



**Filed**

Supreme Court of Guam, Clerk of Court

**IN THE SUPREME COURT OF GUAM**

**ESTATE OF GLEN CRUZ JR., SONIA K. CRUZ, and TANYA CRUZ,**  
Plaintiffs-Appellants,

**v.**

**DETRY CORPORATION, CENTURY INSURANCE COMPANY (GUAM)  
LIMITED, and DOES 1-5,**  
Defendants-Appellees.

Supreme Court Case No. CVA22-011  
Superior Court Case No. CV0696-21

**OPINION**

**Cite as: 2023 Guam 14**

Appeal from the Superior Court of Guam  
Submitted on the briefs on June 6, 2023  
Hagåtña, Guam

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

**MARAMAN, J.:**

[1] Plaintiffs-Appellants Estate of Glen Thomas Cruz Jr., Sonia K. Cruz, and Tanya Cruz (“the Cruzes”) appeal the Superior Court’s order granting summary judgment. Without reaching the merits of the Cruzes’ arguments or the trial court’s reasoning, we affirm on procedural grounds.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[2] Glen Thomas Cruz Jr. (“Glen”) died on a work trip while riding as a passenger in a work vehicle. At the time of his death, Glen was working for Defendant-Appellee Detry Corporation (“Detry”).<sup>1</sup>

[3] The Cruzes filed a complaint in the Superior Court, claiming damages from the death of Glen. On the same day, the Cruzes also filed a claim for workers’ compensation with the Worker’s Compensation Commission.

[4] Detry filed an answer to the complaint and later moved for summary judgment. Detry’s supporting memorandum, accompanied by three declarations, argued Glen was an employee of Detry subject to the exclusive remedy of workers’ compensation as provided under 22 GCA § 9104. Record on Appeal (“RA”), tab 9 at 2-4 (Mem. Supp. Mot. Summ. J., Nov. 30, 2021); RA, tab 12 (Decl. Leilanie Deliguin, Nov. 30, 2021); RA, tab 13 (Decl. Tim Roberts, Nov. 30, 2021); RA, tab 14 (Decl. Nuboko S. Miranda, Nov. 30, 2021).

[5] The Cruzes opposed the motion for summary judgment, arguing summary judgment was premature because there was a genuine issue of material fact and that “Plaintiffs must be afforded the opportunity to conduct discovery.” RA, tab 22 at 3-4 (Opp’n Mot. Summ. J., Jan. 10, 2022).

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<sup>1</sup> Detry and Century Insurance Company (Guam) Limited Corporation are the Defendants-Appellees in the instant case and filed their documents together. For simplicity, we refer to them collectively as “Detry.”

The Cruzes argued Glen may not have been considered an employee under 22 GCA § 9103(i), and “[a] genuine issue of material fact exists” because “there is no evidence presented that the decedent was not purely a casual employee.” *Id.* Despite stating a need for discovery and the desire to “have the opportunity to present evidence,” the Cruzes did not reference or present evidence under former Guam Rule of Civil Procedure (“GRCP”) 56(e).<sup>2</sup> *Id.* at 4. They also did not file affidavits stating why they could not yet present evidence under GRCP 56(f) (2007). Instead, the bulk of their legal argument outlined statutory interpretations and the standards of GRCP 56(c) (2007).

[6] Detry filed their reply, arguing that because the Cruzes had not produced probative evidence that Glen *was* a casual employee, they had failed to meet their burden in opposing summary judgment, and the motion should be granted.

[7] The Cruzes untimely filed the declaration of Erika M. Alford, Special Administrator for the Estate of Glen Cruz, Jr., to support their opposition. RA, tab 27 (Decl. Erika M. Alford, Apr. 1, 2022).<sup>3</sup> Her declaration did not refer to the need for discovery or what specific facts discovery would reveal. Perhaps most pertinent to the Cruzes’ argument that Glen’s employment status was disputed is her statement that “Detry knew that Glen was not an employee of Detry in August 2020 because the company gave him a W-4 form to submit which he did not do.” *Id.* at 2.

