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Supreme Court of Guam, Clerk of Court

**IN THE SUPREME COURT OF GUAM**

**JOSEPH T. DUENAS,**  
**as Administrator for the Estate of Rosario T. Quichocho,**  
Plaintiff-Appellee,

**v.**

**GEORGE AND MATILDA KALLINGAL, P.C., GJADE, INC., and**  
**FORTUNE JOINT VENTURE dba FORTUNE VENTURES,**  
Defendant-Appellants.

Supreme Court Case No.: CVA16-019  
Superior Court Case No.: CV1440-07

**OPINION**

**Cite as: 2017 Guam 27**

Appeal from the Superior Court of Guam  
Argued and submitted on June 2, 2017  
Hagåtña, Guam

Appearing for Defendant-Appellant:

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

**TORRES, J.:**

[1] Defendant-Appellants George and Matilda Kallingal, P.C. (“KPC”), GJADE, Inc., and Fortune Joint Venture (“FJV”) (collectively known as “KPC”) brings this appeal against Plaintiff-Appellee Joseph T. Duenas, as Administrator for the Estate of Rosario T. Quichocho (“Rosario”). This matter is on appeal for the fourth time. This particular appeal is based on a matter from limited remand by this court in *Duenas ex rel. Quichocho v. George & Matilda Kallingal, P.C.*, 2015 Guam 19, where this court instructed the trial court to determine post-termination damages, if any, suffered by KPC as a result of the delay on the part of Rosario in tendering a new lease.

[2] KPC appeals from the trial court’s Findings of Facts and Conclusions of Law after a bench trial on remand that found KPC was not entitled to post-termination damages for a loan fee charged by First Hawaiian Bank or common-area maintenance fees for the maintenance of Legacy Square. Furthermore, the trial court denied KPC’s ex parte application for the immediate release of funds deposited in the trial court registry and to vacate all previous orders requiring deposits for those funds.

[3] For the reasons stated herein, we affirm the trial court’s judgment.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[4] The factual background and procedural history of this matter were previously brought before this court and are described in prior opinions. *See Duenas ex rel. Quichocho v. George & Matilda Kallingal, P.C.*, 2015 Guam 19 (hereinafter “KPC III”); *Duenas ex rel. Quichocho v. George & Matilda Kallingal, P.C.*, 2013 Guam 28 (hereinafter “KPC II”); *Duenas ex rel.*

*Quichocho v. George & Matilda Kallingal, P.C.*, 2012 Guam 4 (hereinafter “*KPC I*”). This case is on its fourth appeal after limited remand to the trial court pursuant to this court’s opinion in *KPC III*.

[5] *KPC II* provides a succinct background of the parties:

In December 1993, GJADE, Inc., a Guam corporation consisting of Gregorio and Josephina Quichocho and their son Anthony Quichocho, entered into a joint venture agreement with [KPC], a Guam corporation consisting of Drs. George and Matilda Kallingal, to form Fortune Joint Venture (“FJV”) for the purpose of financing and constructing an all concrete commercial building project for lease. In June 1994, Rosario T. Quichocho, who is represented here by [Duenas], the administrator of her estate, leased property to GJADE for the project.

2013 Guam 28 ¶ 3. The project ultimately became known as Legacy Square. In *KPC I*, this court held, *inter alia*, that KPC was entitled to a new lease, thus reversing the trial court’s dismissal of KPC’s counterclaim seeking execution of a new lease. On remand, Duenas presented KPC with a new lease that KPC refused to sign. Subsequently, the trial court issued an order removing all of KPC’s rights under the lease. In *KPC II*, this court dismissed the appeal because the issue of the amount of post-termination damages remained. Further, this court in *KPC II* mandated the trial court to “determine the amount of post-termination damages, if any, each party is owed.” *Id.* ¶ 25.

