IN THE SUPREME COURT OF GUAM

UNIFIED INTEREST,
Plaintiff-Appellee,

v.

PACAIR PROPERTIES, INC.,
Defendant-Appellant.

Supreme Court Case No.: CVA16-006
Superior Court Case No.: CV0347-13

OPINION

Cite as: 2017 Guam 9

Appeal from the Superior Court of Guam
Argued and submitted on February 24, 2017
Hagåtña, Guam

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

TORRES, J.:

[1] Defendant-Appellant PacAir Properties, Inc. ("PacAir") appeals from the Judgment entered in this case, which held that a valid contract existed and awarded Plaintiff-Appellee Unified Interest ("Unified") damages for breach of that contract and *quantum meruit* in the amount of $57,028. The trial court entered judgment following a one-day bench trial, the filing of post-trial submissions, and the filing of supplemental post-trial submissions on the issue of damages.

[2] For the reasons set forth below, we affirm the finding that a valid contract existed between PacAir and Unified, and we reject PacAir's argument that the trial court failed to consider its affirmative defense of unclean hands. But, we vacate the award of *quantum meruit* damages and remand for further proceedings not inconsistent with this Opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] PacAir is in the business of real estate leasing on Guam. Frank Arriola has been the general manager of PacAir since 2008.

[4] Unified is a consultancy that "advise[s] building owners and brokers throughout the country on navigating through [the] GSA [i.e., General Services Administration] leasing process." Transcript ("Tr.") at 82 (Bench Trial, Apr. 22, 2015). Unified's main principal is Anthony Lichtl. Prior to starting Unified, Lichtl had worked at GSA as a leasing specialist for several years. While at GSA, Lichtl was responsible for various government leases in areas throughout the western United States and Pacific region, including Guam. During this time,

Lichtl never worked on a Guam-based project that ended with a signed lease. He did, however, work on one Guam-based project that bore the solicitation number 9GU2004.

[5] After Lichtl left GSA and started Unified, GSA posted solicitation number 8GU2008. Prompted by the release of this solicitation, on August 16, 2011, Lichtl emailed Arriola regarding the possibility of Unified advising PacAir "in pursuing [a] GSA lease." RA, tab 16, Ex. 5 (Opp'n to Mot. for Summ. J., Apr. 29, 2014); *see also* Tr. at 62, 82-83 (Bench Trial).

[6] The following day, the parties began a chain of communication in which Lichtl described the types of services that Unified provided. According to Lichtl, "the first task [for Unified] would be to identify competitors and provide [PacAir] with data regarding GSA rents in Guam." Tr. at 29 (Bench Trial). Next, "[Unified] will walk [PacAir] through all requirements of the lease and develop a shell deficiency report which identifies existing building conditions relative to the lease requirements so that the offeror has a clear understanding of next steps throughout the GSA procurement." *Id.* at 30. In explaining this work, Lichtl stated via email: "Please find attached, a flow chart and *corresponding consulting tasks*." *Id.* at 30, 72-74, 97 (emphasis added). The attached document, entitled "Government Leasing Consultants," set forth the multiple steps in the GSA-procurement process. This document also laid out three potential fee schedule options, including one based solely upon an hourly rate of $100 per hour.

[7] Between August and October 2011, the parties negotiated a consulting agreement. PacAir requested that Unified accept "a fixed fee of one percent for this [consulting] project, as we will have to invest heavily on [a] [b]uildout and are committed to pay a real estate brokerage commission." Tr. at 31-32 (Bench Trial). Unified accepted this 1% fee plus a $500 retainer, which was reduced from a 3% fee that Unified had originally requested. Lichtl testified that

during these negotiations he disclosed to PacAir that he had recently left the GSA and was under certain ethical restrictions as a result. PacAir denies that these early conversations regarding Lichtl's employment restrictions took place.

[8] On or about October 17, 2011, Arriola and Lichtl met for lunch in San Diego, California to discuss finalizing the contours of their consulting relationship. During this meeting, Lichtl provided Arriola with a copy of an unsigned consulting agreement. Arriola requested at this meeting that Lichtl prepare a one- or two-page summary report of the Guam market that Arriola could provide to his boss. In response, Lichtl prepared a document overnight that ultimately turned out to be nine pages in length.

[9] Arriola and Lichtl met again the next day on October 18, 2011. During this meeting, Lichtl presented Arriola with the nine-page report. This report provided, among other things, "estimated milestones that were to take place on a GSA project schedule, as well as the consulting tasks that [Unified] would take on." Tr. at 105 (Bench Trial). The "Unified Interest consulting tasks" included the following: (i) "Tour PacAir & round table"; (ii) "A/E and GC estimates due"; (iii) "Compile initial offers"; (iv) "Compile revised offer"; and (v) "Compile final offer." RA, tab 12, Ex. B at 6 (Decl. of Anthony Lichtl, Feb. 24, 2014).

[10] Lichtl testified that this nine-page report "was really one of the initial steps in . . . following through with what I had committed to in August, and also something that [Arriola] had requested in August." Tr. at 105-06 (Bench Trial). On one of the pages of the report, Unified disclosed that "[a]s a former GSA employee, [Lichtl is] held to certain post-employment restrictions," including being unable to interface with GSA on projects that he was substantially involved in while employed at GSA. *Id.* at 105; *see also id.* at 109-14; RA, tab 12, Ex. B (Decl.

of Anthony Lichtl). Unified specifically stated that "[t]his regulation does not apply to all GSA projects nationwide, but *does* apply to the USDA/VA project," which Lichtl admitted "is th[e] 8GU2008 solicitation." Tr. at 135 (Bench Trial) (emphasis added); *see also* RA, tab 12, Ex. B (Decl. of Anthony Lichtl). Arriola read through this report during the October 18 meeting, while Lichtl engaged in small talk with Arriola's friend who also attended the meeting.

