IN THE SUPREME COURT OF GUAM

ADRIAN L. CRISTOBAL, CONCEPCION F. CRISTOBAL, JORGE E.U. CRISTOBAL, BEATRIZ CRISTOBAL, E.C. LEON GUERRERO, JUAN B. LEON GUERRERO, ALBERTO C. LAMORENA, III, Trustee, and FE C. LAMORENA,
Plaintiffs-Appellants,

v.

JEFFREY SIEGEL, FRANCIS L. GILL, and CORAL PIT, INC.,
Defendants-Appellees.

Supreme Court Case No.: CVA17-027
Superior Court Case No.: CV0442-88

OPINION

Cite as: 2018 Guam 29

Appeal from the Superior Court of Guam
Argued and submitted on June 11, 2018
Hagåtña, Guam

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and Estate of Fe C. Lamorena:
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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and ROBERT J. TORRES, Associate Justice.

TORRES, J.:

[1] Plaintiffs-Appellants (collectively, "the Cristobals")[1] appeal from the Superior Court's November 1, 2017 Decision and Order finding that they waived and prevented a condition precedent to Section Seven of the 1996 Settlement Agreement ("Settlement Agreement"), an agreement the Cristobals entered into with Defendants-Appellees Bottomless Pit, LLC ("Bottomless Pit").[2] We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Our prior opinions trace the factual history of the dispute. *See Cristobal v. Siegel*, 2012 Guam 16 ("*Cristobal I*"); *Cristobal v. Siegel*, 2014 Guam 16 ("*Cristobal II*"); *Cristobal v. Siegel*, 2016 Guam 27 ("*Cristobal III*"). Upon remand of *Cristobal III*, Bottomless Pit filed a motion for additional findings, specifically requesting a finding that the Cristobals had waived the occurrence of the Closing Date as a condition precedent, thereby activating Section Seven of the Settlement Agreement. The trial court agreed, finding that the Cristobals prevented the recording of a subdivision map, which in turn prevented the occurrence of a Closing Date, and therefore, Section Seven applied. Thus, the trial court concluded that the Cristobals prevented and waived map recordation—and, implicitly, the occurrence of the Closing Date as a condition precedent—which resulted in the application of Section Seven. The Cristobals filed a timely appeal.

[1] Of the plaintiffs who filed Superior Court Case No. CV0442-88, only Estate of Jorge E.U. Cristobal, Alberto C. Lamorena III, Trustee, and Estate of Fe C. Lamorena appealed the trial court's Decision and Order.

[2] Appellee Bottomless Pit, LLC is the successor in interest to Coral Pit, Inc. *Cristobal v. Siegel*, 2016 Guam 27 ¶ 1 n.1.

II. JURISDICTION

[3] This court has jurisdiction over appeals from a final order. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-281 (2018)); 7 GCA §§ 3107(b), 3108(a) (2005); *see also* Guam R. Civ. P. 54(a), 58(a)(1)(B).

III. STANDARD OF REVIEW

[4] A trial court's findings of fact are reviewed for clear error. *Guam Resorts, Inc. v. G.C. Corp.*, 2013 Guam 18 ¶ 33. Under this standard, we look "at whether the trial court's finding of fact is supported by substantial evidence, and the trial court's decision will only be reversed if this court has a definite and firm conviction that a mistake has been committed." *Id.* (quoting *In re Guardianship of Moylan*, 2011 Guam 16 ¶ 12).

[5] "A trial court's conclusions of law, including its interpretation of this court's mandate from a prior appeal, are reviewed *de novo*." *In re Guardianship of Moylan*, 2017 Guam 28 ¶ 13. "We further review 'the trial court's actions on remand for an abuse of discretion.'" *Id.* (quoting *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 17). Finally, principles of contract interpretation, including settlement agreements, are reviewed *de novo*. *See Cristobal III*, 2016 Guam 27 ¶ 15 (citing *Blas v. Cruz*, 2009 Guam 12 ¶ 11).

