IN THE SUPREME COURT OF GUAM

ANTONETTE L. BABAUTA,
Plaintiff-Appellee,

v.

EVANGELIS J. BABAUTA,
Defendant-Appellant.

OPINION

Cite as: 2013 Guam 17

Supreme Court Case No.: CVA12-028
Superior Court Case No.: DM0498-06

Appeal from the Superior Court of Guam
Argued and submitted on February 20, 2013
Hagåtña, Guam

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

MARAMAN, J.:

[1] This case is on its second appeal after remand to the trial court for proceedings consistent with this court's opinion in *Babauta v. Babauta*, 2011 Guam 15 ("*Babauta I*"). Defendant-Appellant Evangelis J. Babauta ("Evangelis") argues that the trial court erred in denying him reimbursement for his post-separation payments from his separate funds toward a line of credit that was taken out during his marriage to Plaintiff-Appellee Antonette L. Babauta ("Antonette"), and for insurance proceeds intended for repairs to the marital residence. Evangelis also appeals the trial court's denial of his request for credit for the fair market rental value of the marital residence during the time in which Antonette enjoyed its exclusive possession by court order but no longer lived there. Finally, Evangelis contends that the trial court's finding that Antonette did not commit waste of the marital residence is not supported by substantial evidence.

[2] For the reasons set forth below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The facts underlying the original trial court proceedings can be found in *Babauta I*; thus, only those facts which are relevant to the current appeal will be recited.

[4] Evangelis and Antonette were married in December 1998. In October 2003, the parties purchased a house for $220,000.00. The parties made a down payment of $75,000.00 towards the purchase price and executed a five-year mortgage for the balance. The house served as the marital residence and was held in joint tenancy.

[5] The parties separated on or about June 11, 2006. On July 14, 2006, the trial court granted Antonette an Order of Protection against Evangelis, which, among other things, ordered him to

vacate the marital residence. Antonette enjoyed exclusive possession of the marital residence until August 2012, when the trial court ordered that both parties "shall be permitted to enjoy mutual use and access to the marital residence as joint tenants." Record on Appeal ("RA"), tab 123 at 1 (Order After Hr'g , Aug. 2, 2012).

[6] Both parties sought a divorce based on extreme cruelty and grievous mental suffering. Antonette sued on the additional ground of bodily harm, while Evangelis sued on the additional ground of adultery. The trial court granted Antonette's petition for divorce, finding Evangelis at fault for extreme cruelty due to numerous incidents of domestic violence during the marriage. The court awarded both parties equal shares in the marital residence and ordered the house sold and the proceeds divided. Antonette was granted exclusive possession of the house until it could be sold. Antonette vacated the residence in August 2009 due to water damage and has not lived there since.

[7] In the original appeal, Evangelis sought, *inter alia*, reimbursement or credit for his separate property contributions toward the down payment on and improvements to the marital residence during the marriage, as well as for his post-separation payments on the mortgage and other expenses related to the residence. Specifically, Evangelis argued that he was entitled to reimbursement in the amount of $144,580.26 "for the down payment, renovations, and furnishing of the marital residence," the source of such funds being the liquidation of "his separate property, including his retirement fund, IRA, and equity in other real property . . . ."[1]

[1] The trial court provided a list of the specific sources of income Evangelis claimed were used for the down payment, furnishings, and improvements to the marital residence:

a. United States Marine Corps separation pay 9/9/02 = $18,304.58;
b. Veterans Disability back pay 9/11/02 = $50,859.00;
c. Gov. Guam Retirement Fund cash withdrawal 11/12/02 = $25[,]348.52;
d. IRA withdrawal 3/19/03 = $23,231.67[; and]
e. Home equity loan 10/9/03 secured by separate property = $39,852.49

Babauta I, CVA10-008, Appellant's Br. at 4, 8 (Oct. 14, 2010). Evangelis also argued that he was entitled to reimbursement in the amount of $93,524.03 for his separate property contributions toward "the mortgage, home insurance and real property taxes on the marital residence" after the parties' separation.[2] *Id.* at 5, 11.

[8] This court affirmed the trial court's denial of reimbursement for the separate funds used for the down payment on the residence, holding that the parties' "act of taking title to [the] property as joint tenants raise[d] an inference of a gift of the funds used to acquire the property, which [could not] be rebutted solely by tracing the source of the funds." *Babauta I*, 2011 Guam 15 ¶ 43. Because Evangelis used tracing as the sole basis of his challenge to the inference of a gift, the court found that the inference was not overcome and, therefore, Evangelis was not entitled to reimbursement. Moreover, because the residence was held in joint tenancy, the court determined that Evangelis and Antonette each owned an undivided one-half separate property interest in the residence.

