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CLERK OF COURT

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IN THE SUPERIOR COURT OF GUAM

MSU GUAM LLC,

Plaintiff,

v.

WANG-CHIEH "RONALD" SU and
MANHATTAN FINANCIAL LLC,

Defendants.

CIVIL CASE NO. CV0077-24

DECISION AND ORDER

*(Defendants' Motion for Attorney's Fees and
Costs)*

INTRODUCTION

This matter came before the Honorable Arthur R. Barcinas on September 8, 2026, upon Defendants' Motion for Attorney's Fees and Costs. Defendants Wang-Chieh "Ronald" Su ("Ronald") and Manhattan Financial LLC ("Manhattan" and "Defendants" collectively) commenced this motion. The Defendants represented by Attorney Daniel J. Berman. Plaintiff MSU Guam LLC ("MSU" or "Plaintiff") is represented by Attorney Charles H. McDonald II.

Having reviewed the briefings filed by both parties, the Court issues the following Decision and Order.

BACKGROUND

This matter involves underlying allegations of fraud. MSU commenced this suit, alleging that Manhattan had engaged in misconduct surrounding a commercial loan and foreclosure involving MSU and real property in Guam. Specifically, MSU obtained its first loan from Community First Guam Federal Credit Union ("Community First"). Plaintiff had renewed and extended its loan over the years since they first obtained it.

1 In 2017, the Defendants registered as Manhattan Financial LLC and purchased the note
2 and mortgage from Community First. Community First then assigned Manhattan as the new
3 mortgagee of Plaintiffs' note and mortgage.

4 The Plaintiffs asserted in their complaint that the Defendant had fraudulently concealed
5 their identity as Ronald Su, the brother of David Su. David Su is the sole owner of MSU. The
6 Defendants' alleged misrepresentation caused the Plaintiffs to sell the property at a "discounted
7 price".

8 On October 2, 2025, the Defendants moved for Summary Judgment. After hearing
9 arguments from the parties, this Court issued its Decision and Order granting Summary Judgment
10 in favor of the Defendants on June 5, 2026.

11 The Defendant then commenced this Motion for Award of Attorneys' Fees and Expenses.
12 The Plaintiff filed their Opposition to the Defendants' Motion and the Defendant thereafter filed
13 their Reply in support. The Court heard oral arguments on the motion on September 8, 2026.

14 After considering the arguments of the parties, the Court took this matter under
15 advisement.

16 DISCUSSION

17 I. The American Rule

18 Under Guam Rules of Civil Procedure Rule 52(d)(2)(A), claims for attorneys' fees and
19 related nontaxable expenses shall be made by motion unless the substantive law governing the
20 action provides for the recovery of such fees as an element of damages to be proved at trial.
21 GRCP Rule 52(d)(2)(A). In cases involving the award of attorney's fees, Guam follows the
22 American Rule. *See Fleming v. Quigley*, 2003 Guam 4 ¶ 7. The American Rule dictates that
23 parties will bear their own litigation expenses, including attorney's fees. *Id.*

24 There are, however, several recognized exceptions to the American Rule. These
25 exceptions include where attorney's fees are: (1) authorized by statute, (2) authorized by contract,
26 or (3) allowed in judicially established equitable circumstances. *Id.*

27 The Defendants cite neither any statute nor circumstances which would indicate that the
28 Court should depart from the American Rule in this case and grant an award of attorneys' fees.

1 That leaves the Court to consider solely whether an exception to the American Rule would
2 be authorized by the contract formed between the parties. The Court finds that the language of
3 the contract would not authorize the Defendants' requested award.

4 **II. The language of the Mortgage Documents does not authorize this award for**
5 **attorneys' fees**

6 The Mortgage executed between the Plaintiff and Community First in 2011 contained the
7 following attorney's fee provision:

8 Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of
9 the terms of this Mortgage, Lender shall be entitled to recover such sum as the court
10 may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or
11 not any court action is involved, and to the extent not prohibited by law, all
12 reasonable expenses Lender incurs that in Lender's opinion are necessary at any
13 time for the protection of its interest or the enforcement of its rights shall become a
14 part of the indebtedness payable on demand and shall bear interest at the Note rate
15 from the date of the expenditure until repaid.