[8] Four months after the motion for summary judgment was filed, the Superior Court issued a Decision and Order granting summary judgment. Considering the substantive arguments made, the Superior Court found that Glen qualified as an “‘employee’ as a matter of law pursuant to 22

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<sup>2</sup> GRCP 56 was updated on July 18, 2022. *See Re: Amendments to the Guam Rules of Civil Procedure and Local Rules of the Superior Court for Civil Proceedings*, PRM06-006 (Promulgation Order No. 06-006-18-01, July 18, 2022). Prior to the 2022 update, the GRCP in effect was adopted by PRM06-006-01 (May 3, 2007). Because all relevant judgments and filings in this case occurred before the 2022 updates to Rule 56, all references to the GRCP or “Rule(s)” in this opinion will refer to the former GRCP (2007), unless otherwise indicated with a “(2022)” parenthetical.

<sup>3</sup> Detry did not object to the late filed declaration, and the court exercised its discretion to consider it. RA, tab 30 at 3 n.1 (Dec. & Order).

GCA § 9103(i),” and workers’ compensation was the “exclusive remedy to recover for any liability of Detry.” RA, tab 30 at 10 (Dec. & Order, July 5, 2022).

[9] In considering whether summary judgment was appropriate, the trial court focused on GRCP 56(c), directing the trial court to grant a motion if all filed documents “show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” GRCP 56(c) (2007); *see also* RA, tab 30 at 3 (Dec. & Order).<sup>4</sup> The court noted that the Cruzes repeatedly argued that Detry did not provide evidence showing Glen was not a casual employee, but it was the Cruzes’ burden to provide probative evidence. RA, tab 30 at 6 (Dec. & Order). As the Cruzes had not alleged facts to support the assertion Glen was a casual employee, identified which facts put forward by Detry were in dispute, nor correctly applied Guam’s law, the trial court found no issue of material fact in dispute.

[10] The Cruzes timely appealed. In their opening brief, the Cruzes state they “present a single issue on appeal: whether the trial court committed reversible error in granting summary judgment in Appellees [sic] before discovery could be conducted.” Appellants’ Br. at 5 (Dec. 27, 2022).<sup>5</sup>

[11] Detry notes that in the four months after the motion was filed, the Cruzes did not respond to suggest they required further discovery. Appellees’ Br. at 4 (Jan. 19, 2023). Additionally, Detry argues their motion was not premature under GRCP 56(b) (2022), that the Cruzes did not follow

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<sup>4</sup> The judge also denied a GRCP 11 motion, finding the Cruzes were not malicious in their filings; this denial was not appealed.

<sup>5</sup> In their Statement of the Issues, the Cruzes submitted:

1. Whether the lower court committed reversible error in granting summary judgment without affording Appellants leave to amend their complaint.
2. Whether the lower court committed reversible error in granting summary [sic] Appellees’ motion for summary judgment.

Statement of Issues (Aug. 26, 2022). Detry’s opposing brief contends that due to abandonment, the only issue for appeal is whether the trial court erred in granting summary judgment before the Cruzes conducted discovery. Appellee’s Br. at 1 (Jan. 19, 2023). We agree and address only the issue raised in the Cruzes’ opening brief. *See People v. Kitano*, 2011 Guam 11 ¶ 54; *see also People v. Quinata*, 1999 Guam 6 ¶ 26.

GRCP 56(d) (2022) (updated to replace former GRCP 56(f) (2007)), and that the trial court properly granted summary judgment.<sup>6</sup> *Id.* at 5.

## II. JURISDICTION

[12] This court has jurisdiction over appeals from a final judgment entered in the Superior Court under 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 118-22 (2023)) and 7 GCA §§ 3107(b) and 3108(a) (2005).

## III. STANDARD OF REVIEW

[13] This court reviews a grant of summary judgment *de novo*. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2020 Guam 20 ¶ 35.

[14] “In analyzing whether a claim is ripe for summary judgment, a [trial] court has discretion to determine whether the parties have had adequate time for discovery, and that determination is reviewed for abuse of discretion.” *Stanback v. Best Diversified Prods., Inc.*, 180 F.3d 903, 910 (8th Cir. 1999); *see also Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006).

## IV. ANALYSIS

### A. The Former Rule 56 Is the Applicable Authority

[15] GRCP 56 was updated by a Promulgation Order on July 18, 2022. *See Re: Amendments to the Guam Rules of Civil Procedure and Local Rules of the Superior Court for Civil Proceedings*, PRM06-006 (Promulgation Order No. 06-006-18-01, July 18, 2022). However, all filings and judgments in this case occurred before this update took effect.<sup>7</sup> Thus, the former GRCP 56 (2007)

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<sup>6</sup> Although Detry incorrectly referenced the updated GRCP 56 (2022), this court still considers their arguments and applies the applicable rules from GRCP (2007) where possible.

<sup>7</sup> Promulgation Order No. 06-006-18-01 went into effect on August 1, 2022.

is the relevant authority for our review, and all references to “Rule(s)” or GRCP in this opinion are to this former version, unless otherwise indicated. *See supra* note 1.

[16] As GRCP 56 was drawn directly from the former Federal Rule of Civil Procedure (“FRCP”) 56, interpretations of the former FRCP 56 are persuasive in our interpretation of GRCP 56. *See People v. Quitugua*, 2009 Guam 10 ¶ 10.

**B. The Trial Court Did Not Err When It Considered Detry’s Motion for Summary Judgment before the Cruzes Began Discovery**

[17] We first address the Cruzes’ argument that the trial court erred in entertaining the motion for summary judgment before they began discovery. We find it did not. When a defending party moves for summary judgment, they may do so “at any time, . . . with or without supporting affidavits for a summary judgment in the party’s favor as to all or any part thereof.” GRCP 56(b) (2007). “[I]t is well-established that a motion for summary judgment may be filed prior to discovery. [Former] Rule 56(b) allows a defendant to file the motion at any time, so long as the non-moving party has had sufficient time to engage in discovery.” *Jefferson v. Chattanooga Publ’g Co.*, 375 F.3d 461, 463 (6th Cir. 2004) (rejecting plaintiff’s argument that FRCP summary judgment motion was improperly filed before discovery when plaintiff did not engage in discovery during six-month period after defendant’s answer was filed).

[18] We are not persuaded by the Cruzes’ argument that “[s]ummary judgment is inappropriate before discovery has begun.” Appellant’s Br. at 8. GRCP 56(b) permitted Detry, as the defending parties, to move for summary judgment “at any time . . . with or without supporting affidavits.” GRCP 56(b) (2007). On November 30, 2021, Detry moved for summary judgment with declarations. Although Detry’s motion was filed only one month after their answer to the Cruzes’ complaint, the hearing on the motion did not occur until April 4, 2022—meaning the Cruzes would

have been on notice for over four months after the motion was filed. During that four-month period, the Cruzes did not engage in discovery. *See* Appellee’s Br. at 4, 11.

[19] Like the Sixth Circuit’s finding that six months is “sufficient time to engage in discovery,” *Jefferson*, 375 F.3d at 463, we find four months to be sufficient for the Cruzes to have at least begun the process of discovery. Thus, GRCP 56(b) permitted Detry to file for summary judgment before the commencement of discovery.

**C. We Affirm the Trial Court’s Entry of Summary Judgment on GRCP 56 Procedural Grounds**

[20] Having decided Detry could file for summary judgment before the commencement of discovery, we turn next to whether the trial court could grant summary judgment before the Cruzes engaged in discovery. We decline to reach the merits of the parties’ arguments in the trial court or the trial court’s reasoning, and instead affirm the trial court’s entry of summary judgment on procedural grounds.

[21] This court “may affirm the judgment of a lower court on any ground supported by the record,” *Cesar ex rel. Cesar v. QBE Ins. (Int’l), Ltd.*, 2001 Guam 6 ¶ 8, “without touching on the substance of the trial court’s reasoning,” *Kelley v. Kelley*, 2016 Guam 23 ¶ 13.

[22] We ground our decision to affirm in the Cruzes’ failure to properly follow the procedures required by GRCP 56(e) or (f). In its granting of summary judgment, the trial court focused on a substantive analysis under GRCP 56(c), but it could have reached the same conclusion by considering the procedural requirements of GRCP 56(e) or (f). *See* GRCP 56(c) (2007); *see also* RA, tab 30 (Dec. & Order). To preserve the standards of GRCP 56, we focus our review on the Cruzes’ failure to comply with the rule and affirm on procedural grounds.

**1. Because the Cruzes did not follow GRCP 56(e) or (f), the trial court did not abuse its discretion when it granted summary judgment before the Cruzes began discovery.**

[23] Though the trial court referenced the lack of evidence offered by the Cruzes to rebut the motion for summary judgment, it did not connect this to the GRCP 56(e) or (f) deficiencies in the Cruzes' response. *See* RA, tab 30 at 7 (Dec. & Order).

[24] After a motion for summary judgment is made, GRCP 56(e), as applicable at the relevant time, required the adverse party to do more than rely on the allegations in its complaint:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, *must set forth specific facts showing that there is a genuine issue for trial*. If the adverse party *does not so respond, summary judgment, if appropriate, shall be entered* against the adverse party.

GRCP 56(e) (2007) (emphases added). Thus, GRCP 56(e) shifts the burden to the non-movant after a motion for summary judgment. As we have previously stated:

“A movant bears the initial burden to show that undisputed facts in the record support a *prima facie* entitlement to the relief requested.” If the movant satisfies this burden, the burden then shifts to the [non-movant] to show that there exists a material question of fact that would preclude the grant of summary judgment. To avoid a grant of summary judgment in favor of the movant, “the non-movant may not simply deny the allegations to create a factual dispute, but is obligated to set forth specific facts showing there is a genuine issue for trial.”

*DFS*, 2020 Guam 20 ¶ 35 (internal citations omitted). The non-movant must also do more than “simply rely on the allegations in the pleadings.” *Att’y Gen. of Guam v. Perez*, 2008 Guam 16 ¶ 13.

[25] If the non-movant cannot “set forth specific facts showing that there is a genuine issue for trial” as required by former Rule 56(e), he or she must “invoke the protection of [former] Rule 56(f) by explaining why he or she cannot yet present facts to justify his or her opposition.” Peggy J. Anderson, *F.R.C.P. 56(f): Obtaining Additional Discovery Time When Facing Summary*

*Judgment*, 25-JUL Colo. Law. 43, 43, 46 n.5 (1996) (citing *Pasternak v. Lear Petroleum Expl., Inc.*, 790 F.2d 828, 832 (10th Cir. 1986)).

[26] Former GRCP 56(f) and former FRCP 56(f) were substantively identical, stating:

When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party’s opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or may make such other order as is just.

GRCP 56(f) (2007); FRCP 56(f) (2003).<sup>8</sup>

[27] The party moving for a continuance under GRCP 56(f) “must show how additional discovery would preclude summary judgment and why a party cannot immediately provide ‘specific facts’ demonstrating a genuine issue of material fact.” *E.M. Chen & Assocs., Inc. v. Lu Island Dev., Inc.*, DCA No. CV-93-00017A, 1993 WL 469348, at \*5 (D. Guam App. Div. Oct. 21, 1993) (quoting *Mackey v. Pioneer Nat’l Bank*, 867 F.2d 520, 524 (9th Cir. 1989)). A party may make a showing through affidavits. GRCP 56(c) (2007). “References in memoranda and declarations to a need for discovery do not qualify as motions under Rule 56(f).” *Barona Grp. of Capitan Grande Band of Mission Indians v. Am. Mgmt. & Amusement, Inc.*, 840 F.2d 1394, 1400 (9th Cir. 1987) (citations omitted).

[28] While a proper Rule 56(f) filing “invokes the court’s discretion in ordering a continuance,” a party’s failure to file an affidavit under Rule 56(f) invokes the court’s discretion in granting summary judgment. *Pasternak*, 790 F.2d at 832-33 (“Where a party opposing summary judgment and seeking a continuance pending completion of discovery fails to take advantage of the shelter

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<sup>8</sup> The only difference between GRCP 56(f) (2007) and FRCP 56(f) (2003) is a single comma in the last sentence between “discovery to be had” and “or may make such other order.” GRCP (2007) had this comma, while FRCP (2003) did not.

provided by Rule 56(f) by filing an affidavit, there is no abuse of discretion in granting summary judgment if it is otherwise appropriate.”).

[29] In *Tatum v. City & County of San Francisco*, though the plaintiff submitted a declaration, it was insufficient under former Rule 56(f) because it “did not identify the specific facts that further discovery would have revealed or explain why those facts would have precluded summary judgment.” 441 F.3d at 1100. The Ninth Circuit determined that “[b]ecause Tatum did not satisfy the requirements of Rule 56(f), the district court did not abuse its discretion by denying her request for a continuance.” *Id.* (“Failure to comply with [the requirements of Rule 56(f)] is a proper ground for denying relief.” (alterations in original) (quoting *United States v. Kitsap Physicians Serv.*, 314 F.3d 995, 1000 (9th Cir. 2002))).

[30] After Detry made and supported their motion for summary judgment, the burden shifted to the Cruzes to set forth specific facts showing there was a genuine issue of material fact. GRCP 56(e) required them to do more than rely on the allegations raised in their complaint, and GRCP 56(f) should have been invoked if they could not yet do this.

[31] The Cruzes argued Glen’s employee status was in dispute—i.e., whether he was a full-time employee or a casual employee. *See* RA, tab 1 at 3 (Compl., Sept. 28, 2021). Detry’s motion for summary judgment provided declarations sufficiently showing Glen was an employee of Detry, subject to workers’ compensation. Rather than providing facts or evidence to show Glen *was not* an employee of Detry subject to workers’ compensation, the Cruzes’ opposition to the motion for summary judgment simply stated, “While there is evidence of compensation, there is no evidence presented that the decedent was not purely a casual employee.” RA, tab 22 at 4 (Opp’n Mot. Summ. J.). Their opposition simply restated the allegations raised in the complaint and

misinterpreted the burden of proof as being Detry's instead of their own. As they did not set forth evidence on any specific facts in dispute, the Cruzes failed to carry their burden under GRCP 56(e).

[32] The Cruzes also failed to properly invoke the protections of GRCP 56(f). Their opposition referred only to the need for discovery and was insufficient to delay the entry of summary judgment. *See id.* At 4. The Cruzes were required to file an affidavit outlining the *facts to be uncovered* in discovery but did not do so. *See* GRCP 56(f) (2007). Instead, they suggested Detry should have to prove Glen was not purely a casual employee. RA, tab 22 at 4 (Opp'n Mot. Summ. J.). Because the Cruzes relied on the allegations in their pleadings, in direct conflict with the requirements of former GRCP 56(e), did not file an affidavit under former GRCP 56(f), and simply referenced a need for discovery in their opposition, the trial court did not abuse its discretion when it entered summary judgment.

[33] It is too late for the Cruzes to invoke GRCP 56(f). GRCP 56(f) relief cannot be sought for the first time on appeal. *Pangilinan v. Palting*, DCA Civ. No. 86-0027A, 1987 WL 109399, at \*3 (D. Guam App. Div. Jan. 29, 1987). In *Pangilinan*, the District Court of Guam Appellate Division affirmed an order of summary judgment after a party failed to conduct discovery, failed to request GRCP 56(f) relief, and in doing so failed to make a proper motion or file affidavits. *Id.*, at \*3. We find this analysis persuasive and apply it here.

[34] Though the Cruzes do not mention GRCP 56(f) anywhere in their trial or appellate court filings (even after it was raised by Detry in their appellate brief), they are essentially seeking to use the protection of GRCP 56(f) for the first time on appeal, which they are barred from doing.

[35] The Cruzes' failure to comply with GRCP 56(e) or invoke GRCP 56(f) means their opposition was insufficient to delay or prevent a grant of summary judgment. Summary judgment, therefore, was properly granted, and the trial court did not abuse its discretion in doing so.

**V. CONCLUSION**

[36] GRCP 56(b) (2007) permitted Detry to file for summary judgment before discovery, and the four-month window between filing the motion and the trial court’s decision provided enough time for the Cruzes to gather and present evidence under GRCP 56(e) or to seek GRCP 56(f) protection. The record supports affirming on procedural grounds, and we find the trial court did not abuse its discretion when it entered summary judgment for Detry before discovery occurred. The judgment of the trial court is **AFFIRMED**.

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/s/  
F. PHILIP CARBULLIDO  
Associate Justice

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/s/  
KATHERINE A. MARAMAN  
Associate Justice

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/s/  
ROBERT J. TORRES  
Chief Justice