omitted). Without further analysis, Oxana proceeds to point out that *Smith* concluded that there were no facts in the record from which the trial court could exercise personal jurisdiction over the husband pursuant to a Missouri rule. *See id.* at 14. However, Oxana failed to analyze how this conclusion of lacking jurisdiction weighs in favor of finding jurisdiction over David.

[48] Oxana misinterprets *Smith* because the opinion discussed both the Missouri long-arm statute *and* constitutional due process requirements. “However, these contacts do not satisfy the constitutional due process requirements for exercising personal jurisdiction over Husband in the current dissolution matter unless there is a causal relationship between those specific acts and the dissolution actions.” *Smith*, 2008 WL 4051029, at *5; *see also* Reply Br. at 14. Oxana attempts to distinguish *Smith* from this case by asserting it focused on the long-arm statute, but *Smith* does indeed analyze constitutional due process. *See Smith*, 2008 WL 4051029, at *3. Thus, the argument is unpersuasive.

[49] Oxana also argues that the causation element should employ a “but for” test that was adopted in *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990)). *See* Opp’n at 15-16 (citing *Shute*, 897 F.2d at 385). She argues that “the acquisition of community property assets

in Guam has given rise to the ability to seek a divorce here and a division of property” and that “[b]ut for’ the acquisition of real property[,] using funds that belong either in the Marital Fund account or are alternatively, community property, has given Plaintiff the opportunity to seek redress.” *Id.* at 16.

[50] Oxana also argues that termination of the marital relationship is an *in rem* matter and that any court in any jurisdiction may grant a divorce without affecting the “other rights of the spouse without *in personam* jurisdiction over the non-resident spouse.” *Id.* (citing *Estin*, 334 U.S. at 541). The fact that the termination of the marital relationship is an *in rem* matter is not the issue in this case. *See* Reply Br. at 12-13. Rather, the trial court’s assertion of “jurisdiction over Defendant” constitutes *in personam* jurisdiction, not *in rem* jurisdiction. *See id.* at 13 (citing RA, tab 8 at 2 (Dec. & Order, Jan. 9, 2012)). Either way, this argument does not help Oxana because David is not contending that the Guam court has no jurisdiction to issue the dissolution of marriage. He is instead asserting that the Guam court does not have personal jurisdiction over him for the alleged breach of the Prenuptial Agreement claim and the subsequent property division arising out of the breach. *See* Pet. at 19-20.

[51] Finally, Oxana also alleges that because “the parties will dispute the character of the real property and Plaintiff’s right to such property, such circumstances could not have arisen ‘but for’ Defendant-Petitioner’s Guam forum related activities.” Opp’n at 16. This argument is essentially as follows: but for David purchasing the Guam condominium, this piece of real property would not exist and, thus, not be disputed over when dividing the marital property. The argument is unsound because the division of marital property is derivative of the divorce claim itself; Oxana cannot argue that David’s condominium purchase and forum-related activities qualify as “but for” causation for the breach of the Prenuptial Agreement and divorce itself.

[52] In *Shute*,⁶ the Ninth Circuit explicitly adopted the “but for” test for causation, noting that:

The “but for” test is consistent with the basic function of the “arising out of” requirement—it preserves the essential distinction between general and specific jurisdiction. Under this test, a defendant cannot be haled into court for activities unrelated to the cause of action in the absence of a showing of substantial and continuous contacts sufficient to establish general jurisdiction. . . . The “but for” test preserves the requirement that there be some nexus between the cause of action and the defendant’s activities in the forum.

Shute, 897 F.2d at 385 (internal citations omitted). The *Shute* court concluded that the plaintiff Shutes’ cause of action arose out of the defendant Carnival’s contacts with the forum state, Washington. *Id.* at 386. The court reasoned that there was sufficient evidence that the defendant “Carnival’s solicitation of business in Washington attracted the Shutes (through their travel agent) to the Carnival cruise. In the absence of [i.e., but for] Carnival’s activity, the Shutes would not have taken the cruise, and Mrs. Shute’s injury would not have occurred.” *Id.* David is correct in this argument that the “but for” test, as applied in *Shute*, does not apply analogously in this case.⁷ Regardless, even applying it here would not establish causation. Applying *Shute*’s “but for” analysis to the instant case would appear as follows: in the absence of—or but for—David’s forum-related activity of purchasing the Guam condominium, the breach of the Prenuptial Agreement claim and the subsequent divorce matter would not have occurred. This logic is unpersuasive because one only has to look at the sequence of events to determine that a post-separation purchase of real property could not be a “but for” cause for the claims underlying the separation and subsequent divorce matter itself.

⁶ The judgment in *Shute v. Carnival Cruise Lines* has since been overruled by the U.S. Supreme Court case of *Carnival Cruise Lines v. Shute*, albeit based on the issue of the parties’ forum selection clause; the Supreme Court decided it was unnecessary to consider the constitutional argument regarding personal jurisdiction. *See Carnival Cruise Lines v. Shute*, 499 U.S. 585, 589 (1991). Insofar as the Court did not touch upon the issue of personal jurisdiction, the Ninth Circuit’s adoption of a “but for” test for causation in *Shute* has not been overruled.

⁷ At this time, we do not reject this “but for” test in *Shute*, but recognize it does not apply to these facts in the instant case. Rather, the “arising out of” test from *PCI Communications* will suffice for determining causation.

[53] Thus, Oxana has not successfully shown a causal connection between David's forum-related contact of the Guam condominium purchase and the divorce claim, which includes claims of breach of the Prenuptial Agreement, request for spousal support, and division of marital property.

c. Reasonableness

[54] As the third prong, reasonableness must be factored into the analysis of a court's exercise of personal jurisdiction over a defendant. *See PCI Commc'ns*, 1999 Guam 17 ¶ 31. The *PCI Communications* court enumerated the following six factors that courts may assess:

1) the extent of the defendant's interjection into the forum state, 2) the burden on the defendant, 3) the forum State's interest in adjudicating the dispute, 4) the plaintiff's interest in obtaining convenient and effective relief, 5) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and 6) the shared interest of the several States in furthering fundamental substantive social policies.

Id. ¶ 32 (internal quotation marks and citation omitted) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)).

[55] However, because we have already determined that purposeful availment and causation are lacking in this case, we need not proceed to analyze this prong of whether exercising jurisdiction over David would be reasonable.

V. CONCLUSION

[56] Because the interlocutory appeal of the denial of a motion to dismiss is a discretionary appeal, rather than an appeal as of right, we find that an interlocutory appeal of such a motion does not provide a plain, speedy, or adequate remedy when the trial court lacks personal jurisdiction over a nonresident defendant. Thus, we hold that a writ of prohibition will lie in the event that the trial court lacked personal jurisdiction over nonresident defendant David in Oxana's divorce matter.

[57] In our review of the personal jurisdiction issue, we hold that the trial court lacked general jurisdiction over David because Oxana did not show that David’s forum-related contact was “continuous and systematic.” Under the *de novo* standard of review, the trial court erred when it found personal jurisdiction over David when he purposefully availed himself of the protections of the Guam forum. As for purposeful availment, David’s mere purchase of a condominium in Guam is not enough to establish that he purposefully availed himself of the protections of Guam laws because his purchase of the condominium put him on notice for property-related disputes, not the divorce-related dispute at issue. Thus, the second prong is not satisfied. There is no causal relationship between David’s forum-related contact, the Guam condominium, and the issues giving rise to the divorce-related claims. Finally, because the causation element was not met in this case, we decline to consider the various factors relating to the third prong of reasonableness and fairness of the trial court’s exercise of jurisdiction over David.

[58] For the foregoing reasons, we hereby **ISSUE** this writ of prohibition and **ORDER** the Superior Court not to proceed further.

Original Signed: **Robert J. Torres**
By

ROBERT J. TORRES
Associate Justice

Original Signed: **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

Original Signed: **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Chief Justice