

IN THE SUPREME COURT OF GUAM

HAWAIIAN ROCK PRODUCTS CORPORATION,
Plaintiff,

v.

**OCEAN HOUSING, INC., DONALD and TERESITA WILSON,
KI DO CHA, EMSCO, SEUING LEE, KORANDO CORP.,
MOON SIK YOON, JIN HEE LEE, and DOES I through X,**
Defendants.

KORANDO CORPORATION,
Cross-Claimant,

v.

**OCEAN HOUSING, INC., DONALD WILSON and TERESITA WILSON,
KI DO CHA, EMSCO, SEUING LEE, MOON SIK YOON, JIN HEE LEE,**
Cross-Defendants.

DONALD E. WILSON and TERESITA S. WILSON,
Cross-Claimants-Appellees,

v.

**OCEAN HOUSING, INC., KI DO CHA, MOON SIK YOON,
JIN HEE LEE, and DOES I through X and all other persons unknown
claiming any right, title, estate, lien or interest in the real property
described in the Cross-Claim adverse to Cross-Claimants' ownership,
or any cloud on Cross-Claimants' title,**
Cross-Defendants-Appellants.

OCEAN HOUSING, INC. and JIN HEE LEE,
Cross-Claimants-Appellants,

v.

DONALD E. WILSON and TERESITA S. WILSON,
Cross-Defendants-Appellees.

Supreme Court Case No.: CVA14-025
Superior Court Case No.: CV0327-03

OPINION

Cite as: 2016 Guam 4

Appeal from the Superior Court of Guam
Argued and submitted on August 7, 2015
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Presiding Justice;¹ KATHERINE A. MARAMAN, Associate Justice; ALBERTO E. TOLENTINO, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] This case comes before the court as an appeal by Cross-Claimants-Appellants Ocean Housing, Inc. (“OHI”) and Jin Hee Lee (collectively, “OHI and Lee”). At issue on appeal is the trial court’s grant of summary judgment to Cross-Defendants-Appellees Donald E. Wilson and Teresita S. Wilson (collectively, “the Wilsons”) for their cross-claims to quiet title, for expungement of a *lis pendens*, and for a writ of possession. OHI and Lee assert that the trial court committed reversible error by granting summary judgment without issuing a reasoned decision weighing the factors necessary for such judgment. Additionally, OHI and Lee claim that summary judgment was improper due to the remaining disputes of material facts regarding their affirmative defenses and the Wilsons’ establishment of a *prima facie* case. OHI and Lee seek to have this court vacate the grant of summary judgment and remand to the trial court for resolution of remaining factual disputes.

[2] For the reasons stated herein, we affirm the grant of summary judgment on the Wilsons’ cross-claims and remand for determination of the appropriate award of attorney’s fees.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The case involves the parties’ competing interests in approximately eight acres of real property located in Dededo, Guam (hereinafter “Property”). On May 8, 1995, the Wilsons and OHI entered a Joint Venture Agreement (“JVA”) for the purpose of constructing and marketing residential units on the Property which was to be contributed by the Wilsons. The JVA stated that OHI would perform the acts necessary for construction of 54 residential units on the

¹ Associate Justice F. Philip Carbullido, as the senior member of the panel, was designated Presiding Justice.

Property. Under the JVA, the Wilsons were obligated to contribute the Property upon which the units would be constructed.

[4] The JVA specified several facts relevant to the present dispute. It stated that the parties would divide the profits and losses of the venture in the following manner: OHI - 85.22% and the Wilsons - 14.78%. Each party was solely responsible for its contribution; OHI for all aspects of residential units and construction and the Wilsons for the Property. Further, the property value contributed to the venture by the Wilsons was represented by subsequent agreement addendum as \$1,000,000.

[5] Two important events occurred prior to the enactment of the JVA. First, the Wilsons had previously conveyed a portion of the Property included in the JVA, Lot No. 10111-10-11, to Joann Nauta in July 1978. Secondly, in September 1990, the Wilsons and Joann Nauta leased several lots on the Property, including Lot No. 10111-10-11, to Anna Wang Kao for 99 years. Neither of these facts was disclosed to OHI at the time of the JVA, and Lee became aware of them five years after the enactment of the JVA. As to the latter, disputes arose regarding the lease agreement, culminating in litigation between the Wilsons and Da Yu Overseas, Inc. That dispute was ultimately resolved in January 2001, when the court terminated the Wilson-Kao lease agreement *nunc pro tunc* to August 2, 1994.

[6] On February 5, 2001, following the resolution of litigation regarding the Wilson-Kao lease agreement, the parties to the JVA entered into a Release and Settlement Agreement (“OHI-Wilson Release”). Among other things, the OHI-Wilson Release specified that OHI would release the Wilsons and their agents from any liabilities and waive any claims or causes of action in connection with the JVA, and would indemnify the Wilsons and defend them in any suits asserted in connection with the JVA. In exchange, the parties to the OHI-Wilson Release agreed

to subdivide the Property, granting the right, title, and interest of Lots 13 through 34 (“Phase I Lots”) to OHI along with any homes and improvements thereon. However, this grant of interest in the specified Property was explicitly made contingent on OHI’s removal of liens on the Property held by Hawaiian Rock Products Corporation (“Hawaiian Rock”) and others specifically identified in the “Schedule I” document attached to the OHI-Wilson Release. RA, tab 255, Ex. F at 2-3, 12 (Release & Settlement Agreement, Feb. 5, 2001). As further specified in the OHI-Wilson Release, failure by OHI to remove the liens would constitute a default and result in forfeiture of OHI’s title and interest in the Phase I Lots granted by the OHI-Wilson Release.

[7] In November 2001, the parties entered into an amended release and settlement agreement (“Amended Release”). The Amended Release stated that OHI had failed to complete its obligations within the timeframe specified in the original OHI-Wilson Release. However, the Amended Release voided the provision of the original OHI-Wilson Release which would have triggered OHI and Lee’s default and forfeiture of their interest in the Property. In exchange for additional consideration to the Wilsons, the Amended Release granted additional time for OHI to fulfill its obligation of removing the Property liens specified in the Release. The Amended Release also specified that if OHI had not satisfied these obligations by the extended completion date, their interest in the Phase I Lots, granted by the OHI-Wilson Release, would be voided.

