



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

KAMLESH K. HEMLANI,
Plaintiff-Appellant,

v.

MANU and ANITA MELWANI, JETHMAL K. MELWANI, ISHWAR P. HEMLANI, VINOD I. and YOGITA V. HEMLANI, RADHI P. HEMLANI ESTATE, PARAMANAND MELWANI ESTATE, RADHI'S FOUNDATION, RADHI PURAN TRUST, RADHI FAMILY TRUST, PACIFIC RAINBOW, INC., SAFETY 1ST SYSTEMS INC., PACIFIC AMERICAN TITLE INSURANCE & ESCROW COMPANY, VASUDEV B. HEMLANI, P.D. HEMLANI FOUNDATION, LTD., CHITRA HEMLANI, SONA HEMLANI, PADI DARYANANI, and DOES 1-95,
Defendant-Appellees.

Supreme Court Case No.: CVA15-023
Superior Court Case No.: CV1527-13

OPINION

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Radhi Puran Trust, Radhi Family Trust,
Pacific Rainbow, Inc., Safety 1st Systems, Inc.,
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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] Plaintiff-Appellant Kamlesh K. Hemlani (“Kamlesh”) appeals the Superior Court’s final judgment dismissing his complaint for lack of standing and disposing of all claims therein. The lower court found that Kamlesh could not have standing as trustee following trust termination and that a separate *lis pendens* fell within the statutory sham exception, foreclosing sanctions and fees. For the reasons contained herein, we reverse both of these rulings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case is a continuation of a longstanding familial dispute among these parties over a trust established by P.D. Hemlani (“P.D.”) and Radhi Hemlani (“Radhi”), husband and wife, both now deceased. The Defendant-Appellees in this action are Manu P. Melwani and associated appellees¹ (the “Manu Appellees”), the Radhi P. Hemlani Estate (the “Estate”), Radhi’s Foundation, and Vasudev B. Hemlani and the P.D. Hemlani Foundation, Ltd. (“PDHF/Vashi”).

A. The Radhi Puran Trust

[3] Over the course of their lifetimes, P.D. and Radhi accumulated assets worth millions of dollars. Their estate plan centered on the creation of the Radhi Puran Trust (the “RPT”), a Guam private trust. The RPT was to be overseen by its trustees, which were initially P.D. and Radhi.

[4] Under the RPT instrument (the “Instrument”), Jack Hemlani, Ishwar Hemlani (“Don”), and Vashi were to be appointed successor co-trustees upon the death of the last surviving initial

¹ The associated appellees are Anita Melwani, Jethmal Melwani, Ishwar Hemlani, Vinod Hemlani, Yogita Hemlani, Estate of Parmanand Melwani, Radhi Puran Trust, Radhi Family Trust, Pacific Rainbow, Inc., Safety 1st Systems, Inc., Pacific American Title Insurance & Escrow Company, Chitra Hemlani, Sona Hemlani, Padi Daryanani, and Does 1-95.

trustee. If any one of the three successor co-trustees died, resigned, was removed, or was incapacitated, the remaining two successor co-trustees were to appoint a third successor co-trustee so that there would always be three successor co-trustees. A majority of the successor co-trustees was required to bind the trust for all purposes. The trust agreement was subsequently altered by P.D. and Radhi, amending the successor co-trustees to be Kamlesh, Don, and Vashi.

[5] Under sections 5.02(A) and (B) of the Instrument, after one settlor's death, a Survivor's Trust and a Residuary Trust were meant to be created. Under section 5.05(B), the Instrument provided, "Upon the death of the Surviving SETTLOR, the TRUSTEE shall distribute the balance then remaining of the Residuary Trust to the RADHI FOUNDATION, a Guam not for profit corporation."² Record on Appeal ("RA"), tab 1, Ex. 6 at V3 (The Radhi Puran Trust, 1997).