[9] As for Evangelis' post-separation separate property contributions of $93,524.03 to the mortgage, homeowners insurance, and property taxes, this court reversed the trial court's denial of reimbursement, holding that the separate property nature of the payments placed them outside the realm of the trial court's authority to make a disproportionate division based on fault. The case was remanded "to the trial court to apply to those [post-separation] payments at issue in [the original appeal] the general rule that a spouse who, after separation of the parties, uses his or her

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RA, tab 78 at 4 (Am. Finds. Fact & Concl. L., Jan. 7, 2010).

[2] In particular, after the parties' separation, Evangelis paid $86,900.75 in monthly mortgage payments, $4,899.00 in yearly homeowners insurance, and $1,724.28 in real property taxes, for a total of $93,524.03. *Babauta I*, 2011 Guam 15 ¶ 12.

separate funds to pay preexisting community obligations is entitled to reimbursement upon divorce, and to make any other findings consistent with [the] opinion." *Id.* ¶ 45.

[10] On remand, the trial court ordered the parties to submit further briefing regarding the calculations required pursuant to *Babauta I.* The trial court found that Evangelis paid the following community debts after separation of the parties: $93,524.03 for expenses paid up to the time of the issuance of the Amended Findings of Fact and Conclusions of Law in the original trial; $3,266.00 in homeowners insurance premiums; and $1,737.27 for real property taxes as of November 30, 2011. In accordance with this court's mandate, the trial court awarded Evangelis reimbursement for half of these post-separation contributions, amounting to $46,762.02[3] for the mortgage payments and $2,501.64 for the insurance premiums and property taxes.[4]

[11] Evangelis further sought reimbursement for a Bank of Hawaii home equity line of credit ("BOH line of credit") in the amount of $39,852.49 that he took out against a four-plex he held as separate property and used toward the down payment on the marital residence. Evangelis claims he had refinanced $31,412.32 of this debt in 2007—after the parties' separation—in order to maintain the mortgage and other payments on the residence. The parties argued back and forth as to whether this issue was properly before the trial court on remand. Evangelis argued that the issue was within the scope of the remand order because it dealt with the payment of community obligations with separate funds after separation of the parties. By contrast, Antonette

[3] The figure in the trial court's Decision & Order Remand contains a typographical error. The trial court awarded $46,726.00 as half of the $93,524.03 in mortgage payments. However, the figure should have been $46,762.02. The trial court's earlier Decision & Order reflected the correct figure.

[4] Noting that its Amended Findings of Fact and Conclusions of Law discussed that community funds were used to furnish the house, yet failed to divide such community property, the trial court ordered credit to Evangelis of $15,000.00, which represented his 50% share of the furnishings of the residence. Antonette was allowed to retain the furnishings. This ruling is not at issue in the current appeal.

argued that the issue should have been raised in the first appeal, and, thus, Evangelis was barred from raising it on remand. The trial court agreed with Antonette.

[12] After an extensive hearing on the issue of whether Antonette committed waste of the marital residence during the pendency of the first appeal, the trial court found:

> Many areas of the property are in the same condition today as they were at the time of purchase, to include: deck and wall cracks, exterior piping, over growth of vegetation, the pool pump room and surrounding exterior pool area, exterior fence wand [sic] walls, [and] the garage. The parties admit that the house was a "fixer-upper."

RA, tab 111 at 2 (Dec. & Order Remand, July 3, 2012). The trial court further found that:

> [Antonette] could have taken better care of the residence after she moved out through regular monthly maintenance and upkeep, including yard work and running of some utilities. At most, [Antonette]'s failure of upkeep of the house and yard has led to the need for some cleaning and maintenance, but does not rise to the level of waste. Waste touches on some wrongful act or omission, is tort in nature involving substantial injury. There is no evidence of substantial injury to the property.

Id. at 2-3 (citation omitted). Finding that Evangelis' evidence that repairs of $89,000.00 were needed to be made to the home included repairs for conditions and damages existing at the time of purchase of the home, the trial court determined that Antonette was responsible only for her failure of normal maintenance and upkeep during the pendency of the appeal, crediting Evangelis $4,800.00 for disposal and cleaning and for waterblasting.