[6] On remand, the trial court found, *inter alia*, that “KPC was not entitled to any post-termination damages in light of KPC’s refusal to execute the new lease.” *KPC III*, 2015 Guam 19 ¶ 2. In *KPC III*, we reversed the trial court’s decision regarding post-termination damages to KPC, finding that the trial court “failed to make a determination of post-termination damages as to KPC and merely concluded that KPC suffered no post-termination damages as a result of refusing to execute a new lease.” *KPC III*, 2015 Guam 19 ¶ 31. This court also remanded the

case to the trial court “to calculate KPC’s post-termination damages, if any, as a result of the delay on the part of [Rosario] in tendering a new lease.” *Id.* ¶ 32.

[7] On remand, KPC sought to prove that it suffered post-termination damages for the loan fee charged by First Hawaiian Bank and for the common-area maintenance fee for the maintenance of Legacy Square by Kal’s Developers Inc. (“KDI”), a company owned by the same owners as KPC. In addition, KPC filed an Ex Parte Application for Immediate Release of Funds Deposited in Court Registry in this Action and to Vacate All Previous Orders Requiring Deposited Funds with the Court (“Application”). The trial court found that KPC was not entitled to post-termination damages in the form of either the loan fee or the maintenance fee and also denied KPC’s ex parte application. KPC timely appealed.

## **II. JURISDICTION**

[8] This court has jurisdiction over this case pursuant to 48 U.S.C.A. §§ 1424-1(a)(2) (Westlaw through Pub. L. 115-90 (2017)) and 7 GCA §§ 3107 and 3108(a) (2005).

## **III. STANDARD OF REVIEW**

[9] We review the trial court’s equitable orders and actions on remand for an abuse of discretion. *Abalos v. Cyfred Ltd.*, 2006 Guam 7 ¶ 14. “The trial court abuses its discretion when its equitable decision is based on an error of law or a clearly erroneous factual finding.” *Id.* (citation and internal quotation marks omitted). The legal conclusions of the trial court are reviewed *de novo*. *Hemlani v. Hemlani*, 2015 Guam 16 ¶ 9 (citation omitted). Factual findings are reviewed for clear error. *Rong Chang Co. v. M2P, Inc.*, 2012 Guam 1 ¶ 13.

## **IV. ANALYSIS**

[10] On appeal, KPC argues that it is entitled to post-termination damages in the form of the cost of the loan fee incurred by KPC’s sister company, GEOMAT & Sons, Inc. (“GEOMAT”),

to pay off the Bank of Guam mortgage on KPC's behalf and in the form of common-area maintenance fees incurred by KDI for maintaining the Legacy Square grounds. KPC reasons that it is entitled to these damages allegedly caused by Rosario's delay in offering KPC a new lease. KPC also argues that the trial court erred in denying its Ex Parte Application for Immediate Release of Funds Deposited in Court Registry in this Action and to Vacate All Previous Orders Requiring Deposited Funds with the Court. In response, Rosario asserts that KPC failed to meet its burden showing that the damages were caused by a delay in offering a new lease and that the trial court did not abuse its discretion in denying KPC's ex parte application to release the funds on deposit.

[11] We discuss these issues in turn.

**A. Post-Termination Damages: The Loan Fee**

[12] On remand, KPC asserted that the First Hawaiian Bank loan fee of \$57,500.00<sup>1</sup> incurred by GEOMAT should be characterized as post-termination damages resulting from Rosario's termination of the ground lease and delay in offering a new lease. *See* Record on Appeal ("RA"), tab 339 at 11-12 (Finds. Fact & Concl. L., Sept. 19, 2016). KPC stated that it was unable to pay off the Bank of Guam mortgage and loan and therefore had to seek assistance from GEOMAT. *Id.* KPC further stated that in order for GEOMAT to pay off the Bank of Guam mortgage and loan on behalf of KPC, GEOMAT borrowed \$2.3 million from First Hawaiian Bank and incurred the loan fee. *Id.* KPC relied solely on testimony by Dr. George Kallingal that KPC was entitled to post-termination damages for the First Hawaiian Bank loan fee because KPC has to reimburse GEOMAT for incurring the loan fee on KPC's behalf. *Id.* at 8-9, 11.