IV. ANALYSIS

A. The Superior Court Did Not Violate Its Mandate on Remand

[6] The Cristobals assert that the Superior Court violated its mandate. Appellant's Br. at 19-24 (Mar. 12, 2018); Reply Br. at 5-7 (Apr. 23, 2018). "On remand, a trial court must comply with the mandate of the appellate court." *In re Guardianship of Moylan*, 2017 Guam 28 ¶ 26 (quoting *Town House*, 2003 Guam 6 ¶ 16). Nevertheless, "a mandate cannot be applied in a vacuum, and [it] must be interpreted in light of the appellate court's opinion." *Id.* (quoting *Town*

House, 2003 Guam 6 ¶ 16). On remand after appeal, "[t]his requires that the trial court 'examine both the mandate and the opinion and proceed in accordance with the views expressed therein.'" *Id.* (quoting *Town House*, 2003 Guam 6 ¶ 16).

[7] In *Cristobal III*, we explicitly stated that "[a]bsent a finding that the sale has not been completed on the Closing Date *or* that the parties waived this condition precedent, the conveyance obligations in Section Seven have not been triggered." 2016 Guam 27 ¶ 26 (emphasis added). Consequently, we expressly remanded for further proceedings. *See id.* ¶ 41. Moreover, we did not limit the trial court's ability to conduct further proceedings; thus, the remand was general. *See id.*; *cf. In re Guardianship of Moylan*, 2017 Guam 28 ¶ 27 (distinguishing between specific and general mandates).

[8] Essentially, the Cristobals frame Bottomless Pit's motion for additional fact-finding as if it were barred by the law of the case doctrine. *See* Appellant's Br. at 22-23 (asserting "Bottomless Pit did not make its waiver argument during the appeal in [*Cristobal III*], and only raised it for [sic] its petition for re-hearing and on remand to the trial court."). The law of the case doctrine is distinct from, but related to, the mandate rule. *See People v. Tedtaotao*, 2017 Guam 12 ¶ 9.

> Under [the] law of the case doctrine, a legal decision made at one stage of litigation, unchallenged in a subsequent appeal when the opportunity to do so existed, becomes the law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time.

Williamsburg Wax Museum, Inc. v. Historic Figures, Inc., 810 F.2d 243, 250 (D.C. Cir. 1987); *see also Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co.*, 510 F.3d 474, 481 (4th Cir. 2007) ("The mandate rule is a specific application of the law of the case doctrine. The rule 'forecloses litigation of issues decided by the [trial] court but foregone on appeal or otherwise

waived . . . .'" (citations omitted)); *United States v. Bell*, 5 F.3d 64, 66 (4th Cir. 1993) ("[The mandate rule] forecloses relitigation of issues expressly or impliedly decided by the appellate court.").

[9] The fatal flaw in the Cristobals' argument is that, until our holding in *Cristobal III*, there was no legal decision that the occurrence of the Closing Date operated as a condition precedent to Section Seven. 2016 Guam 27 ¶¶ 25-26. *Cristobal III* itself expressly noted that the question was still open. *Id.* ¶¶ 26, 41. By necessity, our remand required additional fact-finding. The Superior Court did not violate its mandate.

B. The Superior Court Did Not Err in Finding the Cristobals Prevented and Waived the Condition Precedent to Activating Section Seven of the Settlement Agreement

1. The Cristobals prevented the occurrence of map recordation

[10] The Cristobals argue that we should reverse the Superior Court's finding that they had prevented and waived the recordation of a subdivision map as a condition precedent. Appellant's Br. at 24-32; Reply Br. at 11-16. Even though a finding of *either* waiver *or* prevention is independently sufficient to excuse map recordation as a condition, *see, e.g.*, *Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.*, 180 Cal. Rptr. 3d 683, 694-98 (Ct. App. 2014) (analyzing waiver and prevention separately), here the trial court's analysis oscillates between these related concepts without clearly delineating their contours, *see* Record on Appeal ("RA"), tab 464 at 5-6 (Dec. & Order, Nov. 1, 2017). Because we find the Superior Court did not clearly err in finding the Cristobals *prevented* the occurrence of the condition, we need not reach the distinct concept of waiver.

