IN THE SUPREME COURT OF GUAM

BANK OF GUAM,
Plaintiff-Appellee

vs.

DAVID D. FLORES and WILLIAM B.S.M. FLORES,
Defendants-Appellants

Supreme Court Case No. CVA03-017
Superior Court Case No. CV1162-02

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on July 16, 2004
Hagåtña, Guam

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BEFORE: FRANCES M. TYDINGCO-GATEWOOD, Chief Justice (Acting)[1]; ROBERT J. TORRES, Associate Justice; PETER C. SIGUENZA, JR., Justice *Pro Tempore*.

TORRES, J.:

[1] Plaintiff-Appellee the Bank of Guam foreclosed a mortgage granted by Defendants-Appellants David and William Flores ("Floreses") to secure a promissory note. The Bank of Guam later filed a lawsuit against the Floreses to recover the deficiency remaining due on the promissory note following the foreclosure. The Floreses counterclaimed, arguing that the Bank of Guam breached an agreement to postpone foreclosure of the mortgage and seeking specific performance regarding the Bank of Guam's release of a separate mortgage. The trial court granted the Bank of Guam's motion for summary judgment on all claims. The Floreses appeal the trial court's judgment. We affirm in part, reverse in part, and remand this matter for further proceedings consistent with this opinion.

I.

[2] In December 1999, the Floreses borrowed $3,915,000.00 from the Bank of Guam pursuant to a Promissory Note ("Note") secured by a mortgage on properties in Hagåtña and Mangilao, Guam ("Mortgage"). The Note and Mortgage were accompanied by a Loan Agreement ("Loan"). The Loan proceeds were to be used in part to acquire and renovate the D'Flores Capitol Building, formerly known as Pedro's Plaza, in Hagåtña, Guam.

[3] The Bank of Guam sent a notice to the Floreses on December 11, 2000 that the Floreses were in default under the Note for failure to make their required payments. The notice also informed the Floreses that if the default was not cured within thirty days, the full amount due on the Note of $4,128,125.43 would be accelerated and be immediately due and payable. The Floreses did not cure the default and the Bank of Guam recorded its Notice of Default and of Acceleration of Indebtedness with the Department of Land Management. The Bank of Guam then recorded its Notice of Sale under Power of Sale in Mortgage with the Department of Land Management, scheduling the foreclosure sale for March 27, 2001.

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[1] Chief Justice F. Philip Carbullido recused himself from this matter. Associate Justice Frances M. Tydingco-Gatewood, as the senior member of the panel, serves as Acting Chief Justice herein.

[4] David Flores subsequently wrote to the Bank of Guam regarding the default and ongoing renovations underway at the Hagåtña property and requested that the foreclosure proceedings be briefly delayed to give him a chance "to secure the additional financing necessary to complete the project and bring his loan current." Appellee's Supplemental Excerpts of Record ("SER"), tab 2 (Cowan's Decl., Ex. L-1 (Ltr. from Att'y Stephanie Flores to Att'y Cowan of 02/16/01)). The Bank of Guam granted the request for a postponement of the foreclosure sale, with no concessions required from the Floreses, and rescheduled the foreclosure sale for April 26, 2001. On April 25, 2001 the Bank of Guam and David Flores executed an Agreement for Extension ("Extension Agreement") postponing the foreclosure sale for at least forty-five days, but no more than sixty days from the then scheduled date of the foreclosure sale. Under the terms of the Extension Agreement, the Bank of Guam agreed to postpone the April 26, 2001 foreclosure sale in exchange for the Floreses' efforts in renovating the Hagåtña property and the Floreses granting the Bank of Guam additional collateral with a mortgage over certain Yigo property ("Yigo Mortgage"). Appellant's Excerpts of Record ("ER"), tab 5 (David Flores' Decl., Ex. F (Extension Agreement, p. 1)). The Bank of Guam subsequently scheduled the foreclosure sale for June 26, 2001. On June 26, 2001, the Bank of Guam again extended the foreclosure sale date, this time until August 28, 2001. The foreclosure sale occurred on August 28, 2001.

[5] The Bank of Guam filed the underlying lawsuit against the Floreses in the Superior Court of Guam for the recovery of the deficiency remaining due on the Note following the foreclosure of the Mortgage. The Floreses answered and counterclaimed, alleging that the Bank of Guam breached the Extension Agreement by going forward with the foreclosure sale, and seeking specific performance and release of the Yigo Mortgage. The Bank of Guam later moved for summary judgment upon its complaint and upon the Floreses' counterclaim. The trial court issued its Decision and Order granting the Bank of Guam's motion for summary judgment, resulting in a judgment in the Bank of Guam's favor for $1,027,526.65 and the Floreses taking nothing upon their counterclaim. The Floreses appealed.

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II.

[6] This court has jurisdiction over this appeal from a final judgment. Title 7 GCA § 3107 (2004).

[7] A trial court's decision granting a motion for summary judgment is reviewed *de novo*. *Edwards v. Pac. Fin. Corp.*, 2000 Guam 27, ¶ 7; *Manvil Corp. v. E.C. Gozum & Co.,* 1998 Guam 20, ¶ 6; *Iizuka Corp. v. Kawasho Int'l (Guam), Inc.*, 1997 Guam 10, ¶ 7. In rendering a decision on a motion for summary judgment, the court must draw inferences and view the evidence in a light most favorable to the non-moving party. *Edwards*, 2000 Guam 27 at ¶ 7. "If the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot merely rely on allegations contained in the [pleadings] . . . , but must produce at least some significant probative evidence tending to support the [pleadings] . . . ." *Id.* Thus, this court's "ultimate inquiry is to determine whether the 'specific fact' set forth by the nonmoving party, coupled with undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence." *Id.* (citing *Iizuka*, 1997 Guam 10 at ¶ 8).

[8] "The court may grant summary judgment pursuant to Rule 56 of the Guam Rules of Civil Procedure when '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 and that the moving party is entitled to a judgment as a matter of law.'" *Manvil*, 1998 Guam 20 at ¶ 6 (quoting Guam R. Civ. P. 56(c)). "A material fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." *Edwards*, 2000 Guam 27 at ¶ 7 (quoting *Iizuka*, 1997 Guam 10 at ¶ 7). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510 (1986) (emphasis in original). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248, 106 S. Ct. at

2510. "There is a genuine issue, if there is 'sufficient evidence' which establishes a factual dispute requiring resolution by a fact-finder." *Iizuka Corp.*, 1997 Guam 10 at ¶ 7.

III.

[9] The Floreses argue that questions of material fact remain in dispute which preclude summary judgment.[2] They contend first that the term "mutual benefit" as it appears in the Extension Agreement is ambiguous, they should be allowed to introduce extrinsic evidence to explain the ambiguity and summary judgment is inappropriate because a question of material fact exists regarding whether the mutual benefit available to the Floreses under the Extension Agreement includes cancellation of the foreclosure sale and reinstatement of the Loan. Secondly, the Floreses argue that a material fact remains in dispute regarding whether they performed their obligations under the Extension Agreement sufficiently to entitle them to its benefits, including release of the Yigo Mortgage. We first consider the Floreses' argument that the term "mutual benefit" is ambiguous.

A. The Extension Agreement and Admissibility of Parole Evidence

[10] The Floreses assert that the term "mutual benefit" in the Extension Agreement is ambiguous and susceptible to a meaning that not only includes the potential benefit to them of postponement of the foreclosure sale, but also reinstatement of the Loan.[3] Interpretation of a contract to determine

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[2] The scope of this appeal is quite narrow. The Floreses argue only that summary judgment was inappropriate because questions of material fact exist regarding an Agreement for Extension ("Extension Agreement") entered into by the parties on April 25, 2001. The Floreses do not challenge that they were in default under the terms of their Note due to non-payment, or that the Bank of Guam had accelerated the amounts due under the Note, or that the Floreses had not tendered the entire accelerated amount that was due. The Floreses also do not challenge the non-judicial foreclosure procedures undertaken by the Bank of Guam or the judgment amount. Any issues related to such matters are undisputed.

[3] The Extension Agreement reads, in pertinent part, as follows:

> This Agreement is made by and between BANK OF GUAM ("Bank") and DAVID D.L. FLORES ("Flores") with respect to a foreclosure sale scheduled by Bank for April 26, 2001, at 10:00 A.M., of property owned by Flores. Flores desires an extension of such foreclosure sale, and Bank agrees to extend the foreclosure sale for a period of at least 45 but not more than 60 days from the currently scheduled date thereof on the following terms and conditions:
>
> 1. Flores shall complete or cause to be completed construction and renovation work upon the mortgaged real property located in Hagåtña, Guam, in

what is intended by its various provisions is properly done by considering the contract as a whole and not by considering a particular part of the contract in isolation. *Stewart Title Co. v. Herbert*, 96 Cal. Rptr. 631, 634-35 (Ct. App. 1970). A particular term cannot be considered "ambiguous" in some detached or abstract sense, but rather must be considered in the context of both the instrument containing it as well as the circumstances of the entire case. *Avemco Ins. Co. v. Davenport*, 140 F.3d 839, 843 (9th Cir. 1998). Thus, to determine whether the term is ambiguous on its face, we must review the Extension Agreement and the circumstances under which it was made in order to consider the meaning and function of the term "mutual benefit." *Producers Dairy Delivery Co. v. Sentry Ins. Co.*, 718 P.2d 920, 927 n.7 (Cal. 1986).

[11] The general rule under Guam law is that "a contract in writing . . . supercedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." Title 18 GCA § 86107 (1994). "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible . . . ." Title 18 GCA § 87105

> accordance with the Contract (the "Contract") dated April 25, 2001, between David Flores dba Resource Developers and Reksa Guam Pacific Builders ("Reksa") and shall perform all his obligations thereunder. . . .
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> 2. Flores shall grant to Bank [the Yigo Mortgage] . . .
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> 3. . . . as additional security for the obligations outstanding and secured by the existing mortgages held by [the] Bank and for Flores' further obligations under this Agreement.
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> 4. Upon satisfactory completion of work under the Contract, and payment of all obligations by Flores to Reksa of costs of such work, the Bank shall release its Mortgage upon the Yigo property. . . .
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> 5. This Agreement is given for the purpose of allowing Flores the opportunity to complete necessary construction and renovation work upon the mortgaged real property to the **mutual benefit** of Flores and Bank, and at Flores' sole cost and expense. The Mortgage on the Yigo property herein provided is given in consideration of the extension herein provided, and further to give additional collateral to the Bank as security in the event Flores fails to complete the renovation work at his sole cost and expense as herein provided within the duration of this extension.
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> . . . .

Appellant's ER, tab 5 (David Flores' Decl., Ex. F (Extension Agreement) (emphasis added)).

(1994). "A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." Title 18 GCA § 87109 (1994).

[12] The introductory paragraph of the Extension Agreement provides that "[David] Flores desires an extension of such foreclosure sale, and Bank agrees to extend the foreclosure sale for a period of at least 45 but not more than 60 days from the currently scheduled date thereof on the following terms and conditions." Appellant's ER, tab 5 (David Flores' Decl., Ex. F (Extension Agreement, p. 1)). Paragraph 5 of the Extension Agreement mentions the term "mutual benefit." *Id.* (Extension Agreement, p. 2). The Floreses argue that the term "mutual benefit" is ambiguous and that such ambiguity creates a question of material fact regarding the consideration for the Extension Agreement.

[13] Courts have held that when an obligation is ripe for enforcement and the party entitled to enforce the obligation agrees to postpone such enforcement for a period of time in exchange for a promise, such postponement is sufficient consideration for the promise. *See Levine v. Tobin*, 26 Cal. Rptr. 273, 274-75 (Ct. App. 1962). Viewing the terms of the Extension Agreement in light of the rules for interpretation of contracts found in Title 18 GCA §§ 87107 and 87109, we find that the consideration received by the Floreses for the Extension Agreement consisted of the postponement of the foreclosure sale and the consideration received by the Bank of Guam was the Floreses' promises to improve the Hagåtña property and to grant additional collateral with the Yigo Mortgage.[4] 18 GCA §§ 87107, 87109. Title 18 GCA § 87105 further makes clear that any negotiations concerning the consideration for the Extension Agreement which preceded the Extension Agreement's execution are superceded by the terms of the written instrument. 18 GCA § 87105.

[14] Regarding potential contract ambiguities, "[i]t is a question of law whether a contractual provision is ambiguous." *E.M. Chen & Assocs., v. Lu Island Dev., Inc.,* Civ. No. 93-00017A, 1993 WL 469348, at *3 (D. Guam App. Div. Oct. 21, 1993). "A contract is ambiguous when, on its face,

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[4] As discussed further *infra*, the Extension Agreement expressly allowed for release of the Yigo Mortgage upon satisfactory completion of the construction and renovation work on the Hagåtña property and payment of all obligations by the Floreses to the contractor.

it is capable of two different reasonable interpretations." *Id.* (quoting *Southland Corp. v. Emerald Oil Co.,* 789 F.2d 1441, 1444 n.2 (9th Cir. 1986)). "[I]f the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning." *Avemco Ins. Co.,* 140 F.3d at 842 (quoting *AIU Ins. Co. v. Superior Court (FMC Corp.)*, 799 P.2d 1253, 1264 (Ca. 1990)). However, "[i]t is a well-settled principle that if a contract is ambiguous on its face, a court must look to extrinsic evidence to interpret the contract." *E.M. Chen & Assocs.*, 1993 WL 469348, at *3.

[15] The Floreses argue that parole, or "extrinsic," evidence should be admissible to support their claim that the term "mutual benefit" is ambiguous and that its meaning may have included a potential benefit to the Floreses of cancellation of the foreclosure sale and reinstatement of the Loan. The Bank of Guam urges that parole evidence should not be considered because the term "mutual benefit" is unambiguous on the face of the Extension Agreement.

[16] Guam's parole evidence rule, codified at Title 6 GCA § 2511, provides:

> When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:
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> 1. Where a mistake or imperfection of the writing is put in issue by the pleadings; or
>
> 2. Where the validity of the agreement is the fact in dispute.
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> But *this Section does not exclude other evidence* of the circumstances under which the agreement was made or to which it relates, as defined in § 2515 [Circumstances to be Considered], or *to explain an extrinsic ambiguity*, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

Title 6 GCA § 2511 (1994). (Emphasis added.)

[17] When the parties have reduced the terms of an agreement to a writing, section 2511 prohibits the introduction of any evidence of the terms of the agreement other than the contents of the writing, except where a mistake or imperfection of the writing is an issue or where the validity of the agreement is in dispute. *Id.* Section 2511 does not, however, exclude other evidence to explain an extrinsic ambiguity. *Id.* The Floreses assert the trial court erred when it excluded the parole evidence offered because such evidence was to explain an extrinsic ambiguity and therefore the Bank of Guam's summary judgment motion should have been denied.

[18] In order to determine whether the trial court properly excluded the parole evidence offered by the Floreses, we must decide whether the term "mutual benefit" is unambiguous and clear on its face or whether the term is capable of two different reasonable interpretations. "[I]n contract cases, summary judgment is appropriate only if the contract or the contract provision in question is unambiguous." *E.M. Chen & Assocs.,*1993 WL 469348, at *3 (quoting *Castaneda v. Dura-Vent Corp.*, 648 F.2d 612, 619 (9th Cir.1981)); *see United Bhd. of Carpenters and Joiners of America, Lathers Local 42-L v. United Bhd. of Carpenters and Joiners of America,* 73 F.3d 958 (9th Cir. 1996); *Maffei v. N. Ins. Co. of New York*, 12 F.3d 892 (9th Cir. 1993). We agree with the trial court that the term "mutual benefit" in the Extension Agreement is unambiguous and does not include the benefit to the Floreses of cancellation of the foreclosure sale and reinstatement of the Loan; therefore, summary judgment was appropriately entered on this issue.

[19] Under the Extension Agreement, David Flores agreed to complete certain renovation work at the Hagåtña property. He also agreed to provide the Bank of Guam with the Yigo Mortgage as additional security for the outstanding obligations to the Bank of Guam and to secure the further obligations under the Extension Agreement. The Bank of Guam's obligation pursuant to the Extension Agreement was "to extend the foreclosure sale for a period of at least 45 but not more than 60 days" from the then-scheduled sale date of April 26, 2001. Appellant's ER, tab 5 (David Flores' Decl., Ex. F (Extension Agreement)). The Extension Agreement was given "for the purpose of allowing Flores the opportunity to complete necessary construction and renovation work upon the mortgaged real property to the mutual benefit of Flores and Bank, and at Flores' sole cost and expense." Appellant's ER, tab 5 (David Flores' Decl., Ex. F (Extension Agreement, p. 2)).

[20] The term "mutual benefit" is unambiguous and does not include the potential benefit to the Floreses of complete cancellation of the foreclosure sale. Even if the Floreses performed their obligations under the Extension Agreement, they would not have been entitled to cancellation of the foreclosure sale and reinstatement of the Loan under the terms of the Extension Agreement. Allowing the Floreses the opportunity to complete the construction and renovation work on the Hagåtña property is the specific action that would be mutually beneficial to the Bank of Guam and the Floreses. The Extension Agreement is clear on its face that this was the intended meaning of the

term "mutual benefit" at the time the Extension Agreement was reduced to writing by the parties. The benefit of the renovations to the Floreses is obvious - they owned the property at the time and were improving it. Even if the foreclosure were to go forward, the value of the improvements would likely result in a higher foreclosure sale price, thus any deficiency amount remaining due on the loan following the foreclosure sale would be decreased. Likewise, the Bank of Guam would benefit from the renovations because the property secured a defaulted loan with an outstanding balance due in excess of four million dollars – any increase in the value of the collateral would certainly benefit the lender. Therefore, any improvements to the collateral would clearly be to the "mutual benefit" of the lender/mortgagee, the Bank of Guam, and the borrower/mortgagor, the Floreses.

[21] Having concluded the term "mutual benefit" in the Extension Agreement is unambiguous and cannot reasonably be interpreted to include a potential benefit to the Floreses of cancellation of the foreclosure sale and reinstatement of the Loan, we now address the Floreses' argument that a material fact remains in dispute regarding whether the Floreses performed sufficiently under the Extension Agreement to entitle them to the benefits of the Agreement, including release of the Yigo Mortgage.

B. Performance under the Extension Agreement

[22] The Floreses argue that summary judgment was further precluded by the existence of a factual dispute regarding whether they sufficiently performed under the Extension Agreement to entitle them to the benefits under the Extension Agreement. We agree that this question of fact remains in dispute, but disagree that it is material to all of the claims raised in this case. Instead, the material fact which remains in dispute, whether the Floreses sufficiently performed under the Extension Agreement, concerns only the counterclaim seeking release of the Yigo Mortgage.

1. The Fact in Dispute

[23] As we previously stated, in rendering a decision on summary judgment, we must draw inferences and view the evidence in a light most favorable to the non-moving party. *Edwards*, 2000 Guam 27 at ¶ 7. It is undisputed that the Extension Agreement was originally to run for at least forty-five days but no more than sixty days from April 26, 2001. However, the parties dispute what effect the Bank of Guam's subsequent postponement of the June 26, 2001 foreclosure sale to August

28, 2001 had on the Extension Agreement. The Floreses argue that the Extension Agreement was extended, giving the Floreses until at least the August 28, 2001 sale date to perform their obligations under the Agreement. The Floreses assert that by July 27, 2001 the renovations to the Hagåtña property were sufficiently complete and the building was ready for occupancy. Accordingly, they should be entitled to the benefits provided under the Extension Agreement including release of the Yigo Mortgage. The Bank of Guam argues that its postponement of the sale to August 28, 2001 was a unilateral decision that did not further extend the terms of the Extension Agreement or the Floreses' entitlement to benefits under the Extension Agreement.[5] The Bank of Guam disputes that the Floreses eventually completed the renovations and in any event the renovations were not completed within the original maximum sixty days provided by the Extension Agreement, thus the Floreses are not entitled to any benefits the Agreement may have offered.

[24] Paragraph 1 of the Extension Agreement required the Floreses to complete the renovations to the Hagåtña property "in accordance with the Contract ("the Contract") dated April 25, 2001, between David Flores dba Resource Developers and Reksa Guam Pacific Builders ("Reksa")." Appellant's ER, tab 5 (David Flores' Decl., Ex. F (Extension Agreement, p. 1)). Paragraph 5 states that "[t]his Agreement is given for the purpose of allowing Flores the opportunity to complete necessary construction and renovation work upon the mortgaged real property . . . within the duration of this extension" *Id.* at 2. Although paragraph 5 does not define the term "necessary," the contract must be read together as one document. Paragraph 1 clearly requires Flores to "complete or cause to be completed construction and renovation work upon the" Hagåtña property "in accordance with the Contract." *Id.* at 1. A review of the Reska Contract makes clear that the original contractor defaulted leaving the project incomplete and necessitating the Contract with Reska in order to complete the project. *See* Appellant's ER, tab 5 (David Flores' Decl., Ex. G (Reska Contract)). The obligations of the original contractor are not apparent as the original contract was not provided to the court. The Reska Contract does provide, however, that "the Project has been idled [sic] over the past 90 days" and "[i]n order for the Project to generate revenues, it must be functional and ready

[5] The Floreses do not argue that the August 28, 2001 foreclosure sale was untimely under the Extension Agreement and that issue is not before us.

for occupancy." *Id.* We can therefore reasonably infer that the original contract, which Reska agreed to complete, contemplated finishing the renovations to the Hagåtña property so that the premises could be occupied by tenants.