[8] The present litigation initially arose via a Complaint filed in March 2003 by Hawaiian Rock against the Wilsons, OHI, and Lee seeking to quiet title and compel transfer of title for breach of warranty and fraud. The Complaint was based on an alleged breach of a settlement agreement and mutual release of claims between Hawaiian Rock, the Wilsons, OHI, and Lee (“Hawaiian Rock Settlement”). The Hawaiian Rock Settlement resolved earlier disputes

between these parties litigated in a separate lawsuit. The litigation stemming from the Hawaiian Rock Complaint resolved the claims of Hawaiian Rock and another party, Korando Corporation. However, during the course of this proceeding, the Wilsons filed a cross-claim in April 2006 against OHI and Lee to quiet title on the basis of violations of the OHI-Wilson Release and the Amended Release.

[9] OHI and Lee responded, filing an answer which denied the cross-claim allegations of the Wilsons and asserted several affirmative defenses. In addition to their answer, OHI and Lee filed several cross-claims against the Wilsons, including Rescission/Reformation of Contract, Breach of Fiduciary Duty, Breach of Contract, Mental Distress, and Abuse of Process. The Wilsons moved to dismiss OHI and Lee's cross-claims. OHI and Lee opposed dismissal and filed several exhibits in support of their position.

[10] On September 9, 2013, the trial court dismissed OHI and Lee's claims against the Wilsons. The trial court found that all of OHI and Lee's claims stemming from the JVA were barred by the release and indemnification provision of the OHI-Wilson Release and that the remaining claim for mental distress was barred by the applicable statute of limitations. OHI and Lee moved for reconsideration on September 23, 2013, claiming that the trial court had overlooked outcome-determinative facts. The Wilsons filed their opposition to the motion for reconsideration and in the same pleading filed a cross-motion for summary judgment on their claims against OHI and Lee. On November 18, 2013, OHI and Lee filed an opposition to the Wilsons' motion for summary judgment.

[11] On March 31, 2014, the trial court issued a Decision and Order that denied reconsideration of these claims, definitively resolving all substantive disputes OHI and Lee claimed against the Wilsons. However, the trial court also denied the Wilsons' motion for

summary judgment, explaining that because the dispute remained pending through the conclusion of appeal or exhaustion of the right to appeal, it could not expunge the *lis pendens*, precluding the perfection of title necessary to grant judgment on a quiet title action or issue a writ of possession. Thus, the court explicitly declared its decision a final judgment, which triggered the 30-day window for appeal under Guam Rules of Appellate Procedure 4(a). OHI and Lee declined to appeal within this period, and the Wilsons thereafter renewed their motion for summary judgment. In response, the trial court issued judgment granting the Wilsons' requested relief to quiet title and expunge OHI and Lee's *lis pendens*, RA, tab 300 (Judgment, July 15, 2014), and subsequently gave the Wilsons a writ of possession. OHI and Lee filed a notice of appeal thereafter, on August 11, 2014.

II. JURISDICTION

[12] This court has jurisdiction over appeals from a final judgment of the Superior Court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-114 (2015)) and 7 GCA §§ 3107(b) and 3108 (2005). Here, the parties disagree over when a final judgment was issued by the Superior Court. See Appellant's Br. at 1 (Apr. 17, 2015); Appellee's Br. at 2-4 (May 14, 2015). Timeliness of appeal constitutes a jurisdictional question for this court, which will be addressed below. *Abalos v. Cyfred, Ltd.*, 2009 Guam 14 ¶ 6; *McGhee v. McGhee*, 2008 Guam 17 ¶¶ 5-7.

III. STANDARD OF REVIEW

[13] Determination of our own appellate jurisdiction is a threshold issue which must be resolved prior to review of the merits of a dispute. See *Ellis v. AAR Parts Trading, Inc.*, 828 N.E.2d 726, 732-33 (Ill. App. Ct. 2005); *Kilroy v. Kilroy*, 137 S.W.3d 780, 783 (Tex. App. 2004). Such determination requires an interpretation of relevant statutory authority as well as

resolution of a mixed question of law and fact, both of which are conducted *de novo*. *Lujan v. Lujan*, 2012 Guam 7 ¶ 18 (questions of law are reviewed *de novo*); *Gutierrez v. Guam Power Auth.*, 2013 Guam 1 ¶ 8 (mixed questions of law and fact are reviewed *de novo*). We review a trial court's decision granting a motion for summary judgment *de novo*. *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 8; *Taitano v. Lujan*, 2005 Guam 26 ¶ 11. A trial court's conclusions of law are also reviewed *de novo*. *Mendiola v. Bell*, 2009 Guam 15 ¶ 11.

IV. ANALYSIS

A. Timeliness of Appeal

[14] As an initial matter, the Wilsons challenge the timeliness of the present appeal. Appellee's Br. at 2-4. A timely notice of appeal is mandatory and jurisdictional. *Gill v. Siegel*, 2000 Guam 10 ¶ 5 (quoting *United States v. Robinson*, 361 U.S. 220, 224 (1960)). For an appeal taken as a matter of right, the time requirements are absolute and leave this court no discretion to digress. *Sky Enter. v. Kobayashi*, 2002 Guam 24 ¶ 8. As noted above, such jurisdictional issues must be addressed before reaching the substance of an appeal. *Ellis*, 828 N.E.2d at 732-33; *Kilroy*, 137 S.W.3d at 783. Rule 4(a) of the Guam Rules of Appellate Procedure ("GRAP") requires that when an appeal is permitted by law from the Superior Court to the Supreme Court, the time within which an appeal may be taken in a civil case shall be 30 days from the date of entry of judgment. GRAP 4(a)(1).

[15] The parties have differing opinions on whether the notice of appeal was timely filed, which stems from a disagreement over the date on which final judgment was entered. OHI and Lee assert that judgment in the case was made final with the trial court's issuance of a judgment on July 15, 2014. Appellant's Br. at 1; Appellant's Reply Br. at 1 (May 28, 2015). Based on this assumption, OHI and Lee contend that their notice of appeal, filed on August 11, 2014, complied

with GRAP 4(a) by falling within the 30-day period following judgment. Appellant's Br. at 1; Reply Br. at 1. The Wilsons respond that the March 31, 2014 Decision and Order entered on April 1, 2014, constituted a final judgment resolving all substantive matters between the parties. Appellee's Br. at 2-4. The Wilsons further explain that the remaining resolution of their action to quiet title and expunge *lis pendens* could not have been resolved prior to the completion of an appeal or the expiration of the time to appeal, a phenomenon they claim occurred on May 1, 2014. *Id.* at 3-4.