[11] At the October 18 meeting, both parties signed the consulting agreement that was provided by Unified the previous day. This document was untitled, printed on Unified letterhead, and purported to be an agreement between PacAir and Unified (hereinafter, the "Agreement"). The Agreement stated in pertinent part the following:

> The purpose of this agreement is to outline the services and fee schedule involved in the GSA lease requirement. Unified Interest will act as the dedicated Government Real Estate consultant for PacAir Properties for the duration of 1 year from the date of this contract's execution.
>
> For the consulting services offered by Unified Interest (see document titled "Consulting Tasks"), a retainer fee of $500 is due within 15 days upon full execution of this contract. Additionally, the owner agrees to a 1% fee of the total gross rent for the guaranteed lease term; payable only if lease transaction is consummated.
>
> Although travel to the site is not mandatory, it is strongly recommended. Terms and conditions of the travel arrangement will be made through a separate agreement and will be subject to reasonable costs such as, but not limited to; day rate, air and travel related expenses with a not to exceed limit.

See RA, tab 12, Ex. A (Decl. of Anthony Lichtl, Feb 24, 2014) (emphasis omitted). Lichtl testified that during both the October 17 meeting and the October 18 meeting he provided Arriola a copy of a document that he "refer[s] to as consulting tasks," Tr. at 99-100 (Bench Trial), which is the same document attached to the email dated August 17, 2011, entitled "Government Leasing Consultants," *id.* at 109-10, 127. *See also* RA, tab 12, Ex. A (Decl. of

Anthony Lichtl). Arriola denied receiving any document other than the Agreement and the nine-page report during the October 17 and October 18 meetings.

[12] Two days after the parties signed the Agreement, Lichtl sent Arriola an email that contained various attachments. Among the attachments to this email were the executed Agreement, an invoice from Unified to PacAir for the $500 retainer, and a copy of the nine-page report. Shortly thereafter, the parties ceased communicating with one another.

[13] PacAir was eventually awarded a lease with GSA for solicitation number 8GU2008, with a lifetime value of more than $8 million. Unified and Lichtl were not involved in preparing the materials that ultimately went into the GSA bid that PacAir won, and Unified never received any payment from PacAir.

[14] Unified filed a civil complaint containing one cause of action for breach of contract, which alleged that PacAir had violated the Agreement by failing to pay Unified the $500 retainer and 1% of the total lease value awarded to PacAir. PacAir's main defense was that the parties never entered into a valid contract because the document entitled "Consulting Tasks" that was referenced in the Agreement was never provided and, according to PacAir, did not exist. PacAir also asserted an affirmative defense of unclean hands, which was based upon the allegation that "Lichtl never disclosed he was ethically restricted from appearing before the GSA on its behalf until after the [A]greement was signed." RA, tab 38 at 13 (Finds. Fact & Concl. L., Sept. 22, 2015); *see also* RA, tab 4 (Answer, Apr. 17, 2013).

[15] The trial court held a one-day bench trial. At the close of testimony, the court ordered the parties to submit proposed findings of fact and conclusions of law.

[16] Several months after the close of evidence, the trial court issued its Findings of Fact and Conclusions of Law (the "Initial Findings"). The trial court found, among other things, "that a valid contract was created on October 18, 2011 between Plaintiff and Defendant." *See* RA, tab 38 at 10 (Finds. Fact & Concl. L.). In reaching this determination, the court found

> that there was no document specifically entitled "Consulting Tasks," provided to Defendant. However, the Court finds that Plaintiff intended for the document titled "Government Leasing Consultants" to be the document he refers to as "Consulting Tasks," and this document was provided to Defendant on more than one occasion. This document is a flow chart listing the consulting services that Plaintiff provides. As Mr. Arriola testified that he read the contract before signing it on behalf of Defendant, the Court finds it reasonable to conclude that Mr. Arriola was aware of the reference to the "Consulting Tasks" document, and he consented to it before signing.

Id. (citation omitted). In addition, the trial court found that "if Mr. Arriola was unsure what the document 'consulting tasks' referred to, he would not have signed the agreement on October 18, 2011," in part because he himself testified that "he did not have any concerns regarding the agreement prior to signing it." *Id.*

[17] The trial court also rejected PacAir's defense of unclean hands. In deciding this issue, the trial court refused to address whether Unified or Lichtl had criminally violated 18 U.S.C. § 207, which establishes certain post-employment restrictions on government employees, on the basis that federal courts have exclusive jurisdiction over claimed violations of that statute. On the facts, the court found that "at the very least, Defendant was aware of Mr. Lichtl's employment history with GSA from the start." *Id.* at 14. Moreover, the court found "credible Mr. Lichtl's testimony that he indicated his post-employment restrictions for the USDA/VA project in the summary report as a precautionary measure, and that if Defendant had adequately shared its concerns with Plaintiff of the post-employment restrictions to the project, rather than

simply refraining from contact, he would have requested for specific guidance on the matter from GSA legal counsel to ensure he would not be in violation of federal law." *Id.* Accordingly, the trial court found that Unified did not engage in "unconscionable, bad faith, or inequitable conduct," and thus, "Defendant's affirmative defense of unclean hands does not apply in this case." *Id.*

[18] Regarding the issue of damages, the trial court found that Unified was entitled to the $500 retainer called for in the Agreement. The trial court refused Unified's "request for the 1% fee of the total gross rent for the guaranteed lease term of Solicitation No. 8GU2008 (Lease No. GS-09B-02945)." *Id.* at 11. Nevertheless, the trial court *sua sponte* found that the nine-page report was one of the consulting tasks Unified was required to perform under the agreement and that, "under a theory of *quantum meruit*, [Unified] should be compensated for the work done for the nine-page summary report." *Id.* The trial court then ordered the parties "to submit documentation showing the value of the services Plaintiff provided through the nine-page summary report dated October 18, 2011." *Id.* at 12.

[19] Following the Initial Findings, the parties each submitted additional filings regarding the question of *quantum meruit* damages. In its submission, Unified argued that the value of services provided by it must be measured through industry custom, which it claimed was a percentage fee of the final lease value awarded to PacAir. RA, tab 43 at 1-3 (Unified Br. & Supporting Documentation Re: Value of Services). Unified also submitted a supporting affidavit of Anthony Lichtl that attached three exhibits, including copies of other contracts Unified had entered into, other GSA agreements showing that percentage fees are used in calculating payment for consultants, and a breakdown of the purported value of services rendered by Unified

that was prepared by Lichtl. The value of services calculation prepared by Lichtl was based solely upon a portion of the 1% fee contained in the Agreement and assigned various completed tasks a percentage of the total work.

[20] PacAir argued in its submission that Lichtl had spent only one night preparing the nine-page report, which itself was based entirely on publicly available information, and therefore Unified should be compensated at Lichtl's admitted rate of $100 per hour. RA, tab 44 (Submission of Def. as to Nine-Page Summ.). PacAir also submitted an affidavit of Arriola that indicated the information in the nine-page report was either common knowledge in the leasing industry throughout Guam or publicly available via the internet. *Id.* at 3-4.

[21] The trial court issued Supplemental Findings of Fact and Conclusions of Law (the "Supplemental Findings") in which it found that "the reasonable value of the services provided to Defendant in the nine-page report is $56,528." *See* RA, tab 45 at 4 (Suppl. Finds. Fact & Concl. L., Apr. 1, 2016). The court rejected PacAir's request to award payment based upon an hourly wage. Rather, the court determined that Unified was entitled to be compensated for four categories of tasks that Unified claimed accounted for 65% of the total amount of work it had contracted to complete under the Agreement, including: (i) "Identify[ing] properties for GSA opportunity"; (ii) "Research[ing] typical GSA rents and qualify[ing] all properties"; (iii) "Notify[ing] owners of potential to do business with GSA"; and (iv) "Prepar[ing] strategy for clients." *Id.* at 3. The court rejected compensation for "[r]esearch[ing] government opportunities via www.fsb.gov," which Unified claimed accounted for 10% of the total work it had contracted to perform under the Agreement, because this "was completed before [Unified] contacted [PacAir]." *Id.*

[22] Based upon these findings, the trial court entered Judgment. This appeal was timely filed.

II. JURISDICTION

[23] This court has jurisdiction over appeals from a final judgment entered in the Superior Court of Guam. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-43 (2017)); 7 GCA §§ 3105, 3107(b), 3108(a), 25102(a) (2005).

III. STANDARD OF REVIEW

[24] "[O]ur standard of review following a bench trial is that the trial court's '[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.'" *Town House Dep't Stores, Inc. v. Ahn*, 2000 Guam 32 ¶ 13 (alteration in original) (citations omitted) (quoting *Yang v. Hong*, 1998 Guam 9 ¶ 4) (collecting cases). Conclusions of law, however, "are reviewed *de novo*." *Id.*; *see also Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 15.

[25] "Whether a contract is certain enough to be enforced is a question of law for the court." *Patel v. Liebermensch*, 197 P.3d 177, 180 n.1 (Cal. 2008) (citations omitted); *see also Blas v. Cruz*, 2009 Guam 12 ¶ 18 (in determining whether contract was formed, stating "[p]rinciples of contract interpretation are legal questions reviewed de novo" (citation omitted)). Similarly, "[w]hether a given term is 'essential' to a contract is a matter of law to be reviewed *de novo*, a determination turning largely on the type of contract at issue . . . ." *Liberto v. D.F. Stauffer Biscuit Co.*, 441 F.3d 318, 324 (5th Cir. 2006) (footnote omitted).

[26] "The question of whether the lower court decided [the] *quantum meruit* determination in accordance with the governing law is . . . a legal question reviewed *de novo*." *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 22 (citation omitted). This court has previously stated that "[t]he measure of damages is a mixed question of law and fact warranting *de novo* review." *Guam Resorts, Inc. v. G.C. Corp.*, 2013 Guam 18 ¶ 35 (citing *Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 20). Legal questions concerning damages—e.g., whether the methodology applied in calculating damages is appropriate—are reviewed *de novo*. *See Kinetic Energy Dev. Corp. v. Trigen Energy Corp.*, 22 S.W.3d 691, 702 (Mo. Ct. App. 1999) (whether plaintiff took "a proper *quantum meruit* approach to valuation" and whether testimony is "competent evidence of value . . . are matters of law to be decided by the court" *de novo*).

IV. ANALYSIS

[27] PacAir claims on appeal that the trial court committed three separate errors in the Initial Findings and the Supplemental Findings. First, PacAir argues that the trial court erred in finding that a valid contract existed between PacAir and Unified. Appellant's Br. at 6-10 (Sept. 14, 2016). Second, PacAir posits that "there is no legal basis for the award" of damages in the amount of $56, 528 for *quantum meruit* liability. *Id.* at 10-12. Third, PacAir claims that the trial court failed to consider its affirmative defense of unclean hands, a purported error that PacAir argues requires reversal. *Id.* at 12-14. Unified opposes this appeal, arguing that the Agreement signed between Unified and PacAir was sufficiently clear such that it was valid and legally binding, that Unified is entitled to payment for its partial performance under the Agreement, and that the trial court adequately considered (and rejected) PacAir's affirmative defense of unclean hands. Appellee's Br. at 13-33 (Oct. 13, 2016).

A. A Valid Contract Existed Between Unified and PacAir

[28] PacAir first argues on appeal that the trial court erred in finding that the Agreement constituted a valid contract because (1) the Agreement signed by both parties purported to reference and incorporate a document entitled "Consulting Tasks," which PacAir claims does not exist; and (2) to the extent that the document entitled "Government Leasing Consultants" was incorporated into the Agreement, that document purportedly provides that Unified would interface with GSA—a term that PacAir claims was essential to the agreement and a task Unified was barred from doing under federal law. Appellant's Br. at 6-10. In opposition, Unified argues that the Agreement contained its essential terms and the court should not overturn the trial court's factual findings because they are not clearly erroneous. Appellee's Br. at 13-19.

[29] After reviewing the record in this case, it is clear to the court that PacAir and Unified entered into a valid contract.

1. Contract Validity

[30] Under Guam law, a valid contract requires "an offer, acceptance, and consideration." *Mobil Oil Guam, Inc. v. Tendido*, 2004 Guam 7 ¶ 34 (citing 18 GCA § 85102). "An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement (Second) of Contracts § 24 (1979); *see also Mobil Oil Guam*, 2004 Guam 7 ¶ 35. "To create the power of acceptance, essential terms in the offer need only be reasonably certain." *Mobil Oil Guam*, 2004 Guam ¶ 35 (citation omitted). "Where an offer does not include an essential term, the contract is unenforceable." *Id.* (citations omitted).

[31] "[V]oiding an agreement for absence of an essential term is a step that courts should take only in rare and extreme circumstances." *Shann v. Dunk*, 84 F.3d 73, 81 (2d Cir. 1996) (citations omitted); *see also Patel*, 197 P.3d at 180 ("[T]he law does not favor but leans against the destruction of contracts because of uncertainty . . . ."). This is, in part, due to the fact that "at some point virtually every agreement can be said to have a degree of indefiniteness, and if the doctrine is applied with a heavy hand it may defeat the reasonable expectations of the parties in entering into the contract." *Cobble Home Nursing Home, Inc. v. Henry & Warren Corp.*, 548 N.E.2d 203, 206 (N.Y. 1989) (citations omitted). "The conclusion that a party's promise should be ignored as meaningless is at best a last resort." *Id.* (citation and internal quotation marks omitted).

[32] According to the Restatement (Second) of Contracts, "[t]he terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy." Restatement (Second) of Contracts § 33 (1979). "Where the parties have intended to conclude a bargain, uncertainty as to incidental or collateral matters is seldom fatal to the existence of the contract." *Id.* § 33 cmt. a. Essential terms are those terms the parties "would reasonably regard as vitally important elements of their bargain." *Gen. Metal Fabricating Corp. v. Stergiou*, 438 S.W.3d 737, 744 (Tex. App. 2014) (citation omitted).

2. The Agreement Contained All of the "Essential" Terms Necessary to Create a Valid and Binding Contract

[33] In determining whether a term is essential to a contract, specific provisions of the contract—and indeed, the contract itself—cannot be looked at in isolation. Rather, "a court should consider the broad framework of a contract in determining whether missing terms are actually essential—that is, necessary to make the agreement legally binding." *Shann*, 84 F.3d at

79. Making this determination "requires use of a standard that is 'necessarily flexible, varying for example with the subject of the agreement, its complexity, the purpose for which the contract was made, the circumstances under which it was made, and the relation of the parties.'" *Id.* (quoting *Cobble Hill Nursing Home*, 548 N.E.2d 203, 206 (N.Y. 1989)).

[34] PacAir uses the majority of its brief to argue that the trial court erroneously found that the "Government Leasing Consultants" document provided to PacAir was actually the "Consulting Tasks" document referred to in the Agreement. *See, e.g.*, Appellant's Br. at 9-10. But whether or not the "Government Leasing Consultants" document is part and parcel of the Agreement itself is ultimately beside the point. The Agreement on its own terms, and without incorporating by reference any additional document, was sufficiently concrete such that a valid contract existed. To the extent that there was any ambiguity in the four corners of the Agreement, the "Government Leasing Consultants" document is properly referenced to provide certainty to those terms in determining whether a binding contract was consummated.

[35] In its Initial Findings, the trial court stated that it could not look beyond the four corners of the Agreement in order to determine whether a valid contract was created—i.e., whether the Agreement contained all of the "essential terms." *See* RA, tab 38 at 9 (Finds. Fact & Concl. L.). This, however, is not correct. "There is no legal doctrine that requires a court to restrict its examination to the 'four corners' of a contract to determine whether omitted terms are essential." *Shann*, 84 F.3d at 79 (citations omitted). Pursuant to 6 GCA § 2511, a court may generally not consider parol evidence when interpreting a contract, but an explicit exception is carved out "[w]here the validity of the agreement is the fact in dispute." 6 GCA § 2511(2) (2005). Thus, while a court may not reference extrinsic evidence to interpret, vary, or add to the terms of an

unambiguous written agreement, *see Wasson v. Berg*, 2007 Guam 16 ¶ 11, this is conceptually distinct from determining whether all essential terms of a contract are contained within the writing.

[36] The Supreme Court of California explained this distinction as follows: "Because the [agreement] itself must include the essential contractual terms, it is clear that extrinsic evidence cannot *supply* those required terms. It can, however, be used to *explain* essential terms that were understood by the parties but would otherwise be unintelligible to others." *Sterling v. Taylor*, 152 P.3d 420, 426 (Cal. 2007) (citations omitted). Put another way,

> [i]t is not strictly accurate to say that the subject-matter must be absolutely certain from the writing itself, or by reference to some other writing. The true rule is, that the situation of the parties and the surrounding circumstances, when the contract was made, can be shown by parol evidence, so that the court may be placed in the position of the parties themselves; and if *then* the subject-matter is identified, and the terms appear reasonably certain, it is enough [to create a valid contract].

Id. at 768 (citation omitted). Therefore, "[b]efore rejecting an agreement as indefinite, a court must be satisfied that the agreement cannot be rendered reasonably certain by reference to an extrinsic standard that makes its meaning clear." *Cobble Hill Nursing Home*, 548 N.E.2d at 206 (citation omitted); *see also Gittes v. Cook Int'l*, 598 F. Supp. 717, 721 (S.D.N.Y. 1984).

[37] Courts have held that agreeing to act as a "consultant" on behalf of another party is sufficient to create a valid, binding contract so long as the subject matter of the consultancy is sufficiently identified. *See, e.g., Gittes*, 598 F. Supp. at 721-22 (holding that where plaintiff agreed to act as consultant on behalf of defendant, "plaintiff's duties are not an essential term and therefore need not be reduced to writing" because "both parties had a clear idea as to plaintiff's skills and abilities and the work for which he held himself out as equipped"). Indeed,

rarely do professional services contracts set forth all the discrete tasks or steps a professional must undertake in order to accomplish the parties' stated goal.

[38] In a case from the United States District Court in the Eastern District of Virginia, for example, the court was presented with a services contract indicating that "marketing" and "selling" activities would be performed by the plaintiff. *Fransmart, LLC v. Freshii Dev., LLC*, 768 F. Supp. 2d 851, 869 (E.D. Va. 2011). The defendant argued that the agreement "lack[ed] the requisite specificity because it does not identify the 'marketing' and 'selling' activities that [the plaintiff] is obligated to perform." *Id.* The court rejected this argument, stating that "[i]t is well-settled that courts will enforce . . . contracts with broad performance obligations." *Id.* (citations omitted); *see also McMichael v. Borough Motors, Inc.*, 188 S.E.2d 721, 722-23 (N.C. Ct. App. 1972) (finding an employment contract sufficiently defined nature and extent of services where agreement stated that plaintiff would "be [defendant's] used car manager in charge of the used car department and all the employees of that department"). While defining specific tasks may be appropriate in some situations, "it is often impractical to reduce performance obligations to well-defined terms because the parties do not foresee all of the possible contingencies that might arise during the course of contract performance." *Fransmart, LLC*, 768 F. Supp. 2d at 869 (citations omitted).

[39] On the facts presented here, and as the trial court correctly found, "[t]he language of the [A]greement makes clear that Plaintiff is to act as a dedicated government real estate consultant to Defendant for one (1) year." RA, tab 38 at 9 (Finds. Fact & Concl. L.). When Arriola was asked at trial whether he "knew what [PacAir] w[as] hiring [Unified] for," Arriola responded by framing Unified's role broadly: "to be a consultant, to work with GSA on this project." Tr. at 34

(Bench Trial); *see also Gittes*, 598 F. Supp. at 722 ("[I]t bears noting that *defendants* used the term ["consultant"] to describe *plaintiff* and were fully aware at that time of his background and the nature of the services he had rendered to his previous employers."). Furthermore, the testimony and evidence admitted at trial indicated that the term "dedicated" was included into the Agreement in response to Lichtl's request to be appointed as a consultant for "*all* government real estate contracts in Guam . . . ." Tr. at 33 (Bench Trial) (emphasis added). In exchange for these services, "Defendant is to pay Plaintiff a $500 retainer and a 1% fee of the total gross rent for the guaranteed lease term, if a lease transaction is consummated." RA, tab 38 at 9 (Finds. Fact & Concl. L.).

[40] The Agreement sufficiently states Unified's role as a consultant and identified the goal of the parties, which was to obtain a lease agreement with the government. *See Langer v. Lemke*, 49 N.W.2d 641, 644 (N.D. 1951) ("The subject matter of the contract is definitely described. The mere fact that the contract may be indefinite or ambiguous in some detail that later results in a dispute between the parties does not necessarily render the contract void for lack of mutuality or meeting of the minds. The contract is not void because of uncertainty."); *see also Morton v. Hewitt*, 202 F. Supp. 2d 394, 397 (D.V.I. App. Div. 2002), *aff'd*, 78 F. App'x 793 (3d Cir. 2003) (rejecting argument "that for the terms of a contract to be 'reasonably certain' they must be spelled out in detail"). To the extent there was any ambiguity in Unified's role as a consultant, the document entitled "Government Leasing Consultants" gave further meaning to the term "consultant" for purposes of creating a valid contract, regardless of whether it was incorporated by reference into the Agreement itself. In this context, and on the unique facts of this case, we

find that the Agreement constituted a valid and binding contract. *See Shann*, 84 F.3d at 79 (determining whether terms are essential is based on unique facts of each case).

3. Whether Unified Would Interface Directly With the GSA Was Not an "Essential" Term of the Agreement

[41] PacAir also argues on appeal that it believed when entering into the Agreement that Unified would interact directly with the GSA and "[t]he document entitled 'Government Leasing Consultants' provided that one of the tasks was contacting the government," which was a task Unified was unable to perform. Appellant's Br. at 7. Because of this, PacAir claims that the parties never had a meeting of the minds regarding Unified's role. In opposition, Unified points to the trial court's finding that Unified included the post-employment restrictions for the USDA/VA project in the nine-page report "as a cautionary measure" and that Lichtl would have sought guidance from GSA if PacAir had raised the issue before signing the Agreement. Appellee's Br. at 19 (citing RA, tab 38 at 11 (Finds. Fact & Concl. L.)). "Whether a term is 'essential' depends on its relative importance to the parties and whether its absence would make enforcing the remainder of the contract unfair to either party." *Copeland v. Baskin Robbins U.S.A.*, 117 Cal. Rptr. 2d 875, 879 n.3 (Ct. App. 2002). Assuming *arguendo* that Unified agreed to interface with GSA as part of the Agreement (a fact heavily in dispute during trial), the record does not support a finding that this was an essential term of the Agreement. Unified's inability to perform this task therefore does not undermine the enforceability of the Agreement.

[42] "Although the intent of the parties determines the meaning of the contract, the relevant intent is 'objective'—that is, the objective intent as evidenced by the words of the instrument, not a party's subjective intent. . . . The true intent of a contracting party is irrelevant if it remains unexpressed." *Shaw v. Regents of the Univ. of Cal.*, 67 Cal. Rptr. 2d 850, 856 (Ct. App. 1997)

(citations omitted); *see also Patel*, 197 P.3d at 183 ("The mere state of mind of the parties is not the object of inquiry."). Other than Arriola's subjective testimony that PacAir considered this an important term, there is no evidence in the record indicating that it was essential to the Agreement. Indeed, Arriola admitted at trial that Unified never specifically stated that he would "appear before the GSA on behalf of PacAir" and that it was only his "general belief" that Unified would do so. Tr. at 31-32 (Bench Trial). Requiring PacAir to directly contact GSA also would not be unfair to PacAir; evidence was admitted at trial that this could, in fact, be beneficial in obtaining a GSA lease. *See, e.g.*, Tr. at 114 (Bench Trial).

[43] That the parties ultimately came to dispute whether Unified agreed to personally appear before the GSA does not make this term essential for purposes of the Agreement. "[F]ew contracts would be enforceable if the existence of subsequent disputes were taken as evidence that an agreement was never reached." *Patel*, 197 P.3d at 182; *see also Langer*, 49 N.W.2d at 644 ("The mere fact that the contract may be indefinite or ambiguous in some detail that later results in a dispute between the parties does not necessarily render the contract void for lack of mutuality or meeting of the minds."). Upon a review of the record, the court concludes that Unified interfacing with the GSA was not an essential term of the parties' contract. Unified's inability to so interact with the GSA therefore does not lead to the conclusion that the parties failed to have a meeting of the minds when they entered into the Agreement.

B. The Trial Court Properly Considered PacAir's Affirmative Defense of Unclean Hands

[44] "The doctrine of unclean hands is an affirmative defense invoked by defendants to prevent a plaintiff from obtaining relief." *Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12 ¶ 26 (citation omitted). This doctrine is "invoked when one seeking relief in equity has

violated conscience, good faith or other equitable principles in his prior conduct." *Id.* (citation omitted). PacAir contends on appeal that the trial court failed to consider its affirmative defense of unclean hands and that the trial court's failure to consider this affirmative defense requires reversal. *See* Appellant's Br. at 12-14. PacAir's argument rests on the fact that the trial court refused to consider whether Unified had violated 18 U.S.C. § 207(a)(1), which makes it a crime for a former federal employee to communicate with or appear before a federal agency on behalf of another person for purposes of influencing a decision on a matter that the employee previously worked on while employed by the government. Appellant's Br. at 13. The trial court stated that it would "not address whether Mr. Lichtl was or would have been in violation of 18 U.S.C. § 207(a)(1), as pursuant to 18 U.S.C. § 3231" the federal courts have exclusive jurisdiction over alleged violations of that federal statute. RA, tab 38 at 13 (Finds. Fact & Concl. L.). Essentially, PacAir argues that the trial court was required to determine whether Unified committed a criminal violation in order to determine whether Unified had unclean hands. We reject this proposition.

[45] Without question, in determining whether a party comes to a court of equity with unclean hands, the existence of a statute making certain conduct illegal may properly be considered. The court, however, need not specifically determine whether a crime was committed in order to determine whether a party has unclean hands. As PacAir admits in its opening brief, "[t]he court below was *not* asked to determine a criminal violation on the part of Mr. Lichtl, the court was asked to determine whether Mr. Lichtl had unclean hands, and [sic] an affirmative defense, in order to determine whether the court should hear his complaint." Appellant's Br. at 13 (emphasis added). A party may have unclean hands even if innocent of a crime and vice versa.

[46] While the affirmative defense of unclean hands and a claim of criminal culpability may be closely related on the facts of a specific case, they are not the same. These inquiries have different standards of proof; a defense of unclean hands need only be proven by a preponderance of the evidence, while criminal liability must be proven beyond a reasonable doubt. Furthermore, although a person may be a victim of a criminal act, the ultimate party aggrieved in a criminal prosecution is the public at large, as represented by the state. Victims are not allowed to personally bring a criminal prosecution in their own name against another; their remedy lies in a civil action. These differences, among others, require us to reject PacAir's proposition.

[47] As a factual matter, the trial court rejected a finding that "Mr. Lichtl engaged in 'unconscionable, bad faith, or inequitable conduct.'" RA, tab 38 (Finds. Fact & Concl. L.). On this basis, the trial court concluded its analysis by expressly stating: "the Court finds that Defendant's affirmative defense of unclean hands does not apply in this case" and, thus, "Plaintiff is not precluded from recovery." *Id.* Contrary to PacAir's argument, it is clear from the record that the trial court considered—and rejected—PacAir's affirmative defense of unclean hands. This determination is therefore affirmed.

C. The Trial Court Committed Reversible Error in Awarding Damages Based on an Improper Application of a *Quantum Meruit* Theory of Recovery

[48] PacAir next argues on appeal that "[t]here is no legal basis for the" *quantum meruit* damages awarded by the court below. Appellant's Br. at 12. Among other things, PacAir takes issue with the fact that Unified was awarded $56,528 in damages based upon one night of work prior to the signing of the parties' contract, while the evidence at trial established that Unified worked for a fee of $100 per hour. *Id.* at 11. In opposition, Unified argues that providing the nine-page report constituted partial performance under the Agreement, it is entitled to the

reasonable value for its services preparing that report, and industry custom dictates that reasonable value should be derived from a percentage of the lease value, not an hourly rate. Appellee's Br. at 20-25.

1. The Parties' Respective Positions and the Trial Court's Supplemental Findings of Fact

[49] Following its ruling that Unified had satisfied the elements of a claim of *quantum meruit*, the trial court ordered the parties "to submit documentation showing the value of the services Plaintiff provided through the nine-page summary report dated October 18, 2011." RA, tab 38 at 12 (Finds. Fact & Concl. L.).

[50] In its post-trial submission, Unified argued that it had completed 80% of the work it was required to perform under the Agreement. *See* RA, tab 42, Ex. C (Decl. of Anthony Lichtl, Nov. 11, 2015). This included five specific categories, each allocated a percentage of the total work called for under the Agreement and followed by a brief description. These categories included: (i) "Research government opportunities via www.fbo.gov.," allocated 10%; (ii) "Identify properties for GSA opportunity," allocated 15%; (iii) "Research typical GSA rents and qualify all properties," allocated 20%; (iv) "Notify owners of potential to do business with GSA," allocated 10%; and (v) "Prepare strategy for client," allocated 25%. *Id.*

[51] In addition to these five categories, Lichtl also listed three other categories of work that he admitted he was unable to perform. These tasks included: (i) "Submit initial offers to GSA"; (ii) "Submit revised offers to GSA"; and (iii) "Review Lease Award details." *Id.* These three tasks purportedly accounted collectively for 20% of the total amount of work required under the Agreement. Based on its claim to have completed 80% of the work called for under the

Agreement, Unified argued that the value of its services were $64,603, which was calculated based upon the final lease value awarded to PacAir and the terms of the Agreement. *Id.*

[52] PacAir argued in its supplemental post-trial submission—filed the same day as Unified's supplemental submission—that the information contained in the nine-page report "is common knowledge within Guam," and to the extent that it is not, "the information provided is found at . . . three (3) websites." RA, tab 44 at 2 (Submission of Def. as to Nine-Page Summ.). Arriola supported this argument with a sworn affidavit. In addition, PacAir argued that Lichtl "testified that he imagined he stayed up all night preparing" the nine-page report, "but [he] could give no specific information how long it took him." *Id.* at 2. This testimony, coupled with the fact that Lichtl valued his own work at a rate of $100 per hour, meant that even "[a]ssuming that it took Mr. Lichtl an entire [eight-hour] day . . . to prepare the nine-page document, . . . that would entitle [Unified] to $800." *Id.* Finally, PacAir argued that "[t]he report was of no benefit to . . . PacAir in [its] subsequent involvement with GSA procurement." *Id.*

[53] In the Supplemental Findings, the court found that the nine-page report accounted for three specific tasks in the "Government Leasing Consultants" document, RA, tab 45 at 2 (Suppl. Finds. Fact & Concl. L.), which sets forth at least twenty separate consulting tasks, RA, tab 12, Ex. C (Decl. of Anthony Lichtl, Feb. 24, 2014). While noting that recovery under *quantum meruit* is generally measured by an hourly rate, the court stated that it would "not speculate [on] the amount of time Mr. Lichtl could have spent working on the report, and award Plaintiff an hourly charge, as Defendant requests." RA, tab 45 at 3 (Suppl. Finds. Fact & Concl. L.) (citations omitted). Rather, relying upon what it termed "well-recognized exceptions based on

clear and accepted market place conventions," the trial court measured the value of Unified's services based upon a percentage of the contingent contract value. *Id.* at 2-3.