[13] On similar grounds, the trial court denied Evangelis' request for reimbursement for an $11,726.97 insurance check for water damage to the residence. Evangelis testified that he signed over his interest in the check to Antonette on the condition that she would use the proceeds to make repairs necessitated by the water damage. He argued that Antonette failed to so apply the insurance proceeds, pointing to the state of disrepair of the property as support. The trial court found that Antonette had applied these proceeds to the replacement of personal property and to

repairs to the interior of the house necessitated by the water damage. The trial court rejected Evangelis' argument that Antonette committed waste by failing to apply more of the insurance proceeds to the repair of the house, finding that many of the house's problems existed at the time of purchase, or, in the case of those problems related to the lack of upkeep, did not stem from the water damage covered by the insurance claim.

[14] On remand, Evangelis also sought reimbursement for the fair market rental value of the residence from the time Antonette moved out of the residence in 2009 (after the water damage). The trial court denied his request for lost rental income. Evangelis regained access to the residence by the trial court's order in August 2012.

[15] Evangelis timely filed a Notice of Appeal.

II. JURISDICTION

[16] This court has jurisdiction over an appeal from an order after remand pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-13 (2013)) and 7 GCA § 3107 (2005).

III. STANDARD OF REVIEW

[17] The trial court's findings of fact after a bench trial are reviewed for clear error while its conclusions of law are reviewed *de novo*. *Babauta I*, 2011 Guam 15 ¶ 19 (citing *Mendiola v. Bell*, 2009 Guam 15 ¶ 11). A finding of fact will be reversed for clear error where it is not supported by substantial evidence, and this court is left with a definite and firm conviction that a mistake has been made. *In re Moylan*, 2011 Guam 16 ¶ 12 (quoting *Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶¶ 30, 32). This court does not substitute its judgment for that of the trial court. *Id.*

[18] The trial court's interpretation of this court's mandate is reviewed *de novo*. *Lamb v. Hoffman*, 2011 Guam 13 ¶ 11 (citing *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶¶ 16-17). The trial court's actions on remand are reviewed for an abuse of discretion. *Town House*, 2003 Guam 6 ¶ 17.

IV. ANALYSIS

A. Whether Evangelis is Entitled to Reimbursement for Post-separation Payments on the BOH Line of Credit.

[19] Evangelis seeks reimbursement for the BOH line of credit, claiming that he refinanced a portion of this debt after the parties' separation and that, under *Babauta I*, he is entitled to reimbursement pursuant to our holding regarding post-separation separate property contributions toward community debt.

[20] In *Babauta I*, we expressed the general rule that "a spouse who, after separation of the parties, uses his or her separate funds to pay preexisting community obligations should be reimbursed upon divorce." 2011 Guam 15 ¶ 32 (citing *In re Marriage of Epstein*, 592 P.2d 1165, 1170 (Cal. 1979); *Vides v. Vides*, 30 Cal. Rptr. 447, 447 (Ct. App. 1963)). Because the trial court denied Evangelis reimbursement for his post-separation contributions on the grounds that he was at fault due to extreme cruelty, we then considered 19 GCA § 8411(a), which grants to the trial court, in cases involving adultery or extreme cruelty, discretion to distribute community property to the parties in such proportions as the court may deem just. *Id.* ¶ 35 (citing 19 GCA § 8411(a) (2005)). Relying upon our reading of 19 GCA § 6104(a)[5] as well as

[5] Title 19 GCA § 6104(a) provides:

> Community debts shall be satisfied first from all community property and all property in which the spouses own an undivided equal interest as joint tenants or tenants in common, excluding the residence of the spouses. Should such property be insufficient, community debts shall then be satisfied from the residence of the spouses. Should such property be insufficient, only the separate property of the spouse who contracted or incurred the debt shall be liable for its

the long-standing California rule that the community property to be divided upon divorce is that which remains after the satisfaction of community debts, we held:

> [B]efore a disposition of community property can be made under 19 GCA § 8411, the nature of any debts must be definitely ascertained. Should there be any community debts, those debts shall be deducted from the gross value of any community property before such property is divided between the parties. Any disproportionate distribution due to a finding of adultery or extreme cruelty shall only be made on the community property remaining after all community debts have either been satisfied or otherwise accounted for in the valuation of the net community property.

Id. ¶ 38.