[11] "[T]he fundamental goal of contract interpretation is to give effect to the mutual intent of the parties as it existed at the time of contracting." *Pauma Band of Luiseno Mission Indians of*

Pauma & Yuima Reservation v. California, 813 F.3d 1155, 1165 (9th Cir. 2015) (alteration in original) (emphasis omitted) (quoting *U.S. Cellular Inv. Co. v. GTE Mobilnet, Inc.*, 281 F.3d 929, 934 (9th Cir. 2002)). It is a fundamental contractual principle that a party who prevents the fulfillment of a condition may not take advantage of this act, therefore excusing the condition. *See, e.g.*, *Moore Bros. Co. v. Brown & Root, Inc.*, 207 F.3d 717, 725 (4th Cir. 2000) ("The prevention doctrine is a generally recognized principle of contract law according to which if a promisor prevents or hinders fulfillment of a condition to his performance, the condition may be waived or excused."); *Bradford Dyeing Ass'n v. J. Stog Tech GmbH*, 765 A.2d 1226, 1237-38 (R.I. 2001) ("It is further both elementary as well as fundamental contract law that if one party to the contract prevents the happening or performance of a condition precedent that is part of the contract, that action eliminates the condition precedent."). *See generally* 17B C.J.S. *Contracts* § 703 (2018) ("The conduct of a party which prevents or dispenses with performance by the adverse party is equivalent to a waiver of the right to require performance."); 17B C.J.S. *Contracts* § 704 (2018) ("Each party to a contract implicitly agrees not to prevent, or to do anything to prevent, the other party from performing, not to hinder, impede, obstruct, or delay him or her in performing, or in discharging his or her contractual obligations, not to make his or her performance more burdensome or more costly, and not to render performance impossible by any act of his or her own." (footnotes omitted)). Under the doctrine of prevention, a "condition precedent is deemed excused when a promisor hinders or precludes fulfillment of a condition and that hindrance or preclusion contributes materially to the nonoccurrence of the condition." *Ne. Drilling, Inc. v. Inner Space Servs., Inc.*, 243 F.3d 25, 40 (1st Cir. 2001) (citing Restatement (Second) of Contracts § 245 (1981)).

[12] Here, we find nothing in the Superior Court's review of the record—and its ultimate conclusion—that gives us a "definite and firm conviction that a mistake has been committed." *Guam Resorts*, 2013 Guam 18 ¶ 33 (quoting *In re Guardianship of Moylan*, 2011 Guam 16 ¶ 12); *see also* RA, tab 459 at Exs. 1-4 (Mot. for Finding, May 26, 2017) (documentation reflecting Bottomless Pit's attempts to effectuate map recordation); RA, tab 453 at 24:22-23; 25:21-24; 33:8-19 (Tr. re OSC Hr'g, May 22, 2015) (testimony that Section Seven activates if a sale under Sections Two and Three of Settlement Agreement did not occur, as is the case). On the facts of this case, we are not persuaded that the Superior Court clearly erred when it concluded that the Cristobals' ongoing failure to sign the maps proposed by Bottomless Pit amounted to preventing map recordation. Moreover, this failure to execute a subdivision map contributed materially to the nonoccurrence of the condition because a map cannot be recorded without the Cristobals' consent. *See Ne. Drilling*, 243 F.3d at 40.

[13] In addition, if we were to adopt the Cristobals' reasoning, then the untenable implication is that Sections Three *and* Seven would never apply for so long as the Cristobals unilaterally continued to refuse to record a map. *See* Appellant's Br. at 29-32; Reply Br. at 11-16. Section Two of the Settlement Agreement contemplates that the sale of a portion or all of a particular lot was necessary for Bottomless Pit to fund the settlement. RA, tab 162, Ex. 1 at § 2.2 (Stip. & Order for Settlement & Compromise of Claims, Mar. 14, 1996). Yet, the time period for the initial land sale contemplated under Sections Two and Three has *already expired*, a fact not disputed on appeal.[3] *See id.* §§ 2.2, 3.1 (contemplating Bottomless Pit would enter into a land

[3] The Cristobals' assertion that "the alleged failure to give these assurances [to record a subdivision map] did not completely foreclose or substantially hinder Bottomless Pit's ability to obtain a buyer and effectuate a sale in accordance with Sections Two and Three of the Settlement Agreement," Appellant's Br. at 27-28, is disingenuous because the time period for a sale under Sections Two and Three has already expired, rendering any sale pursuant to those deadlines impossible anyway—a fact the Cristobals implicitly concede. *See* RA, tab 162, Ex. 1 at §§ 2, 3

sale to fund settlement amounts within 90 days from execution of Settlement Agreement, and then close within 90 days from recording map); *see also* RA, tab 453 at 24:19-23, 25:21-24, 28:13-17, 34:9-16 (Tr. re OSC Hr'g) (testimony of same).

