



**Filed**

Supreme Court of Guam, Clerk of Court

**IN THE SUPREME COURT OF GUAM**

**PORTIS INTERNATIONAL, LLC,**  
Plaintiff-Appellant,

**v.**

**ROBIN MARQUARDT, ELIZABETH A. CHARGUALAF,**  
**and FRANK L. GOGUE,**  
Defendants-Appellees.

Supreme Court Case No.: CVA17-029  
Superior Court Case No.: CV0540-16

**OPINION**

**Cite as: 2018 Guam 22**

Appeal from the Superior Court of Guam  
Argued and submitted on July 12, 2018  
Hagåtña, Guam

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

**TORRES, J.:**

[1] Plaintiff-Appellant Portis International, LLC (“Portis”) appeals from a dismissal for failure to state a claim under Guam Rule of Civil Procedure (“GRCP”) 12(b)(6). Portis also appeals the Superior Court’s award of attorney’s fees to Defendants-Appellees Robin Marquardt, Elizabeth A. Chargualaf, and Frank L. Gogue (collectively, “Marquardt”). We dismiss for lack of jurisdiction.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[2] Portis initiated the action below by filing a complaint for forcible entry and detainer under 21 GCA §§ 21101(a) and 21102(a). Marquardt attacked the complaint in part by moving to dismiss for failure to state a claim under GRCP 12(b)(6). In the motion, Marquardt also requested attorney’s fees and costs pursuant to an underlying lease agreement. On January 5, 2017, the Superior Court issued a Decision and Order (“January Order”) that granted Marquardt’s 12(b)(6) motion to dismiss and awarded attorney’s fees and costs, leaving only the amount open to further adjudication. After further proceedings, on October 6, 2017, the trial court awarded \$15,824.50 in attorney’s fees and costs to Marquardt (“October Order”). The trial court later issued a final judgment incorporating both the dismissal of Portis’s complaint pursuant to GRCP 12(b)(6) and the award of attorney’s fees and costs. This was the only judgment issued by the court below. Portis filed its appeal on December 5, 2017. This court, after *sua sponte* review of the trial record, ordered the parties to submit simultaneous supplemental briefs on the issue of whether this court had jurisdiction to consider the appeal, to which the parties complied.

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## II. JURISDICTION

[3] “Jurisdictional issues may be raised by any party at any time or *sua sponte* by the court.” *Duenas v. George & Matilda Kallingal, P.C.*, 2013 Guam 28 ¶ 11. The jurisdictional statutes prescribing this court’s appellate jurisdiction are strictly interpreted. *Id.* (citing *People v. Natividad*, 2005 Guam 28 ¶ 1). For the reasons below, we dismiss the appeal for lack of jurisdiction.

## III. ANALYSIS

### A. The January Order Was Final and Appealable

[4] Whether this court has appellate jurisdiction turns on whether the January Order was final and appealable with respect to the 12(b)(6) dismissal. That order dismissed the case pursuant to GRCP 12(b)(6) and awarded attorney’s fees and costs, but it left open the question of the amount of fees and costs for further determination—a question that was not resolved until the October Order. *See* Record on Appeal (“RA”), tab 26 at 8 (Dec. & Order, Jan. 5, 2017); RA, tab 42 at 10 (Dec. & Order, Oct. 6, 2017).

[5] This court has appellate jurisdiction over civil appeals arising from final judgments or final orders entered in the Superior Court. 7 GCA §§ 3107(b), 3108 (2005); *see also* 7 GCA § 25102(a) (2005). A judgment or order “is final if it disposes of the entire case by determining the rights of the parties in an action.” *Sharrock v. McCoy*, 2016 Guam 7 ¶ 39 (citing 7 GCA § 21101 and collecting cases); *see also Duenas*, 2013 Guam 28 ¶ 15 (“[T]o appeal an order as a final judgment, the order must have the effect of disposing of the case and must be reduced to a final judgment.” (quoting *People v. Angoco*, 2006 Guam 18 ¶ 10)); Guam R. Civ. P. 54(a).

[6] Ordinarily, an order or judgment granting a motion to dismiss for failure to state a claim amounts to a final judgment. *See, e.g., Wheelless v. Maria Parham Med. Ctr., Inc.*, 768 S.E.2d

119, 122 (N.C. Ct. App. 2014) (citations omitted). However, it is less clear whether an order is final when it dismisses a case pursuant to GRCP 12(b)(6) and is coupled with an award of attorney's fees, with such fees subject to further proceedings to determine the amount to be awarded.