[21] Evangelis argues that the BOH line of credit is a community debt because it was incurred during the marriage. Appellant's Br. at 7 (Nov. 30, 2012). Evangelis contends that because he solely satisfied the debt after the separation of the parties, he is entitled to reimbursement of half of the payments pursuant to our mandate in *Babauta I*. *Id.*

[22] Antonette counters that Evangelis is essentially seeking a second bite at the apple because the trial court already decided the issue of his entitlement to reimbursement for the BOH line of credit in the original trial, and we affirmed the trial court's decision in *Babauta I*. Appellee's Br. at 7-8 (Jan. 2, 2013).

[23] We agree with the trial court that Evangelis' arguments concerning the BOH line of credit went beyond the scope of our mandate. We determined in the original appeal that Evangelis was not entitled to reimbursement for the BOH line of credit; thus, the trial court was precluded from revisiting that issue on remand. Furthermore, we find that Evangelis waived the argument that the BOH line of credit is a community debt which he satisfied with his separate

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> satisfaction. If both spouses contracted or incurred the debt, the separate property of both spouses is jointly and severally liable for its satisfaction.

19 GCA § 6104(a) (2005).

funds after separation of the parties because he chose to instead characterize the BOH line of credit as a separate property contribution toward the down payment on the marital residence. *See Babauta I*, 2011 Guam 15 ¶¶ 10, 13, 20. While Evangelis did indeed seek reimbursement for the BOH line of credit at the initial trial, his original theory of recovery qualified the line of credit as part of the $144,580.26 of separate funds he contributed toward the down payment, furnishings, and improvements of the marital residence. *Id.* ¶¶ 10, 13. Evangelis maintained this theory of recovery throughout the initial trial and in his first appeal. *Id.* ¶¶ 10, 20.

[24] We affirmed the trial court's denial of reimbursement for the down payment, finding that the contributions constituted a gift of Evangelis' separate funds to Antonette for the purposes of taking title to the residence in joint tenancy. *Id.* ¶ 26. Although Evangelis separately sought reimbursement for his post-separation separate property contributions of $93,524.03 toward mortgage payments, homeowners insurance premiums, and real property taxes, he did not include the BOH line of credit as one of his post-separation contributions toward community debt, not even as an alternative theory of recovery. *See id.* ¶¶ 12-13, 31. Indeed, throughout the proceedings in the initial trial and appeal, Evangelis never characterized the BOH line of credit as a community debt, but instead consistently characterized it as a separate property contribution toward the down payment on the residence. Evangelis changed his theory of recovery for these payments on remand after his initial theory failed on appeal.[6] Evangelis made the strategic decision during the initial trial and appeal to pursue reimbursement of 100% of the BOH line of credit as his separate funds rather than seek 50% reimbursement for post-separation contributions toward community debt.

[6] In fact, Evangelis did not move for reimbursement for the BOH line of credit in his initial pleading after remand. *See* RA, tab 100 (Def.'s Mem. Supp. Reimbursement). Instead, he raised the new theory of recovery at the remand hearing concerning waste. *See* Transcripts ("Tr.") at 10-11, 13-16 (Evidentiary Hr'g, Apr. 4, 2012).

[25] Arguably, under *Babauta I*, the BOH line of credit would have been subject to our holding that community debts shall be deducted from the gross value of any community property before such property is divided between the parties. However, our holding and mandate did not give the parties license to introduce new arguments as to payments that would be recoverable under the rule, especially when Evangelis made the conscious decision not to include the BOH line of credit as one of his post-separation contributions toward community debt.

[26] Indeed, we specifically explained that in calculating the amount owed to Evangelis for his post-separation separate property contributions to community debt, the trial court was not required to consider all of Evangelis' post-separation payments toward community debt, but instead only those payments which he sought to recover on appeal:

> Although the trial court ordered Evangelis to pay all community debts, he does not argue on appeal that he should be relieved of paying any of these debts and instead only argues that he should be reimbursed or otherwise compensated for his post-separation payments on the residence. Thus, we will not require the trial court to reconsider, in light of our holding that community debts must first be satisfied from community property, its order requiring Evangelis to pay all community debts insofar as those debts are not part of his prayer for relief on appeal.

Id. ¶ 39 n.3.

[27] In other words, the trial court's order that Evangelis pay all community debts still applies to any community debt not included in the $93,524.03 that Evangelis sought to recover in the original appeal. This is so even if in future cases the trial court would be required to first subtract or otherwise credit those debts from the community property before assigning them to a particular spouse. Thus, notwithstanding the fact that the BOH line of credit probably falls under the definition of a community debt, our holding in *Babauta I* on the issue of reimbursement for post-separation payments toward community debt did not contemplate recovery for the BOH line of credit or any other payments outside of the $93,524.03. Rather, before reaching the issue of

Evangelis' post-separation contributions in the first appeal, we had already deemed the line of credit as a gift of Evangelis' separate property toward the down payment and denied reimbursement on this basis.

[28] According to the Court of Appeals for the Fourth Circuit:

> The mandate rule is a specific application of the law of the case doctrine to cases that have been remanded on appeal. By limiting subsequent proceedings to only those issues falling within the scope of the appellate court's mandate, the rule ensures that litigants in remanded cases get only one bite at the apple, foreclosing relitigation of issues expressly or impliedly decided by the appellate court.
>
> On appeal, a party waives any issue that could have been but was not raised before the appellate court. Because it has not been tendered to the appellate court for decision, an issue that has been waived on an initial appeal is "not remanded" to the district court even if other issues in the case are returned to the court below. Given that a waived argument is not within the scope of the appellate mandate, the mandate rule thus holds that, where an argument could have been raised on an initial appeal, it is inappropriate to consider that argument on a second appeal following remand.

United States v. Perez, No. 12-6303, 2012 WL 3642849, at *1 (4th Cir. Aug. 24, 2012) (per curiam) (citations and internal quotation marks omitted); *see also Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co.*, 510 F.3d 474, 481 (4th Cir. 2012) ("[U]nder the mandate rule[,] a remand proceeding is not the occasion for raising new arguments or legal theories."); *cf. Duenas v. George & Matilda Kallingal, P.C.*, 2012 Guam 4 ¶ 35 ("As a matter of general practice, 'this court will not address an argument raised for the first time on appeal.'" (citing *Univ. of Guam v. Guam Civil Serv. Comm'n*, 2002 Guam 4 ¶ 20)); *Cho v. Fujita Kanko Guam, Inc.*, 2009 Guam 21 ¶ 35 ("A party ordinarily cannot raise for the first time on appeal a novel theory." (citing *Taitano v. Lujan*, 2005 Guam 26 ¶ 15)).

[29] On these grounds, we hold that the trial court did not abuse its discretion in denying reimbursement to Evangelis for the BOH line of credit.

B. Whether Evangelis is Entitled to the Fair Market Rental Value of the Marital Residence When Antonette Enjoyed Exclusive Possession.

[30] Evangelis also appeals the trial court's denial on remand of his request for reimbursement for the fair market rental value of the marital residence during the time when Antonette enjoyed exclusive possession of the residence. Appellant's Br. at 8-10. Evangelis specifically seeks rent from the time Antonette moved out of the residence in August 2009 until the August 2012 Order After Hearing reinstating Evangelis' access to the residence. Appellant's Reply Br. at 6 (Jan. 16, 2013). Evangelis argues that the trial court's denial of reimbursement for rent constitutes an award to Antonette of Evangelis' separate property. Appellant's Br. at 9.

[31] Antonette counters that Evangelis' exclusion from the residence was the result of a 2006 protective order brought about by Evangelis' history of family violence,[7] and that in any event, the issue of reimbursement for the fair market rental value of the home was not raised in the initial appeal. Appellee's Br. at 9-10.

[32] Evangelis' argument for reimbursement for the fair market rental value of the residence during his exclusion suffers from the same infirmity as his argument regarding the BOH line of credit. Specifically, Evangelis' argument is not subject to review because, though he sought reimbursement for lost rental income in the initial trial, *see* RA, tab 70 at 7 (Def.'s Proposed Finds. Fact & Concl. L., July 10, 2009), he failed to raise the issue in the first appeal. As mentioned above, litigants are generally prohibited from raising issues on a second appeal that

[7] Antonette quotes the language of 19 GCA § 6101(h), which provides:

> Neither husband nor wife has any interest in the separate property of the other, except as provided in § 6105, but neither can be excluded from the other's dwelling except pursuant to a court order. The Superior Court may order the temporary exclusion of either party from the family dwelling or from the dwelling of the other upon a showing that physical or emotional harm might result otherwise or for such other good cause as the court may state in such an order.

