IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE DISSOLUTION OF OKA TOWERS CORPORATION,

Petitioner-Appellee,

TRANS PACIFIC EXPORT CO., Claimant-Appellant.

OPINION

Filed: May 2, 2000

Cite as: 2000 Guam 16

Supreme Court Case No. CVA98-022 Superior Court Case No. CV1285-97

Appeal from the Superior Court of Guam Argued and submitted on May 10, 1999 Hagåtña, Guam

Appearing for the Appellant: Steven A. Zamsky, Esq. Zamsky Law Firm Suite 501, Bank of Guam Bldg. 111 Chalan Santo Papa Hagåtña, Guam 96910

Appearing for the Appellee: James T. Mitchell. Esq. Frederick J. Horecky, Esq. on the briefs Law Offices of Horecky & Associates 1st Floor, J. Perez Bldg. 138 Seaton Blvd. Hagåtña, Guam 96910 BEFORE: BENJAMIN J. F. BEFORE: BENJAMIN J. F. CRUZ, Chief Justice; BEFORE: BENJAMIN JOHN A. MANGLONA, Designated Justice.

SIGUENZA, J.:

[1] OkaOka Towers Corporation filed a Petition for the Dissolution of a Corporation.Oka Towers Corporation ExportExport Company entered an appearance and objected to the dissolution on the basis of an outstandingoutstanding claim against the corporation which woutstanding claim against the corporation which CourtCourt of Guam. That matter wasCourt of Guam. That matter was subsCourt of Guam. That matter was su Towers and TransTowers and Trans Pacific appealed thatTowers and Trans Pacific appealed that ruling. In the sanctionssanctions against Trans Pacific for filing a legsanctions against Trans Pacific for filing a legally unrsa awardaward of sanctions. Contrary to theaward of sanctions. Contrary to the lower court, we findaward of sanctior andand objection to dissolution dojection to dissolution was proper; consequently, we reverse the award of and ob

FACTS

[2] On September 22, 1997, Oka TowersOn September 22, 1997, Oka Towers Corporation (hereinafter App forfor Voluntary Dissolution of a Corporation in the Superior Court for Voluntary Dissolution of a Corporation anan amended an amended petition was filed. A Notice by the Clerkan amended petition was filed. A Notice by the andand Order to Show Cause was filed on November 26, 1997.¹ On January 9, 1998, On January 9, 1998, counsel PacificPacific Export Company (hereinafter Appellant) filed an Entry of AppearancePacific Export Company (hereinafter Appellant) filed an Entry of AppearancePacific Export Company (hereinafter Appellant) for the dissolution of Appellee; however, no basis document.

¹ItIt appears thatIt appears that two Amended Notices by Clerk for Voluntary Dissolution were subsequently It appears that two Am 19, 1997, and January 12, 1998.

[3] AtAt the March 10, 1998, Order to Show Cause hearing before Judge Lamorena it was disclosed disclosed that disclosed that another civil case between the parties was before Judge Manibusan, and that di judgment judgment motions were argued the previous week.² Also at the hearing, it was discussed that Appellant s counsel had filed an objection and that there wasAppellant s counsel had filed an objection waswas to be filed in addition thereto. Judge Lamorena continued the hearing until Apwas to be filed in addition thereto. Judge Lamorena continued the hearing until Apwas to be filed in addition thereto. The The Appellant, on the same day, filed its claim and incorporated by reference all documents and the entire record in the above-referenced civil case. *See* Appellee s Excerpts of Record (EOR) 7.

[4] InIn the interim, on March 16, 1998, Judge Manibusan issued a Decision In the interim, on March 16, grantedgranted Appellee s Sumgranted Appellee s Summary Jgranted Appellee s Summary Judgment motion prejudice, prejudice, and assessed sanctions pursuant toprejudice, and assessed sanctions pursuant to Rule 11pr Appellee s EOR 4. Judge LamorenaAppellee s EOR 4. Judge Lamorena transferred the instant dissolu April 7, 1998.

