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2015 FEB 11 PM 4:18

**SUPREME COURT
OF GUAM**

IN THE SUPREME COURT OF GUAM

**NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,**
Plaintiff,

v.

CYFRED, LTD., KINI B. SANANAP and IOWANA M. SANANAP,
Defendants.

KINI B. SANANAP and IOWANA M. SANANAP,
Counterclaimants-Appellants,

v.

**NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,**
Counterclaim Defendant-Appellee.

Supreme Court Case No.: CVA13-039
Superior Court Case No.: CV1465-06

OPINION

Cite as: 2015 Guam 7

Appeal from the Superior Court of Guam
Argued and submitted on August 12, 2014
Hagåtña, Guam

Appearing for Counterclaimants-Appellants:

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Appearing for Counterclaim

Defendant-Appellee:

Terence E. Timblin, *Esq.*
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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, C.J.:

[1] Counterclaimants-Appellants Kini B. Sananap and Iowana M. Sananap (“the Sananaps”) appeal the trial court’s *Interlocutory Judgment* granting summary judgment and the trial court’s Decision and Order on the Sananaps’ Motion to Amend Judgment. The trial court dismissed the Sananaps’ counterclaim for breach of a settlement agreement on summary judgment.

[2] On appeal, the Sananaps argue that the trial court erred in excluding from evidence two letters written by the counsel for Counterclaim Defendant-Appellee National Union Fire Insurance Company of Pittsburg, PA (“National Union”), dated July 30, 2007, and October 24, 2007. In addition, the Sananaps argue that the trial court erred in dismissing their counterclaim on summary judgment because there are *genuine issues of material fact*. Finally, the Sananaps assert that the law of the case doctrine precluded the trial court from dismissing their counterclaim on summary judgment.

[3] For the reasons stated herein, we reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] Defendant Cyfred, Ltd. (“Cyfred”) sold lots in the Gill-Baza Subdivision but failed to install sewer lines. The Sananaps purchased one of the lots. National Union insured Cyfred under two *general liability policies*.

[5] The Sananaps filed a complaint against Cyfred in the case CV1448-02.¹ The Sananaps alleged that Cyfred made false statements and promises about “power, water, water lines and

¹ The case CV1448-02 has been before this court multiple times on appeal and the details are described in our prior opinions. See *Sananap v. Cyfred, Ltd.*, 2011 Guam 21; *Yanfag v. Cyfred, Ltd.*, 2009 Guam 16; *Abalos v.*

sewer.” *Sananap v. Cyfred, Ltd.*, CV1448-02 (First Am. Compl. at 4-6 (Sept. 27, 2002)). Forty owners of other lots were subsequently joined as plaintiffs. *Sananap v. Cyfred, Ltd.*, 2011 Guam 21 ¶ 2. In Count Two of the Amended Complaint, under the section titled “Sananaps’ claims,” the Sananaps argued that they had purchased the property in reliance on Cyfred’s statements, and requested damages from Cyfred for “substantial emotional distress and recent typhoon property damages; their attorney’s fees and costs; and/or, if knowingly done, treble, exemplary or punitive damages.” *Sananap v. Cyfred, Ltd.*, CV1448-02 (First Am. Compl. at 7-8).

[6] Cyfred filed a counterclaim against the Sananaps. Cyfred alleged that the Sananaps were in default of their obligations under a promissory note and a mortgage. Cyfred requested damages for all money owed on the promissory note; foreclosure of the mortgaged premises; and attorney’s fees and costs.

[7] The Sananaps and other homeowners filed an Answer to the Counterclaim. In its “Fourth Affirmative Defense,” the homeowners argued that they had been damaged by Cyfred and requested special and general damages. Appellant’s Br. at 2 (Feb. 17, 2014).

[8] Cyfred tendered the defense of and requested indemnity for the allegations contained in Count Two of the Complaint. National Union agreed to accept the tender subject to a reservation of rights, including the right to withdraw from the defense upon a judicial determination of non-coverage and recover from Cyfred any cost or expense incurred in defending claims not covered under the policies.

[9] National Union subsequently filed the case underlying this appeal, CV1465-06, seeking declaratory relief against Cyfred and the Sananaps. National Union argued that it had no duty to

indemnify or defend Cyfred against Count Two of the CV1448-02 complaint because the allegations were not covered under the policy.