16 Decl. of Gerard A. Cruz, Ex. A, Mortgage at p. 6.

17 Upon assignment of the mortgage to Manhattan, the Defendant took on Community First's
18 place as Lender of the mortgage. This is a crucial detail.

19 The language of the agreement clearly states that the attorneys' fee provision of the
20 mortgage shall only trigger "if Lender institutes any suit or action to enforce any of the terms of
21 this mortgage." This matter was instituted by the *mortgagor* based on their allegations of fraud.
22 Manhattan responded as an assignee of Community First's initial interest as the lending
23 mortgagee.

24 Read plainly, the language of the mortgage would seem to indicate that the Defendant
25 cannot recover attorneys' fees in this matter, as they were not the ones who instituted this action.

26 The Defendants argue that this provision of the mortgage should be read to be award
27 attorneys' fees to the prevailing party in the event of a dispute concerning the terms of the Note
28 or any of the settlement documents executed by the parties. The Defendant also refers to the
language of the Promissory Note, which also contains a provision for attorneys' fees. The
Promissory Note says:

Attorneys' Fees; Expenses. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including without limitation all reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

Decl. of Gerard A. Cruz, Ex. 1, Promissory Note at p. 2.

Defendants' characterization of the attorneys' fee provision would have the Court interpret this language to mean that the Mortgage and Promissory Note intended to award any prevailing party attorneys' fees in an action involving a dispute centered on the mortgage and promissory note. The Court does not find that the contract language could be construed in such a manner. Further, the Court does not find that ambiguity exists to warrant such a reading.

The attorneys' fees of the Promissory Note does not include the same language which limits an attorneys' fee award upon the commencement of the action by the lender. It does, however, require the Borrower to pay the Lender any amount expended to collect the note, as well as attorneys' fees expended for bankruptcy proceedings. While not explicit as the language found in the mortgage, this language seems to similarly indicate that the Lender is entitled to expenses incurred in its enforcement of the Promissory Note.

The Defendants refer to a holding by the Guam Supreme Court in *Mobil Oil Guam, Inc. v. Tendido*, 2004 Guam 7, which they suggest holds that the prevailing party should be entitled to an award of attorneys' fees because the lease was the source of the underlying action and central to the controversy between the parties.

Defendants seem to miss a key aspect to the holding of *Mobil Oil*, however. The Supreme Court awarded attorney's fees because an exception to the American Rule was allowed by the contract formed by the parties. The language of the contract provided that "in the event of judicial proceedings by *either* parties against the other to enforce any of its rights hereunder, the party in default will pay the other party's reasonable attorney's fees and cost of suit." *Mobil Oil Guam, Inc.*, 2004 Guam 7 ¶ 43.

1 The Supreme Court found that such contractual language authorized the award of the
2 attorneys' fees in favor of the party which was found to be in default.

3 This case is also distinct from the Supreme Court's holding in *Waathdad v. Cyfred*, 2024
4 Guam 6, where the Supreme Court held that attorney's fees could be awarded to the lender even
5 though the lender did not institute the action. In *Cyfred*, the language of the promissory note
6 between the parties read: "Maker agrees to pay all costs of collection and reasonable attorney's
7 fees incurred by the Holder in enforcing this Note ... upon the occurrence of any event of
8 default..." *Id.* at ¶ 25.

9 In *Cyfred*, the maker of the promissory note instituted the action. That action, however,
10 sought an injunction against the holding defendant because it had begun enforcing its notes and
11 mortgages through foreclosure of the plaintiff-makers' lots. *Id.* at ¶ 25-26. The Supreme Court
12 found that attorneys' fees were warranted in these conditions because, although the holders did
13 not initiate the action, the language of the promissory note conditioned an award of attorneys'
14 fees upon the holder's enforcement of the note.

15 In all such cases, the Court is bound by the language of the agreements of the parties. Such
16 language would indicate that, because the Lender did not institute this action or otherwise pursue
17 enforcement of the terms of their agreements, the Defendant is not entitled to an award for
18 Attorney's fees.

19 **CONCLUSION**

20 In light of the reasoning above, Defendant's Motion for Attorney's Fees and Costs is
21 **DENIED.**

22
23 **IT IS SO ORDERED** OCT 23 2026.

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28 **HONORABLE ARTHUR R. BARCINAS**
Judge, Superior Court of Guam