[5] OnOn April 17, 19On April 17, 1998, AppelOn April 17, 1998, Appellee filed a Motion for Award of F Costs. The hearing occurredCosts. The hearing occurred onCosts. The hearing occurred on June 2, 1998, before a that the Appellant sthat the Appellant s objection was timely filed, sanctions were appropriate because it hadth dismisseddismissed the civil case. *See* Transcript, vol. --, Transcript, vol. --, p. 28 Transcript, vol. --, p. 28 (Hearin AttorneysAttorneys Fees and Costs, June 2, 1998). The court alsoAttorneys Fees and Costs, June 2, 1998). The court oror resurrected andor resurrected and some award granted, then Section 5101 of Title 18 of theor resurrected and

²Transpacific Transpacific Export Co. v. Oka Towers Corp., Superior Court Civil Case No. CV 1232-97. We have earlier decideddecided the appeal of this case in 2000 Guamdecided the appeal of this case in 2000 Guam 3 anddecided the appeal of the Appellant and the imposition of sanctions there.

wouldwould provide the means for Appellant to act on itswould provide the means for Appellant to act on its clain MotionMotion for Award of Petitioner s Attorneys Fees and Costs, June 2, 1998). The court issued an Order forfor Paymentfor Payment of Petitioner s Attorneys Fees and Costs on July 30, 1998. *See* Appellant s EOR 4. App courtcourt articulated its findings by stating that Appellant s court articulated its findings by stating that App AppelleeAppellee was entitled to its attorneys fees and costs incurred in defending against a claim that should notnot have been maintained from the outset. *See* Appellant s EOR 4. Appellant s EOR 4. Judgment Appe VoluntaryVoluntary Dissolution of Oka Towers Corporation and Payment ofVoluntary Dissolution of Oka Tower Costs. *See* Appellant s EOR 5.

DISCUSSION

[6] JurisdictionJurisdiction of this court is not disputed and vests pursuant to Title 7 of tJurisdiction of this Annotated sections 3107 and 3108 (1994).

[7] We review orders imposing We review orders imposing RuleWe review orders imposing Rule 11 sanction *Hartmarx Corp.*, 496 U.S. 384, 405, 110 S.Ct. 2447, 2461, 496 U.S. 384, 405, 110 S.Ct. 2447, 2461 (1990). A composing imposing sanctions when imposing sanctions when it imposing sanctions when it bases its decision erroneous assessment of the evidence. *Mark Indus Ltd. v. SeaMark Indus Ltd. v. Sea Captain s Choice, M* 732 (9th Cir. 1995).

[8] Rule 11 of the Guam Rules of Civil Procedure provides, in relevant part:

RuleRule 11. Signing of Pleadings, Motions, And Other Papers; Sanctions. Every

pleading, pleading, motion, or otherpleading, motion, or other paper ofpleading, motion, or other paper of a byby at least one attorney of record in the attorney's individuably at least one attorney of record in the at shallshall be stated. A party whoshall be stated. A party who is shall be stated. A party who is not reprepleading, pleading, motion, or other paper and state the party's address. . .The signature of an attorneyattorney or party cattorney or party constitutes aattorney or party constitutes a certificate by the pleading, pleading, motion, or other paper, that to the best of the signer's knowledge, information, information, and belief formed after reasonable inquiry it is well grounded in fact and isis warranted by existing law or a good faith argument for the extension, modification oror reversal of existing law, and that it is not interposed for any imor reversal of existing law, and tha suchsuch as to harass or to cause unnecessary delay osuch as to harass or to cause unnecessary delay o litigation. . . If a pleading, motion, or other paper is signed in violationlitigation. . . If a pleading, motion, thethe court, upon motion or its own initiative, shall impose the court, upon motion or its own initiative, shall it, it, a represented party, or both, an appropriate sanction, which may include an order toto pay to the other party or pato pay to the other party or parto pay to the other party or parties the am because because of the filing of the pleading, motion, because of the filing of the pleading, motion, or other attorney's fee.

Guam R. Civ. P. 11.

[9] ThisThis rulThis rule was adopted from the corresponding provision of the Federal Rules of CiThis Procedure. *See* Comment to GRCP 11. Rule 11 empowers federal courts to impose sanctions upon

thethe signers of the signers of paper where: (a) the paper is frivolous orthe signers of paper where: (a) the paper is frivolous orthe signers of paper where: (a) the paper is frivolous orthe signers of paper where: (b) the paper is frivolous orthe signers of paper where: (b) the paper is frivolous orthe signers of paper where: (b) the paper is frivolous orthe signers of paper where: (b) the paper is frivolous orthe signers of paper where: (b) the paper is frivolous orthe signers of paper where: (c) the paper is frivolous orthe signers of paper is frively o

TownsendTownsend v. Holman ConsultingTownsend v. Holman Consulting Corp., 929 F. 3d 1358, 1362., 929 F

toto denote a filing that is both baseless and made witto denote a filing that is both baseless and made witho (citation(citation omitted). Lastly, a reasonable inquiry means (citation omitted). Lastly, a reasonable circumstances of a case. *Id.* at 1364 (citing *Cooter & Gell*, 496 U.S. at 402, 110 S.Ct. at 2459).

[10] InIn this case, the trialIn this case, the trial judge awarIn this case, the trial judge awarded sanct unreasonableunreasonable and that Appelleeunreasonable and that Appellee hadunreasonable and that Appellee had not not have been maintained from the outset. We are unsure whot have been maintained from the outset. We are unsure whot have been maintained from the outset. We are unsure whot have been maintained from the outset. We are unsure whot have been maintained from the outset. We are frively imposition of sanctions was because the objection and claim were frively for for some improper purpose, for some improper purpose, or both. for some improper purpose, or both. Under einot have been ordered.

[11] Guam law provides a mechanism for the pursuit of claimsGuam law provides a mechanism for the pursu

itsits corporate existence is terminated.³ We are of the view that We are of the view that it We are of the view that toto seek to protect its interest by filing the objection and claim in the instant mto seek to protect its interest by broughtbrought in good faith.brought in good faith. brought in good faith. Appellant proceeded to properly prosed usingusing the statutory procedure for resolution of claims inusing the statutory procedure for resolution of applicationapplication already contained an averment of the pending civil case between itself and Appellant and ofof an outstanding debt owed to Universe Insurance of an outstanding debt owed to Universe Insurance Underwrit factfact alone does not precludefact alone does not preclude the respective creditor/claimant from filing their object TheThe resolution was filed.⁵ Mo Moreover, Appellee s petition to dissolve came shortly after Appellant had institinstituted its breach of contract and fraud claims. We find nothing frivolous or impropinstitute Appellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of its interests byAppellant s pursuit of some protection of

[12] InIn fact, itIn fact, it appeared that the trial court felt thatIn fact, it appeared that the trial court felt that App and the cand the claim of March 10 was proper. *See* Transcript, vol. --, pp. 20-24 (Hearing on AwardAward of Petitioner s Attorneys Fees and Costs, June 2, 1998). ThAward of Petitioner s Attorneys Fees

³AA corporation A corporation may be voluntarily dissolved by A corporation may be voluntarily dissolved by the Superior C ourt The The application for dissolution must The application for dissolution must be in writing and must set forth The application for dissolution that that dissolution was resolved by the affirmative that dissolution was resolved by the affirmative vote that dissolution was resolved by the ofof stock issued or subscribed. *See* Title 18 GCA § 5104 (1992). Notice for the application of dissolution must Title 18 GCA § 5 published published and the date on which the right of objection to the application mustpublished and the date on which the right of object (1992).(1992). Any person may file objections to the dissolution of the (1992). Any person may file objections to the dissolution of the corp that arises from the application and the objection there to shall be tried by the court. *Id*.

⁴The record indicates that another creditor objected to the Appellee s dissolution, although itThe record indicates that another itsits claim. *See* Transcript, vol. --, p. Transcript, vol. --, p. 29 (Hearing on Motion Transcript, vol. --, p. 29 (Hearing on Motion for Awar 1998).

⁵HadHad the civil case Had the civil case been undecided at the time dissolution was granted, then the court would haveHad the ci to appoint a receiver for lawful distribution to shareholders, creditors or other interested parties. *See* 18 GCA § 5107.

withwith Appellee that anywith Appellee that any action taken by the Appellant after its decision and order grantic judgmentjudgment in the civil case would be frivolous. *See* Transcript, Transcript, vol. --, pp. 24-28 (Hearing on M forfor Award of Petitioner s Attorneys Fees and Costs, June 2, 1998). However, thfor Award of Petitioner s Att indicate that Appellant did anything more in pursuit of the claims in the dissolutindicate that Appellant justified the court s award of sanctions.

[13] TheThe trial court The trial court concluded that Appellant should have withdrawn its claim uponThe trial coof of the Decision and Order on the summary judgment motion of the Decision and Order on the summary judgment motion of the Decision and Order on the summary judgment pursuit of the claim was frivolous. However, bypursuit of the claim was frivolous. However, by its very te aa pleading, a pleading, motion, or other paper that is frivolous or interposed for an improper purpose. *SSeSo Townsend*,, 929 F.3d, 929 F.3d at 1362. We find no infirmity in, 929 F.3d at 1362. We find no infirmity in the Er byby the Appellant and hold that theby the Appellant and hold that the trial court abused its discretion in imposi Appellant for this filing.⁶

CONCLUSION

[14] The The trial court abused The trial court abused its discretion by awarding fees and costs on the basis that T objection and claim were legally unreasonable.

[15] Therefore, the trial court s imposition of sanctions is **REVERSED**.

JOHN A. MANGLONA

PETER C. SIGUENZA

⁶Because Because the lower court relied on no other basis fBecause the lower court relied on no other basis for Because the Appellee s arguments of alternative bases for the lower court s award.

Designated Justice

Associate Justice

BENJAMIN J. F. CRUZ Chief Justice