B. Vashi's 2009 Lawsuit, the Memorandum of Settlement and the Creation of the PDHF

[6] P.D. passed away on March 12, 2004, leaving Radhi as the sole remaining trustee. Radhi then amended the trust several times and eventually, on September 4, 2009, she revoked the Survivor's Trust. After allegations of misconduct regarding the validity of Radhi's amendments and revocation of the trust, Vashi filed suit, naming Radhi, Manu, Don, Radhi's Foundation, and others as defendants. The issue in that case was determining what portion of the trust assets constituted Radhi's share in the community property such that she could claim the property as a result of revoking the Survivor's Trust. In July 2011, the parties entered into a Memorandum of Settlement and the entire action was dismissed with prejudice by Stipulation and Order of the Superior Court. The Memorandum of Settlement called for the restoration of certain assets to

² The identity of Radhi's Foundation referred to in the RPT Instrument may be in doubt. However, this determination is unnecessary for resolution of the issues on appeal.

Radhi, the Radhi's Foundation or the RPT and for the creation of the PDHF "with the same charitable purpose as Radhi's Foundation . . . consistent with the charter it filed in 1991." RA, tab 1, Ex. 26 at 1 (Mem. of Settlement, July 2011). Under the Memorandum of Settlement, the PDHF was to operate as a separate charitable entity and immediately receive assets.

1. The Guardianship Proceeding

[7] On November 7, 2011, after the Memorandum of Settlement was executed, Kishore Hemlani filed a petition for guardianship over Radhi. The Guardianship Court appointed the Office of the Public Guardian ("OPG") as trustee ad litem of the RPT, but noted that it was not making a finding regarding Radhi's capacity.

2. Kamlesh's First Lawsuit

[8] On June 25, 2012, Kamlesh filed a complaint in the Superior Court, alleging that Radhi was incompetent and that he had become a successor co-trustee to the RPT as a result of Radhi's alleged incompetence. In that matter, the Superior Court found that Radhi had not been determined to be incompetent, and as a result "she remains the sole trustee of the Radhi Puran Trust; and so she shall remain unless and until one of the conditions provided for in the trust instrument is satisfied." *Kamlesh K. Hemlani v. Radhi P. Hemlani, et al.*, CV0758-12 (Dec. & Order at 5, July 9, 2013). The court therefore concluded that Kamlesh did not have standing at that time and dismissed his complaint. Kamlesh did not appeal this decision. Subsequently, Radhi died on August 18, 2013.

3. Kamlesh's Present Lawsuit

[9] Kamlesh filed this case, claiming to be a successor co-trustee to the RPT as a result of Radhi's death and asserting multiple causes of action on the basis that he therefore has standing as trustee. Following the completion of discovery, the trial court dismissed Kamlesh's complaint

for lack of standing, granting defendants' motions for summary judgment. Kamlesh appeals this ruling.

[10] The Manu Appellees had also previously filed a counterclaim against Kamlesh for malicious prosecution. This claim alleged the wrongful recording of a notice of *lis pendens* against certain property owned by Manu, in Kamlesh's previous lawsuit. Kamlesh filed a motion to dismiss the malicious prosecution counterclaim and for attorney's fees, costs, and sanctions under Guam's Citizen Participation in Government Act ("CPGA"), arguing the counterclaim was a violation of Guam law. The trial court granted Kamlesh's motion to dismiss the malicious prosecution counterclaim, but denied Kamlesh's request for attorney's fees, costs, and sanctions under the CPGA, reasoning that such remedy was barred by failure to comply with the notice of *lis pendens* statute. Kamlesh now also appeals the trial court's denial of sanctions and fees under the CPGA.

II. JURISDICTION

[11] This court has jurisdiction to hear this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-248 (2016)) and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[12] We review the trial court's granting of a motion for summary judgment *de novo*. *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 8 (citing *Paulino v. Biscoe*, 2000 Guam 13 ¶ 12). When deciding 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. *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 7 (citing *Edwards v. Pac. Fin. Corp.*, 2000 Guam 27 ¶ 7). Our "ultimate inquiry is to determine whether the 'specific fact' set forth by the non-moving party, coupled with undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor

based on that evidence.” *Edwards*, 2000 Guam 27 ¶ 7 (quoting *Iizuka Corp. v. Kawasho Int’l (Guam) Inc.*, 1997 Guam ¶ 8).

[13] “A trial court’s decision on whether a party has standing is reviewed *de novo*.” *Macris v. Guam Mem’l Hosp. Auth.*, 2008 Guam 6 ¶ 8 (quoting *Benavente v. Taitano*, 2006 Guam 15 ¶ 10). Determining standing presents questions of law and mixed questions of law and fact, both of which are reviewed *de novo*. See *Hawaiian Rock Prods. Corp. v. Ocean Hous., Inc.*, 2016 Guam 4 ¶ 13 (citing *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*)).