[14] Hence, Section Seven is now the operative provision that allows the parties to effectuate the originally intended settlement and extinguishment of claims. Paragraph Two of Section Seven expressly states that "[i]f an Agreement for the sale of [the subject lot] is not entered into between [Bottomless] Pit and a prospective buyer within twelve (12) months of the execution of this Agreement," then Bottomless Pit would release and quitclaim specified parcels to the Cristobals.[4] RA, tab 162, Ex. 1 at § 7 ¶ 2 (Stip. & Order for Settlement & Compromise of Claims). Paragraph Three of Section Seven similarly contemplates that "the balance due from Coral Pit to [the Cristobals] shall be extinguished" except for certain amounts owed to the Cristobals in connection with proceeds recovered by Bottomless Pit in a separate action filed by Bottomless Pit against an insurance company. *See id.* § 7 ¶ 3. Therefore, preventing Section Seven from taking effect impedes Bottomless Pit's ability to discharge its obligations under the contract. *See, e.g.*, *Alois v. Waldman*, 149 A.2d 406, 409 (Md. 1959) ("It is well settled that, where cooperation is necessary to the performance of a condition, a duty to cooperate will be implied, and that a party owing such a duty cannot prevail if such failure operates to hinder or prevent performance of the condition." (collecting authorities)). The Cristobals' failure to effectuate Section Seven vitiates the fundamental purpose of the Settlement Agreement as a

(Stip. & Order for Settlement & Compromise of Claims); *see also* Appellant's Br. at 9 (admitting "Section Two . . . obligated [Bottomless Pit] to complete the sale within ninety (90) days of the execution of the agreement . . . [which] expired on May 29, 1996"); RA, tab 453 at 24:22-23; 34:6-35:5 (Tr. re OSC Hr'g) (same).

[4] We recognize that Section Seven's contemplated land partitioning contemplates subdividing the property in a manner that may be different from that contemplated under Section Two. *Compare* RA, tab 162, Ex. 1 at § 2 (Stip. & Order for Settlement & Compromise of Claims), *with id.* § 7.

whole, a result we are not willing to embrace.[5] *See Pauma Band of Luiseno Mission Indians*, 813 F.3d at 1165.

[15] For the foregoing reasons, the Superior Court did not clearly err in finding that the Cristobals prevented the recordation of a subdivision map, thus excusing map recordation and the occurrence of the Closing Date as a condition precedent to the activation of Section Seven. Because we affirm the Superior Court's finding of prevention, we need not reach the theory of equitable estoppel advanced by Bottomless Pit.

2. The Settlement Agreement's continuing waiver provision does not bar the finding that the Cristobals prevented the occurrence of a condition precedent

[16] Section Six of the Settlement Agreement contains the following provision: "A waiver by any party of any provision, covenant, condition, and warranty contained herein shall not be deemed a continuing waiver of the affected right or interest and may be enforced by the affected party at any time thereafter." RA, tab 162, Ex. 1 at § 6.2 (Stip. & Order for Settlement & Compromise of Claims). The Superior Court did not address this non-waiver clause, even though the Cristobals raised it below. *See* RA, tab 461 at 18 (Opp'n to Mot. to Make Finding, May 26, 2017); RA, tab 464 at 1-6 (Dec. & Order). Specifically, the Cristobals argue that even if prior communications between the parties in 1997 and 2009-2010 are construed to be waivers, those waivers cannot be deemed to be ongoing under Section Six, and therefore they can continue to demand performance of any conditions precedent. *See* Appellant's Br. at 32-34. In other words, the Cristobals frame these communications as limited to those specific incidents in

[5] The Cristobals' briefing cites only one case to support their argument that they did not waive the condition precedent, *Dist.-Realty Title Ins. Corp. v. Ensmann*, 767 F.2d 1018 (D.C. Cir. 1985). That case is easily distinguishable; there, the court found that the acts that purportedly gave rise to waiver were in fact consistent with the parties using their *best efforts* to bring about settlement, and "[e]fforts to bring about a condition [precedent] cannot be considered waiver of the condition." *Id.* at 1024. By contrast, the Cristobals' actions in this case are directly inconsistent with an effort to bring about settlement, as well as the conditions precedent to settlement.

time, even though the absence of a recorded map continues to date. *See id.* at 33. We find this characterization overly narrow.