19 GCA § 6101(h) (2005). Antonette argues that nothing in section 6101 requires reimbursement of fair market rental value to the excluded spouse during the period of exclusion.

could have been raised on the first appeal. *State v. Mandanas*, 262 P.3d 522, 524 (Wash. Ct. App. 2011) (citing *State v. Suave*, 666 P.2d 894, 896 (Wash. 1983); *State v. Jacobsen*, 477 P.2d 1, 3 (Wash. 1970)); *see also Deltic Timber Corp. v. Newland*, 2012 Ark. App. 271, at 6, 2012 WL 1327823, at *4 ("The law-of-the-case doctrine . . . prevents consideration of an argument that could have been raised at the first appeal and is not made until a subsequent appeal."); *State v. Powers*, No. 24476, 2011 WL 5825320, at *2 (Ohio Ct. App. 2011) ("[L]itigants are not permitted to make new arguments to the trial court on remand that . . . could have been raised on the first appeal." (citation omitted)). Thus, Evangelis' abandonment in the first appeal of the issue of reimbursement for rent barred him from revisiting the issue on remand, because the issue fell beyond the scope of our mandate to the trial court.

[33] Perhaps in an effort to get around the argument that the issue should have been raised in the first appeal, Evangelis limits his request for reimbursement for rent to the time after Antonette moved out of the residence in August 2009. However, it is clear from the record that Evangelis had ample time after Antonette's abandonment of the residence and before the filing of the initial notice of appeal (and divestment of the trial court's jurisdiction) to raise the issue. Although Antonette moved out of the residence after the conclusion of trial arguments in June 2009, the trial court did not issue its Amended Findings of Fact and Conclusions of Law until January 7, 2010, and the Interlocutory Decree of Divorce until March 24, 2010. In April 2010, Evangelis moved to stay the judgment pending the expiration of the time for filing a notice of appeal, RA, tab 86 (Def.'s Mot. Stay Judgment, Apr. 13, 2010), and a hearing was held on the motion at the end of April, RA, tab 90 (Hr'g Mins. Mot. Stay Judgment, Apr. 29, 2010). Evangelis filed a Notice of Appeal on May 7, 2010. RA, tab 94 (Notice of Appeal, May 7, 2010). Thus, from Antonette's abandonment of the residence in August 2009 until Evangelis'

initial appeal in May 2010, nothing prevented Evangelis from moving the trial court for a hearing regarding reimbursement for rent or regaining possession of the residence given Antonette's abandonment. Raising the issue on remand does not change the fact that Evangelis abandoned the argument by not raising it during the initial trial court proceedings or in the first appeal.

[34] Presumably, another possible basis for Evangelis' raising the issue on remand is that our opinion in *Babauta I* established the marital residence as the separate property of each party. *See* Appellant's Br. at 4-5 ("The trial court denied Husband's request for fair market value rental income of the marital residence due to Wife's exclusive possession of the marital residence, *which had been deemed separate property in Babauta I.*" (emphasis added)). However, the Guam Code serves as the basis for the characterization of the marital residence as the separate property of the parties, not this court's opinion in *Babauta I*. *See* 19 GCA § 6101(a)(8) ("*Separate property* means: . . . each spouse's undivided interest in property owned in whole or in part by the spouses as co-tenants in joint tenancy . . . ."). In any event, any question that may have existed as to the characterization of the residence as either community or separate property did not preclude Evangelis from raising the issue of reimbursement for the fair market rental value of the residence after Antonette's abandonment during the initial trial court proceedings or in the first appeal. Because Evangelis failed to raise the issue earlier, the trial court did not abuse its discretion in denying this request on remand, and the issue is not properly before this court on this current appeal.

C. Whether Substantial Evidence Supports the Trial Court's Finding that Antonette Did Not Commit Waste of the Marital Residence.

[35] On remand, Evangelis sought reimbursement for waste he alleged Antonette committed during the pendency of the first appeal, specifically after her abandonment of the marital residence in August 2009. *See* RA, tab 100 at 4 (Def.'s Mem. Supp. Reimbursement). The trial

court determined that while Antonette failed to adequately maintain the residence, her omissions did not rise to the level of waste. RA, tab 111 at 2-3 (Dec. & Order Remand). Although the trial court recognized that several areas of the property were in need of repair, the court found that many of the deteriorated conditions existed when the parties purchased the property, and thus were not attributable to Antonette's lack of maintenance. *Id.* The court determined that, at most, Antonette was liable for $4,800.00 worth of cleaning, disposal, and waterblasting, and credited Evangelis in this amount. *Id.* at 3.

[36] Evangelis argues that the trial court's findings concerning the condition of the property are not supported by substantial evidence. Appellant's Br. at 11; Reply Br. at 7-8. Evangelis contends the trial court essentially reversed its pre-remand-hearing finding that the property was in need of substantial repairs when it issued its Decision & Order Remand, in which it found that the property required only some cleaning and maintenance. Reply Br. at 8.