[16] “The Guam Legislature limited the appellate review of this court, generally, to final determinations.” *Duenas v. George & Matilda Kallingal, P.C.*, 2013 Guam 28 ¶ 12 (citing *People v. Angoco*, 2006 Guam 18 ¶ 11). Under ordinary circumstances, this rule requires a party to assert all claims of reversible error in a single appeal following final judgment on the merits. *Angoco*, 2006 Guam 18 ¶ 10. “Guam law defines a final judgment as ‘the final determination of the rights of the parties in an action or proceeding.’” *Duenas*, 2013 Guam 28 ¶ 15 (quoting 7 GCA § 21101; *A.B. Won Pat Guam Int’l Airport Auth. v. Moylan*, 2004 Guam 1 ¶ 21). Thus, regardless of the trial court’s characterization of its order, a judgment will not trigger the time limit to appeal unless it is truly a final judgment.

[17] It is undisputed that the trial court’s September 9, 2013 Decision and Order dismissed all of OHI and Lee’s claims against the Wilsons involving their rights regarding the disputed Property under the parties’ agreements. RA, tab 272 (Dec. & Order (Mot. Dismiss), Sept. 9, 2013). Further, the trial court’s March 31, 2014 Decision and Order denied reconsideration of these claims, resolving all substantive disputes OHI and Lee asserted against the Wilsons. RA, tab 292 at 4-5 (Dec. & Order, Mot. Recons. & Cross-Mot. Summ. J., Mar. 31, 2014). The trial court also acknowledged the Wilsons’ argument that its previous decision had “extinguished any

claims of OHI and Lee for title or possession of the [Property] at issue” and thus warranted summary judgment on their quiet title claim, expungement of the *lis pendens* and grant of a writ of possession. *Id.* at 3. However, the trial court also stated that because the dispute remained pending through the conclusion of appeal or exhaustion of the right to appeal, it could not expunge the *lis pendens*, precluding the perfection of title necessary to grant judgment on a quiet title action or issue a writ of possession. *Id.* at 5-7. Thus, the court declared in its March 31, 2014 Decision and Order that its decision is a final judgment which triggered the 30-day window for appeal under GRAP 4(a). *Id.* at 6. The trial court also issued a notice of entry on the docket, consistent with the requirements of a final judgment. RA, tab 293 (Notice Entry on Docket, Apr. 1, 2014); *see also Sky Enter.*, 2002 Guam 24 ¶ 16 (“[A] judgment . . . is entered within the meaning of [GRAP 4(a)] when it is entered in the civil or criminal docket and notice is given to the parties of this entry by the Clerk of the Superior Court.” (quoting Guam R. App. P. 4(a))). Following a failure of OHI and Lee to appeal within this time period, the trial court declared their appellate rights extinguished and issued judgment granting the Wilsons’ requested relief. RA, tab 300 (Judgment).

[18] Title 7 GCA § 14103 allows a party “[i]n an action affecting the title or the right of possession of real property” to record a notice of *lis pendens* describing the nature of the action and the property affected. 7 GCA § 14103 (2005). “The purpose of *lis pendens* is to give constructive or actual notice that there is a pending action which may affect the title to real property.” *Morioka v. I & F Corp. Guam*, Civ. No. 91-00027A, 1991 WL 255842, at *3 (D. Guam App. Div. Nov. 18, 1991), *aff’d*, 999 F.2d 543 (9th Cir. 1993). The result of such notice is to bind any purchaser of the disputed property after notice is filed to subsequent judgments rendered in the action. *Id.* OHI and Lee exercised this right, filing notice with regard to the

present litigation. RA, tab 276, Ex. D (Not. Lis Pendens, Apr. 14, 2008). Guam case law has established that the constructive notice provided by recording of a *lis pendens* remains in effect for the entire pendency of the case until its final determination upon appeal, or until the time for appeal has passed. *Pelowski v. Taitano*, 2000 Guam 34 ¶¶ 21-25; *Taitano*, 2005 Guam 26 ¶ 28. However, the trial court's March 31, 2014 Decision and Order did not trigger the time limits for appeal because it did not dispose of the Wilsons' quiet title cross-claim against OHI and Lee. RA, tab 292 (Dec. & Order, Mot. Recons. & Cross-Mot. Summ. J.).

[19] Other courts have found that an order which does not fully dispose of a quiet title claim cannot be considered a final judgment for purposes of appeal. *See, e.g., Mancabelli v. Gies*, 454 S.W.3d 785, 791 (Ark. Ct. App. 2015); *Sinopole v. Morris*, 735 S.W.2d 194, 195-96 (Mo. Ct. App. 1987); *Furniture Distrib. Ctr. v. Miles*, 821 P.2d 1165, 1166 (Utah 1991). The trial court claimed that the existence of the notice of *lis pendens* rendered it incapable of issuing an order to quiet title, due to the remaining dispute clouding ownership. RA, tab 292 at 7 (Dec. & Order, Mot. Recons. & Cross-Mot. Summ. J.). However, this assertion is incorrect. While a recording of *lis pendens* has tangible effects upon the marketability of real property, it is unlike a lien or other encumbrance, in that it is merely a notice which does not create any new or disputed interest in the property. *See Kerns v. Kerns*, 53 P.3d 1157, 1164 n.6 (Colo. 2002); *Alien, Inc. v. Futterman*, 924 P.2d 1063, 1070 (Colo. App. 1995). Thus, there is no reason that a trial court could not issue a final appealable decision on the merits of a quiet title claim whether or not a *lis pendens* remained on the record. Further, the conclusion of appellate review would itself remove any residual burdensome effects on the property which were not evaluated in the trial decision. In any event, the trial court's failure to address the Wilsons' claim to quiet title meant that the

Decision and Order rendered on March 31, 2014, was not a final judgment that completely disposed of the parties' rights. *See* 7 GCA § 21101 (2005); *Duenas*, 2013 Guam 28 ¶ 15.

[20] We find that the March 31, 2014 Decision and Order entered on the docket April 1, 2014, did not constitute a final judgment subject to the time limits of GRAP 4(a). Rather, final judgment occurred from the judgment and notice of entry entered by the court on July 15, 2014, as that judgment disposed of all claims the parties held against one another. *See* RA, tab 300 at 2 (Judgment). As OHI and Lee filed their notice of appeal on August 11, 2014, *see* RA, tab 303 (Notice of Appeal, Aug. 11, 2014), we conclude that such appeal is timely and grants this court jurisdiction over the dispute. *See* GRAP 4(a).