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<sup>1</sup> Initially, KPC alleged that it was entitled to \$87,500.00 in damages for the loan fee. Appellants' Br. at 15 (Mar. 7, 2017). However, on appeal, KPC concedes that the correct amount is actually \$57,500.00. *See* Reply Br. at 3 (Apr. 20, 2017).

[13] The trial court assessed KPC's damages using the "equitable compensation" theory. See *id.* at 12. The court found that, in light of the evidence presented, i.e., Dr. Kallingal's testimony, KPC "[had] not establish the element of causation and therefore is not entitled to the reimbursement. . . ." *Id.* The court further found that KPC "was fully liable to repay the [Bank of Guam] mortgage . . . regardless of whether Rosario had offered a new lease or not." *Id.* The court found that it was not in a position "to determine damages that may have resulted from the termination of the Ground Lease, as [this court] has already affirmed [the trial court's] decision to terminate the lease retroactively" in *KPC III*. *Id.* Accordingly, the court determined that it could not speculate and ultimately held that KPC was not entitled to post-termination damages for the First Hawaiian Bank loan fee incurred by GEOMAT. *Id.* at 11-12.

[14] On appeal, KPC reiterates that it is entitled to the loan fee as post-termination damages because the fee was incurred by GEOMAT in connection with paying off KPC's Bank of Guam mortgage "[a]s a result of Rosario's termination of the Ground Lease and delay in offering to KPC a new lease." Appellants' Br. at 17 (Mar. 7, 2017). KPC argues that because the trial court acknowledged that the termination of the lease "may have caused" the loan fee to be incurred, it would not be speculative for the trial court to have found that Rosario's delay in offering a new lease was the cause of KPC having to incur the expense. *Id.* at 18; see RA, tab 339 at 12 (Finds. Fact & Concl. L.) ("The [trial court] notes that termination of the Ground Lease *may have caused* GEOMAT to incur the First Hawaiian Bank loan fee. . . ." (emphasis added)). For support, KPC relies, as it did on remand, solely upon Dr. George Kallingal's testimony that GEOMAT had to incur the First Hawaiian Bank loan fee, and argues this testimony is sufficient proof pursuant to

6 GCA § 2501<sup>2</sup> that the loan fee was incurred as a result of Rosario’s termination of the ground lease. Reply Br. at 4 (Apr. 20, 2017).

[15] In opposition, Rosario relies on this court’s decision in *KPC III*. There, we remanded the case to the trial court with instructions to “determine whether KPC is entitled to damages as a result of the delay.” *KPC III*, 2015 Guam 19 ¶ 31. Rosario emphasizes the language “as a result of the delay,” *id.*, arguing that KPC failed to surmount the hurdle of proving it suffered any damages resulting from the alleged delay. See Appellee’s Br. at 26 (Apr. 6, 2017). Rosario highlights the fact that Dr. Kallingal admitted “that he could not say whether or not KPC would have acted any differently if Rosario had timely offered to KPC [sic] a new lease containing the terms” this court found Rosario was obligated to offer. *Id.* at 27; see also RA, tab 339 at 9 (Finds. Fact & Concl. L.) (“Dr. Kallingal was unsure if Defendant KPC would have accepted the new lease if [sic] was offered by Rosario immediately after the Ground Lease was terminated.”); Transcript (“Tr.”) at 107-08 (Bench Trial, Apr. 13, 2016) (Dr. Kallingal admitting that actions following lease would be “speculative”).

[16] Next, Rosario argues that the outstanding balance on the Bank of Guam loan was \$1,921,192.42, not \$2.3 million, thus suggesting “that other loans or credit facilities were paid off or refinanced at the same time by GEOMAT” in addition to the Bank of Guam mortgage.<sup>3</sup> Appellee’s Br. at 28-29; see also RA, tab 310 at 20-24 (Def.’s Suppl. Ex. List, Apr. 1, 2016).