[37] Evangelis' characterization of the trial court's earlier statement regarding the condition of the property is inaccurate when viewed in the context of the court's entire order. In the trial court's January 25, 2012 Decision & Order, the court stated, "In light of the evidence of the marital residence requiring substantial repairs,[8] the Court determines a hearing on remand is necessary so that the Court may determine the amount of reduced value, if any, attributable to [Antonette]'s actions during the pendency of the appeal." RA, tab 104 at 3 (Dec. & Order, Jan. 25, 2012). Evangelis quoted only the first clause of the sentence, ending after the phrase "substantial repairs." *See* Reply Br. at 8. When reading the sentence as a whole, however, it is clear that the trial court did not make a definite finding as to the condition of the property and

[8] Presumably, the evidence referred to consists of several photographs attached to Evangelis' declaration in support of his motion for reimbursement which depict the exterior condition of the property. *See* RA, tab 101, Ex. 1 (Decl. Evangelis J. Babauta, Nov. 30, 2011).

certainly did not find Antonette responsible for any of the conditions of the property. Instead, the trial court expressed that a hearing was necessary to determine "the amount of reduced value, *if any*, attributable to [Antonette] . . . ." RA, tab 104 at 3 (Dec. & Order) (emphasis added). After extensive testimony on the matter, the trial court determined that most of the problem areas of the property preexisted Antonette's exclusive possession of the residence, and that, at most, she failed to regularly clean and maintain the property. *See* RA, tab 111 at 2-3 (Dec. & Order Remand).

[38] "Substantial evidence is such relevant evidence which reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence." *Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12 ¶ 8 (quoting *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 11) (internal quotation marks omitted). Upon review of the testimony presented during the evidentiary hearing on the issue of waste, it is clear that substantial evidence exists to support the trial court's finding that most of the damage to the residence preexisted Antonette's vacating of the residence in 2009.

[39] Evangelis called as a witness Hilario Manalo, Vice President of 5M Construction, who had inspected the residence in February 2012 and prepared an estimate of the costs of repairs to the home. *See* Tr. at 27, 30-31 (Evidentiary Hr'g). Manalo testified as to several cracks on the exterior walls of the house, rust damage to the pool pump room, damaged tiles in the swimming pool, bubbling paint and mildew growth on the exterior of the house, and other cosmetic issues. Manalo could not provide an approximate date as to when any specific damage or condition may have occurred. He did suggest that the cracks along the walls were possibly caused by earthquakes. *See, e.g.*, Tr. at 24-25 (Cont'd Evidentiary Hr'g, Apr. 12, 2012). He also indicated

that the materials used in the pool pump room—metal pipes—were outdated, because these days PVC is used instead of metal to avoid rust damage. *Id.* at 31.

[40] Antonette testified that several of the damaged areas of the residence existed prior to her moving out of the house in 2009, including the cracks on the walls, and that she recalled that certain cracks occurred in 2006, after an earthquake. Tr. at 47-48 (Bench Trial, June 27, 2012) ("In 2006, early or mid-2006, these cracks did exist from the earthquake that recently happened, and I recall sometime in April of 2006, Mr. Babauta was saying that he was going to make a claim with the insurance."). She also testified that some of the conditions existed at the time of purchase of the house, such as rust on exposed rebar, *id.* at 48, and cosmetic issues with the exterior stairway, *id.* at 51.[9]

[41] In light of the testimonies of Manalo and Antonette, we hold that substantial evidence exists to support the trial court's findings that much of the damage to the residence occurred prior to 2009, and that therefore Antonette did not commit waste during the pendency of the appeal, but instead merely neglected to regularly clean and maintain the property.

D. Whether Evangelis is Entitled to Insurance Proceeds for Water Damage to the Marital Residence.

[42] Finally, Evangelis appeals the trial court's denial of his request for reimbursement for $11,726.97 in insurance proceeds that was paid to the parties for water damage caused by a

[9] Evangelis' testimony provided little support for his argument that Antonette's lack of upkeep necessitated substantial repairs to the marital residence. Evangelis did testify that the deck was now black (presumably from mold), when it was red at the time he moved from the residence, Tr. at 141-42 (Cont'd Evidentiary Hr'g); that the grass was overgrown and the pool was dirty, *id.* at 139; that there were numerous cracks in the house, *id.* at 155; that paint was peeling, which he assumed was caused by water damage, *id.*; and that a water tank and a solar panel were missing, *id.* at 156-58. However, many of these conditions are simply issues of lack of cleaning and maintenance, for which the trial court credited Evangelis. Furthermore, the fact that Evangelis presented evidence which may have contradicted the other evidence that many of the deteriorated conditions preexisted Antonette's exclusive possession does not necessarily mean that substantial evidence did not exist to support the trial court's finding that Antonette did not commit waste. *See Guam Top Builders*, 2012 Guam 12 ¶ 8 (explaining that substantial evidence can still exist even if it is possible to draw two different conclusions from the evidence).

broken water heater. *See* Appellant's Br. at 7-8. According to Evangelis, he indorsed the insurance check to Antonette "on [the] condition that the proceeds would be used for the repairs to the residence." *Id.* at 8.

