

IN THE SUPREME COURT OF GUAM

GUAM YUN SHAN ENTERPRISES, INC.,)	Supreme Court Case No. CVA97-041
)	Superior Court Case No. CV0817-96
Plaintiff-Appellant,)	
)	
vs.)	OPINION
)	
SHENZHEN DEVELOPMENT BANK, LTD.,)	
)	
Defendant-Appellee.)	
)	
)	

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Appeal from the Superior Court of Guam

Argued and Submitted on 5 May 1998

Hagåtña, Guam

Appearing for the Plaintiff-Appellant:

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BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS, Associate Justice; and HOWARD TRAPP, Associate Justice.

TRAPP, J.:

[1] Guam Yun Shan Enterprises, Inc., (GYS), appeals the superior court's partial summary adjudication dismissing Count II of its Complaint for a Declaratory Judgment and the denial of its Motion for Leave to File an Amended Complaint, certified under Guam R. Civ. P., Rule 54(b)(1996). This court heard argument on the issue of claim finality under Rule 54(b). GYS urges this court to affirm the trial court's certification of these issues as final and appropriate for review under GRCP Rule 54(b). In the alternative, it asks us to accept jurisdiction as an interlocutory matter, under 7 GCA § 3108(b)(1994).

[2] GYS, a Guam corporation, mortgaged its property to Defendant Shenzhen Development Bank, Ltd. (Shenzhen), a corporation of the People's Republic of China (PRC) on 4 May 1993. The mortgage was recorded with the Department of Land Management on 13 July 1993. It secured the indebtedness of Shenzhen Yun Shan Machinery Hire Company, a PRC corporation, to the Defendant Shenzhen. On 11 June 1996, GYS filed a "Complaint for a Declaratory Judgment" in the Superior Court of Guam, which contains three counts. Count II asks to have the mortgage declared null and void on the ground that GYS's consent was obtained through the incarceration and other duress practiced upon its president and majority shareholder, Koon Kwong Chu (Chu), in the PRC. GYS claims that Chu was told that he would be released only if GYS mortgaged its Guam land to secure Shenzhen Yun Shan Machinery Hire Company's indebtedness to Defendant Shenzhen. The mortgage was signed on behalf of GYS by Chu's wife, Wai Ping Shen Chu, on 4 May 1993. Chu

was released from prison two weeks later; his passport was withheld from him until 20 August 1993. On 3 February 1997, Defendant Shenzhen filed its motion for the dismissal of Count II, arguing that the action is one based on fraud and, therefore, barred by the three-year statute of limitations, 7 GCA § 11305(4)(1996). GYS opposed the motion and asked for leave to file an amended complaint. The proposed amended complaint restates the challenged second count as an action for rescission and adds five new counts. The superior court entered a partial judgment dismissing Count II and denied GYS's Motion For Leave To File An Amended Complaint. It also certified the partial summary adjudication and order of denial for immediate appeal under GRCP 54(b).

[3] We do not decide whether this appeal falls within Rule 54(b). Rather, we elect to review this issue as an interlocutory matter under 7 GCA § 3108(b)(1994). Section 3108(b)(1) states, in pertinent part, that the court may view the matter as interlocutory when it will “[M]aterially advance the termination of the litigation or clarify further proceedings therein.” 7 GCA § 3108(b)(1). GYS argues that this court should review the summary judgment dismissal and denial of the motion for leave to amend on principles of fairness and equity. We concur. Review of this matter will serve to advance the termination of the litigation and clarify further proceedings.

[4] Review of a trial court's decision to grant summary judgment is reviewed *de novo*. *Iizuka Corp. v. Kawasho Int'l, Inc.*, 1997 Guam 10, ¶ 7. Summary judgment is proper under Guam R. Civ. P. 56 “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact.” GRCP 56(c). A decision to grant or deny declaratory relief is reviewed *de novo*. *Ablang v. Reno*, 52 F.3d 801, 803 (9th Cir. 1995); *Tashima v. Administrative Office of U.S. Courts*, 967 F.2d 1264, 1273 (9th Cir. 1992).

[5] GYS calls its complaint, “A Complaint for a Declaratory Judgment”. It contains three counts. Count II alleges that the mortgage is void and of no force or effect because it was executed and delivered under duress. The superior court held that Count II is barred by the three (3) year statute of limitations. 7 GCA § 11305 (4). It also found the motion for leave to amend to be futile because duress is the gravamen of GYS’s complaint.

[6] In *Luckenbach S.S. Co. v. United States*, 312 F.2d 545 (2d Cir. 1963), the district court granted defendant’s summary judgment on the ground that plaintiff’s claim was time-barred by the two-year limitation of the Suits in Admiralty Act, 46 U.S.C. § 745. The claim involved \$417,302.13 for “additional charter hire” on certain vessels which were owned by the defendant and chartered by the plaintiff from the period of 1946 to 1951. *Id.* at 547. Plaintiff sought a declaration of non-liability for additional payments which defendant claimed were due. *Id.* at 548. The court of appeals, in reversing and remanding the case, stated:

Limitations statutes do not apply to declaratory judgments as such. Declaratory relief is a mere procedural device by which various types of substantive claims may be vindicated. There are no statutes which provide that declaratory relief will be barred after a certain period of time. Limitations periods are applicable not to the form of relief but to the claim on which the relief is based.

Id.

The *Luckenbach* court further stated:

Non-liability for which plaintiff seeks a declaration is not a “cause of action” within the meaning of the limitations section. Non-liability is the negative of the claim or cause of action with respect to which the declaration is sought. For purposes of the statute of limitations non-liability is inextricably linked with that cause of action. So long as the claim can be made, its negative can be asserted. When the claim itself has been barred, a declaration of non-liability is also barred, except for non-liability which is itself based upon the bar of the limitations period.

Id. at 549.

[7] In the present case, GYS asks for a declaration of non-liability under the mortgage, based on the defense of duress. “The purpose of statutes of limitation is to bar actions, not to suppress or deny matters of defense . . . it is a general rule that such statutes are not applicable to defenses, but apply only where affirmative relief is sought.” (Annotation, 78 ALR 1074 (1932)). The law is well settled that limitations do not normally run against a defense. *Northern Pac. Ry. Co. v. United States*, 277 F.2d 615, 623-624 (10th Cir. 1960). The principle has often been expressed in the figure of speech that the statute is available only as a shield, and not as a sword. *Id.* We believe the same approach may be applied to the case at bar. GYS’s fraud count raises a question of defense to the mortgage rather than affirmative relief, and thus is not barred by the limitations period.

[8] For the foregoing reasons, the decision of the trial court is REVERSED and the case is REMANDED for further proceedings consistent with this opinion.

HOWARD TRAPP
Associate Justice

JANET HEALY WEEKS
Associate Justice

PETER C. SIGUENZA
Chief Justice