[14] Our review also requires interpretation of the CPGA and notice of *lis pendens* statutes. “The interpretation of a statute is a legal question subject to *de novo* review.” *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 8 (citing *Apana v. Rosario*, 2000 Guam 7 ¶ 9).

IV. ANALYSIS

[15] The parties expend much effort in arguing factual allegations that played no role in the trial court’s decision and are largely inapplicable to the issues on appeal. By way of clarity, the only meaningful inquiries for this appeal are whether Kamlesh had standing for his lawsuit as trustee of the RPT and whether the trial court erred in denying Kamlesh anti-SLAPP relief when dismissing Manu’s counterclaim.

A. Standing

[16] The trial court’s dismissal rested on the finding that Kamlesh had no standing to prosecute the RPT’s claims. Kamlesh first appeals this ruling, arguing that as trustee, he had power to bring claims on behalf of the RPT as part of his winding up capabilities. Appellant’s Br. at 13-24 (Feb. 16, 2016).

[17] Standing is a requirement of subject matter jurisdiction that must be determined as of the date of filing of the complaint. *Taitano v. Lujan*, 2005 Guam 26 ¶ 15 (citation omitted); *Wilbur v. Locke*, 423 F.3d 1101, 1107 (9th Cir. 2005) (quoting *Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 460 (5th Cir. 2005)), *abrogated on other grounds by Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570 n.4 (1992) (“The existence of federal jurisdiction ordinarily depends on the facts as they exist when the complaint is filed.” (citation omitted)). A plaintiff cannot rely on events unfolding after the filing of a complaint to establish his or her standing. *Wilbur*, 423 F.3d at 1107. Where a plaintiff has no standing, the trial court has no subject matter jurisdiction and its only course of action is to announce that it has no jurisdiction and dismiss the case. *DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth.*, 2014 Guam 12 ¶ 14 (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998)). Therefore, a party lacking standing necessarily lacks the ability to prosecute a claim. *See Taitano*, 2005 Guam 26 ¶ 15.

[18] This court has adopted traditional standing requirements, meaning parties must possess either statutory or common law standing.³ *Benavente*, 2006 Guam 15 ¶¶ 16-18 (citations omitted). Standing is not merely a pleading requirement, but rather an indispensable part of the plaintiff’s case; thus, it must be supported in the “same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Defenders of Wildlife*, 504 U.S. at 561 (1992) (citations

³ The parties do not allege that there is a statutory basis for standing. To establish constitutional common law standing, a party must show:

(1) it has suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Pia Marine Homeowners Ass’n v. Kinoshita Corp. Guam, Inc., 2013 Guam 6 ¶ 16 (citation omitted).

omitted). Therefore, at the summary judgment stage of litigation, a plaintiff carries the burden of establishing standing by setting forth evidence of specific facts. *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1148-49 (2013) (citations omitted). Accordingly, the crucial inquiry at hand is whether Kamlesh set forth sufficient evidence of specific facts to establish standing as trustee of the RPT for his claims.

[19] A trustee acts on behalf of the trust, and generally has standing to bring claims on its behalf during the life of the trust. See 18 GCA § 66301 (2005) (“A trustee is a general agent for the trust property. . . . His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.”). However, it does not necessarily follow that a trustee remains cloaked in trust authority where he takes action after the trust has ended, during the winding up phase. Because Kamlesh initiated legal proceedings after P.D. and Radhi passed away, the circumstances of this case beget a determination of the end of the RPT, and an analysis as to the extent of a trustee’s winding up powers.

1. The Ending of the RPT

[20] Guam law provides that “[a] trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.” 18 GCA § 66501 (2005). Courts interpret trusts as contracts and, therefore, the intent of the parties to a trust instrument, like a contract, is generally restricted by the plain meaning of the trust instrument terms. See *Goldin v. Bartholow*, 166 F.3d 710, 715 (5th Cir. 1999) (citation omitted); *Wasson v. Berg*, 2007 Guam 16 ¶ 10 (citations omitted). It is therefore incumbent to review the RPT’s object or purpose and determine when this was fulfilled.

[21] The trial court reasoned that the RPT Instrument is unambiguous in stating that upon Radhi’s death, the successor co-trustees were to distribute the Residuary Trust balance to the

Radhi's Foundation. RA, tab 334 at 4-6 (Dec. & Order, July 14, 2015). Citing *Salvation Army v. Price*, 42 Cal. Rptr. 2d 925, 928 (Ct. App. 1995), for the principle that the trustee's title ceases when the trust's objects are performed, the trial court found that given the RPT's purposes of caring for P.D. and Radhi and distributing their property, the only remaining task was to wind up the RPT upon their deaths. *Id.* at 6-7. As for standing, the trial court found that upon Radhi's death, the trust terminated and the only power the trustees had left was to convey trust property to the Radhi's Foundation. *Id.* at 8. Citing *Goldin*, 166 F.3d at 718, the trial court found that "when a trust terminates, the trustee no longer has any personal, substantial interest in the outcome of a litigation involving the trust." *Id.* at 8. Therefore, the trial court reasoned that the trust terminated when Radhi died, and Kamlesh did not have standing to bring suit. *Id.*

[22] A trust will terminate by relevant operation of law upon the expiration of a period or happening of an event as provided in the trust, or when the trust purpose is fulfilled. *See Ball v. Mann*, 199 P.2d 706, 708-09 (Cal. Dist. Ct. App. 1948); Restatement (Third) of Trusts § 61 (2003). The RPT was established:

[T]o provide for the orderly disposition of the SETTLORS' property upon the SETTLORS' deaths and the efficient administration of the trust assets in the event of incapacity. During the SETTLORS' lives, the SETTLORS retain full power to control the use, enjoyment and management of the Trust and shall be the primary beneficiaries of this Trust.

RA, tab 1, Ex. 6 at Preamble (The Radhi Puran Trust, 1997). Section 5.05(B) of the Instrument states that "[u]pon the death of the Surviving SETTLOR, the TRUSTEE shall distribute the balance then remaining of the Residuary Trust to the RADHI FOUNDATION." *Id.* at V-3. Thus, the object and purpose of the RPT was to manage its assets and provide for the settlors during their life, and then distribute remaining assets upon death of the last remaining settlor, which was Radhi. When the object and purpose were complete, the RPT would end.

[23] Providing for the settlors was clearly accomplished upon Radhi's death. As for the distribution of trust assets, the Restatement contains an illustration interpreting a similar trust instrument providing for a life beneficiary and efficient administration on death:

W devised a portion of her estate to T in trust to provide for the support and care of H during his lifetime, and further provided that, "upon H's death, the trust property shall be distributed by right of representation to those of my issue who are then living." The trust will terminate upon H's death.

Restatement (Third) of Trusts § 61 cmt. a, illus. 1 (Am. Law Inst. 2003). Essentially, a trust terminates upon the life beneficiary's death, and not when the property is distributed; instead, the distribution of property is simply an event that must occur after the trust ends. Accordingly, we agree with the trial court that the RPT ended on Radhi's death.

2. Winding up Powers

[24] The next inquiry is what effect the ending of the RPT had on the trustees' powers, as Kamlesh became a trustee when Radhi died. "When the time for the termination of the trust has arrived, the trustee has such powers and duties as are appropriate for the winding up of the trust." *Botsford v. Haskins & Sells*, 146 Cal. Rptr. 752, 754 (Dist. Ct. App. 1978) (quoting Restatement (Second) of Trusts § 344).

[25] The trial court reasoned that since the RPT's terms indicated that the trustees were to convey trust property to the Radhi's Foundation upon Radhi's death, Kamlesh had the power to make this conveyance as part of his wind up powers. RA, tab 334 at 7-8 (Dec. & Order, July 14, 2015) (citing Restatement (Second) of Trusts § 344 cmt. b). Subsequently, the trial court cited *Goldin*, 166 F.3d at 717, in holding that a trustee lacks a personal interest in the outcome of trust litigation after termination, and therefore lacks standing in the matter. *See id.* at 8 (Dec. & Order, July 14, 2015). However, *Goldin* is distinguishable in an important way: because the trust was a liquidating trust where its entire purpose was winding up before an express termination

date, the Fifth Circuit found that the trust instrument foreclosed the existence of default wind up powers after termination. 166 F.3d at 716-17. Indeed, the *Goldin* court recognized that for trusts where immediate distribution is contemplated upon a certain date, a trustee retains certain powers after termination, as “[w]ith these types of instruments, the grant of winding-up power is merely a recognition of the powers necessary to effect distribution coupled with a restriction to a reasonable time.” *Id.* This is in effect the same rule articulated in the Restatement. Therefore, contrary to the trial court’s sweeping interpretation, the *Goldin* court’s narrow holding was that “winding-up powers are a default provision that may be denied to a trustee if the instrument affirmatively indicates they are not contemplated after a specified termination date.” *Id.* at 716. For current application, the Instrument does not foreclose wind up powers after the RPT ended, and the RPT was not a liquidating trust with a set termination date. Therefore, *Goldin* does not decisively resolve the current case.

[26] Instead, there is not a hard and fast list of trustee wind up powers; rather, it is a contextual determination based on what is reasonably necessary for that particular trust. *See, e.g.*, 76 Am. Jur. 2d *Trusts* § 71 (“The termination of a trust leaves the trustee with a mere administrative title to the property, and the trustee is not immediately divested of all duties and responsibilities, but has the powers and duties appropriate for winding up trust affairs.”). Before termination, the trustee has a power, as well as a duty, to enforce reasonably necessary claims through a lawsuit. Restatement (Second) of Trusts § 192 cmt. a (Am. Law Inst. 1959). Then, “[w]hen the time for the termination of the trust has arrived, the trustee has such powers and duties as are appropriate for the winding up of the trust,” *id.* § 344, which are “similar to the powers and duties of the trustee in administering the trust . . . except so far as they are modified because of the fact that the trust is in process of termination,” *id.* § 344 cmt. a. California’s statutes have a similar

individual determination of the extent of a trustee's wind up powers. See Cal. Prob. Code § 15407(b) ("On termination of the trust, the trustee continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.").

[27] Generally, it is recognized across jurisdictions that trustees retain *some* post-termination power and duties for the purpose of winding up trust administration; however, the extent of these powers varies given it is a contextual determination. See, e.g., *Peoples Bank v. D'Lo Royalties, Inc.*, 235 So. 2d 257, 266 (Miss. 1970) ("When the time for the termination of the trust arrives, the duties and powers of the trustees do not cease immediately, but rather hold on until the trust is closed."); *Leith v. Mercantile Tr. Co. Nat'l Ass'n*, 423 S.W.2d 75, 85 (Mo. Ct. App. 1967) (holding that during the winding up phase, trustee was under duty to take necessary steps toward distribution and to exercise reasonable care and skill in preservation of trust property until distribution was complete); *Kimble v. Baker*, 285 S.W.2d 425, 430-31 (Tex. Civ. App. 1956) (finding that trustees have powers necessary for winding up an estate with a duty to make reasonably prompt distributions, and further finding that where trustees' right to a reasonable time frame was challenged by beneficiaries, trustees had authority to employ an attorney for prosecution of a suit for judgment declaring such rights).

[28] There are a number of courts that have permitted a trustee to maintain a lawsuit after the termination date of the trust, under varying circumstances. Kamlesh cites *Peoples Bank v. D'Lo Royalties, Inc.*, 235 So. 2d at 266, wherein the Mississippi Supreme Court validated the trustees' actions in chancery court because the trust specifically provided for extension past the termination date. Kamlesh also cites *In re Estate of Scrimger*, 188 Cal. 158, 168-69 (1922), in support of allowing trustees continued power after termination where the trustees were carrying out their duty to care for the trust when beneficiaries litigated over division of assets; however,

the case does not address trustees' power to *initiate* a lawsuit. Elsewhere, in *Cogdell v. Fort Worth National Bank*, where a trust was involved in three ongoing lawsuits at the time of termination, a Texas appeals court found it proper to allow the trustee to continue representation, reasoning that the trustee has such powers and duties as are necessary for winding up the estate. 537 S.W.2d 304, 307 (Tex. Civ. App. 1976). Moreover, in *Account of First National Bank & Trust Co.*, the court disallowed reimbursement for unnecessary litigation a trustee commenced during that time, but did not invalidate the commencement itself. 115 A.2d 167, 173, 177 (Pa. 1955).