[25] In considering whether the Floreses sufficiently performed their obligations under the Extension Agreement, we observe that counsel for the Bank of Guam provided a copy of the June 26, 2001 Postponement of Sale under Power of Sale in Mortgage to the Floreses and stated in an accompanying letter that, "[a]t [the] request of Mr. Flores, Bank of Guam agreed to a further extension of the foreclosure sale. . . . Mr. Flores should keep the Bank of Guam informed of his progress with respect to the building." Appellee's SER, tab 2 (Cowan Decl., Exs. GG (Postponement of Sale under Power of Sale in Mortgage) and HH (Ltr. from Att'y Cowan to Att'y Stephanie Flores of 06/27/01)). We also are mindful that the new foreclosure sale date of August 28, 2001 was sixty-three days later than the previously scheduled date of June 26, 2001. Furthermore, ample evidence exists in the record that the Bank of Guam's representative Mike Naholowaa inspected the Hagåtña property on several occasions after June 26, 2001 and before the August 28, 2001 foreclosure sale date. While it is true that a lender with a security interest over a parcel of property has an inherent interest in the state of his collateral, when this evidence is taken in a light most favorable to the Floreses, a reasonable inference can be drawn that the Bank of Guam inspections were occurring not simply because the property was collateral for the Bank of Guam's loan, but to monitor the progress of the renovations required by the Extension Agreement.

[26] We conclude that when all the evidence before the court is viewed in a light most favorable to the Floreses, for the purposes of considering whether the Floreses performed sufficiently under the Extension Agreement it is not unreasonable for the trier of fact to conclude the Extension Agreement was extended to August 28, 2001. Although the Reska Contract states that the renovations were to be completed within forty-five days of April 25, 2001, an essential purpose of the Extension Agreement was to allow Flores to complete the construction. Therefore, it is also a reasonable inference that the Floreses had until August 28, 2001 to "complete or cause to be completed construction and renovation work upon the" Hagåtña property. Appellant's ER, tab 5 (David Flores' Decl., Ex. F (Extension Agreement, p. 1)).

[27] Now we must consider, in a light most favorable to the Floreses, whether a factual dispute exists concerning the Floreses' completion of the renovations required under the Extension Agreement. *Edwards*, 2000 Guam 27 at ¶ 7.

[28] Evidence was submitted to the court from both sides regarding the ongoing renovations that occurred during the period the Extension Agreement was in effect, which we have held was through August 28, 2001. This evidence included information regarding potential tenants for the premises and supposed commitments from such tenants to occupy the building submitted by the Floreses as well as evidence submitted by the Bank of Guam indicating the Floreses' failure to complete the required renovations. *See generally* Appellant's ER, tabs 4-6 (William and David Flores Decls.); Appellee's SER, tab 1 (Mike Naholowaa Decl.). The Floreses additionally submit that even if they did not fully complete the required work on the Hagåtña property, their '"'substantial performance" should be considered in any determination of whether they are entitled to the benefits of the Extension Agreement. Again, we must draw inferences and view the evidence in a light most favorable to the non-moving party in rendering a decision on summary judgment. *Edwards*, 2000 Guam 27 at ¶ 7.

[29] Considering the evidence before the court and the inferences that can reasonably be drawn from such evidence, we determine that a question of fact remains in dispute regarding whether or not the Floreses performed sufficiently under the Extension Agreement to entitle them to the Extension Agreement benefits. In order to preclude the grant of a motion for a summary judgment, however, this disputed fact must be a *genuine* issue of *material* fact. *Liberty Lobby*, 477 U.S. at 247-48, 106 S. Ct. at 2510 (emphasis in original).

2. Materiality

[30] "A material fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." *Edwards*, 2000 Guam 27 at ¶ 7 (citing *Iizuka*, 1997 Guam 10 at ¶ 7). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Liberty Lobby*, 477 U.S. at 247-48, 106 S. Ct. at 2510 (emphasis in

original). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248, 106 S. Ct. at 2510.