[7] Under the federal approach,<sup>1</sup> in *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196 (1988), the United States Supreme Court unanimously adopted a rule that “a decision on the merits is a ‘final decision’ . . . whether or not there remains for adjudication a request for attorney’s fees attributable to the case.” 486 U.S. at 202-03. *Budinich* was reaffirmed by the Supreme Court as recently as 2014. See *Ray Haluch Gravel Co. v. Cent. Pension Fund of Int’l Union of Operating Eng’rs & Participating Emp’rs*, 571 U.S. 177, 185-89 (2014). In *Ray Haluch Gravel*, the Court clarified that *Budinich* applied irrespective of whether the claims to attorney’s fees and costs sounded in statute versus in contract. The Court emphasized that the “[o]perational consistency” stressed in *Budinich* “is not promoted by providing for different jurisdictional effect . . . based solely on whether the asserted right to fees is based on a contract or a statute.” *Id.* at 186. We adopted *Budinich* in *Data Management Resources, LLC v. Office of Public Accountability*, 2013 Guam 27 ¶¶ 38-41. Several states have done the same. See, e.g., *State Bd. of Educ. v. Waldrop*, 840 So. 2d 893, 899 (Ala. 2002); *Baldwin v. Bright Mortg. Co.*, 757 P.2d 1072, 1073-74 (Colo. 1988) (en banc); *Hylton v. Gunter*, 97 A.3d 970, 975-76 (Conn. 2014); *Snodgrass v. State Farm Mut. Auto. Ins. Co.*, 789 P.2d 211, 213 (Kan. 1990); *Kelly Inn No. 102, Inc. v. Kapnison*, 824 P.2d 1033, 1041 (N.M. 1992).

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<sup>1</sup> “[B]ecause the Guam Rules of Civil Procedure are generally derived from, although not identical to, the Federal Rules of Civil Procedure . . . , federal decisions that construe the federal counterparts to the [GRCP] are persuasive authority.” *Gov’t of Guam v. O’Keefe*, 2018 Guam 4 ¶ 9. In addition, because the Guam Rules of Appellate Procedure are substantially similar to the Federal Rules of Appellate Procedure, we look to federal case law when interpreting the Guam Rules of Appellate Procedure. *Data Mgmt. Res., LLC v. Office of Pub. Accountability*, 2013 Guam 27 ¶ 37.

[8] The procedural posture of the present case is analogous to that which we encountered in *Data Management*, except that here, we are not presented with a potentially *premature* appeal—as was the case in *Data Management*, see 2013 Guam 27 ¶ 35—but a potentially *late* appeal. The issue, however, is essentially identical, viz. whether an order issued by the trial court was final and appealable even though the issue of attorney’s fees and costs was not completely finalized. We answered this question in the affirmative in *Data Management*. *Id.* ¶¶ 40-41. An apparent, but inconsequential, distinction between *Data Management* and the present case is that the claim for fees in *Data Management* was based on a statute, whereas Marquardt’s claim for fees is based on a contractual prevailing-party provision in the underlying lease. *Compare id.* ¶ 14, with RA, tab 17 at 10 (Mot. Dismiss, Sept. 1, 2016). As stated, however, this type of distinction was recently held by the United States Supreme Court to be immaterial for the purposes of the rule adopted in *Budinich*. See *Ray Haluch Gravel*, 571 U.S. at 188 (“The rule adopted in *Budinich* ignores these distinctions in favor of an approach that looks solely to the character of the issue that remains open after the court has otherwise ruled on the merits of the case.”). Therefore, *Data Management* remains applicable to the present case, and as a result of its adoption of *Budinich*, the January Order was final and appealable with respect to the issue of the 12(b)(6) dismissal of Portis’s complaint, notwithstanding the fact that the amount of attorney’s fees and costs was not finalized. See *Data Mgmt.*, 2013 Guam 27 ¶¶ 38-41.

#### **B. The Court Lacks Jurisdiction Over the Issue of the 12(b)(6) Dismissal**

[9] “The filing of a timely notice of appeal to take an appeal as of right is an absolute requirement from which this court has no discretion to digress.” *Gill v. Siegel*, 2000 Guam 10 ¶ 5; accord *Hawaiian Rock Prods. Corp. v. Ocean Hous., Inc.*, 2016 Guam 4 ¶ 14; see also *Marriott v. Marriott*, 2014 Guam 28 ¶¶ 7-12. Guam Rule of Appellate Procedure (“GRAP”)