[17] A significant difficulty we have in accepting this characterization is that it wholly disregards the fact that the Superior Court found not only implied waiver, but also the frustration or prevention of a condition. RA, tab 464 at 5-6 (Dec. & Order). While Section Six might have relevance to the issue of an implied waiver, it makes no reference to preventing the occurrence of conditions, and the trial court's finding of prevention is independently sufficient to excuse map recordation as a condition. On appeal, the Cristobals point us to no persuasive authority that supports the proposition that a non-*waiver* clause can be used as a shield against a finding that a party *prevented* the occurrence of a condition. *See* Appellant's Br. at 32-34; Reply Br. at 25-26. While we realize that waiver and prevention are related doctrines, they are distinct, *see, e.g.*, *Blumberg Assocs. Worldwide, Inc. v. Brown & Brown of Conn., Inc.*, 84 A.3d 840, 877 (Conn. 2014), and we have found no persuasive authority—and the Cristobals do not cite any—that would support the proposition that, on the facts before us, the non-waiver clause specifically bars the application of the prevention doctrine. To the contrary, because the "rule that a party may not prevent or hinder the occurrence of a contract condition is a specific application of the covenant of good faith and fair dealing," *see id.* at 876, we are especially wary of construing Section Six so broadly that it relieves the Cristobals from the duty of good faith and fair dealing implicit in the contract as a whole. This implicit duty includes not frustrating Bottomless Pit's attempts to discharge its obligations under Section Seven, which is now, effectively, the only operative provision that would allow extinguishment of the pertinent claims. In this respect we find ourselves in agreement with Justice Cardozo's recognition that "[h]e who prevents a thing from being done may not avail himself of the nonperformance, which he has, himself,

occasioned," because we are dealing with the foundational principle—which underlies the concepts of both waiver and prevention—that "no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong." *Imperator Realty Co. v. Tull*, 127 N.E. 263, 266 (N.Y. 1920) (Cardozo, J., concurring) (quoting *Dolan v. Rodgers*, 44 N.E. 167, 167 (N.Y. 1896)) (citing *Riggs v. Palmer*, 22 N.E. 185, 190 (N.Y. 1889)).

[18] Finally, basic contractual principles also persuade us that the non-waiver clause in Section Six of the Settlement Agreement should not be elevated to such a degree that it would frustrate the purpose of Section Seven, which, as noted above, is now the operative provision governing the settlement and extinguishment of claims. The Cristobals have not persuaded us that the non-waiver clause—which makes no mention of conduct that *hinders* a condition—can legitimately be used to shield conduct that frustrates the intended purpose of the contract as a whole. *See, e.g.*, *HRC Guam Co. v. Bayview II L.L.C.*, 2017 Guam 25 ¶ 60 (stating that we avoid unreasonable interpretations of a contract). Moreover, an "interpretation which gives effect to all provisions of the contract is preferred to one which renders part of the writing superfluous, useless or inexplicable." *Pauma Band of Luiseno Mission Indians*, 813 F.3d at 1171 (quoting 11 Williston on Contracts § 32:5 (4th ed. 2015)); *see also* 18 GCA § 87107 (2005); 18 GCA § 87118 (2005). If we adopted the Cristobals' expansive reading of Section Six—*viz.* as if it also applied to shield conduct that frustrated the purpose of the contract—then the intention of Section Seven, and the contract as a whole, would be undermined, if not nullified altogether. Therefore, we decline to find that Section Six was intended to include within its scope the kind of particular conduct at issue here, namely the finding that the Cristobals prevented map recordation.

V. CONCLUSION

[19] For the foregoing reasons, we **AFFIRM** the Superior Court's Decision and Order dated November 1, 2017.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice