IN THE SUPREME COURT OF GUAM

TUMON PARTNERS, LLC and HEE K. CHO
Plaintiffs-Appellants,

v.

KEVIN SHIN,
Defendant-Appellee.

Supreme Court Case No.: CVA07-007
Superior Court Case No.: CV0169-07

OPINION

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Appeal from the Superior Court of Guam
Argued and Submitted on February 21, 2008
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; RICHARD H. BENSON, Justice *Pro Tempore*; JOHN A. MANGLONA, Justice *Pro Tempore*.

TORRES, C.J.:

[1] Plaintiffs-Appellants, Tumon Partners, LLC ("TPLLC") and Hee K. Cho ("Cho") appeal the Decision and Order issued by the lower court granting Defendant-Appellee, Kevin Shin ("Shin") ex-parte Motion to Modify Amended Preliminary Injunction and disqualifying *Attorney* Richard Pipes from representing Shin in *Shin v. Fujita*, Civil Case No. CV1240-05 (*"Shin I"*) and *TPLLC and Cho v. Shin*, Civil Case No. CV0169-07 (*"Shin II"*), or any other related case. As a result of Pipes' disqualification, the lower court held that Shin was "free to obtain substitute counsel to either pursue the notice of appeal filed in [*Shin I*], file an objection to the notice of appeal, or take whatever action Shin deems appropriate." Appellants' Excerpts of Record ("ER"), tab 6 at. 7 (Decision and Order). TPLLC and Cho claim this court has jurisdiction pursuant to Title 7 GCA § 3107(b)(1), 7 GCA § 25102(f) or 48 U.S.C. § 1424-1(a)(1).

[2] Since the appeal was not filed as an original proceeding for an injunction, which would invoke this court's original jurisdiction we lack jurisdiction to address the appeal under 7 GCA § 3107(b). We also decline to exercise supervisory jurisdiction under 48 U.S.C. § 1424-1(a)(1). Although we lack jurisdiction under section 3107(b) and we decline to exercise our supervisory jurisdiction, we interpret 7 GCA § 25102(f), to allow an appeal to be taken from an order modifying an injunction and TPLLC and Cho, as aggrieved parties have standing to appeal the modification of the preliminary injunction. Nevertheless, because the parties concede that the language in the Decision and Order "to take whatever action Shin deems appropriate" is limited only to taking action

in the *Shin I* appeal, which has since been dismissed by this court, this appeal is now rendered moot. Accordingly, the appeal is dismissed.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] TPLLC and Cho request appellate review of the trial court's Decision and Order granting Shin's *Ex Parte* Motion to Modify Amended Preliminary Injunction and disqualifying attorney Richard Pipes ("Attorney Pipes") from representing Shin in CV1240-05 ("*Shin I*"), CV0169-07 ("*Shin II*"), or any other related case. The underlying action is one of three related cases involving Shin, TPLLC, Cho, Bando Corp., Security Title, Inc., and Fujita Kanko Guam, Inc. Appellants' Excerpts of Record ("ER"), tab 6 at 1. In 2005, Shin filed suit against Fujita, captioned as *Shin v. Fujita*, CV1240-05 ("*Shin I*"), for an alleged breach of contract and other claims relating to the sale of Fujita's Tumon Bay property. *Id.* Subsequently, Shin and TPLLC and Cho entered into a Memorandum of Agreement ("MOA") concerning the litigation over the Fujita property. ER, tab 1 at 1-6 (Memorandum of Agreement). The MOA provided that "[a]ll significant and material decisions regarding the litigation, including settlement, shall be made jointly by Cho and TPLLC", ER, tab 2 at 3, and that Richard Pipes would "represent Cho, Shin and TPLLC going forward". ER, tab 1 at 5. The MOA also required that "all costs and attorney's fees incurred in the litigation shall be the responsibility of and paid promptly by TPLLC" and Shin would be indemnified "for any liability and/or costs arising out of any adverse decision in the Litigation." ER, tab 1 at 3. A few months later, Shin terminated Attorney Pipes as his legal counsel and retained Attorney Louie Yanza. *See* Shin's Supplemental Excerpts of Record ("SER") at 39; ER, tab 6 at 2.