[17] Dr. Kallingal’s credibility was not questioned at trial; however, in this appeal, Rosario presents several points that cut against Dr. Kallingal’s testimony. For example, as the trial court

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<sup>2</sup> Title 6 GCA § 2501 states: “The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact, except those instances specifically provided for in Title 8, Chapter 95 of this Code (Criminal Procedure).” 6 GCA § 2501 (2005).

<sup>3</sup> The record is unclear how the additional loan monies unaccounted for in the loan balance was allocated. We will not address this issue here.

also recognized, Dr. Kallingal himself admitted that he could not say whether KPC would have acted differently if Rosario had timely offered a new lease to KPC as mandated by this court. See RA, tab 339 at 9, 12 (Finds. Fact & Concl. L.). In addition, the lack of documentary evidence showing the mortgage in default, a recorded notice of default, or that Bank of Guam took any steps towards foreclosing on the Bank of Guam mortgage or made any formal demands further cuts against Dr. Kallingal's testimony. See Appellee's Br. at 29.

[18] Besides Dr. Kallingal's testimony, the only other evidence admitted was a document that only establishes that the Bank of Guam loan was paid off, but sheds no light at all as to why payment was needed immediately. RA, tab 310 at 20-24 (Def.'s Suppl. Ex. List); see also Appellee's Br. at 30. Rosario points out that no other evidence was presented to corroborate Dr. Kallingal's testimony that the total amount of the loan taken to pay Bank of Guam was \$2.3 million dollars. See Appellee's Br. at 30-31. Though Dr. Kallingal's testimony is granted full credit under 6 GCA § 2501, its speculative nature in combination with the absence of corroborating evidence is insufficient to overcome the deference due to the trial court in this appeal.

[19] Moreover, KPC's reliance on our language in *KPC III* to support its argument that it would not be speculative to award damages is inconsequential. Appellants' Br. at 16-17 (quoting *KPC III*, 2015 Guam 19 ¶ 31). In *KPC III*, we stated that "it is *possible* that KPC *may* have suffered post-termination damages, even if no new lease were executed, *as a result of the delay on the part of [Rosario] in offering a new lease.*" 2015 Guam 19 ¶ 31 (emphases added). This court's language in *KPC III* merely suggests the possibility that KPC might have suffered post-termination damages as a result of Rosario's delay—not that KPC in fact suffered damages, as it asserts on appeal. See *id.* Indeed, our remand to the trial court was "to calculate KPC's post-



termination damages, *if any*, as a result of the delay on the part of [Rosario] in tendering a new lease,” *id.* ¶ 3 (emphasis added), recognizing that there may not be post-termination damages. Thus, this court finds itself in the same position as the trial court—a position to merely speculate whether the delay caused the loan fee.

[20] The trial court’s determination, based on Dr. Kallingal’s testimony and the absence of corroborating evidence at trial, that KPC is not entitled to post-termination damages for the First Hawaiian Bank loan fee was not clearly erroneous, and we affirm this finding.

**B. Post-Termination Damages: Common Area Maintenance Fee**

[21] On remand, KPC also sought post-termination damages for the common area fees incurred between November 2007 and July 2012. RA, tab 339 at 12 (Finds. Fact & Concl. L.). KPC explained that “during the period after Rosario had terminated the ground lease, KPC incurred expenses for maintenance and repairs made to Legacy Square, and that such maintenance and repairs benefited Rosario’s side of the property.” *Id.* at 12-13. KPC stated that KDI had “to manage and maintain all of Legacy Square from January 1, 2010 through July 16, 2012, including Rosario’s side of the property.” *Id.* at 13. KPC alleges that during this period, “Rosario failed to make any common area fee payments for maintenance” of Rosario’s side of the building. *Id.* However, no evidence of an agreement obligating Rosario to pay KDI or KPC a common area fee for maintenance was presented during remand.