B. “Sua Sponte” Grant of Summary Judgment

[21] OHI and Lee first claim that the trial court erred in granting summary judgment to the Wilsons on their claim to quiet title. Appellant's Br. at 17-19. The basis of this assertion is that the court issued the ruling *sua sponte* and without notice after having previously denied an identical motion for summary judgment. *Id.* In support of this contention, OHI and Lee point to this court's decision in *Lujan v. Quinata*, 2014 Guam 20, in which we found reversible error where a trial court issued a grant of summary judgment, finding that a lack of prior notice to the parties had resulted in prejudice. *See Lujan v. Quinata*, 2014 Guam 20 ¶¶ 24-28; Appellant's Br. at 17-18. However, these arguments are unpersuasive when applied to the materially distinguishable facts of this case.

[22] The trial court did not rule *sua sponte* or without warning. In its March 31, 2014 Decision and Order, the trial court stated that evaluation of the Wilsons' cross-claims would not be ripe until after the 30-day appeal period. RA, tab 292 at 5-7 (Dec. & Order, Mot. Recons. & Cross-Mot. Summ. J.). In accordance with this statement, the Wilsons waited for the period

prescribed by the trial court and then renewed their motion for summary judgment as to their cross-claims. See RA, tab 294 (Renewed Mot. Summ. J., May 6, 2014). Consequently, OHI and Lee were properly placed on notice that the trial court was reconsidering the motion in light of what it believed to be changed circumstances.

[23] Even assuming, *arguendo*, that notice was insufficient, this deficiency would not have constituted reversible error. As this court stated in *Lujan*, a lack of notice warrants reversal of summary judgment only upon a showing of prejudice to the losing party. 2014 Guam 20 ¶ 25. In this case, no such prejudice would have resulted absent notice because OHI and Lee were already afforded an opportunity to oppose the trial court's grant of summary judgment. OHI and Lee's contention that they were denied the opportunity to oppose summary judgment on the Wilsons' cross-claims is factually incorrect, since they were given the chance to argue against summary judgment during the court's first consideration of the motion and in fact did file an opposition. See RA, tab 281 (Opp'n to Cross-Mot. Summ. J., Nov. 18, 2013). OHI and Lee have not articulated any way in which the trial court's reevaluation of a motion already briefed by both parties resulted in prejudice against them.

[24] Accordingly, we hold that the trial court did not err in failing to provide additional notice prior to granting summary judgment on the Wilsons' cross-claims.

C. Summary Judgment in Favor of the Wilsons on their Cross-Claims to Quiet Title, to Expunge *Lis pendens*, and Request for a Writ of Possession

1. Proper Standard for Evaluating Summary Judgment

[25] In their appeal, OHI and Lee allege that the trial court improperly shifted the burden to the non-movant to defeat the motion for summary judgment, rather than requiring the movant to establish that no genuine issues of material fact remained. Appellant's Br. at 25. Thus, it is

prudent at the outset of our analysis on the merits to reiterate the appropriate standard for evaluating a motion for summary judgment.

[26] Summary judgment is appropriate “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 R. Civ. P. 56(c); *see also Bank of Guam v. Flores*, 2004 Guam 25 ¶ 8; *Gayle v. Hemlani*, 2000 Guam 25 ¶ 20. A genuine dispute occurs where there is “‘sufficient evidence’ which establishes a factual dispute requiring resolution by a fact-finder.” *Gayle*, 2000 Guam 25 ¶ 20 (citing *Iizuka Corp. v. Kawasho Int’l, Inc.*, 1997 Guam 10 ¶ 7). However, the issue must encompass a “material fact.” *Id.* “A ‘material’ fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. . . . Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment.” *Id.* (alteration in original) (quoting *Iizuka Corp.*, 1997 Guam 10 ¶ 7).

[27] In determining appropriateness of granting summary judgment, a court “must view the evidence and draw inferences in the light most favorable to the non-movant.” *Id.* ¶ 21 (citing *Iizuka Corp.*, 1997 Guam 10 ¶ 8). If, however, the movant proves that no genuine issues of material fact remain, the non-movant may not rely on mere allegations contained in the complaint, but must offer some significant probative evidence supporting such allegations. *Id.* A movant bears the initial burden to show that undisputed facts in the record support a *prima facie* entitlement to the relief requested. *See, e.g., Hemlani v. Hemlani*, 2015 Guam 16 ¶ 18. If such a showing is made, however, the non-movant may not simply deny the allegations to create a factual dispute, but is obligated to set forth specific facts showing there is a genuine issue for

trial. *Gayle*, 2000 Guam 25 ¶ 21 (citing *Iizuka Corp.*, 1997 Guam 10 ¶ 8); *see also* Guam R. Civ. P. 56(e).

2. Application of Summary Judgment Standard

[28] OHI and Lee state that even if the trial court's judgment did not violate notice requirements, it was procedurally deficient in that the trial court failed to actually apply the summary judgment standards in rendering its decision. Appellant's Br. at 20-21. At first glance, the record appears to support this factual assertion. The trial court did not issue a separate decision and order granting the motion for summary judgment. Additionally, the judgment rendered on July 15, 2014, did not state its basis for concluding that the Wilsons had stated a *prima facie* case for relief or that the arguments asserted by OHI and Lee did not bring any material fact into dispute. *See* RA, tab 300 (Judgment). In its March 31, 2014 Decision and Order regarding the Wilsons' first motion for summary judgment on their cross-claims, the trial court noted the Wilsons' assertion that their success in disposing of OHI and Lee's claims extinguished any rights to the Property that they might have had, warranting summary judgment on their quiet title action. RA, tab 292 at 3-4 (Dec. & Order, Mot. Recons. & Cross-Mot. Summ. J.). However, the trial court did not resolve the merits of this assertion, instead holding that the issue was not yet ripe for disposition due to the pendency of the *lis pendens* through the appellate process. *Id.* at 5-7. Thereafter, following the Wilsons' renewed motion for summary judgment, *see* RA, tab 294 (Renewed Mot. Summ. J.), the trial court did not issue a new reasoned decision on whether resolution of OHI and Lee's claims extinguished material disputes with regard to the quiet title action. Instead, the trial court merely issued a single-page judgment disposing of the claims and granting the Wilsons' requested relief. *See* RA, tab 300 (Judgment).