[29] The most relevant case is *Botsford*, where the trustees commenced legal action after the date set for termination of the trust. 146 Cal. Rptr. at 754. It may be tempting to characterize an irrevocable assignment of the right to sue by the trustors to the trustees being the outright rule from *Botsford*.⁴ However, before the *Botsford* court discussed assignment of claims, it focused on the impractical prospect of distributing a cause of action to 500 shareholders, then finding that maintaining the action that had been assigned to the trustee was “a reasonable continued function of the trustee.” *Id.* at 756. Again, it is this contextual determination of reasonableness in conjunction with an assignment of right that appears to have been the rule from *Botsford*. See *Gurkewitz v. Haberman*, 187 Cal. Rptr. 14, 20 (Ct. App. 1982) (“It would have been equally unreasonable to assign the cause of action in the instant case to 56 beneficiaries.”).

[30] Applying this framework to the current facts requires examination of our specific circumstances to determine whether bringing this lawsuit was “a reasonable continued function

⁴ The *Botsford* trust agreement irrevocably assigned to trustees any cause of action the trustors might have possessed. 146 Cal. Rptr. at 753. However, this does not necessarily dictate that this power continues as a wind up power automatically; indeed all powers that might be abrogated during wind up are necessarily first granted, specifically or by default, and yet some must be abrogated in wind up. Moreover, the *Botsford* ruling did not turn on this absolute assignment provision alone. *Id.* at 756-57.

of the trustee” to wind up the RPT. *Botsford*, 146 Cal. Rptr. at 756; see Restatement (Second) of Trusts § 344. In this case, the most operative consideration is not merely the initiation of a lawsuit post termination, but rather the claims involved in the lawsuit. Kamlesh, as successor co-trustee, had the power and duty upon trust termination to distribute trust assets to the beneficiaries. It is only reasonable that in order to so distribute assets, a trustee must have the ancillary ability to account for and marshal these assets; else they would be unable to fulfill their chief post-termination obligation. Kamlesh brought this action to recover assets that he alleges were wrongfully appropriated by various perpetrators from the RPT. Assuming his allegations are true, Kamlesh would have been initially unable to properly allocate assets that were essentially stolen from the RPT and, therefore, rightfully pursued a legal remedy to recover the pilfered property. We therefore find that in winding up the affairs of the RPT, bringing this lawsuit after trust termination in order to recover trust assets was “a reasonable continued function of the trustee.” *Botsford*, 146 Cal. Rptr. at 756. The power to distribute assets necessarily includes the ability to marshal them, including through litigation if necessary.

[31] In sum, the trial court was inaccurate in sweepingly stating that a trustee cannot have standing after termination. Whether a trustee’s power to sue on behalf of the trust continues after termination is a contextual determination; the availability of continued power depends on what is reasonably necessary for winding up the trust. Here, bringing a lawsuit to marshal purportedly stolen assets for distribution to beneficiaries was a reasonable continued function of the trustee. Accordingly, the trial court erred in ruling Kamlesh may not have standing as trustee.⁵

⁵ Nothing in this decision addresses the question of whether the Instrument foreclosed the ability of Kamlesh to bring a suit without the approval of other successor co-trustees. Such arguments are beyond the scope of consideration at this stage.

B. Denial of Anti-SLAPP Relief

[32] Kamlesh next argues that while the trial court was correct in dismissing a counterclaim by Manu based on the filing of a notice of *lis pendens*, the court erred in denying Kamlesh sanctions and fees.⁶ Strategic Lawsuits Against Public Participation (“SLAPPs”) are lawsuits consisting of meritless claims in order to harass and unfairly quell other litigants, and the Citizen Participation in Government Act (“CPGA”) is Guam’s anti-SLAPP statute. *Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 9. The CPGA allows for the recovery of attorneys’ fees, costs and sanctions for persons who had a SLAPP filed against them. 7 GCA § 17106(g) (2005). Not so however under the “sham exception,” which we described in *Melwani v. Hemlani*:

The sham exception is outlined in the *Noerr-Pennington* doctrine and found in the second portion of section 17104. The exception is designed to “encompass[] situations in which persons use the governmental process—as opposed to the outcome of that process—as an anticompetitive weapon” The Court in *Omni* described conduct fitting into this exception as “‘not genuinely aimed at procuring favorable government action’ at all.” The CPGA includes comparable language in its sham exception [under 7 GCA § 17104]. Conduct “where not aimed at procuring any government or electoral action, result or outcome” is not immune from liability.

2015 Guam 17 ¶ 31 (citations omitted). A notice of *lis pendens*, when properly recorded, provides a purchaser or encumbrancer of real property with constructive notice of the pendency of the action affecting the title or right of possession of the property. 7 GCA § 14103 (2005). However, filing of a notice which does not satisfy certain statutory *lis pendens* requirements may fall within the sham exception to the CPGA and disallow anti-SLAPP relief. *See Melwani*, 2015 Guam 17 ¶¶ 34-37 (describing that Guam law allows for recording of a *lis pendens* notice at the time of, or after, the filing of a complaint and that the defendants should have followed this time

⁶ It is important to note that this issue and the trial court’s ruling on it are not dependent on Kamlesh having standing as trustee of the RPT. Therefore, the trial court properly ruled upon the merits and we may likewise do so in review.

frame in order to overcome the sham exception, otherwise, non-compliance with the statute would render the notice ineffective). The question at hand is therefore whether Kamlesh's notice of *lis pendens* was immune from liability under the CPGA, or whether it was statutorily a sham, "not aimed at procuring any government or electoral action." *Id.* ¶ 31 (quoting 7 GCA § 17104).

[33] The trial court dismissed Manu's counterclaim, but citing *Melwani*, 2015 Guam 17, denied Kamlesh anti-SLAPP relief under the sham exception, reasoning that a *lis pendens* recorded upon the filing of a motion to amend a complaint is a sham, and not genuinely aimed at procuring favorable government action. RA, tab 339 at 7-9 (Dec. & Order, July 24, 2015).

[34] The purpose of a notice of *lis pendens* is to put the public on notice of "litigation that potentially affects the title or possession to property." *Melwani*, 2015 Guam 17 ¶ 32. Kamlesh filed the *lis pendens* concurrent with a motion to amend his complaint. This is markedly different from the facts before this court in *Melwani*, wherein the *lis pendens* was improperly filed an entire month before the lawsuit was even initiated and the owners of the properties were not named parties to any lawsuit relating to the properties. See 2015 Guam 17 ¶ 34. Our holding in *Melwani* was not intended to stand for an uncompromising rule of absolute compliance with the blackletter rules for filing of a complaint, and we do not wish to interpret it so narrowly as to disallow the *lis pendens* filed here. Indeed, the *Noerr-Pennington* doctrine forming the basis for our holding in *Melwani* focused on the importance of "breathing room" for protecting ancillary activities necessary for exercising the right to petition. 2015 Guam 17 ¶ 25 (citations omitted). It would be contrary to the purpose and intent of this doctrine to smother an apparently earnest *lis pendens* filed concurrently with a motion to amend a complaint. We therefore hold that Kamlesh's *lis pendens* was "genuinely aimed at procuring favorable government action," and

therefore not a sham. *Id.* ¶ 31 (quoting *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 380 (1991)).

[35] The trial court erred in interpreting our *Melwani* holding in such a narrow and stifling manner; Kamlesh’s *lis pendens* did not fall within the sham exception to the CPGA.

V. CONCLUSION

[36] The trial court erred in granting the motion for summary judgment. A trustee has the powers reasonably necessary to wind up the trust, which may include the power of marshaling trust assets and initiating a lawsuit to do so. We therefore **REVERSE** the trial court’s ruling that Kamlesh could have no standing as trustee. However, we make no judgment as to whether the Instrument otherwise foreclosed Kamlesh from bringing this suit. Further, the *lis pendens* did not fall within the sham exception to the CPGA, and we **REVERSE** that ruling of the trial court. The parties raise several issues that are improper or unnecessary for the current disposition, which we decline to address at this juncture. Accordingly, we **REMAND** this matter for further proceedings not inconsistent with this opinion.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

KATHERINE A. MARAMAN
Associate Justice

/s/

ROBERT J. TORRES
Chief Justice