[22] The trial court again utilized the equitable compensation doctrine to assess KPC’s post-termination damages in the form of a common area fee and made the same conclusion it did regarding the loan fee—that it was not in a position to speculate “whether defendant KPC would have acted differently had Rosario offered the new lease sooner.” *Id.* at 13. In making its decision, the court highlighted that Dr. Kallingal, who testified on behalf of KPC, was “unsure of

whether [KPC] would have accepted a new lease had Rosario offered it soon after cancelling the [old lease].” *See id.* Therefore, the trial court found that KPC could not establish the element of causation necessary to establish damages under an equitable compensation theory. *Id.*

[23] In addition, KPC argued that its maintenance of Legacy Square from 2007 through 2012 benefited Rosario at KPC’s detriment, and the trial court assessed KPC’s post-termination damage claim for common area fees using the doctrine of unjust enrichment. *See id.* at 13-15. Using unjust enrichment, the trial court again found that KPC was not entitled to damages in the form of common area maintenance fees because KPC is (i) already allowed to retain one-third of the rent payments to specifically cover the maintenance fees, (ii) KDI—not KPC—expended the funds necessary for maintenance, and (iii) Rosario has yet to receive any funds due despite KDI remaining in full possession of the entire Legacy Square. *Id.* at 14-15. On appeal, KPC utilizes the same argument it did to justify the loan fee, that if Rosario had “timely offered the new lease,” which KPC subsequently rejected, Rosario should have taken over the maintenance of Legacy Square, including the Kentucky Fried Chicken grounds, which was part of Legacy Square. Appellants’ Br. at 18. KPC asserts that it alone maintained the grounds outside the Kentucky Fried Chicken building on the property from November 2007 to December 2009, and that Kentucky Fried Chicken stopped paying KPC the monthly common area fee of \$430.00 “sometime in 2008.” *Id.* But see Tr. at 16-21 (Evidentiary Hr’g for Damages, Mar. 9, 2016) (Dr. Kallingal testifying that maintenance began November 7, 2007, and that KPC was not receiving payment). In addition, KPC asserts that because Rosario had been awarded rent from Kentucky Fried Chicken, *see KPC I*, 2012 Guam 4 ¶ 27, Rosario would be “unjustly enriched by receiving the benefit of the payments without the burden of maintaining the grounds.” Appellants’ Br. at

18. Accordingly, KPC asserts that the trial court should have awarded it the monthly \$430.00 common area fee for 12 months for a total of \$5,160.00. *Id.*

[24] In opposition, Rosario questions the proposed amount of damages in the amount of \$5,160.00. *See Appellee's Br.* at 23 n.4. Rosario asserts that this is a “purely speculative sum,” *see id.*, highlighting a few dubious points in Dr. Kallingal's testimony made on behalf of KPC. *See id.* For example, when asked about the number of months KPC received common area fees after the termination of its lease, Dr. Kallingal responded “a few more months” and that he could “only guess” on the length of time. *See Tr.* at 17 (Cont'd Bench Trial, Apr. 27, 2016).

[25] Like the trial court, Rosario also emphasizes that she has not yet received any funds due for the period awarded by the trial court and later affirmed by this court in *KPC I*, 2012 Guam 4 ¶ 50. Previously, the trial court awarded Rosario post-termination damages in the form of rent payments “and further allowed [KPC] to retain one-third of the rent payments specifically for maintenance fees.” RA, tab 339 at 14 (Finds. Fact & Concl. L.) (citation omitted). On remand, the trial court found that Rosario “clearly has not benefited from [KPC's] continued maintenance of the property as [KPC]—or rather, KDI—is still in possession of the entire Legacy Square and has paid nothing to [Rosario] in return.” *Id.* at 14-15. Accordingly, the trial court found that Rosario was not unjustly enriched, since KPC failed to show that Rosario had received some sort of benefit from KPC without compensating it. *See id.*; *see also Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 27.

[26] KPC's argument that Rosario would be unjustly enriched since Rosario had been previously awarded rent is negated by the fact that KPC has not yet paid Rosario the pre-termination or post-termination rent. RA, tab 339 at 14 (Finds. Fact & Concl. L.); *see also KPC I*, 2012 Guam 4 ¶ 27. Further, KPC is already entitled to keep a portion of the rent due to

Rosario to cover the maintenance fees. *See id.* Also, as the trial court had found, Rosario did not benefit from KPC's continued maintenance since KPC is still in possession of Legacy Square even though KPC has not yet paid Rosario the rent she is entitled to. *See id.* Moreover, there is no evidence of an agreement between Rosario and KPC mandating that KPC was to maintain Legacy Square in exchange for monthly payments by Rosario. Therefore, under the abuse of discretion standard, Rosario does not appear to have been unjustly enriched by KDI's maintenance of the property since KDI remains in possession of Legacy Square and is already entitled to retain a portion of rent, which has yet to be paid to Rosario, to cover the cost.

[27] Accordingly, we affirm the trial court's determination that KPC is not entitled to post-termination damages in the form of common area maintenance fees under the equitable compensation or unjust enrichment theories.<sup>4</sup>

**C. Ex Parte Application for the Immediate Release of Funds Deposited in the Trial Court Registry and to Vacate All Previous Orders Requiring Deposits for Those Funds**

[28] Despite the matter being on limited remand, KPC filed an Ex Parte Application for Immediate Release of Funds Deposited in Court Registry in this Action and to Vacate All Previous Orders Requiring Deposited Funds with the Court. RA, tab 326 (Application). The Application was made regarding funds in the form of deposited rent payments into the Superior Court of Guam registry for the Department of Public Health and Social Services' (DPHSS) use of office space in Legacy Square. RA, tab 340 (Dec. & Order, Sept. 19, 2016). The trial court

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<sup>4</sup> In addition, Rosario asserts the affirmative defense of unclean hands protects her from liability for the maintenance fee. Appellee's Br. at 25. Rosario argues that KPC remains liable to the estate for pre-termination rents and post-termination damages that have not yet been paid or satisfied even despite this court having previously found it liable in the prior appeals. *See id.* at 25-26. However, because we have already determined that the trial court did not abuse its discretion in finding that KPC was not entitled to post-termination damages in the form of common area maintenance fees from Rosario, we need not address the merits of this affirmative defense.

had previously ordered all rent checks payable to KDI be deposited into the registry until the matter was resolved. *Id.*

[29] The trial court denied the Application, finding that the deposited funds are still being litigated in *Kal's Developers, Inc. v. Duenas ex rel. Quichocho*, Superior Court Case No. CV0793-12, and therefore a release of those funds for this case would not be appropriate. *Id.* at 5. The trial court also found that the “funds should no longer be held in this case,” *id.*, reasoning that the ownership of the funds will depend on the disposition of CV0793-12. In dispute in that case is the right to the funds expended for the maintenance of Legacy Square after December 1, 2009. RA, tab 339 at 14 (Finds. Fact & Concl. L.). On appeal, KPC expressly conceded that the funds in dispute in the Application should be handled in CV0793-12.

[30] KPC filed its Application while the case was on limited remand from *KPC III*, where we placed the case on limited remand and specifically instructed the trial court “to calculate KPC’s post-termination damages, if any, as a result of the delay on the part of [Rosario] in tendering the new lease.” *KPC III*, 2015 Guam 19 ¶¶ 10-12, 31-32; *see also* RA, tab 326 (Application). Despite KPC’s Application being outside the scope of our remand, the trial court denied KPC’s motion to release since KDI is currently litigating ownership over the deposited funds in CV0793-12. RA, tab 340 at 5 (Dec. & Order). Because the Application and the trial court’s corresponding order were made outside the scope of our limited remand from *KPC III*, 2015 Guam 19, we will not address the Application or the merits of the trial court’s order denying it.

## V. CONCLUSION

[31] KPC has failed to show a clearly erroneous factual finding based on the evidence, and the trial court did not abuse its discretion. We **AFFIRM** the trial court’s determinations that KPC is

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not entitled to post-termination damages for the First Hawaiian Bank loan fee and the common area maintenance fees for Legacy Square.

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/s/  
F. PHILIP CARBULLIDO  
Associate Justice

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/s/  
ROBERT J. TORRES  
Associate Justice

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/s/  
KATHERINE A. MARAMAN  
Chief Justice