[29] This court has previously stated that trial judges should “articulate the reasons for [their] decisions.” See *Rahmani v. Park*, 2011 Guam 7 ¶ 65. As noted above, we have also underscored the importance of establishing a sufficient appellate record when disposing of a case via summary judgment. *Lujan*, 2014 Guam 20 ¶ 28. Here, while the trial court did not prepare a separate written decision explicitly granting summary judgment on the Wilsons’ quiet title claim, it did articulate its reasons for this conclusion in two previous substantive decisions and orders in the record. In its September 9, 2013 Decision and Order, the trial court applied the provisions of the OHI-Wilson Release to determine the respective rights of the parties to the Wilson Property. RA, tab 272 at 14 (Dec. & Order (Mot Dismiss)). In doing so, the trial court rejected OHI and Lee’s arguments that misconduct in the creation of the JVA alleviated their obligations to resolve the liens and prevented their default under the OHI-Wilson Release. *Id.* at 15. Furthermore, the March 31, 2014 Decision and Order stated that the trial court considered the denial of reconsideration to resolve all substantive disputes between the parties with regard to their respective property rights under the agreements. See RA, tab 292 at 6 (Dec. & Order, Mot. Recons. & Cross-Mot. Summ. J.). Thus, viewing the record as a whole, it is clear that the trial court established its reasons for concluding that OHI and Lee had no remaining interest in the disputed Property, entitling the Wilsons to summary judgment. Nonetheless, this court must determine if the failure to produce a separate written decision on the merits of the quiet title summary judgment motion itself warrants reversal.

[30] The answer is subject to a split of authority. Several jurisdictions have opined that a failure by the trial court to include the basis of its decision and its conclusions of law is error potentially warranting reversal. See *Big Man v. State*, 626 P.2d 235, 240-41 (Mont. 1981) (Shea, J., concurring); *Masters v. Worsley*, 777 P.2d 499, 500-01 (Utah Ct. App. 1989). The purpose

for this is to provide the parties with an explanation of the analysis used in resolving the dispute and to provide an adequate record for appellate review. *Masters*, 777 P.2d at 501. However, many courts have held that, due to the *de novo* nature of review, a grant of summary judgment must be affirmed on appellate review if it is supported by any basis in the record, even if such basis was not included in the trial court's decision. See, e.g., *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1047 (9th Cir. 2009); *DeFriece v. McCorquodale*, 998 So. 2d 465, 470 (Ala. 2008); *Rowland v. Great States Ins. Co.*, 20 P.3d 1158, 1162 (Ariz. Ct. App. 2001); *City of Gainesville v. Dodd*, 573 S.E.2d 369, 374-75 (Ga. 2002) (Carley, J., dissenting); *Urban Sites of Chi., LLC v. Crown Castle USA*, 979 N.E.2d 480, 488 (Ill. App. Ct. 2012). This rule is consistent with our prior holdings regarding the *de novo* nature of review for summary judgment. See *Taitano*, 2005 Guam 26 ¶ 11; *Zahnen*, 2008 Guam 5 ¶ 8.

[31] We are persuaded to adopt the reasoning of the latter group of cases in finding that the trial court's failure to explicitly indicate the basis of a judgment is not itself reversible error where such reasons are clear from the record. In each of the former cases, in finding error for a failure to articulate the reason for a decision, the courts relied on specific requirements for written and reasoned decisions established by statute or court rules in their jurisdiction. See *Big Man*, 626 P.2d at 241 (Shea, J., concurring) ("The Canons of Judicial Ethics require that trial judges, in disposing of controverted cases, set out the reasons for their decisions." (citing Canon 19 (144 Mont. at xxvi-xxvii))); *Masters*, 777 P.2d at 501 ("Utah R. Civ. P. 52(a) provides: 'The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under Rules 12(b), 50(a) and (b), 56, and 59 when the motion is based on more than one ground.'"). By contrast, the Guam Rules of Civil Procedure ("GRCP") contain no such requirements in the section governing summary judgment, and grants of summary judgment are

explicitly excluded from the general requirements to provide findings of fact and conclusions of law. See Guam R. Civ. P. 56; see also Guam R. Civ. P. 52(a) (“Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule . . . 56 . . .”). Thus, in the absence of a contrary statutory mandate, this court defaults to the general rule regarding summary judgment in which the court conducts *de novo* review and affirms a grant if supported by any basis in the record.²

[32] For these reasons, the trial court’s failure to release a separate reasoned decision analyzing the factors of GRCP 56 in granting the Wilsons’ motion for summary judgment is not itself reversible error, and the award of summary judgment must be evaluated on its merits.

3. Whether Summary Judgment was Improper Due to Remaining Factual Disputes

[33] In the alternative, OHI and Lee assert that if the trial court did not fail to apply the appropriate summary judgment factors, then its application of the summary judgment factors was erroneously done. Appellant’s Br. at 21-25. Specifically, they claim that the trial court failed to identify sufficient undisputed facts to support a *prima facie* case for recovery. *Id.* at 24-25. OHI and Lee further claim that material issues of fact remained regarding their affirmative defenses; for example, the alleged material issue that the Wilsons had breached the agreements of the parties and their fiduciary duties towards OHI and Lee. *Id.* at 22-24. A significant portion of the Wilsons’ response is aimed at defending the trial court’s grant of summary judgment in favor of the Wilsons in regards to OHI and Lee’s claims against them. See Appellee’s Br. at 5-14. However, OHI and Lee concede in their reply brief that they are not challenging the court’s September 9, 2013 Decision and Order dismissing their claims against the Wilsons. Reply Br. at

² Despite this conclusion, we emphasize that the better practice is for the trial court to issue a reasoned decision articulating the basis for granting or denying summary judgment. Such a decision is important for establishing a sufficient understanding for appellate review and to inform the parties of the rationale for the outcome of their dispute.

1-2. Instead, they reiterate that the basis of their appeal is limited to the trial court's alleged errors in granting summary judgment on the Wilsons' cross-claims for quiet title, expungement of *lis pendens*, and for a writ of possession. *Id.* Thus, this court will limit its review to that question.