[54] The trial court then reviewed the five categories that Unified claimed accounted for 80% of the total work it was required to perform under the Agreement. The trial court rejected awarding damages for the first category—i.e., "[r]esearch[ing] government opportunities via www.fbo.gov"—because it was "completed before Plaintiff contacted Defendant." *Id.* at 3. Excluding this one category, the court adopted the remainder of Unified's argument and awarded Unified damages totaling $56,528 for *quantum meruit*.

2. The Trial Court's Measure of Damages Was Improper

[55] Where a party breaches a valid contract, damages are awarded in order to protect one or more of the three separate interests held by the non-breaching party: (i) an expectancy interest; (ii) a reliance interest; and (iii) a restitution interest. *See* Restatement (Second) of Contracts § 344. At issue in this appeal is the appropriate amount of restitution damages owed to Unified.[1] Restitution damages are awarded where a party has partially "furnish[ed] services under the contract" and requires "the other party to disgorge the benefit that he has received by returning it to the party who conferred it." *Id.* § 344 cmt. a.

[56] In *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, this court for the first time explained the doctrinal underpinnings of *quantum meruit* as a theory of equitable recovery in our jurisdiction. 2005 Guam 7. As the court noted in that case, "the nature of

[1] In its Initial Findings, the trial court determined that Unified was entitled to $500 in expectancy damages. *See* RA, tab 38 at 11 (Finds. Fact & Concl. L.) ("Pursuant to the contract, the Court orders Defendant to pay Plaintiff the $500 retainer fee. However, the Court does not grant Plaintiff's request for the 1% fee of the total gross rent for the guaranteed lease term . . . ."). PacAir did not separately appeal the award of this amount; it challenged this award only to the extent that it challenges whether the parties entered into a valid contract. Unified also did not cross-appeal this award of expectancy damages. The court therefore leaves the award of $500 in expectancy damages in place following this appeal.

the *quantum meruit* theory of recovery has been the subject of much confusion." *Id.* ¶ 23. "The measure of recovery for *quantum meruit*, whether under the theory of an implied-in-fact contract, or a quasi-contract, is the value of the services, measuring the value in the labor market where the service itself was sought by the defendant." *Id.* ¶ 25 (citation and internal quotation marks omitted). The reasonable value of those services "may be found in a variety of ways." *Asia Pac. Hotel Guam, Inc. v. Dongbu Ins. Co.*, 2015 Guam 3 ¶ 28.

[57] At its core, damages awarded in *quantum meruit* are a form of restitution damages. *See, e.g.*, Restatement (Third) of Restitution and Unjust Enrichment § 39 cmt. a.; 22 Am. Jur. *Damages* § 70 ("Damages measured by the value of performance go by various names, including both 'restitution' and 'reliance' as well as 'quantum meruit.'"). But because *quantum meruit* claims are not based on an underlying written contract, *see Tanaguchi-Ruth + Assocs.*, 2005 Guam 7 ¶ 25, "the amount to which [a plaintiff] is entitled is measured not by the contract price but rather by the reasonable value of services rendered," *New Windsor Volunteer Ambulance Corps, Inc. v. Meyers*, 442 F.3d 101, 118 (2d Cir. 2006) (internal quotation marks omitted). "Although the contract price is evidence of the benefit, it is not conclusive." Restatement (Second) of Contracts § 374 cmt. b (1981); *see also Oliver v. Campbell*, 273 P.2d 15, 19 (Cal. 1954) (en banc). The "[c]ontract price and the reasonable value of services rendered are two separate things." *Maglica v. Maglica*, 78 Cal. Rptr. 2d 101, 105 (Ct. App. 1998). "[P]roof of reasonable value may not be accomplished simply by plaintiff stating the 'standard price' which the plaintiff usually charges for a particular job." *Kinetic Energy Dev. Corp.*, 22 S.W.3d at 698 (citation omitted). Rather, "[t]here must be testimony or other evidence that the rate claimed was objectively reasonable in the marketplace." *Id.* (citation omitted); *see also Sw. Ariz. Fruit &*

Irrigation Co. v. Cameron, 141 P. 572, 572-73 (Ariz. 1914) (holding that for an award based on partial performance "it is incumbent on plaintiff to prove such value by evidence dehors the contract").

[58] In awarding damages, the trial court relied solely on Lichtl's post-trial affidavit. *See* RA, tab 45 at 3-4 (Suppl. Finds. Fact & Concl. L.). This affidavit, however, failed to properly analyze the "value of services" by conflating this concept with the contract price contained in the Agreement. Exhibit C to Lichtl's post-trial declaration clearly indicates that his calculation of damages was "per [the] contract." *Id.*, Ex. C. No independent analysis regarding the value of Unified's services was performed.[2] Rather, the trial court awarded what amounted to a percentage of a percentage of the final lease value awarded to PacAir. This was improper under a theory of *quantum meruit*.

[59] As Unified admitted during oral arguments, it neither pled nor litigated a separate claim of *quantum meruit*. Implicit in this admission is the fact that Unified never submitted evidence of the market value for its services. Nevertheless, the trial court held *sua sponte* after the close

[2] Lichtl did attach various other agreements to his post-trial affidavit. As indicated in the affidavit, these documents were submitted solely to show that Unified "offers the same services to all [its] clients for a fixed commission" and "[a] negotiated fixed commission based on a percentage of the total gross rent . . . is an acceptable form of consideration." RA, tab 42 ¶¶ 5-6 (Decl. of Anthony Lichtl, Nov. 11, 2015). Even had these documents been submitted for the purpose of proving the market value of Unified's services, they are not sufficient to justify the award of damages in this case. In *Carlino v. Kaplan*, a case the trial court relied upon in reaching its damages calculation, the court rejected similar evidence for establishing a market value of services because the submitted contracts, like those submitted by Unified here, did "not follow any well-established convention, but var[ied] greatly in defining the scope of services provided by the consultants, the length of time over which the services were to be delivered, and the amounts of consulting fees and incentive payments that the [relevant industry clients] agreed to pay." 139 F. Supp. 2d 563, 566 (S.D.N.Y. 2001); *see also Learning Annex Holdings, LLC*, 860 F. Supp. 2d 237, 248 (S.D.N.Y. 2012), *aff'd*, 652 F. App'x 67 (2d Cir. 2016) (refusing to value services based upon a percentage method, in part, because no evidence was admitted showing where plaintiff's services might fall in the range acceptable throughout the marketplace).

of evidence at trial that Unified had satisfied the elements of such a claim.[3] It thereafter purported to award Unified what it believed was the value of the work Unified completed under the Agreement. In this procedural context, it appears that the trial court actually intended to award damages directly under the contract (rather than for a separate claim of *quantum meruit*), similar to the method this court approved of in *Guam Resorts, Inc. v. G.C. Corp.*, 2013 Guam 18.