[10] Attorney Wayson W. S. Wong ("Wong") represented the Sananaps and the other homeowners in CV1448-02 and CV1465-06. Attorney Louie J. Yanza ("Yanza") represented National Union in CV1465-06. Attorney Curtis Van de veld ("Van de veld") represented Cyfred.

[11] In a settlement offer letter to Wong dated July 27, 2007,² Yanza offered \$50,000.00 to settle with the following terms and conditions:

- Settlement with your clients to dismiss Count II of the Amended Complaint against Cyfred, to include the release of National Union.
- Your clients would waive any claim on the Cyfred policies, whether as to any other count of the Sananap Complaint or as to any other complaints that you have filed or may file in the future as to any transactions regarding the Gill-Baza Subdivision.
- Dismissal of your clients' Fourth Affirmative Defense and potential emotional distress damages, to Cyfred's Counterclaim.
- Dismissal of your clients' Counterclaims in *National Union Fire Insurance Company of Pittsburgh, PA v. Cyfred. Ltd., et al.*, Superior Court of Guam, Civil Case No. CV1465-06, and National Union will dismiss its declaratory relief action in said case.

RA, tab 281 at Ex. 1 (Yanza Decl., Nov. 15, 2010).

[12] On July 30, 2007, Yanza sent a second settlement offer letter. In the letter, Yanza stated that he "wish[ed] to make clear the terms of the settlement" in the July 27, 2007 letter. *Id.*, Ex. 2 at 1 (Yanza Decl.). Yanza included the following terms and conditions:

² The parties exchanged letters throughout their negotiations. The letters were submitted to the trial court. The parties apparently do not contest the documents' authenticity. Further, the parties appear not to object to their admission and the trial court's consideration of them except for the two from Attorney Wong dated July 30 and October 24.

1. Settlement with your clients, the Sananaps, to dismiss Count II of the Amended Complaint against Cyfred, to include the release of National Union.
2. All your clients would waive any claim on the Cyfred policies, whether as to any other count of the Sananap Complaint or as to any other complaints that you have filed or may file in the future as to any transactions regarding the Gill-Baza Subdivision.
3. Dismissal of not only the Sananaps, but all your clients' Fourth Affirmative Defense and potential-emotional distress damages, to Cyfred's Counterclaim.
4. Dismissal of the Sananaps' Counterclaims in National Union Fire Insurance Company of Pittsburgh, PA v. Cyfred, Ltd. et al., Superior Court of Guam, Civil Case No. CV1465-06, and National Union will dismiss its declaratory relief action in said case.

The \$50,000.00 payment is directed only to the Sananaps; but your other remaining clients are required to agree to Nos. 2 and 3, above, for the settlement to proceed.

Id.

[13] On October 24, 2007, Yanza sent a third settlement offer letter. Yanza offered \$30,000.00 to settle under the following terms and conditions:

- Settlement with your clients to dismiss Count II of the Amended Complaint against Cyfred, to include the release of National Union.
- Your clients would waive any claim on the Cyfred policies, whether as to any other count of the Sananap Amended Complaint or as to any other complaints that you have filed or may file in the future as to any transactions regarding the Gill-Baza Subdivision.
- Dismissal of your clients' Counterclaims in National Union Fire Insurance Company of Pittsburgh, PA v. Cyfred, Ltd., et al., Superior Court of Guam, Civil Case No. CV1465-06, and National Union will dismiss its declaratory relief action in said case.

Id. at Ex. 3 (Yanza Decl.).

[14] On November 13, 2007, Wong and Yanza discussed the settlement by phone. The Sananaps argue that the parties reached a settlement agreement during this conversation. National Union argues that the parties failed to reach a settlement agreement.

[15] On November 14, 2007, Wong sent Yanza an email. In the email he wrote:

This email will confirm that we have reached a settlement under the terms and conditions set forth in your July 27, 2007 letter to me with the one change that the amount of the settlement is \$75,000 and not the \$50,000 initially offered. Please confirm from your side this settlement. I will work with attorney Van de veld . . . to advise the Court in the Sananap v. Cyfred case of such settlement, but I would first appreciate [sic] your confirmation by email.

Id. at Ex. 4 (Yanza Decl.).

[16] Wong also sent Yanza a letter the same day. In the letter, Wong recounted his version of the settlement negotiations. Wong stated, "On November 13, 2007, at about 5:18 p.m. . . . [y]ou said that your client has agreed to pay the Sananaps \$75,000[.00], and I confirmed with you that aside from the amount, the terms and conditions of this settlement are as set forth in your July 27, 2007 letter to me. You agreed." RA, tab 282, Ex. 1 at 115 (Defs.' Kini B. Sananap's & Iowana M. Sananap's Reply Mem., Nov. 22, 2010). Wong also stated that he "clarified with you that during these recent settlement negotiations starting on October 24, 2007, we were dealing with only the Sananaps and their claims, and we were not trying to settle the claims of any other persons; you confirmed that." *Id.* at 113.

[17] That same day, Yanza replied. In his letter, Yanza informed Wong that "[a]t 5:30 p.m. yesterday, I advised you that I still needed to speak with Cyfred, Ltd. on the terms of the settlement." RA, tab 281, Ex. 6 at 1 (Yanza Decl., Nov. 15, 2010). Yanza informed Wong that he spoke with Van de veld and there was no settlement agreement. Yanza wrote:

The reason the insurer was willing to enter into a settlement is the cost of going forward and continuing in the Sananaps' case. You did not disclose to me your intent to re-litigate the emotional distress claims of the 33 other plaintiffs, as you have filed a motion to reconsider their emotional distress claims. If you are successful, this would defeat the purpose of settlement. National Union would be forced to continue to defend under a reservation of rights with the insured.

Id. Yanza further stated that “if [Wong] wish[ed] to proceed in settling, the Sananaps and all the other 33 plaintiffs must waive their injury claims.” *Id.* at 2.

[18] On November 23, 2007, Wong sent Yanza a letter. In the letter, Wong reasserted his position that the parties had settled and requested Yanza to reconsider its position regarding whether a settlement had been reached. Specifically, Wong wrote, “We did not have a tentative settlement agreement. It was a final settlement agreement. The settlement was among the Sananaps and National Union. Cyfred was not a party to that settlement agreement.” RA, tab 252, Ex. A at 5 (Defs.’ Kini B. Sananap’s & Iowana M. Sananap’s Mot. for Leave to File Add’l Countercls., June 12, 2009).

[19] A few months later, the Sananaps filed a Motion for Leave to File Additional Counterclaims. In the additional counterclaims, they asserted that the Sananaps and National Union had orally agreed to settle for \$75,000.00 on November 13, 2007, and that National Union “refused to honor and thus has breached that settlement agreement.” RA, tab 252 at 2 (Defs.’ Kini B. Sananap’s & Iowana M. Sananap’s Mot. for Leave to File Add’l Countercls.).

[20] National Union filed an opposition to the Sananaps’ motion, arguing that the November 13, 2007 settlement agreement was conditioned upon National Union discussing the settlement with Cyfred. National Union stated that no settlement was reached because National Union’s counsel discovered that the Sananaps filed another motion to re-litigate their emotional distress claims against Cyfred. National Union filed a Declaration of Yanza in support of its motion. In the Declaration, Yanza stated that the November 13, 2007 settlement offer was “conditionally agreed to by National Union. The condition was that I would still need to speak with Cyfred,

Ltd. on the issue to finalize the terms of the settlement. Mr. Wong agreed.” RA, tab 281 at 3 (Yanza Decl.).

[21] The trial court filed a Decision and Order granting the Sananaps’ Motion for Leave to File Additional Counterclaims. In the Decision and Order, the trial court determined that the amendment was not “futile or legally insufficient.” RA, tab 285 at 4-5 (Dec. & Order, June 13, 2011). The trial court found that “questions of fact exist and must be resolved to determine whether both a settlement existed and subsequent breach occurred.” *Id.* at 5.

[22] National Union thereafter filed a Motion for Summary Judgment as to the Sananaps’ breach of settlement agreement claim. National Union argued that “[t]he alleged settlement is a legal impossibility as the alleged acceptance, that is that it was on behalf of the SANANAPS only, does not match the offer which contemplated that the claims of all of [Wong’s] clients and not just the SANANAPS must be dismissed.” RA, tab 331 at 8 (Nat’l Union Fire Ins. Co. of Pittsburg, PA’s Mot. Summ. J. as to the First Cou[n]t of the Sananap[s’] Add’l Countercls., Oct. 4, 2012). National Union argued that the claim should be dismissed because the letters between Wong and Yanza clearly indicated that National Union’s offer required all of Wong’s clients to waive their claims against Cyfred.

[23] The Sananaps opposed the granting of summary judgment, arguing that “at the very least, there a [sic] genuine issue of material facts that preclude any summary judgment at this time.” RA, tab 333 at 5 (Defs.’ Kini B. Sananap’s & Iowana M. Sananap’s Mem. in Opp’n, Nov. 26, 2012).

[24] Subsequently, the trial court issued its Decision and Order on the Motion for Summary Judgment. The court found that National Union’s November 13, 2007 offer was conditional

based on Yanza's declaration that he had to speak with Van de veld prior to finalizing the terms of the settlement. The trial court found that on November 14, 2007, Yanza told Wong that he had talked to Van de veld and there was no agreement. In addition, the court found that Wong's email on November 14, 2007 requesting that Yanza "[p]lease confirm your side [sic] this settlement" was a conditional acceptance of the conditional offer. RA, tab 343 at 4 (Dec. & Order Countercl. Def.'s Mot. Summ. J., Mar. 19, 2013). Finally, the court found that the July 30, 2007 and October 24, 2007 letters were inadmissible because "the Sananaps are attempting to use the letters to establish National Union's Liability to them, which is prohibited by [Guam Rules of Evidence] Rule 408." *Id.* The trial court concluded that the Sananaps had failed to set forth specific facts showing a genuine issue for trial and granted National Union's Motion for Summary Judgment. The trial court then issued a Judgment dismissing the counterclaim.

[25] The Sananaps filed a Motion to Amend the Judgment requesting that the trial court reconsider the Judgment and the Decision and Order because they were "clearly erroneous and/or result in manifest injustice." RA, tab 349 at 1 (Mem. P. & A., Apr. 1, 2013). The Sananaps argued that the "law of the case" doctrine precluded the trial court from dismissing the Sananaps' counterclaim on summary judgment because the trial court had already determined the issue in the Motion for Leave to File Additional Counterclaims. *Id.* at 3-5. Specifically, the Sananaps asserted that the trial court's determination that the counterclaim was not futile precluded the trial court from determining whether there were genuine issues of material fact. In addition, the Sananaps believed that summary judgment was improper because there were still genuine issues of material fact as to whether the parties settled on November 13, 2007. Wong filed a declaration stating that he had reached a settlement agreement on November 13, 2007

with Yanza, and that he “always believed that it was unconditional and final.” RA, tab 347 at 2 (Wong Decl., Apr. 1, 2013).

[26] The trial court denied the Sananaps’ Motion, finding that the law of the case doctrine did not apply and that there were no sufficient grounds for amendment.

[27] The Sananaps filed a Request and Stipulation for Guam Rules of Civil Procedure (“GRCP”) Rule 54(b), requesting the trial court to issue a final judgment on their counterclaim to allow them to appeal the decision. The trial court granted the GRCP Rule 54(b) certification.

[28] The Sananaps timely filed a Notice of Appeal.

II. JURISDICTION

[29] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-290 (2014)) and 7 GCA §§ 3107 and 3108(a) (2005).

[30] The trial court directed final judgment on the Sananaps’ counterclaim pursuant to GRCP Rule 54(b). RA, tab 368 (Req. & Stipulation for GRCP Rule 54(b) Certification; Express Determination & Direction by this Court, Nov. 7, 2013). “Rule 54(b) allows a trial court to direct the entry of a final judgment as to one or more but fewer than all of the claims or parties when there is an express determination that there is no just reason for delay, and upon an express direction for the entry of judgment.” *Abalos v. Cyfred Ltd.*, 2006 Guam 7 ¶ 59.

III. STANDARD OF REVIEW

[31] We review evidentiary rulings for an abuse of discretion. *People v. Castro*, 2013 Guam 20 ¶ 20; *People v. Mallo*, 2008 Guam 23 ¶ 12. “In the context of an evidentiary ruling, abuse of discretion exists when the reviewing court is firmly convinced that a mistake has been made regarding admission of evidence.” *People v. Hall*, 2004 Guam 12 ¶ 34 (quoting *People v.*

Santos, 2003 Guam 1 ¶ 29 n.6). “In this appeal, this court will not substitute its judgment for that of the trial court.” *People v. Quintanilla*, 2001 Guam 12 ¶ 9 (citing *People v. Quinata*, 1999 Guam 6 ¶ 17). “Instead, in order to reverse the trial court, we must first have a definite and firm conviction the trial court, after weighing relevant factors, committed clear error of judgment in its conclusion.” *Id.*

[32] This court will review *de novo* the trial court’s grant of summary judgment. *Guam Resorts, Inc. v. G.C. Corp.*, 2013 Guam 18 ¶ 36; *Core Tech Int’l Corp. v. Hanil Eng’g & Constr. Co.*, 2010 Guam 13 ¶ 16. “Summary judgment is only proper ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Guam Resorts, Inc.*, 2013 Guam 18 ¶ 36 (quoting Guam R. Civ. P. 56(c)). “In rendering a decision on a motion for summary judgment, the court must draw inferences and view the evidence in a light most favorable to the non-moving party.” *Id.* (quoting *Guam Top Builders, Inc. v. Tanota Partners*, 2006 Guam 3 ¶ 8).

IV. ANALYSIS

[33] The Sananaps argue that the trial court erred in excluding the July 30, 2007 and October 24, 2007 letters, and dismissing the case on summary judgment. In addition, the Sananaps argue that the law of the case doctrine precluded the trial court from finding that there was no genuine issue of material fact.

A. Whether the Trial Court Erred in Excluding the July 30, 2007 and October 24, 2007 Letters Pursuant to GRE 408

[34] In its Decision and Order on the Motion for Summary Judgment, the trial court found that the July 30, 2007 and October 24, 2007 letters were inadmissible because “the Sananaps are

attempting to use the letters to establish National Union's liability to them, which is prohibited by [Guam Rules of Evidence] Rule 408." RA, tab 343 at 4 (Dec. & Order Countercl. Def.'s Mot. Summ. J.).

[35] Pursuant to GRE 408, evidence of "attempt[s] to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible." Guam R. Evid. 408. GRE 408 does not prohibit evidence of settlement negotiations when it is not used to prove liability but "to prove the terms of the settlement agreement" or "whether an offer and acceptance had occurred creating an enforceable agreement." *Blas v. Cruz*, 2009 Guam 12 ¶ 15.

[36] In *Blas v. Cruz*, the trial court found that the parties in a divorce action had entered into a settlement agreement. *Id.* ¶ 7. On appeal, the wife argued that the trial court erred when it considered evidence of settlement negotiations for the purpose of determining whether the parties entered into a settlement agreement. *Id.* ¶ 12. The wife argued that consideration of the evidence violated GRE 408, which bars evidence of conduct or statements made in attempting to compromise a claim. *Id.* ¶ 13. This court found that GRE 408 "bars compromise evidence only when offered as evidence of 'validity,' 'invalidity,' or 'amount' of the disputed claim." *Id.* ¶ 14. Evidence related to a settlement agreement is admissible where it is not offered to prove liability but rather to prove the terms of the settlement agreement or to prove the fact of settlement. *Id.* ¶ 14-15.

[37] Here, the Sananaps sought to introduce the June 30, 2007 and October 24, 2007 letters to show that the parties entered into an agreement on November 13, 2007. The Sananaps were

required to show that a settlement agreement was formed in order to prove that National Union breached the settlement agreement. The letters were not offered by the Sananaps to prove liability. Therefore, the trial court erred in excluding the letters pursuant to GRE 408.

B. Whether there were Genuine Issues of Material Fact Which Precluded the Trial Court from Dismissing the Case on Summary Judgment

[38] Next, the Sananaps argue that the trial court erred in dismissing the case on summary judgment because there were genuine issues of material fact. Specifically, the Sananaps argue that there were genuine issues of material fact regarding whether National Union's November 13, 2007 offer was final and whether the acceptance matched the offer.