[43] The trial court denied reimbursement to Evangelis, finding that Antonette applied the insurance proceeds "to replacement of personal property and repairs to the interior of the house caused by the water damage." RA, tab 111 at 2 (Dec. & Order Remand). Evangelis contends that Antonette failed to produce "any evidence to substantiate the costs of repairs to the marital residence," and that "[i]nstead she proffered testimony that items of a personal nature were purchased." Reply Br. at 5. Evangelis argues that Antonette's failure "to utilize the separate property insurance proceeds, and the trial court's award of the proceeds to [Antonette] constitutes a division of separate property in contravention of the Order in *Babauta I*." *Id.*

[44] At the remand hearing, Antonette testified that she first used the insurance proceeds to replace personal items that had been damaged by the water heater incident, including a bed, bedding, clothing, and furniture. Tr. at 10 (Bench Trial). She eventually used the remainder of the proceeds to clean and repair parts of the home that had suffered from the water damage. *Id.* at 10. Antonette testified:

> [W]hat I did was I cleaned up the water, and -- and had some help, and paid people to help me clean up the upstairs one, and then I repaired all the -- I did painting and water blasting the upstairs, replaced all the doors, and stuff like that with the remainder of the --- the funds.
>
> . . . .
>
> I spent almost $5,000, paying people, and buying the -- the supplies to do the work.

Id. at 10-12. Antonette did not present copies of any receipts for the supplies or labor, testifying that she paid family members and acquaintances to do the work. *Id.* at 12.

[45] The trial court's finding that Antonette used the insurance proceeds to make repairs to the residence is supported by the evidence recited above. While Antonette did not provide documentary evidence of the expenditures she incurred while repairing some of the water damage, she did testify under oath to these expenses and repairs, and the trial court apparently believed her testimony. Evangelis essentially seeks a determination by this court that the trial court's finding constitutes clear error. However, given the long-established principle that this court gives great deference to the trial court's findings of fact, *see Takagi & Assocs., Inc. v. Int'l Ins. Underwriters*, 2006 Guam 4 ¶ 20 ("[T]he trial court's findings of fact are entitled to great deference . . . ."), we cannot say that the state of the evidence is such that the trial court's finding is clearly erroneous or that we have a definite and firm conviction that a mistake has been made.

V. CONCLUSION

[46] We hold that the trial court did not abuse its discretion in denying Evangelis reimbursement for the BOH line of credit. We held in the first appeal that Evangelis was not entitled to reimbursement for the line of credit because the funds from the line of credit constituted a gift from Evangelis to Antonette towards the down payment on the marital residence. Thus, Evangelis was foreclosed from again seeking reimbursement for these funds on remand, the issue being outside the scope of our mandate to the trial court. Furthermore, Evangelis waived the argument that the BOH line of credit constituted a community debt which he paid after separation when he failed to make that argument during the initial trial or the initial appeal.

[47] The trial court likewise did not abuse its discretion in denying Evangelis reimbursement for the fair market rental value of the marital residence either during Antonette's exclusive possession or after her abandonment of the property. Although Antonette vacated the residence

in August 2009, well before the completion of the initial trial court proceedings and initiation of the first appeal, Evangelis did not raise the argument to either the trial court or this court until the remand proceedings in late 2012. As a result, the issue was waived and was not properly before the trial court on remand or this court on second appeal.

[48] We further hold that substantial evidence exists to support the trial court's findings that much of the damage to the marital residence occurred prior to 2009, and that therefore Antonette did not commit waste during the pendency of the appeal, but instead merely neglected to regularly clean and maintain the property. Finally, given the long-established principle that this court gives great deference to the trial court's findings of fact, we find no clear error in the trial court's finding that Antonette did not misuse the proceeds of an insurance check for water damage to the marital residence.

[49] For the foregoing reasons, we **AFFIRM** the trial court's decision and order.

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

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

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