[60] In *Guam Resorts*, we noted that "in a contracts case, a party in breach 'is entitled to restitution for any benefit that he has conferred by way of part performance.'" *Id.* ¶ 47 (quoting *Guam Top Builders*, 2012 Guam 12 ¶ 61). In determining the amount of restitution damages to be awarded, the court ordered the trial court on remand to "produce a percentage which best approximates the amount of work completed, and base its award on that number." *Id.* ¶ 50. After determining this percentage, we instructed the trial court to use this percentage to then "figure out the total amount due based on the construction contract sum." *Id.* ¶ 51. In calculating an award using this method, however, the court made clear that this award was based upon a breach of contract—what the court referred to as "equitable compensatory damages"—not an award of *quantum meruit*. *See id.* ¶¶ 24, 50.

[61] The result reached in *Guam Resorts* was, in many respects, idiosyncratic. Basing an award upon a percentage of the work completed was appropriate in *Guam Resorts* because the contract at issue in that case called for monthly "progress payments" based upon the amount of work completed at the time of each payment. *See id.* ¶¶ 3-4. Moreover, the contract price in *Guam Resorts* was a fixed amount, not contingent upon the occurrence of some event or based upon a percentage of an as-yet-undetermined amount. *See id.* ¶ 3.

[3] Whether this was appropriate was not raised by the parties in their briefing, so this question is not currently before the court. Our Opinion today should not be read as approving of this procedure.

[62] A handful of other cases have also permitted an award of contract damages based upon a percentage of the work completed under a contract. Similar to the contract at issue in *Guam Resorts*, however, each of those cases dealt with a contract for a fixed fee. *See, e.g.*, *Sea Bryte, Inc. v. Hudson Marine Mgmt. Servs.*, 565 F.3d 1293, 1301-02 (11th Cir. 2009); *Plunkett & Cooney, P.C. v. Capitol Bancorp Ltd.*, 536 N.W.2d 886, 889-90 (Mich. Ct. App. 1995). Those cases also make clear that an award of damages based upon a percentage of the work completed is an award for breach of contract, not a separate claim for *quantum meruit*. *See Sea Bryte*, 565 F.3d at 1301-02 ("[W]e agree with the district court's rejection of quantum meruit damages . . . ."); *see also Ervin Constr. Co. v. Van Orden*, 874 P.2d 506, 507 (1993) (awarding damages for breach of contract); *Roof Sys., Inc. v. Johns Manville Corp.*, 130 S.W.3d 430, 442 (Tex. App. 2004) (same). We have been unable to find any case in any jurisdiction that has based an award of damages upon a percentage of the work completed under a contract, where the ultimate amount owed under the contract is derivative of, or contingent upon, the occurrence of some future event. The trial court's decision to do so in this case was improper, regardless of whether the award was based upon a claim for breach of contract or a claim for *quantum meruit*. Upon our review of the record in this case, it is clear that the trial court relied upon an improper methodology in determining its award of damages. The Supplemental Findings and the award of damages are therefore vacated.

3. Further Proceedings on Remand

[63] On remand, the court is instructed to determine the amount of restitution damages that Unified is entitled to as a result of PacAir's breach of contract. According to the Restatement, restitution damages are measured in one of the two following ways: "(a) the reasonable value to

the other party of what he received in terms of what it would have cost him to obtain it from a person in the claimant's position, or (b) the extent to which the other party's property has been increased in value or his other interests advanced." Restatement (Second) of Contracts § 371.

[64] In its Supplemental Findings, the trial court stated that it would "not speculate the amount of time Mr. Lichtl could have spent working on the report." RA, tab 45 at 3 (Suppl. Finds. Fact & Concl. L.). We vacate that decision today, along with the rest of the Supplemental Findings. In doing so, we remind the trial court that it is plaintiff's burden to prove the amount of damages. *See, e.g.*, *Merchant v. Nanyo Realty, Inc.*, 1998 Guam 26 ¶ 18 (noting plaintiff has burden of proof on issue of damages). We further note this court's decision in *Guam Resorts* wherein we stated the following: "We are mindful of the trial court's concern that it could not come up with an exact figure as a result of conflicting and uncertain testimony and evidence." 2013 Guam 18 ¶ 50. "The court need not be absolutely certain" of the amount of damages, *id.* ¶ 50—only a "reasonable certainty" is required, Restatement (Second) of Contracts § 352 (1981) ("Damages are not recoverable for loss beyond an amount that the evidence permits to be established with reasonable certainty."). Where a non-breaching party suffers no loss or is unable to prove any loss upon competent evidence, an award of nominal damages is appropriate. *See* Restatement (Second) of Contracts § 346(2). "Since the party seeking restitution is responsible for posing the problem of measurement of benefit, doubts will be resolved against him . . . ." Restatement (Second) of Contracts § 374 cmt. b (1981).

[65] In determining whether Unified is entitled to restitution damages, the trial court "should rely on findings of fact already made" in its Initial Findings to the extent possible and it "need not otherwise rehear evidence." *Guam Resorts*, 2013 Guam 18 ¶ 50. The court, however, "may

take new evidence if it believes doing so would be necessary." *Id.* Should the court take additional evidence, this evidence should be taken in the context of a trial with all of its attendant protections, including the right to cross-examination of witnesses.

V. CONCLUSION

[66] For the reasons set forth above, we **AFFIRM** the trial court's determination that a valid contract existed between the parties and the trial court's rejection of PacAir's affirmative defense of unclean hands. In addition, we **VACATE** the trial court's Supplemental Findings and the Judgment entered in this case and **REMAND** for further proceedings not inconsistent with this opinion, including a further trial on the issue of damages if deemed necessary by the trial court.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice