IN THE SUPREME COURT OF GUAM

CRAFTWORLD INTERIORS, INC.,

Plaintiff-Appellant

vs.

KING ENTERPRISES, INC., Defendant-Appellee.

OPINION

Supreme Court Case No.: CVA97-043 Superior Court Case No.:CV0914-94

Filed: June 2, 2000

Cite as: 2000 Guam 17

Appeal from the Superior Court of Guam Argued and submitted May 7, 1998 Remanded June 25, 1998 Resubmitted May 25, 1999 Hagåtña, Guam

For Plaintiff-Appellant: William C. Bischoff, Esq. 134 Chalan Santo Papa, Suite 202 Hagåtña, Guam 96910 For Defendant-Appellee: Ana Maria G. Gabriel, Esq. Gayle & Teker A Professional Corp. 330 Hernan Cortes Ave., Suite 200 Hagåtña, Guam 96910 BEFORE: BENJAMINBEFORE: BENJAMIN J. F. CRUZ, Chief Justice¹;; PETER C. SIGUENZA an WEEKS²; Associate Justice.

CRUZ, J.:

The Appellant, Craftworld Interiors, Inc. The Appellant, Craftworld Interiors, Inc. (hereinafter Craftw Enterprises, Enterprises, Inc. (hereinafter King), entered into an agreement, the nature of whichEnterprises, Inc. (h inin this case. Craftworld raises the following issues on appeal: (1) whether the trial court erred in its factual findings, factual findings, and (2) whether the trial courtfactual findings, and (2) whether the trial court findings, and (2) whether the trial court of the agreement of the agreement of the agreement between court did not err in its factual findings and that the parol evidence was appropriately introduced.

FACTUAL AND PROCEDURAL BACKGROUND

Craftworld, Craftworld, a manufacturer of Craftworld, a manufacturer of rattan furniture among Craftworld, with King, a furniture retailer, regarding some rattan furniture.with King, a furniture retailer, regarding some rattan furniture.with King, a furniture retailer, regarding some rattan 21,21, 1994 after King stopped payment on a check issued to Craftworld as21, 1994 after King stopped payment regarding the rattan furniture. An oral agreement was entered into by the parties and and King s presidents, James Uy and Taro Lin³, respectively, for, respectively, for the, respectively, for the sale is whether the agreement was an outright sale of the goods or a consignment agreement.

Initially, Initially, Craftworld beganInitially, Craftworld began to sell its furniture out of one of Lin s furniture the parties subsequently made the parties subsequently made the agreement which is now the subject of this less sellsell the goods for Craftworld. Eight (8) invoi

¹ Although the case was first heard in 1998, Although the case was first heard in 1998, the signatures in this opinion reflect the remand to the trial court, at which time this matter was considered and determined.

² Justice Janet Healy Weeks resigned from the court after hearing oral arguments in this matter.

³ Although the Appellee s Brief spells Mr. L Although the Appellee s Brief spells Mr. Lin s first name Although the App Tallo.

King sKing s store, listing the King s store, listing the merKing s store, listing the merchandise and prices total Fernandez Fernandez and under his signature it is noted, Received the above Fernandez and under his sig condition condition and agree with the terms and conditions. Craftworld claimscondition and agree with the term outrightoutright sale of the furniture to King. outright sale of the furniture to King. Two posoutright sale of th oneone for 90 days and the other one for 90 days and the other for 180 days following the date of the agreement, No TwoTwo days after receiving the checks, Uy delivered to King a Cash/ChargeTwo days after receiving the check atat Kingat King ever signed that document. The firstat King ever signed that document. The firstat King ever signed that document. The first check was casher payment on the second check after it claimed they were unable to sell the furniture.

AA bench trialA bench trial was held onA bench trial was held on June 10, 1996 and Craftworld attempted ofof a consignment sale as inadmissible parol of a consignment sale as inadmissible parol evidence.⁴ Craftw holderholder in due course of the second unpaid check. The trial court ruled in favor of King finding that CraftworldCraftworld was not a holder in due course, thatCraftworld was not a holder in due course, that the paro intointo evidence of oral agreements relating to the transaction, and that the doctrine of courseinto evidence of oral a stablishedestablished that the agreemenestablished that the agreement was aestablished that the agreement was September 23, 1997, and a timely notice of appeal was immediately filed.

BecauseBecause neither party included the invoices at issue in the Excerpts of Record, the only material upon which this court had to makematerial upon which this court had to make an independent analysis we WeWe determined that the trial court s Decision and OrderWe determined that the trial court s Decision and Order findings findings supporting its decision such that the issues before findings supporting its decision such that the issues before findings supporting its decision such that the issues this this court remanded the case the case pursuant to Guam Rule of Civil Procedure 52(a), int court court to prepare Findings of Fact and Conclusions of Law to aid this court in the appeal.court to prepar *Interiors, Inc. v. King Enters.*, CVA97-043 (Order June 25, 1998). The court below Findings of Fact and Conclusions of Law on May 24, 1999.

⁴ Such evidence was primarily oral testimony and a letter prepared by a manager of King.

ANALYSIS

The The standard The standard of review for conclusions of law is de novo. GEDA v. Island Equip., GEDA v.

GuamGuam 7, Guam 7, ¶ 4. Findings of fact made by a trial court after a bench trial shall notGuam 7, ¶ 4. Findi

clearlyclearly erroneous. Guam R. Civ. P. 52(a); clearly erroneous. Guam R. Civ. P. 52(a); see also Yang v. Hong, 1

described in Yang as follows:

AA finding is clearly erroneous when, even thoA finding is clearly erroneous when, even thoughA find entireentire rentire reentire record produces the definite and firm conviction that the court below committed committed a mistake. The appellcommitted a mistake. The appellate court committed a judge'sjudge's assesjudge's assessment of conflicting or ambiguous evidence. The applicable ofof appellate review is narrow; theof appellate review is narrow; the of appellate review is narrow; the havehave found as it did, rather than whether the reviewing court would have ruled differently.

Yang, 1998 Guam 9 at ¶ 7 (citation omitted). In other words,

If If the [trial] court s account of the evidence is plausible in If the [trial] court s account of the evidence is p inin its entirety, the court of appeals mayin its entirety, the court of appeals may not reverse it in its entirety, t itit been sitting as the trier of fact, it would have weighed the evidence differently. A appellate appellate court must accept the lower court sappellate court must accept the lower court s findings appellate appellate court appellate court is left with the definite and firm conviction that committed.

Haeuser v. Department of Law, Gov t of Guam, 1999 Guam 12, ¶ 14 (citations omitted).

TheThe issues in this caseThe issues in this case were defined by the parties as an appeal on the factual find trialtrial court and whether thetrial court and whether the trial court correctly admitted parol evidence. However, be and and King also make substantive arguments as to the and King also make substantive arguments as to the trialtrial court made that the agreementtrial court made that the agreement was not a straight sale, buttrial court made courtcourt need not get to the merits of the legal conclusionscourt need not get to the merits of the legal conclufactual findings. The onlfactual findings. The only legfactual findings. The only legal question this evidence.

1. Factual Findings

The The standard of The standard of review for findings of fact, then, is very deferential to the determination the trial court. Given this the trial court. Given this standard, when faced with a party alleging the trial court.

conclusions conclusions of law contained conclusions of law contained in a conclusions of law contained in a low thethe findings or conclusions are adequate enough to affirm. *See, e.g., In re Allied Supermarkets, Inc.*,

951 F.2d 718, 726 (6th Cir. 1991) (citation omitted); *In re Bradford*, 112 B.R. 347 (B.A.P., 112 B.R. 347 (B.A.P. 1990)1990) (When a trial judge s finding1990) (When a trial judge s finding is based on his decision to credit oror more witnesses, each of whom has told a coherent and facially plausibleor more witnesses, each of v contradicted by extrinsic evidence, that finding, if not internally inconsistent, cancontradicted by extri clearclear error.) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 574, 105 S.Ct. 1504, 1511 (1985)); *CountyCounty of Canyon v. Wilkerson*, 848 P.2d 435, 439-40 (Idaho Ct., 848 P.2d 435, 439-40 (Idaho Ct. App. 1992) should be given to the trial court s assessment of witness credibility).

The The situation in *Hawaiian Trust Co. v. Cowan*, 663, 663 P.2d, 663 P.2d 634 (Haw. App. 1983), is somew similarsimilar to the instant case. In *HawaiiaHawaiian Trust*, th, the appellants alleged that certain findings of clearlyclearly erroneous inclearly erroneous in that they were not supported clearly erroneous in that they were not supported clearly erroneous in that they were not supported clearly erroneous in the record.trial transcripts in the record. trial transcripts in the record. By determining that the inin the absence of transcripts to detein the absence of transcripts to determine the absence of transcripts to court court court was [t]herefore ... compelled to leave the trial court scourt was [t]herefore ... compelled to leave the trial *Id.* at 638.

Similarly, Similarly, Craftworld, though Similarly, Craftworld, though allegingSimilarly, Craftworld, th ExcerptsExcerpts of Record. Excerpts of Record. Moreover, CraftExcerpts of Record. Moreover, Craftworld court scourt s factual determinationscourt s factual determinations were clear errorserrors had indeed occurred. errors had indeed occurred. This court, then, must makeerrors had indeed occurred assessment of the evidence produced at trial and theassessment of the evidence produced at trial and theassessment of the evidence produced at trial and theasest of deference.trial, to which we must give a high degree of deference.trial, to which we must give a high degree of deference are not clearly erroneous.

2. Parol Evidence

ForFor the paFor the parol evidence rule to apply it must first be established that there is a writFor agreementagreement which was agreement which was intended to be the final and complete embodiment of agreement TheThe trial court found that there was an oral agreement between theThe trial court found that there was an oral agreement between theThe trial court found that there was an oral agreement between theThe trial court found that there was an oral agreement between theThe trial court found that there was an oral agreement between theThe trial court found that there was an oral agreement, satisfyNovember 30, 1993 were the written confirmation of that agreement, satisfyNovember 30, 1993 were the trial court er TitleTitle 13 GCA § 2201 (1993). The issue isTitle 13 GCA § 2201 (1993). The issue isTitle 13 GCA § 2201 (1993). The issue is a follows:

§2202. Final Written Expression: Parol or Extrinsic Evidence.

TermsTerms with respect to Terms with respect to which the Terms with respect to which the confirmatory m oror which are otherwise setor which are otherwise set forth in a writing intended by the parties as aor whice expexpression of their agreement with respect to such terms as are incluexpression of their thethereintherein may not be contradicted by evidence of any prior agreement otherein may not be contracontemporaneous oral agreement but may be explained or supplemented:

- (a) ByBy course of dealing or usage ofBy course of dealing or usage of trade (§1205) or by course performance (§2208); and
- (b) ByBy evidence of consistent additional terms unless the courBy evidence of consistent a findfind thefind the writing to have been intended alsofind the writing to have been intended exclusive statement of the terms of the agreement.

1313 GCA § 2202 (1993). The analysis13 GCA § 2202 (1993). The analysis is two-fold: (1) whether the parties1 toto be the final and complete embodiment of their agreement, anto be the final and complete embodiment of contradictscontradicts the terms of the writing, for then it is inadmisscontradicts the terms of the writing, for admissibleadmissible to supplement or explain omissions or ambiguities. *See Enrico Farms,Enrico Farms, Inc. v. . Co.*, 629, 629 F.2d 1304, 1306, 629 F.2d 1304, 1306 (9th Cir. 1980). The trial court cited the case of *Century Rev. v. Lower & Co.*, 770 P.2d, 770 P.2d 692, 697 (Wyo. 1989), for, 770 P.2d 692, 697 (Wyo. 1989), for the propositive the the party seeking to establish that the agreement wasthe party seeking to establish that the agreement was fully that the opposing party must establish the usage of trade argument in return. *Id.*

Unfortunately, Unfortunately, as hasUnfortunately, as has been stated above, the invoices were not made appeal; appeal; therefore, their appeal; therefore, their sufficiency as a complete and integrated writing isappeal; the forfor this court to make. Without for this court to make. Without any documentary for this court to make. Without intentintent of the partiesintent of the parties is the trial transcript. Again, this court mustintent of the parties is the opportunity to judge the credibipportunity to judge the credibility oopportunity to judge the credibi F.3dF.3d 1424, 1427-28 (9th Cir. 1996). There was evidence produced at trial that the agreement was a consignment; consignment; the trial court then enumerated in its Decision anconsignment; the trial court then er oraloral consignment sale. oral consignment sale. Cleaoral consignment sale. Clearly, the court must have burden of proof that the invoices were a completeburden of proof that the invoices were a completeburden of proof that the invoices were a complete andburden of King. Based on tKing. Based on thKing. Based on that finding, the court allowed in the parol evider ambiguous terms of the agreement. The trial court construed the insertion of 90ambiguous terms of the thethe invoice below the box labeled the invoice below the box labeled Terms to be ambiguous.the invoice below which were dated for 90 and 180 dayswhich were dated for 90 and 180 days after November insteadinstead indicativeinstead indicative of a consignment agreement. In light of the factual determinations matrial trial court and the deference to be given those determinations, the trial court s conclusion to admit such parol evidence is not improper.

CraftworldCraftworld cites the case of *Battista v. Radesi*, 491 N.Y.S.2d 81, 82 (A, 491 N.Y.S.2d 81, 8 191985),1985), in which the court excluded parol evidence because the invoices which constitu1985), in w writing writing were complete and writing were complete and final, writing were complete and final, inclu thethe price of each item the price of each item purchased, and the total shipment cost.the price of each item purchased item purchased, and the total shipment cost.the price of each item purchased item purchased, and the total shipment cost.the price of each item purchased item purchased, and the total shipment cost.the price of each item purchased item purchased, and the total shipment cost.the price of each item purchased item purchased item purchased item purchased.

SinceSince the trial court aSince the trial court alreadySince the trial court already determined that the p extrinsic evidence concerning a consignment arrangement, the discussion and arguments extrinsic evidence coursecourse of dealing, wherecourse of dealing, whereby the tricourse of dealing, whereby the trial court superfluous. Nevertheless, superfluous. Nevertheless, although the trial courtsuperfluous. Nevertheless is burden of proving that the writing was the complete andmeet its burden of proving to use subsection (a) of section 2202 as a further basis for bringing in extrinsicto use subsection (a) of section 2202 as a further basis for bringing in extrinsic use subsection (a) of section 2202 as a further basis for bringing in extrinsic use subsection (a) of section 2202 as a further basis for bringing in extrinsic use subsection (a) of section 2202 as a further basis for bringing in extrinsic use subsection (a) of section 2202 as a further basis for bringing in extrinsic use subsection (a) of section 2202 as a further basis for bringing in extrinsic use subsection (a) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsection (b) of section 2202 as a further basis for bringing in extrinsic use subsect

court scourt s use of the concept of course of dealing to allow the admission of all extrinsic evidence was poorlypoorly analyzed. Title 13 GCpoorly analyzed. Title 13 GCA poorly analyzed. Title 13 GCA § 1205 previousprevious conductprevious conduct between the parties to a particular transaction w establishingestablishing a common basis of understanding for interpreting their expressions and other conduct. 1313 GCA § 1205(1). The trial court found that, based on the evidence13 GCA § 1205(1). The trial court found the betweenbetween the parties established a common basis for an understanding which would constitut coursecourse of dealing. However, course of dealing. However, although course of dealing. However, although th notnot seem to support such a relationot seem to support such a relationship in not seem to support su constituting a course of dealing argument.

AA A single transaction cannot constitute a course of dealing. *Kern Oil and ReKern Oil and Refining TennecoTenneco OilTenneco Oil Co.*, 792 F.2d 1380, 1385 (9th Cir. 1986) (citation omitted). The agreement at Cir. thethe first transaction of the kind between thethe first transaction of the kind between the parties, there is ordersorders or invoices were ever issued, and although Craftworld had previously been selling furniture outout of King s store, that transaction was different in characteout of King s store, that transaction was di agreementagreement had to have changed based on the fact that firstagreement had to have changed based on the f and then the invoices and then the invoices were drafted and the furniture, whetherand then the invoices were dra waswas to be sold by King. However, whether a coursewas to be sold by King. However, whether a course of dealin a question of a question of fact. *Insurance Serv. of North America v. NNR Aircargo Serv. (USA), Insurance Serv.* 1111,1111, 1113 (9th Cir. 2000); *In re CFLC, Inc.*, 209 B.R. 508, 513 , 209 B.R. 508, 513 n.8 (, 209 B. Nevertheless, Nevertheless, even if deference is given to the trial court sNevertheless, even if deference is given to trialtrial court s previous determinationtrial court s previous determination that the writing was nottrial court s prev coursecourse of dealing analyscourse of dealing analysis because the parc supplement or explain the writing on that basis.

AsAs an aside, the trial court also considered parolAs an aside, the trial court also considered parol eviden CraftworldCraftworld was not a holder in due course. Guam law providesCraftworld was not a holder in due cou the status of a holder in due course and its concomitant protections: Holder Holder in Due Course. (1) A holder in due course is a holder who takes the instrument

- For value; and (a)
- (b) In good faith; and
- (c) Without Without notice that it is overduWithout notice that it is overdue or hWithout not defense against or claim to it on the part of any person.
- A payee may be a holder in due course. (2) (3)
 - A holder does not become a holder in due course of an instrument:
 - ByBy purchase of it at judicial saleBy purchase of it at judicial sale or by takingBy purcha (a) or
 - By acquiring it in taking over an estate; or (b)
 - ByBy purchasing it as part of a bulk transactionBy purchasing it as part of a bulk transaction (c) business of the transferor.
- AA purchaser of a limiA purchaser of a limited interest A purchaser of a limited interest can be (4)extent of the interest purchased.

1313 GCA13 GCA § 3302 (1993). It is clear that Craftworld was the payee of the 13 GCA § 3302 (1993). It is clear inin order to be a holder in due course, in order to be a holder in due course, it must be shown that Craftworld tool goodgood faith, and without notice of any claims or defenses good faith, and without notice of any claims or defe inin admitting parol evidence to prove the nature of the contract cin admitting parol evidence to prove the nat contract contract for sale of goods. The parol evidence rule, as it applies to the contract for sale of goods. The parol hashas not been found to be applicable to has not been found to be applicable to vary the terms of the negotiable in toto establish whetheto establish whether the holder took the instrument for value, in good faith, and with claimsclaims and defenses. claims and defenses. First Int l Bank of Israel, Ltd. v. L. Blankstein & Son, Inc., 452 (N.Y.(N.Y. 1983). The trial court(N.Y. 1983). The trial court made a finding that it believed that Craftworld was coursecourse because it took thecourse because it took the check with notice of a defense that course because it asas part of aas part of a consignment transaction. Thus, it as part of a consignment transaction. Thus, it was prop thethe nature of the agreement as it went to the proof of Craftworld's holder in due course status.

Moreover, Moreover, given the trial court s determination that Moreover, given the trial court s determination straightstraight sale, straight sale, thstraight sale, then its determination that Craftworld was not a holder in due

CONCLUSION

TheThe standard of review for factual findings is very high; this necessarily makes theThe standard of revi

ofof review of review for legal questions, based on the court s factual findings, high asof review for legal questions invoices invoices from the record makes it difficult to invoices from the record makes it difficult to dispute the tria supportsupport the court s subsequent legal conclusion of admitting parol evidence for purposes of explaining and supplementing the written agreement. This court does not believeexplaining and supplementing the record before us, and therefore the factual findings will not be be disturbed. Based on the factual findings made by the trial court, the legal conclusions as to the admissibilitadmissibility admissibility of parol evidence to explain and supplement the agreement Although Although the relationship between the parties does not seem tAlthough the relationship between the prior oral agreements on the basis that the wri any need to turnany need to turn to course of dealing to any need to turn to course of dealing to any need to turn to course of dealing to any need to turn to course of dealing to any need to turn to course of dealing to supplement or explanations.

Accordingly, the decision of the trial court is AFFIRMED.