IN THE SUPREME COURT OF GUAM

FRANCIS X. PRESTO,
Plaintiff-Appellee,

v.

CLARE A.C. LIZAMA,
Defendant-Appellant,

and

THERESE C. CARLOS, AMPARO DIAZ GUMATAOTAO GARCIA, MERCEDES FLORES GRANTHAM, JAMES GRANTHAM, and ROBIN D. GRANTHAM
Defendants.

Supreme Court Case No.: CVA12-015
Superior Court Case No.: CV0494-08

OPINION

Cite as: 2012 Guam 24

Appeal from the Superior Court of Guam
Argued and submitted on October 19, 2012
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; ALEXANDRO C. CASTRO, Associate Justice *pro tempore*.

TORRES, J.:

[1] Defendant-Appellant Clare A.C. Lizama appeals from a judgment entered in favor of Plaintiff-Appellee Francis X. Presto following a bench trial on the merits.[1] Lizama argues the trial court erred in granting Presto an easement by necessity because Presto's claim should be barred by the equitable doctrines of res judicata and laches after Presto failed to litigate the claim in a prior proceeding predicated on a common nucleus of operative facts; that even if an easement by necessity existed it was extinguished by Lizama's adverse possession; and that dispossession of Lizama from her land would constitute an unlawful taking without just compensation under the Organic Act of Guam. Presto argues that res judicata is inapplicable to this case because the issues raised are sufficiently different; that laches is inapplicable because it was not asserted at trial and there was no showing of prejudice to support use of the doctrine; that adverse possession did not extinguish the claims because it was not asserted at trial nor supported by case law to satisfy the elements of adverse possession; and that an argument for just compensation under the Organic Act of Guam is meritless because the easement by necessity created is not for the benefit of the general public or otherwise for public use.

[2] We hold that the Prestos are precluded from bringing their easement by necessity claim and reverse and vacate the judgment rendered below.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Juan M. Mendiola was the owner of Basic Lot No. 7-REM ("Mendiola Tract"), which was later subdivided to create what ultimately became Lot 7-REM-3 ("Presto Property"), Lot 7-

[1] Despite being named parties in this appeal, the Granthams did not take part in this appeal, and Therese Carlos was a pro se party who did not file a brief.

REM-NEW-B1 ("Lizama Property"), 7-REM-NEW-B-3 ("Grantham Property") and Lot 7-REM-NEW-A ("Carlos Property").

[4] In 1957, Mendiola conveyed the Presto Property to Juanito and Leonisa M. Presto. Attached to the 1957 deed to the property is a property map depicting a "40' PROPOSED ROAD." Record on Appeal ("RA"), tab 3, Ex. 1 at 12 (Compl., Apr. 14, 2008). The Presto Property was thereafter conveyed to Francis X. and Catherine Presto.

[5] In 1959, Mendiola conveyed the Lizama property to his cousin, Veronica M. Villareal, by a deed of gift, which described the property as 1014.44 square meters. Villareal in 1963 conveyed the Lizama property to Frances and David Camacho, her daughter and son-in-law. The Camachos obtained permission from the Department of Public Works ("DPW") to erect a concrete fence on the property, which was built in 1983. The fence is constructed partially on the area in which Presto claims an easement exists. In 1992, the Camachos conveyed the Lizama Property, described as 1014.44 square meters, to their daughter and son-in-law, Clare and Ricardo Lizama. The Lizamas later divorced and Clare A.C. Lizama is the current owner of the Lizama Property.[2]

[6] Therese Carlos Santos ("Carlos") is the current owner of the Carlos Property. Carlos also owns Santos Property Lot 7-4-NEW-REM-2NEW-R1 ("Carlos Property No. 2"), which is not part of the Mendiola Tract.

[7] Twenty feet of the forty-foot-wide proposed road runs through and along the southern portion of the Lizama Property and Carlos Property. The remaining width of twenty feet runs along the northern portion of Carlos Property No. 2.

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[2] As a result of divorce, Clare A.C. Lizama is now known as Clare A. Camacho. To avoid confusion and in view of the procedural history of this case, she will be referred to as Clare A. Lizama, or simply "Lizama," for the remainder of this opinion.