[34] Under Guam law, an action to quiet title "may be brought by any person against another who claims an estate or interest in real . . . property, adverse to him, for the purpose of determining such adverse claim" 21 GCA § 25101 (2005). The basis of the Wilsons' *prima facie* case is that under the OHI-Wilson Release and the Amended Release, OHI was responsible for resolving all liens against the Property held by Hawaiian Rock and other specified parties. *See* RA, tab 117 (Wilson Answer to Cross-Cl., Apr. 14, 2006). In accordance with the agreements, OHI's failure to satisfy the liens constituted a material default which removed all of OHI and Lee's interest in the Property, including all improvements made by them. *Id.* Thus, OHI and Lee have no remaining interest in the Property, and the Wilsons are entitled to quiet title and remove any adverse claim against their interest. *Id.*

[35] Though generally denied by OHI and Lee, each of the above-referenced factors is supported by undisputed factual evidence. The OHI-Wilson Release and the Amended Release explicitly outline OHI's responsibilities to resolve the liens in question. RA, tab 255, Ex. F at 2-3, 12 (Release & Settlement Agreement); RA, tab 274, Ex. A-1 at 1-2 (Am. Release, Nov. 30, 2001). OHI's failure to satisfy these obligations was not only acknowledged by the Amended Release, but also evidenced by Hawaiian Rock's litigation against OHI and the Wilsons on that ground. *See* RA, tab 274, Ex. A-1 at 1 (Am. Release); RA, tab 2 (Hawaiian Rock Compl., Mar. 28, 2003). Further, OHI and Lee appear to have explicitly conceded that they failed to satisfy their lien obligation within the time specified by the Amended Release. *See* RA, tab 274 at 4

(Mem. P. & A. Mot. Recons. & Mot. Summ. J.) (“January 31, 2002 OHI default of Amended Settlement Agreement . . .”). Finally, both the OHI-Wilson Release and the Amended Release unequivocally state that OHI’s failure to resolve the liens would result in the forfeiture of OHI’s interest and title in the Property covered by the initial JVA. RA, tab 255, Ex. F at 6-8 (Release & Settlement Agreement); RA, tab 274, Ex. A-1 at 3 (Am. Release). Each provision is unambiguous and has not been rebutted by any evidence presented by OHI and Lee. Thus, the Wilsons have established a *prima facie* case to prevail on their quiet title action. *See Gov’t of Guam v. Gutierrez*, 2015 Guam 8 ¶ 30 (holding that summary judgment is proper where an agreement’s provisions are unambiguous or where evidence presented regarding its meaning is sufficiently one-sided that a reasonable person could not conclude the contrary).

[36] Despite the establishment of the Wilsons’ *prima facie* case for recovery, OHI and Lee assert that several disputed facts preclude summary judgment. For example, they correctly note that in both its March 31, 2014 Decision and Order and its July 15, 2014 Judgment, the trial court failed to explicitly mention or dispose of OHI and Lee’s denials of the allegations or their assertion of affirmative defenses. Appellant’s Br. at 21-22, 25; *see generally* RA, tab 292 (Dec. & Order, Mot. Recons. & Cross-Mot. Summ. J.); RA, tab 300 (Judgment). The Wilsons argued in the trial court that their success in dismissing OHI and Lee’s claims against them removed any interest that OHI and Lee could claim on the Property, entitling them to quiet title and rendering all remaining factual disputes immaterial. *See* RA, tab 277 at 11 (Opp’n Mot. Recons. & Mot. Summ. J., Oct. 21, 2013); RA, tab 294 at 3-4 (Renewed Mot. Summ. J.). As explained above, *see* Section C.2., the July 15, 2014 Judgment does not specifically explain the trial court’s rationale. However, the record demonstrates that the trial court, in granting summary judgment, relied upon the reasoning that dismissing OHI and Lee’s claims against them removed any

interest that OHI and Lee could claim on the Property, as this argument was explicitly referenced by the court in its March 31, 2014 Decision and Order prior to the court declaring the issue not ripe for review. RA, tab 300 (Judgment); RA, tab 292 at 3, 6 (Dec. & Order, Mot. Recons. & Cross-Mot. Summ. J.). Thus, we must evaluate whether the Wilsons' success in obtaining summary judgment on OHI and Lee's claims against them extinguished all factual disputes regarding the Wilsons' quiet title claim.

[37] The trial court's September 9, 2013 Decision and Order, which has not been challenged on this appeal, did explicitly address the affirmative defense that the Wilsons' claims were barred by the statute of limitations. RA, tab 272 at 23-24 (Dec. & Order (Mot. Dismiss)). There was no factual dispute regarding when the agreements between the parties were entered or when the Wilsons commenced their actions. See RA, tab 255, Ex. F (Release & Settlement Agreement); RA, tab 274, Ex. A-1 (Am. Release); RA, tab 117 (Wilson Answer to Cross-Cl.). Thus, the trial court correctly identified the relevant question as whether or not the action was properly characterized as a breach of contract claim. RA, tab 272 at 7-8 (Dec. & Order (Mot. Dismiss)). Further, the trial court appropriately relied on the clear language of the agreements to determine that OHI and Lee forfeited their interest in the Property automatically upon failure to satisfy the condition of resolving the Hawaiian Rock liens and that the claim was to enforce compliance with these provisions in light of OHI and Lee's continued claims of interest in the Property rather than seek damages for a past breach of the agreement. See RA, tab 255, Ex. F at 6-8 (Release & Settlement Agreement); RA, tab 274, Ex. A-1 at 3 (Am. Release). Thus, the September 9, 2013 Decision and Order disposed of OHI and Lee's affirmative defense of the statute of limitations. RA, tab 272 at 19-21 (Dec. & Order (Mot. Dismiss)).

[38] Further, the September 2013 Decision and Order did dismiss OHI and Lee's claims for Rescission/Reformation of Contract, Breach of Fiduciary Duty, Breach of Contract, Mental Distress, and Abuse of Process. RA, tab 272 at 24-25 (Dec. & Order (Mot. Dismiss)). Thus, it would appear consistent to find that OHI and Lee's affirmative defenses regarding the same subject matter would also be extinguished. The trial court correctly held that the release and indemnification clause of the OHI-Wilson Release precluded OHI and Lee from bringing suit on their asserted claims for Rescission/Reformation of Contract, Breach of Fiduciary Duty, and Breach of Contract. *Id.* at 13-18. Additionally, the trial court found that the remaining disputes were barred by applicable statutes of limitations. *Id.* at 21-22. The rationale for this decision extinguishes the right of a party to assert affirmative defenses in order to prevent the released party from exercising their interests under theories similar to previously waived causes of action. See RA, tab 255, Ex. F at 4-5 (Release & Settlement Agreement) (release of liability includes all claims and causes of action, and demands of any nature and holds the Wilsons harmless in any claim on any proceeding of legal or equitable nature). Thus, dismissal of OHI and Lee's claims on these grounds may itself resolve disputes on affirmative defenses covering the same subjects.

[39] Also, even absent the September 9, 2013 Decision and Order, summary judgment was proper due to the lack of any remaining disputes of material fact. As noted above, OHI and Lee may not merely rely on their assertions from pleadings, but must instead point to evidence in the record which creates a material factual dispute. *Gayle*, 2000 Guam 25 ¶ 21; Guam R. Civ. P. 56(e). Thus, the mere denials of the Wilsons' allegations which OHI and Lee point out in their various pleadings are immaterial to whether summary judgment was properly granted. See Appellant's Br. at 23-24; Reply Br. at 3. Further, OHI and Lee never provided any evidence in support of many of their affirmative defenses. They did not supply any evidence of prejudice

suffered by any delay in the Wilsons' actions and, thus, cannot assert laches. *See, e.g., Wanlass v. Gen. Elec. Co.*, 148 F.3d 1334, 1337 (Fed. Cir. 1998). Their bare assertion that the Wilsons "by their conduct" waived any claims against them is not bolstered with any facts that would indicate such waiver or explanation of what conduct would trigger such a result. *See* RA, tab 178 at 4 (Cross-Defs.' Answer to Wilsons' Cross-Cl., May 19, 2009). Their similarly vague claim, that the Wilsons' claims are barred by *res judicata*, does not provide any factual explanation as to what previous holdings would preclude recovery and lack any specificity necessary to create a triable issue. *Id.*

[40] With regard to their abuse of process defense, some evidence establishes that the Wilsons may have misinformed their counsel of OHI and Lee's addresses, resulting in a default judgment. RA, tab 173 at 2 (Dec. & Order, Mar. 27, 2009). However, while this fact may have been relevant to their cross-claim on the same issue, OHI and Lee have provided no explanation as to how such conduct would preclude the Wilsons from disposition on the merits of their claims given the undisputed fact that the default judgment was set aside and both parties were provided the opportunity to brief the issues fully. *Id.*; *see also* RA, tab 272 at 4-5 & n.10 (Dec. & Order (Mot. Dismiss)). Thus, the evaluation of this issue was proper only as a cross-claim, and does not bar summary judgment on the Wilsons' claims. *See* Guam R. Civ. P. 8(c) (an argument that is pleaded as affirmative defense but which is more appropriately evaluated as a separate counterclaim shall be treated as such).

[41] OHI and Lee's defense of lack of notice is similarly defeated by undisputed facts. RA, tab 178 at 4 (Cross-Defs.' Answer to Wilsons' Cross-Cl.). The basis of this defense was that the Wilsons failed to provide notice of a breach of contract and are thus precluded from recovery. *Id.* However, as explained above with regard to the statute of limitations defense, this was not a

claim for breach of contract, but rather an action to declare any adverse interest in the Property void in compliance with the Amended Release. Further, the language of the Amended Release and the OHI-Wilson Release explicitly stated that failure by OHI to resolve the liens for which it was responsible in the time provided by the agreements would result in default of the agreements and forfeiture of OHI and Lee's Property interests. RA, tab 255, Ex. F at 6-8 (Release & Settlement Agreement); RA, tab 274, Ex. A-1 at 3 (Am. Release). Thus, OHI and Lee received proper notice of the consequences of their failure to perform the duties mandated by both the Amended Release and OHI-Wilson Release.

[42] OHI and Lee's final two affirmative defenses are Misrepresentation and Unclean Hands. RA, tab 178 at 4 (Cross-Defs.' Answer to Wilsons' Cross-Cl.). These defenses actually appear to make the same claim, stating that the misconduct of the Wilsons equitably bars them from recovery to which they would otherwise be legally entitled. *Id.* Specifically, OHI and Lee identify three separate instances of misconduct by the Wilsons: (1) failure to disclose the state of the land's title, which was partially owned by Joann Nauta; (2) the Property's encumbrance by a 99-year lease to Anna Wang Kao, which existed at the time the parties entered into the JVA; and (3) the misrepresentation of the value of the land. *See* Appellant's Br. at 13. For the first two assertions, OHI and Lee provided the Deed of Gift from the Wilsons to Joann Nauta and the lease agreement between the Wilsons and Kao as evidence. RA, tab 255, Ex. B (Deed Gift); RA, tab 255, Ex. A (Lease Agreement). For their claim regarding the value of the land, they provided the valuation of expert consultant Nicholas Captain, which showed that in 1995 (the year the JVA was entered), the value of the Property with the included encumbrances was zero dollars. *See* RA, tab 255, Ex. E (Phase I Consulting Study, Feb. 11, 2011). OHI and Lee contrasted this

figure with the Wilsons' representation that the Property they contributed to the joint venture was worth \$1,000,000. RA, tab 243, Ex. C at 1 (Addendum, May 10, 1995).

[43] Despite the evidence presented, these assertions do not create factual disputes which are material to the outcome of the Wilsons' cross-claims for quiet title, expungement of *lis pendens* and writ of possession. Unclean hands due to the misconduct of a plaintiff may preclude recovery on a quiet title action. See *Wolff v. Bank of N.Y. Mellon*, 997 F. Supp. 2d 964, 978 (D. Minn. 2014); *Aguayo v. Amaro*, 153 Cal. Rptr. 3d 52, 58 (Ct. App. 2013). However, "[n]ot all wrongful conduct constitutes unclean hands. Only if the misconduct is *directly related to the cause at issue* can a defendant invoke the doctrine." *Aguayo*, 153 Cal. Rptr. 3d at 58 (emphasis added); see also *In re New Valley Corp.*, 181 F.3d 517, 525 (3d Cir. 1999). Here, the assertions of misconduct involve purported wrongdoing with respect to the JVA. However, the basis of the Wilsons' cross-claim to quiet title is OHI's failure to fulfill its distinct obligations to remove the Hawaiian Rock liens under the entirely separate OHI-Wilson Release and Amended Release. RA, tab 117 (Wilson Answer to Cross-Cl.). Thus, while both involve business transactions between the two parties, the agreements giving rise to the claim are entirely separate from any wrongdoing related to the failure to disclose the joint ownership or lease agreement as well as the disputed valuation of the Property contributed to the JVA. *Id.* Thus, OHI and Lee are precluded as a matter of law from using these facts to create a triable dispute regarding their affirmative defense. *Aguayo*, 153 Cal. Rptr. 3d at 58; *New Valley*, 181 F.3d at 525.