[39] "In rendering a decision on a motion for summary judgment, the court must draw inferences and view the evidence in a light most favorable to the non-moving party." *Guam Resorts, Inc.*, 2013 Guam 18 ¶ 36. "A genuine issue precluding summary judgment exists 'if there is "sufficient evidence" which establishes a factual dispute requiring resolution by a fact-finder.'" *M Elec. Corp. v. Phil-Gets (Guam) Int'l Trading Corp.*, 2012 Guam 23 ¶ 11.

[40] First, the trial court erred in determining on summary judgment that the November 13, 2007 offer was conditional. This court applies contract principles to the interpretation of settlement agreements. *Blas*, 2009 Guam 12 ¶ 11 (citing *Leon Guerrero v. Moylan*, 2000 Guam 28 ¶¶ 8-9; *Camacho v. Camacho*, 1997 Guam 5 ¶¶ 30-35). "In determining whether there was a contract, the first issue is formation. The three recognized elements of a contract are an offer, acceptance and consideration." *M Elec. Corp.*, 2012 Guam 23 ¶ 12 (quoting *H.K. & Shanghai Banking Corp. v. Kallingal*, 2005 Guam 13 ¶ 28). "If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to" 18 GCA § 85318 (2005); *see also Lang v. Gates*, 36 F.3d 73, 75 (9th Cir.

1994) (“The offeror is the master of his offer. . . . [He] is entitled to insist on a particular mode of manifestation of assent.” (quoting Restatement (Second) of Contracts § 29 cmt. a (1981))).

[41] The trial court found that National Union’s November 13, 2007 offer was conditional based solely on Yanza’s declaration. However, the trial court excluded Wong’s letters, where he asserted that the offer was not conditional but final. Yanza and Wong have differing opinions on whether or not the November 13, 2007 offer was final or conditional, so a credibility determination was necessary to decide which attorney’s version of the November 13, 2007 negotiations was correct. “Credibility . . . is not to be determined by the judge at the summary judgment stage.” *Guam Sanko Transp., Inc. v. Pac. Modair Corp.*, 2012 Guam 2 ¶ 13 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). “If . . . there is any indication that the witness was biased, dishonest, mistaken, unaware or unsure of the facts, there is an obvious advantage to be gained from cross-examination.” *Id.* ¶ 10. Therefore, the trial court improperly dismissed the case on summary judgment when determination of the credibility of the attorneys was necessary to resolve the conflicting versions of their negotiations.

[42] Second, there are genuine issues of material fact regarding whether the offer matched the terms of the acceptance. “It is hornbook law that, to ensure mutual consent of the parties to an offer, an offer must be mirrored by its acceptance to create a binding contract.” *Blas*, 2009 Guam 12 ¶ 19.

[43] National Union argues that its November 13, 2007 offer required all Wong’s clients to drop their claims against Cyfred. The Sananaps argue that the offer only required the Sananaps to drop their claims against Cyfred. The Sananaps accepted on the terms that only the Sananaps would drop their claims. Wong stated in his November 14, 2007 email that the parties had

reached a settlement under the terms and conditions of the July 27, 2007 letter “with the one change that the amount of the settlement is \$75,000[.00] and not the \$50,000[.00] initially offered.” RA, tab 281 at Ex. 4 (Yanza Decl.). The July 27, 2007 letter is ambiguous as to whether it requires only the Sananaps or all Wong’s clients to drop their claims against Cyfred. In his November 14, 2007 and November 23, 2007 letters, Wong stated that during settlement negotiations Yanza clarified that only the Sananaps were required to release their claims. When viewed in the light most favorable to the Sananaps, a fact finder could determine that the term “your clients” in the July 27, 2007 letter referred only to the Sananaps and did not include Wong’s other clients. Therefore, there were genuine issues of material fact regarding whether the acceptance matched the offer.

[44] Since we have determined that the court erred in granting summary judgment, we need not address whether the law of the case doctrine applies.

V. CONCLUSION

[45] We **REVERSE** the trial court’s finding that the July 30, 2007 and October 24, 2007 letters were inadmissible under GRE 408. We further **REVERSE** the trial court’s grant of summary judgment based on our finding that there are genuine issues of material fact, and we **REMAND** the case for further proceedings not inconsistent with this opinion.

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

F. PHILIP CARBULLIDO
Associate Justice

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

KATHERINE A. MARAMAN
Associate Justice

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

ROBERT J. TORRES
Chief Justice