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4(a)(1) requires, in a civil case, that a notice of appeal be filed “within thirty (30) days after the judgment or order appealed from is entered.” Guam R. App. P. 4(a)(1); *see also* *Marriott*, 2014 Guam 28 ¶ 8. Under GRCP 58(a)(1), an order disposing of a motion to dismiss under GRCP 12(b)(6) must be reflected in a judgment set forth in a separate document (the “separate document rule”). *See* Guam R. Civ. P. 58(a)(1); *cf.* *Sharrock*, 2016 Guam 7 ¶ 41. Where the separate document rule applies, a judgment is effectively entered when 150 days have run from entry of the underlying order on the docket, unless the judgment issues earlier. *See* Guam R. Civ. P. 58(b)(2)(B); *see also* *Sharrock*, 2016 Guam 7 ¶¶ 41-42; *Agana Beach Condo. Homeowners’ Ass’n v. Untalan*, 2015 Guam 35 ¶ 10; *Marriott*, 2014 Guam 28 ¶ 8; *Rapadas v. Benito*, 2011 Guam 28 ¶ 9; *Quijano v. Atkins-Kroll, Inc.*, 2008 Guam 14 ¶ 5.

[10] The separate document rule applied to the Superior Court’s grant of the 12(b)(6) motion to dismiss in the January Order. *See* GRCP 58(a)(1). The January Order was entered on the docket on January 5, 2017. RA, tab 27 (Notice of Entry on Docket, Jan. 5, 2017). The 150th day from this date was Sunday, June 4, 2017. Thus, the judgment was effectively entered on Monday, June 5, 2017. *See* Guam R. Civ. P. 58(b)(2)(B); *see also* Guam R. App. P. 11(a)(1)(C); *Sharrock*, 2016 Guam 7 ¶¶ 41-42. Portis had 30 days from June 5, 2017, to file a Notice of Appeal. *See* Guam R. App. P. 4(a)(1), 4(a)(7)(B)(ii). Portis did not file its Notice of Appeal until December 5, 2017, *see* RA, tab 47 (Notice of Appeal, Dec. 5, 2017),<sup>2</sup> and we therefore lack jurisdiction with respect to the 12(b)(6) dismissal.

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<sup>2</sup> Under GRCP 58(c)(1) and GRAP 4(a)(4)(A), when a party moves for attorney’s fees and costs under GRCP 54(d)(2), a trial court may “before a notice of appeal has been filed . . . order” that the motion be treated such that “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.” *See* Guam R. Civ. P. 58(c)(1); Guam R. App. P. 4(a)(4)(A)(iii), (iv). Here, the Superior Court did not issue any order extending the time to appeal as contemplated by these procedural rules, and Portis did not file any motion making such a request.

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**C. The Court Lacks Jurisdiction Over the Issue of Attorney's Fees**

[11] The Superior Court was not required to issue a separate document regarding the issue of fees and costs. *See* Guam R. Civ. P. 58(a)(1)(C) (“[A] separate document is not required for an order disposing of a motion . . . for attorney fees under Rule 54.”). For orders not subject to the separate document rule, a judgment is entered when the order is entered in the civil docket. *See* Guam R. Civ. P. 58(b)(1).

[12] Here, Marquardt moved for attorney's fees and costs pursuant to a contractual prevailing-party provision in the underlying lease, which falls under the type of fees provisions contemplated by GRCP 54, even though Marquardt's motion did not make explicit reference to GRCP 54. *See* RA, tab 17 at 10 (Mot. Dismiss); *see also* *Pia Marine Homeowners Ass'n v. Kinoshita Corp. Guam, Inc.*, 2013 Guam 6 ¶ 19 (“[R]ule [54(d)] itself does not create a substantive right to fees: that must come from some other source.”). While the Superior Court awarded fees and costs in the January Order, it did not determine the final amount until October 6, 2017, *see* RA, tab 42 (Dec. & Order), which was entered on the docket on October 26, 2017, *see* RA, tab 44 (Am. Notice of Entry on Docket, Oct. 26, 2017). Even if, for the sake of argument, we were to take the October Order, rather than the January Order, as the final order disposing of the issue of attorney's fees and costs, Portis would have had 30 days from the entry of the October Order on the docket to file a Notice of Appeal. *See* Guam R. App. P. 4(a)(1), 4(a)(7)(A); *see also* Guam R. Civ. P. 58(b)(1). Portis did not file its Notice of Appeal until December 5, 2017, after this 30-day period elapsed. RA, tab 47 (Notice of Appeal); *see also* Guam R. App. P. 11(a)(1)(C). Therefore, its appeal of the award of attorney's fees and costs was similarly untimely, and we accordingly lack jurisdiction over that issue.

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**IV. CONCLUSION**

[13] For the foregoing reasons, we **DISMISS** the Notice of Appeal filed by Portis on December 5, 2017, for lack of jurisdiction.

/s/

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F. PHILIP CARBULLIDO  
Associate Justice

/s/

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ROBERT J. TORRES  
Associate Justice

/s/

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KATHERINE A. MARAMAN  
Chief Justice