[44] Further, undisputed evidence establishes that OHI and Lee were aware of the facts involving Joann Nauta's part ownership interest and Anna Kao's lease agreement prior to their entry into the OHI-Wilson Release and Amended Release agreements. RA, tab 254 at 2-4 (Aff. Jin Hee Lee Opp'n Mot. Dismiss, May 9, 2012). Thus, there were no misrepresentations with

regard to these issues that related to the agreements upon which the Wilsons' claim is based. Additionally, the dispute regarding the value of the Property at the time the JVA was entered into had become moot by the time the OHI-Wilson Release was entered since Kao's lease had been removed, eliminating the encumbrance that would have devalued the Property. *See* RA, tab 272 at 3 (Dec. & Order (Mot. Dismiss)). Thus, these facts do not create a material dispute that precludes summary judgment.

[45] For these reasons, we hold that no factual disputes remained with regard to the Wilsons' cross-motion to quiet title. Additionally, because we conclude that the trial court was correct to rule in the Wilsons' favor on the quiet title action, any adverse interest will be eliminated and allow the perfection of title necessary for a writ of possession. *See* 20 GCA § 3201 (2005). Further, our issuance of final disposition on appeal will conclude the pendency of the action, allowing for the expungement of the *lis pendens*. *See Taitano*, 2005 Guam 26 ¶ 28. Accordingly, we affirm the trial court's grant of summary judgment on the actions to quiet title, expunge the *lis pendens*, and issue a writ of possession.

D. Award of Attorney's Fees on Appeal

[46] "Any party in a civil case who intends to seek attorney's fees for the appeal must include a short statement to that effect and must identify the authority under which the attorney's fees will be sought." Guam R. App. P. 13(k). Here, both parties have sought fees and costs pursuant to this provision. *See* Appellee's Br. at 14-15; Reply Br. at 7-8. In civil cases, Guam follows the "American Rule," which states that each party is responsible for its own litigation costs, including attorney fees. *Rahmani*, 2011 Guam 7 ¶ 59 (citing *Sule v. Guam Bd. of Dental Exam'rs*, 2008 Guam 20 ¶ 52). However, statutory or contractual provisions allowing attorney fees are exceptions to this rule, and permit a prevailing party to recover their costs. *Sule*, 2008

Guam 20 ¶ 52; *Fleming v. Quigley*, 2003 Guam 4 ¶ 20. The existence of several contractual provisions entered between the parties regarding attorney’s fees triggers such an exception. See, e.g., *Rahmani*, 2011 Guam 7 ¶ 60 (attorney’s fees awarded since attorney’s fees were authorized under the terms of the lease agreement).

[47] Both the OHI-Wilson Release and the Amended Release contain indemnification provisions. Under the OHI-Wilson Release, OHI is required to indemnify the Wilsons and hold them harmless in any claim arising from the parties’ agreement, including covering the costs of reasonable attorney’s fees. See RA, tab 255, Ex. F at 4-5 (Release & Settlement Agreement). Additionally, the Amended Release also requires OHI to “[p]ay any and all attorneys [sic] fees incurred by the Wilsons in negotiating, drafting, executing, and enforcing the Agreement and Amendments and modifications thereto, including this Agreement, and in the settlement of all related disputes between the parties” RA, tab 274, Ex. A-1 at 2 (Am. Release). The OHI-Wilson Release compels the Wilsons to indemnify and hold harmless OHI for any claims or liabilities including attorney’s fees for actions undertaken by the Wilsons, unless the action is caused by the acts or omissions of OHI and Lee. RA, tab 255, Ex. F at 6 (Release & Settlement Agreement).

[48] Here, OHI and Lee claim that the Wilsons are not entitled to attorney’s fees because this appeal stems from an action brought by the Wilsons and was therefore not caused by acts of OHI and Lee. Reply Br. at 7. However, this argument is not persuasive. While the action itself was initiated by the Wilsons, it was a result of the acts and omissions of OHI and Lee. OHI and Lee failed to remove the Hawaiian Rock liens as required by the agreements, which in turn forfeited their interest in the Property. RA, tab 274, Ex. A-1 at 1 (Am. Release); RA, tab 2 (Hawaiian Rock Compl.); RA, tab 274 at 4 (Mem. P. & A. Mot. Recons. & Mot. Summ. J.). Further, OHI

and Lee's continued use of and presence on the Property forced the Wilsons to bring the present quiet title claim to enforce the terms of the OHI-Wilson Release and Amended Release. RA, tab 117 at 7 (Wilson Answer to Cross-Cl.). Finally, the Amended Release explicitly allows for the recovery of attorney's fees incurred by the Wilsons in order to enforce the agreements in disputes with OHI. RA, tab 274, Ex. A-1 at 2 (Am. Release). Thus, the Wilsons are entitled to reasonable attorney's fees for costs incurred in this appeal.

V. CONCLUSION

[49] We hold that OHI and Lee timely filed this appeal in compliance with GRAP 4(a) based on the trial court's issuance of an appealable final judgment on July 15, 2014. Further, we hold that the trial court did not commit reversible error on notice grounds, as OHI and Lee were given proper notice of the motion for summary judgment as well as the opportunity to file an opposition and were thus not prejudiced. Additionally, we hold that the trial court did not improperly shift the burden of proof to OHI and Lee, as the court applied the appropriate standard for evaluating summary judgment. Furthermore, we conclude that the trial court did not err in issuing a grant of summary judgment without an accompanying decision and order explaining the reasoning relied upon or explicitly applying the standards of GRCP 56. We also find that the trial court did not commit error in granting summary judgment on the Wilsons' claims, as no material factual disputes remained at issue. Finally, the Wilsons are entitled to reasonable attorney's fees for costs incurred in this appeal.

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[50] Accordingly, we **AFFIRM** the summary judgment granted below regarding the Wilsons' cross-claims and **REMAND** for determination of the appropriate award of attorney's fees.

/s/

KATHERINE A. MARAMAN
Associate Justice

/s/

ALBERTO E. TOLENTINO
Justice *Pro Tempore*

/s/

F. PHILIP CARBULLIDO
Presiding Justice