[31] The Bank of Guam's sole claim sought the deficiency balance due following foreclosure of the Mortgage securing the Note. The Bank of Guam moved for summary judgment on its sole claim as well as both of the claims within the Floreses' counterclaim. The Floreses' first counterclaim cause of action was for breach of contract claiming the Bank of Guam violated the Extension Agreement by proceeding with the foreclosure sale since the Agreement allegedly provided that the sale would be postponed and the Loan reinstated if the Floreses performed sufficiently. We have already ruled that the Extension Agreement did not include such a benefit to the Floreses and that the Bank of Guam's right to proceed with the foreclosure sale of the Hagåtña property was unrelated to the Floreses' performance under the Extension Agreement. As we previously determined, even if the Floreses completed their obligations under the Extension Agreement, they would not have been entitled to cancellation of the foreclosure sale and reinstatement of the Loan under the terms of the Extension Agreement. Therefore, the fact remaining in dispute, whether the Floreses sufficiently performed under the Agreement, is not material to either the Bank of Guam's claim or the Floreses' breach of contract claim as it cannot be said that the fact's "existence might affect the outcome of the suit." *Edwards*, 2000 Guam 27 at ¶ 7. Since the fact in dispute is not material to either the Bank of Guam's claim or the Floreses' breach of contract claim for reinstatement of the Loan, we hold that summary judgment was appropriately granted on those claims.

[32] The Floreses' second counterclaim cause of action for specific performance sought the release of the Yigo Mortgage. Pursuant to the Extension Agreement, the Floreses were responsible for completing renovations in accordance with the Reska contract. The Extension Agreement also granted the Bank of Guam the Yigo Mortgage and stated in relevant part that "[u]pon satisfactory completion of work under the Contract, . . . , the Bank shall release its Mortgage upon the Yigo property." Appellant's ER, tab 5 (David Flores' Decl., Ex. F (Extension Agreement, p. 1)). Although the trial court's Decision and Order granted the Bank of Guam's motion for summary judgment in

its entirety, the court did not specifically discuss the Floreses' specific performance cause of action in its Decision and Order or the effect of the Floreses' performance on the release of the Yigo Mortgage. Subsequently, the August 5, 2003 Judgment prepared by counsel for the Bank of Guam stated that "Defendants take nothing upon their counterclaim herein," which included both the Floreses breach of contract cause of action and their specific performance cause of action seeking release of the Yigo Mortgage. Appellant's ER, tab 8 (Judgment, p. 2).

[33] Based on the language of the Extension Agreement regarding the Yigo Mortgage, we find that the fact in dispute, whether the Floreses sufficiently completed their obligations under the Extension Agreement, is material to the Floreses' claim for release of the Yigo Mortgage.[6] Accordingly, because we determine that a question of material fact exists regarding the sufficiency of the Floreses' performance under the Extension Agreement, summary judgment is inappropriate on that claim.

IV.

[34] We hold that the term"mutual benefit" in the Extension Agreement is unambiguous, therefore, no fact remains in dispute regarding whether the term includes a potential benefit to the Floreses of cancellation of the foreclosure sale and reinstatement of the Loan. We further determine that a factual dispute remains regarding whether the Floreses sufficiently performed under the Extension Agreement to entitle them to benefits provided under the Agreement. However, the fact remaining in dispute is material only to the Floreses' specific performance counterclaim cause of action seeking release of the Yigo Mortgage.

[35] Accordingly, we **AFFIRM** the trial court's grant of summary judgment as to the Bank of Guam's claim for deficiency and as to the Floreses' first counterclaim cause of action for breach of contract. We **REVERSE** the trial court's grant of summary judgment as to the Floreses' second

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[6] Indeed, at oral argument before this court on July 16, 2004, counsel for the Bank of Guam appeared to concede that an issue of fact may remain in dispute as to whether the Floreses had performed sufficiently to trigger release of the Yigo Mortgage. Without agreeing that the Floreses performed sufficiently, the Bank of Guam's counsel indicated this disputed fact was not material to the Bank of Guam and it was prepared to release the Yigo Mortgage. Accordingly, the fact finding of the Floreses' performance may not be necessary on remand.

counterclaim cause of action for specific performance. The matter is **REMANDED** for further proceedings consistent with this opinion.