[8] In December, 2000, DPW ordered the Lizamas to demolish a portion of a concrete fence located on their property, claiming that the fence was partially built on an easement belonging to Presto.

[9] The Lizamas filed suit against DPW, seeking declaratory and injunctive relief. Specifically, the Lizamas requested that the court declare that no valid easement exists over their property, as claimed by DPW, and enjoin DPW from attempting to remove the concrete fence built on their property or from otherwise interfering with the Lizamas' quiet use and enjoyment of their property.

[10] Presto filed a motion to intervene as a defendant and to join Carlos as an additional party, which was granted by the court. Presto thereafter filed a counterclaim against the Lizamas and a cross-claim against Carlos. The Lizamas and Carlos denied the existence of a valid easement.

[11] After a bench trial, the trial court granted judgment in favor of the Lizamas and Carlos, holding that there was no valid easement granted to the Prestos in the 1957 deed, and granting the declaratory and injunctive relief requested by the Lizamas. The trial court specifically found no easement by express grant and no easement by implication under the reference-to-a-map rule. Presto appealed, arguing that the trial court erred in finding that the property map did not constitute a grant of an easement, either express or by implication, and also argued alternatively that he was entitled to an easement by necessity.

[12] In that case, *Ricardo A. Lizama and Clare A.C. Lizama v. Department of Public Works, Government of Guam, and Intervening Defendant, Francis X. Presto* ("*Lizama v. DPW*"), this court held that the trial court properly found that the property map created neither an express easement, nor did it create an easement by implication. *Lizama*, 2005 Guam 12 ¶ 44. Additionally, we held Presto was barred from raising the issue of easement by necessity for the

first time on appeal, as it was not argued at the trial court level. The record on appeal revealed that at trial Presto did not proceed with the theory of an easement by way of necessity, and instead he relied completely on the map attached to the Presto deed as evidence of the grant of an easement. *See id.* at ¶ 40 (highlighting when Presto stated in closing arguments, "[I]t's not about necessities . . . [i]t's created by a map.").

[13] Almost three years later, Presto filed a complaint seeking an easement by necessity, alleging that his property is landlocked, and seeking a judicial determination of the appropriate location for the easement. Lizama answered the complaint and also filed a motion for summary judgment, arguing an easement by necessity was barred by res judicata. The trial court denied the motion and found Presto's complaint was not barred by res judicata, noting that defendants Amparo Garcia and the Granthams were necessary parties who were not joined in the earlier case, and noting the earlier case involved an easement by grant or implication and not by necessity.

[14] Thereafter, the Granthams filed a motion to dismiss for failure to state a claim upon which relief can be granted, a motion for summary judgment, and a motion for judgment on the pleadings for failure to join an indispensable party. The trial court subsequently issued a decision and order denying these three motions because Presto's complaint was clear and concise and provided adequate grounds for recovery, because a genuine issue of material fact remained with respect to the common grantor's intent at the time of severance, and because the Granthams failed to meet their burden to show that the unnamed property owners were indispensable parties.

[15] After a bench trial, the trial court entered judgment in favor of Presto granting an easement by necessity. Lizama timely filed this appeal.

II. JURISDICTION

[16] This court has jurisdiction over an appeal from a final judgment pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112-197 (2012)) and 7 GCA §§ 3107 & 3108(a) (2005).

III. STANDARD OF REVIEW

[17] "The conclusions of law made by a court following a bench trial are reviewed *de novo*." *Takagi & Assocs., Inc. v. Int'l Ins. Underwriters*, 2006 Guam 4 ¶ 10. Findings of fact, on the other hand, are reviewed in a highly deferential manner and will only be set aside if clearly erroneous. *In re Appl. of Leon Guerrero*, 2005 Guam 1 ¶ 15.

[18] "What constitutes an easement or a right thereto is a question of law, but whether the facts necessary to the existence of the right have been proved is a question of fact . . . ." *Lizama*, 2005 Guam 12 ¶ 12 (citing *State v. Deal*, 233 P.2d 242, 251 (Or. 1951)).

[19] The standard of review for statutory construction is *de novo*. *Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 16. The standard of review for a determination that laches is available as a matter of law is also *de novo*. *Guam Election Comm'n v. Responsible Choices for All Adults Coalition*, 2007 Guam 20 ¶ 76. "[T]he appropriate standard of review of a determination of whether laches applies in a particular case is abuse of discretion." *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 8 (quoting *In re Beaty*, 306 F.3d 914, 921 (9th Cir. 2002)).

IV. ANALYSIS

A. Whether the Easement by Necessity Claim was Precluded by Res Judicata

[20] The central issue on appeal is whether Presto should have been precluded from seeking a claim for an easement by necessity due to the equitable doctrine of res judicata. Section 4209 of Title 6 of the Guam Code Annotated provides:

> **Effect of Judgment or Final Order.** The effect of a judgment or a final order in an action or special proceedings before a court or judge of Guam, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows:
>
> 1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person;
>
> 2. In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided that they have notice, actual or constructive, of the pendency of the action or proceedings.

6 GCA § 4209 (2005). Section 4209 was derived from California Code of Civil Procedure section 1908, which, in turn, simply reiterates common law res judicata. *See Castro v. Higaki*, 37 Cal. Rptr. 2d 84, 87 (Ct. App. 1994) (interpreting identical California statute). As such, we can comfortably resort to our prior cases expounding upon the common law doctrine to guide our analysis for this appeal.

[21] Res judicata, or claim preclusion[3], as defined by this court is "the doctrine by which a 'judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.'" *In re Appl. of Leon Guerrero*, 2001 Guam 22 ¶ 20 (quoting *Trans Pacific Export Co. v. Oka Towers Corp.*, 2000 Guam 3 ¶ 13).

[22] Accordingly, three requirements must be met in order for claim preclusion to apply: (1) a final judgment on the merits; (2) the party against whom claim preclusion is asserted was a party or is in privity with a party in the prior suit; and (3) the issue decided in the prior suit is identical with the issue presented in the later suit. *See Trans Pacific*, 2000 Guam 3 ¶ 16 (citation omitted).

[3] *See Robi v. Five Platters, Inc.*, 838 F.2d 318, 321 n.2 (9th Cir. 1988) (noting U.S. Supreme Court's preference for term "claim preclusion" over the more archaic term "res judicata").

1. Finality of judgment on the merits

[23] In both criminal and civil proceedings, in order for claim preclusion to apply there must be a "final judgment" or determination of an issue so no further judicial act remains to end the litigation. *People v. Cooper*, 57 Cal. Rptr. 3d 389, 405 (Ct. App. 2007). Guam law provides: "That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto." 6 GCA § 4212 (2005).

[24] Generally a judgment does not become final until it has been finally determined on appeal. *In re Morrow*, 189 B.R. 793, 807 (Bankr. C.D. Cal. 1995). For example, state court judgments in California are not final "until the period during which an aggrieved party may file an appeal has expired, or, in cases of appeal, the judgment has been affirmed and the case remitted." *Id.* (citation and footnote omitted).

[25] Here, a "final judgment" was issued in *Lizama v. DPW*, the first proceeding. In that case, Lizama and her then-husband sought and obtained a declaratory judgment against both defendant DPW and defendant-intervenor Presto declaring no easement existed over their property, and they also obtained a judgment granting injunctive relief to prevent the demolition of a concrete fence that was constructed on the alleged easement. RA, tab 30 at 2 (Mem. P. & A. Supp. Mot. Summ. J., Sept. 10, 2008). The matter was finally determined on appeal when this court affirmed the judgment of the trial court and ended the litigation. *Lizama*, 2005 Guam 12 ¶ 44. Therefore, a final judgment was procured.

[26] A judgment is "on the merits" for purposes of claim preclusion if the substance of the claim is tried and determined. *Johnson v. City of Loma Linda*, 5 P.3d 874, 884 (Cal. 2000). For a judgment to bar any subsequent action for the same subject matter between the same parties, it

must appear that the suit in which it was rendered was determined on its merits and not because the cause of action had not yet accrued nor on the ground of any technical defect. *See generally* Restatement (First) of Judgments § 49 (1942). The trial court conducted a full bench trial laden with findings of facts and conclusions of law, which were properly submitted and reviewed upon "appeal from a final judgment." *Lizama,* 2005 Guam 12 ¶¶ 11, 13. It is clear from the record that the judgment was rendered only after the substance of the claim was tried and determined. The judgment of concern for claim preclusion purposes was the declaration that no easement, express or by implication, existed over the Lizamas property, and that judgment was issued on the merits. *Id.* at ¶ 44.

[27] Accordingly, we find the judgment in *Lizama v. DPW* constituted a final judgment on the merits, satisfying the first element of claim preclusion.

2. Privity of parties

[28] Under Guam law, the parties are deemed the same when "those between whom the evidence is offered were on opposite sides of the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either." 6 GCA § 4211 (2005). This language is borrowed directly from California Code of Civil Procedure section 1910. *See* Cal. Civ. Proc. Code § 1910 (West 2012). In other words, claim preclusion applies only to those parties who were adversaries in the first lawsuit. *See Pomona College v. Dunn*, 46 P.2d 270, 277 (Cal. Dist. Ct. App. 1935) (citing Cal. Civ. Proc. Code § 1910).

[29] In *Lizama v. DPW*, Lizama was the plaintiff and Presto was the defendant-intervenor, and in the current lawsuit, Presto is the plaintiff and Lizama is one of the defendants. Therefore, as between Presto and Lizama alone, the parties would be deemed "the same" for purposes of claim

preclusion. *See* 6 GCA § 4211. This same holds true as between Presto and Carlos, since Presto permissively joined Carlos as a cross-defendant in the original lawsuit.

[30] On the other hand, those who were not part of nor required to be part of the first lawsuit, namely, Garcia and the Granthams, would not be deemed "the same" parties or successors in interest ("privies"), and, as such, Presto's claim against those parties would not be precluded. Based on the factual record, Garcia and the Granthams may not be impacted by the dispute at hand. For instance, a default judgment over Garcia would not promote access to the public road the Prestos seek. Furthermore, the Granthams already own property that abuts the main road, so they do not need this court to declare an easement by necessity for them. *See* RA, tab 3 at 2 (Compl.).

[31] Accordingly, we find that Presto and Lizama, as parties in *Lizama v. DPW*, are "the same" parties in this case for claim preclusion purposes, satisfying the second element of claim preclusion.

3. Identity of issues

[32] The third and final element of claim preclusion is identity of issues. A judgment serves as a bar to a subsequent lawsuit only where the "identical" issue was decided in the prior case by a final judgment on the merits. *Am. Broad. Co., Inc. v. Walter Reade-Sterling, Inc.*, 117 Cal. Rptr. 617, 621 (Ct. App. 1974). But absolute identity of form of action is not required; claim preclusion bars a party from instituting a subsequent action where the parties, subject matter, and the causes of action are identical *or substantially identical. Carlson v. Clark*, 970 A.2d 1269, 1273 (Vt. 2009).

[33] When a defendant misses an opportunity to bring a counterclaim in an original action, the defendant's claims in the subsequent action are not precluded unless (1) the defendant's success

in the latter action would nullify the original judgment or impair the rights established in the original action, or (2) a statute requires the defendant to bring his claims in the original action. *Valley View Angus Ranch, Inc. v. Duke Energy Field Servs., Inc.*, 497 F.3d 1096, 1101 (10th Cir. 2007); *see also Meyer v. Vance,* 406 P.2d 996, 999 (Okla. 1965) (applying the common law rule that a defendant is not precluded from bringing a separate action by failing to bring a claim in the first action).

[34] Therefore, to determine whether the identical or substantially identical issue was decided in the prior case of *Lizama v. DPW*, we must conduct a separate analysis to determine whether Presto's easement by necessity claim constituted an omitted counterclaim that he, to his detriment, failed to bring in the first action.

B. Whether the Easement by Necessity Claim was an Omitted Counterclaim in the First Action that Should Be Precluded in This Action

1. Nullification of original judgment

[35] To determine whether Presto should be precluded from pursuing his easement by necessity claim, this court must first decide whether his success in this action would nullify or impair rights established in *Lizama v. DPW*.

[36] In *Lizama v. DPW*, the trial court decided to grant declaratory and injunctive relief to Lizama on the grounds that no express easement or easement by implication existed on the Lizama tract, and we affirmed that decision. *Lizama*, 2005 Guam 12 ¶ 44. But we explicitly held on appeal that the issue of easement by necessity was not properly raised at the trial level nor incorporated into the judgment, and we therefore did not take up the merits of that particular issue. *Id.* at ¶¶ 43-44. Were we now to affirm the trial court's ruling that an easement by necessity exists, we would not nullify or otherwise disturb settled points of law or fact. Instead, we would be addressing a new issue that was not explored in the first proceeding.

[37] As such, we find that Presto's success in this action would not serve to nullify the original judgment made in *Lizama v. DPW* or impair rights established thereby.

2. Compulsory counterclaims by statute

[38] This court must also review whether a statute required Presto to bring his claims in the original action. Rule 13 of the Guam Rules of Civil Procedure, which was adopted from its federal counterpart Rule 13 of the Federal Rules of Civil Procedure, governs compulsory counterclaims and provides as follows:

> (a) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

Guam R. Civ. P. 13(a). For a counterclaim to be compulsory under this rule, it must arise out of the same "transaction or occurrence" as the subject matter of the opposing party's claim. *Id.* Instead of providing exhaustive definitions of the term "transaction or occurrence," we prefer to adopt standards by which the nature of specific counterclaims is determined. *See id.*

[39] In determining whether a counterclaim is compulsory, we should take into consideration the "aggregate of connected operative facts that can be handled together conveniently for purposes of trial to determine if they were founded upon the same transaction, arose out of the same nucleus of operative facts, and sought redress for essentially the same basic wrong." *See Portland Water Dist. v. Town of Standish,* 940 A.2d 1097, 1100 (Me. 2008) (citing *Norton v. Town of Long Island*, 883 A.2d 889, 895 (Me. 2005)) (internal quotation marks omitted).

[40] The failure to raise a compulsory counterclaim, then, results in the preclusion of that claim in subsequent litigation. *Pelowski v. Taitano,* 2000 Guam 34 ¶ 14. This rule follows from public policy principles behind the application of claim preclusion, which includes avoiding

multiplicity of lawsuits and ensuring an end to litigation. *See S. Const. Co. v. Pickard*, 371 U.S. 57, 60 (1962); *see also Agway, Inc. v. Gray,* 706 A.2d 440, 442-43 (Vt. 1997) (addressing public policy supporting res judicata as ensuring an end to litigation after each party has had a full and fair opportunity to be heard).

[41] Moreover, claim preclusion applies even where the second suit "relies on a legal theory not advanced in the first case, seeks different relief than that sought in the first case, or involves evidence different from the evidence relevant to the first case." *Norton,* 883 A.2d at 895 (internal quotation marks omitted); *see also Sebra v. Wentworth*, 990 A.2d 538, 543 (Me. 2010) (affirming preclusion of easement-by-necessity claim proper where plaintiffs did not offer any new evidence not already available in prior proceeding and affirmative defense required interpretation of same deed, common nucleus of operative facts, and redress for almost same wrong). Similarly, a claim is precluded not only where the grounds for recovery in the first action are identical with those pleaded in the first, which a litigant failed to prove, but also where litigants fail to allege those grounds in the first suit. *Basore v. Metro. Trust Co. of Cal.*, 234 P.2d 296, 299 (Cal. Dist. Ct. App. 1951).

[42] Here, Presto argues that claim preclusion should not bar his easement by necessity claim because the issues raised in this action are sufficiently different from those raised in the prior action, given that different elements support an easement by necessity claim compared to express easements and easements by implication. But, just as the court in *Sebra* reasoned, Presto's easement by necessity claim was a compulsory counterclaim despite the fact that arguments would be based on a different theory of recovery and the establishment of unique elements. As an affirmative defense in the first action, the easement by necessity claim required interpretation of the same deed and involved a common nucleus of operative facts to seek redress for

substantially the same wrong, the denial of access to landlocked property. Accordingly, at first glance, we find that Presto's easement by necessity claim was a compulsory counterclaim that was omitted in the first action, one which arose out of a common nucleus of operative facts and was based on the same evidence available at that time.

C. Whether the Easement by Necessity Claim was "Mature" When the Answer was Filed in the First Proceeding

[43] Before determining conclusively that Presto's omission of an easement by necessity claim invokes claim preclusion, we must grapple with the prospect that the easement by necessity claim was not mature at the time the law suggests Presto was required to assert the claim.

[44] The rule governing the maturity of claims is set forth in Rule 13(e) of Guam Rules of Civil Procedure, which provides:

> A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

Guam R. Civ. P. 13(e). For the purpose of claim preclusion, "maturity" refers to claims which do not yet exist, rather than to those whose value or extent is yet to be determined. *See Dickerson v. Goodman*, 161 P.3d 1205, 1208 (Alaska 2007) (discussing the analogous federal rule). Accordingly, even when a counterclaim meets the "transaction or occurrence" test for a compulsory counterclaim, a party need not assert it as a counterclaim if it has not matured when the party serves its answer. *See Burlington N. R.R. Co. v. Strong*, 907 F.2d 707, 712 (7th Cir. 1990) (cause of action not accruing or maturing until after service of answer by defendant-intervenor will not be deemed compulsory counterclaim).

[45] A counterclaim is "ripe," or mature, if a cause of action can be properly initiated and pursued. *Leiendecker v. Asian Women United of Minn.*, 731 N.W.2d 836, 841 (Minn. Ct. App.

2007). Characterized another way, a counterclaim is ready for assertion once all of the elements of the claim can be proven, and not before. For instance, the Washington Court of Appeals held in an unpublished case that a party "did not and could not have" asserted a cause of action for easement by necessity because the property was not landlocked at the time of the original proceeding; it was only after the subdivision of his lots that his property was landlocked, warranting an easement by necessity. *Nappi v. Gunderson*, No. 36487–5–II, 2008 WL 2811267, at *4 (Wash. Ct. App. July 22, 2008).

[46] A few emblematic examples from case law shed further light on the issue of maturity of counterclaims as the issue instructs the operation of claim preclusion. In *Shpak v. Oletsky*, the Court of Appeals of Maryland addressed the issue of reliance on a grantor's promise of access that never materializes. 373 A.2d 1234 (Md. Ct. App. 1977). A developer of a subdivision contracted to provide street access or an access corridor to the owner of a servient tract, but later defaulted on the obligation to provide access. *Id.* at 1236. The court held that where a grantor at the time of original conveyance had other access to a highway, no easement by necessity would be created over the access corridor simply because the access promised never materialized. *See id.* at 1243.

[47] In *Lane v. Skamania County*, the Court of Appeals of Washington further addressed the issue of foresight, an issue key to the appeal currently before us. 265 P.3d 156 (Wash. Ct. App. 2011). In *Lane*, the Lanes sued to enforce a restrictive covenant and permanently enjoin the L'Hommedieus from installing an additional septic tank. *Id.* at 158. After the L'Hommedieus filed an answer, the trial court granted partial summary judgment on the restrictive covenant issue in favor of the L'Hommedieus, and that decision was appealed and later reversed and remanded. *Id.* Then, at a bench trial, the L'Hommedieus argued for damages and attorney fees

as a result of the Lanes "wrongfully enjoining" them from installing the tank, but they did not argue for damages or attorney fees on the basis of a wrongfully filed *lis pendens* against their property. *Id.*

[48] Later in the proceedings, the L'Hommedieus moved to supplement their pleadings to add they were entitled to damages on the basis of a wrongfully filed *lis pendens*. *Id.* at 159. Under the applicable *lis pendens* statute, their counterclaim did not mature until they obtained judgment in their favor in defending the first action. *Id.* Nevertheless, the trial court denied their motion, observing that the L'Hommedieus failed to assert a compulsory counterclaim as soon as the *lis pendens* was filed. *Id.* In affirming the trial court's decision on appeal, the appellate court acknowledged that the exception to the compulsory counterclaim requirement, which applies when a claim is not yet ripe or mature, does not apply in certain situations. Specifically, the appellate court held:

> . . . [The] exception to the compulsory counterclaim requirement necessarily encompasses a claim that depends upon the outcome of some other lawsuit and thus does not come into existence until the action upon which it is based has terminated. . . . However, a counterclaim will not be denied treatment as a compulsory counterclaim solely because recovery on it depends on the outcome of the main action. This approach seems sound when the counterclaim is based on pre-action events and only the right to relief depends upon the outcome of the main action.

Id. at 161 (quoting 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure: Civil § 1411, at 81–84 (2d ed. 1990)).

[49] Presto seeks an easement by necessity. Establishing the elements of an easement by necessity requires proof that (1) the dominant and servient tracts were once held in common ownership that was severed by a conveyance, (2) the necessity for the easement arose out of the conveyance, and (3) the necessity arose at the time the common grantor made the conveyance. *Jernigan v. McLamb*, 665 S.E.2d 589, 592 (N.C. Ct. App. 2008).

[50] Presto argues that before the court in *Lizama v. DPW* concluded proceedings, he held a reasonable belief that an express or implied easement existed based on information provided to him by the Government of Guam. Appellee's Br. at 8 (Aug. 10, 2012). In that sense, Presto contends that an easement by necessity claim was not yet mature and was, instead, a mere theoretical possibility. *See id.* Presto also argues that his reasonable belief was based in large part on the proposed road the original grantor planned to build to provide ingress and egress to his property, though the grantor ultimately abandoned that plan. *See Lizama*, 2005 Guam 12 ¶ 3; RA, tab 70 at 2 (Finds. Fact & Concl. L., Aug. 4, 2011). In other words, Presto is trying to argue that the necessity for the easement arose, not at the time the common grantor made the conveyance, but rather at the time this court issued its final decision in *Lizama v. DPW*.

[51] Despite its ingenuity, Presto's argument does not succeed. In order to establish the elements of an easement by necessity claim, Presto must show that the necessity arose at the time of the conveyance, and not at the conclusion of a subsequent lawsuit. By arguing that the necessity arose later, Presto defeated his own argument. Similarly, as discussed, reliance on a grantor's promise for a proposed road that never materializes is insufficient to establish that the necessity for an easement arose out of the grantor's conveyance at the time the grantor made the conveyance, and not at some later time when the promise was decisively abandoned.

[52] Finally, extracting insight from the *Lane* case, Presto's easement by necessity claim was a compulsory counterclaim since the claim was based solely on pre-action events and only the right to relief depended upon the outcome of the main action. In other words, Presto should have considered that, in case he failed to prove the existence of an express easement or easement by implication, he would be required to alternatively argue for an easement by necessity to prevent the already-accrued claim from being barred. Presto was expected to have the foresight to assert

an easement by necessity claim at the trial stages of *Lizama v. DPW* via alternative or amended pleading, and he failed to do so. *See* Guam R. Civ. P. 13(f) ("When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.").

[53] In light of the above, we hold that Presto's easement by necessity claim is precluded because the identical or substantially identical issue was decided in the prior case of *Lizama v. DPW*, satisfying the third and final element of claim preclusion. That is, there was no valid easement granted to the Prestos in the 1957 deed.

D. The Applicability of Laches, Adverse Possession, and Takings Jurisprudence

[54] Because the judgment is reversed and the decision of the trial court is vacated hereby, this court need not address the remaining issues on appeal, which are now moot.

V. CONCLUSION

[55] Presto's easement by necessity claim is barred by the doctrine of res judicata, or claim preclusion, because the three elements of claim preclusion are satisfied here. In *Lizama v. DPW*, a court of competent jurisdiction rendered a final judgment on the merits, as between the same parties and their privies, and addressed the same or substantially identical issues. *See Lizama*, 2005 Guam 12. Based on common law claim preclusion principles, Presto was required to plead for an easement by necessity as a compulsory counterclaim, one that was mature at the time of his answer in the first proceeding, and he failed to do so. Accordingly, we hold the trial court erred in allowing Presto to assert his easement by necessity claim in this case.

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[56] For the foregoing reasons, we **REVERSE** and **VACATE** the judgment below and **REMAND** this matter to the trial court for further proceedings consistent with this opinion.

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

Original Signed By: Alexandro C. Castro
ALEXANDRO C. CASTRO
Associate Justice, *pro tempore*

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Chief Justice