[4] The very next day TPLLC and Cho, through their counsel Daniel Berman, filed the *Shin II* Verified Complaint and Application for Temporary Restraining Order, seeking a preliminary

injunction and order to restrain Shin from taking any actions with respect to *Shin I* or *Security Title, Inc. vs. Fujita Kenko Guam, Inc. and Kevin Shin* CV0001-06 ("the Fujita suits" in *Shin II*). SER, at 1-15; ER, tab 6 at 2. *See Id.* The Superior Court issued a Preliminary Injunction in *Shin II*, enjoining Shin, attorney Yanza or any of their agents employees and any other of Shin's attorneys from dismissing the Fujita suits; releasing the notice of *lis pendens* in the Fujita suits; settling the Fujita suits; and interfering with the appeal of *Shin I.* ER, tab 6 at 2; ER, tab 2 at 1-2 (Prelim. Inj.). An Amended Preliminary Injunction that contained substantively the same provisions as the original Preliminary Injunction was issued a day later. ER, tab 3 at 1-2 (Am. Prelim. Inj.). Thereafter, Shin filed an *Ex Parte* Motion to Modify Amended Preliminary Injunction which was subsequently granted by the judge who was assigned the *Shin I* case. SER at 35-55 (Exparte Mot. to Modify Amended Prelim. Inj.); ER, tab 6 at 1-7. TPLLC and Cho then filed the instant appeal. During the pendency of this appeal, Shin filed two separate motions to dismiss. Initially Shin argued that the Decision and Order was not a final judgment capable of being appealed and even if appealable, Cho and TPLLC lacked standing. After we dismissed the earlier appeal filed in *Shin I* for lack of jurisdiction, a second motion to dismiss for mootness was filled by Shin. TPLLC and Cho opposed both motions. At the status and disqualification hearing held on January 16, 2008 we informed the parties that the pending motions would be considered and disposed of in conjunction with this appeal.

II. JURISDICTION

[5] We first examine whether the appeal of the Decision and Order is properly before this court. TPLLC and Cho rely on 7 GCA § 3107(b), 7 GCA § 25102, and 48 U.S.C. § 1424-1, to seek

immediate review of the Decision and Order while Shin asserts that these statutory provisions do not apply and the Decision and Order is not a final judgment capable of review.

[6] This court has consistently held that its appellate jurisdiction is limited to those matters which the legislature permits it to review. *People v. Angoco*, 2006 Guam 18 ¶ 8 (citing *People v. Lujan,* 1998 Guam 28 ¶ 8). "[Section] 3107 outlines the jurisdiction of this court, including its appellate and supervisory jurisdiction, while [section] 3108 delineates those judgments and orders of the Superior Court which may be appealed." *Id.* "'Despite statutory provisions expressing a broad grant of jurisdiction . . . where other statutory provisions contain specific limitations on the ability of a party to pursue appellate relief, we must respect those restrictions.'" *Id.* (quoting *People v. Lujan*, 1998 Guam 28 ¶ 9). Statutes that provide this court with appellate jurisdiction are also strictly interpreted. *Angoco*, 2006 Guam 18 ¶ 8 (citing *People v. Natividad*, 2005 Guam 28 ¶ 1).

A. Jurisdiction based on 7 GCA § 3107(b)

[7] Title 7 GCA Section 3107(b) provides this court with jurisdiction over "original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction" and "appeals arising from judgments, final decrees, or final orders of the Superior Court." 7 GCA § 3107(b) (2005). TPLLC and Cho believe this section allows us to exercise jurisdiction to review an order dissolving an injunction which need not qualify as a final appealable order. Such a construction is, however, misapprehended.

[8] We "'interpret statutes in light of their terms and legislative intent.'" *People v. Angoco*, 2007 Guam 1 ¶ 49 (quoting *People v. Flores*, 2004 Guam 18 ¶ 8). "'The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'" *Aguon v. Gutierrez*, 2002

Guam 14 ¶ 6 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). The language of section 3107(b) provides that such authority is granted only over "jurisdiction of *original* proceedings for . . . injunction." 7 GCA § 3107(b) (emphasis added). Unambiguously, therefore, this court has the authority to hear an injunction proceeding under 3107(b) only if it is an original proceeding.

[9] In *Borja v. Bitanga*, this court considered whether it had appellate jurisdiction over a denial of writ relief in a habeas matter. 1998 Guam 29 ¶ 9. We expressed that "the specific language of [section 3107] reveals a distinction is drawn between the court's appellate and original jurisdiction." *Id.* at ¶ 11. "Section 3107 provides the Supreme Court of Guam with original jurisdiction over matters generally characterized as writ proceedings, including mandamus, prohibition and injunction." *Id.* "As explained by the federal Appellate Division, "[t]he phrase 'original jurisdiction' means the power to entertain cases in the first instance as distinguished from appellate jurisdiction . . . ." *People v. Rosario*, 296 F. Supp. 140, 142 (D. Guam App. Div. 1969).

[10] The review of the modification of an injunction is not an original proceeding filed in this court and section 3107(b) cannot be interpreted as granting appellate jurisdiction over the modification of an injunction order issued at the trial level. The plain language of section 3107(b) and *Bitanga*, show that there is a distinction between this court's original and appellate jurisdiction. Section 3107(b) does not provide a basis for a party to file an appeal to this court to "review orders that dissolve injunction." Appellants' Opposition to Motion to Dismiss Appeal (June 27, 2007) at 5. We, therefore, lack jurisdiction to address the instant appeal under 7 GCA § 3107(b), because the appeal was not filed as an original proceeding for an injunction, which could invoke this court's original jurisdiction.

B. Supervisory jurisdiction: 48 U.S.C. § 1424-1(a)(1)

[11] TPLLC and Cho also contend that this court may exercise supervisory jurisdiction under section 1424-1(a)(1)[1] which they contend vests the court with original jurisdiction over proceedings necessary "to protect its appellate jurisdiction and supervisory authority over cases and proceedings before it." Appellants' Opp'n to Mot. to Dismiss at 6. They maintain that by modifying the injunction, the trial court is permitting Shin to sabotage the *Shin I* appeal, formally captioned *Shin v. Fujita*, CVA07-002, "[thereby] allowing Shin to prevent this Court from reviewing the Superior Court's Order denying Motion to Amend Complaint." *Id.* While TPLLC and Cho implicate this court's supervisory jurisdiction as a basis for review, they do not offer any authority to support why this court must protect its appellate or supervisory jurisdiction by hearing the instant appeal.

[12] Title 48 U.S.C. § 1424-1(a)(1) states that the Guam Supreme Court "shall . . . have original jurisdiction over proceedings necessary to protect its appellate jurisdiction and supervisory authority and such other original jurisdiction as the laws of Guam may provide." 48 U.S.C.A. § 1424-1(a)(1) (Westlaw through P.L. 110-313 (excluding P.L. 110-234, 110-246, and 110-289) approved 8-12-08) Section 3107(b) of Title 7 of the Guam Code Annotated appears to have codified the organic grant of such supervisory jurisdiction, containing similar language that this court's authority "includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction" and "supervisory jurisdiction over all inferior courts in Guam." 7 GCA § 3107(b). Supervisory jurisdiction "is of ancient inception, and relates back to and has its origin in the power exercised by the King's Bench in England. . . ." *State ex rel. Auto Fin. Co. v.*

[1] In Appellants' Statement of Jurisdiction, Appellants cite 48 U.S.C. § 1424-3 as a basis for this court's jurisdiction. Appellants' reliance on section 1424-3 is misplaced as this section applies to the District Court Appellate Division.

Landwehr, 71 S.W.2d 144, 145 (Mo. Ct. App. 1934). The King's Bench "was vested with power to keep all inferior courts within the bounds of their authority, and, to do this, could remove their proceedings to be determined by it, or prohibit their progress below. . . ." *Kelly v. Kemp*, 162 P. 1079, 1080 (Okla. 1917). The court also had authority "to enforce in inferior tribunals the due exercise of those judicial or ministerial powers which had been vested in them, by restraining their excesses and quickening their negligence and obviating their denial of justice." *Id.* "As such supervisory control came into exercise by the courts of the colonies, the power of review by appeal or error came to be regarded as separate and distinct from the power exercised pursuant to the established extraordinary legal remedies, so that it is now the latter power which is commonly and generally regarded as falling within the contemplation of the constitutional provision for superintending control, the same to be exercised as a discretionary authority, and under extraordinary circumstances when the remedy by appeal or error is inadequate." *State ex rel. Auto Fin. Co.*, 71 S.W.2d at 145.

[13] It is important to underscore that the extent of the Supreme Court's supervisory power is unrestricted. "Within this sphere is a grant of unlimited power" and that such "'superintending control is hampered by no specific rules or means for its exercise.'" *Hutchins v. City of Des Moines*, 157 N.W. 881, 889 (Iowa 1916) (quoting *State v. Johnson*, 79 N.W. 1081 (Wis. 1899)). The grant of supervisory authority "is so general and comprehensive that its complete and full extent and use have practically hitherto not been fully and completely known and exemplified. It is unlimited, being bounded only by the exigencies which call for its exercise." *Id.* (quoting *State v. Johnson*, 79 N.W. at 1081).

[14] Notwithstanding the breadth of our supervisory power, this authority to supervise and control inferior courts in order to prevent and correct errors and abuses is discretionary and should be exercised under extraordinary circumstances. *See Hutchins v. Des Moines*, 157 N.W. at 890 [mentions "circumstances of exceptional or extraordinary hardship"]; *State ex rel. Auto Fin. Co.*, 71 S.W.2d at 145. In interpreting its own constitutional provision, which conferred on it the "'control and general supervision over all inferior courts,'" the Supreme Court of Louisiana expressed that it was constitutionally authorized to "examine any question which it deemed of sufficient importance for examination and decision" "whenever it deemed proper." *Brunner Mercantile Co. v. Rodgin*, 57 So. 1004, 1004 (La. 1912) (quoting La. Const. Art. 94). "The power thus granted is plenary, and its exercise rests in the sound discretion of the court." *Loeb v. Collier*, 59 So. 816, 816 (La. 1912) (citing *Thompson & Co. v. Gosserand*, 55 So. 663 (La. 1911); *State ex rel. Union Sawmill Co. v. Summit Lumber Co.*, 42 So. 195 (La. 1906)).

[15] In *State ex rel. Helena v. City of Helena Waterworks Co.*, the Supreme Court of Montana considered whether it had original jurisdiction over an injunction invoked under a constitutional provision which conferred on it "general supervisory control over all inferior courts." 115 P. 200, 201 (Mont. 1911) (quoting Mont. Const. Art. 8, § 2). In dismissing the proceeding, the *Helena Waterworks* court expressed that its constitutional supervisory power "was designed to control summarily the course of litigation in the inferior courts and prevent an injustice being done through a mistake of law or a willful disregard of it when there is no appeal from the erroneous order, or the relief obtained through the appeal would be inadequate." *Id.* at 201-02. The court did not find the circumstances warranted issuing original jurisdiction by exercising its supervisory powers and remanded the case so the parties could seek the relief from the district court. *Id.* at 203.

[16] In *People v. Angoco*, we expressed a "strong commitment to prudential rules shaping the exercise of our jurisdiction should result in a sparing use of this extraordinary supervisory power" and that such power should not be exercised "to circumvent the limits on our jurisdiction set forth by the Legislature or to be a substitute for appeal." 2006 Guam 18, ¶ 29. Accordingly, we held that "[a] pretrial ruling on a motion to disqualify defense counsel is usually not an exceptional circumstance which creates significant injustice for which an appeal is an inadequate remedy; consequently, to exercise supervisory jurisdiction on the record before us is unwise and unwarranted." *Id.* at ¶ 30. More importantly, we found that the language providing the court with supervisory authority "was intended to allow us to address extreme cases, such as when the Superior Court is acting in excess of its powers." *Id.* at ¶ 29. In sum, while it is completely within the sound discretion of this court to exercise its organically conferred power of supervisory jurisdiction under 48 U.S.C. §1424-1(a)(1), only an extraordinary case calls for such an exercise of jurisdiction.

[17] Here, the parties are appealing a pretrial decision on an *ex parte* motion to modify an amended preliminary injunction; which, *inter alia*, effectively disqualified Attorney Pipes from participating in the case or related cases. Similar to *Angoco*, we are being asked to exercise supervisory jurisdiction over an order which resulted in the disqualification of counsel and must consider whether Appellants present a compelling reason to exercise such jurisdiction. In line with this court's policy, we decline to exercise our supervisory jurisdiction because TPLLC and Cho have not made a showing that the trial court acted in excess of its powers. The trial court clearly had jurisdiction to grant, deny, or modify an injunction pursuant to Article 3 of Chapter 20 of Title 7 GCA §§ 20301 et. seq. *See* 7 GCA §§ 20301, 20302, 20303, 20305 (2005).

[18] This case fails to present any extraordinary circumstances warranting the use of our supervisory authority. *Angoco*, 2006 Guam 18 ¶ 29. Our supervisory power "was designed to control summarily the course of litigation in the inferior courts and prevent an injustice being done through a mistake of law or a willful disregard of it when there is no appeal from the erroneous order, or the relief obtained through the appeal would be inadequate." *Helena Waterworks Co.*, 115 P. at 201. TPLLC and Cho are not precluded from taking an appeal and have not shown that relief from an appeal would be inadequate. Permitting supervisory review in this instance would circumvent the limits on this court's jurisdiction and operate as a substitute for appeal. *See Angoco*, 2006 Guam 18 ¶¶ 29-30.

[19] We find Appellants' reliance on section 1424-1(a)(1) unavailing. While our supervisory power is unrestricted and rests within this court's sound discretion, this court will not exercise such authority in this instance. Accordingly, we decline to exercise supervisory review under section 1424-1(a)(1).

C. Jurisdiction based on 7 GCA § 25102(f)

[20] Our court has not previously addressed whether an order modifying a preliminary injunction is appealable as an order granting or dissolving an injunction under 7 GCA § 25102(f). To determine if the Decision and Order is appealable under this section initially requires a determination of whether the subject order actually modifies the preliminary injunction (as characterized by TPLLC and Cho) or is merely a disqualification order (as portrayed by Shin). We must first resolve this threshold issue before deciding if this court may exercise jurisdiction over the instant appeal since only particular orders are afforded interlocutory review as a right. *See People v. Angoco*, 2006 Guam 18 ¶ 11 (citing *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16 ¶ 12; *People v. Quenga*, 1997 Guam

6 ¶ 3) ("The Guam Legislature limited the appellate review of this court, generally, to final determinations."); 7 GCA § 3107(b); 7 GCA § 25102; 7 GCA § 3108 (a), (b).

[21] The substance of the order, and not its form or title, determines if it is appealable. *Gomes v. Kauwe's Heirs*, 472 P.2d 119, 119-120 (Haw. 1970) ("The nature of an order as final or interlocutory is determined by its substance and not on the basis of the designation given to by the court."); *Howell v. Reimann*, 288 P.2d 649, 651 (Idaho 1955) ("Whether an instrument is an appealable order or judgment must be determined by its content and substance, and not by its title."); *Airline Ground Serv. Inc. v. Checker Cab Co.*, 39 N.W.2d 809, 811 (Neb. 1949) ("It is fundamental of course that the form of an order or the label placed upon it does not determine its character. It is the substance of the order which is controlling in determining its nature."). "The label placed upon the order or judgment by the trial court is not conclusive." *Peninsula Prop. Co. v. Santa Cruz County*, 235 P.2d 635, 640 (Cal. Dist. Ct. App. 1951). "[A]n appellate court must determine from the substance and effect of the order or judgment whether it is final or interlocutory." *Id.*

[22] An injunction is defined as "a writ or order requiring a person to refrain from a particular act it may be granted by the court in which the action is brought or by a judge thereof, and when granted by the judge [that] may be enforced as an order of the court." 7 GCA § 20301 (2005). A preliminary injunction is "interlocutory, tentative, provisional, ad interim, impermanent, mutable, not fixed or final or conclusive, characterized by its for-the-time-beingness." *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 742 (2d Cir. 1953). "It serves as an equitable policing measure to prevent the parties from harming one another during the litigation; to keep the parties, while the suit goes on, as far as possible in the respective positions they occupied when the suit began." *Id.* Further, courts have expressed that "[t]he purpose of a preliminary injunction is always to prevent irreparable injury

so as to preserve the court's ability to render a meaningful decision on the merits." *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974). "If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury . . . by allowing the parties to take proposed action that the court finds will minimize the irreparable injury." *Id.*

[23] The preliminary injunction restrained and enjoined Shin from dismissing the Fujita suits, releasing the notice of lis pendens, settling the Fujita suits and interfering with their designated attorneys authorized to file an appeal. Thereafter, Shin filed an *Ex Parte* Motion to Modify the injunction, wherein Shin sought permission from the trial court to file a pleading "in the Supreme Court of Guam stating that he objects to Mr. Pipes pursuing the appeal as Mr. Pipes is proceeding against his former client's intentions and interests; or, in the alternative Mr. Pipes be substituted with other counsel." SER at 37. Shin did not particularly move to disqualify Attorney Pipes; instead, Shin moved the court to modify the Amended Preliminary Injunction. Shin also did not expressly request for Attorney Pipes' disqualification from the case, though it is clear that Shin objected to Attorney Pipes' participation in the appeal of *Shin I*. Shin did, however, seek to restrain Attorney Pipes from "proceeding against his former client's intentions and interests." *Id.*

[24] Judge Unpingco granted Shin's motion to modify the amended preliminary injunction based on a conflict of interest. The language of the Decision and Order specifically disqualifies Attorney Pipes from representing Shin in *Shin I* or in any other related case, essentially restricting and enjoining Pipes from participating in the Fujita suits and from representing Shin in such litigation.

[25] The Decision and Order also provides that Shin is "free to obtain substitute counsel" to either pursue the *Shin I* appeal, file an objection to the appeal, or "take whatever action Shin deems

appropriate." ER, tab 6 at 7. Thus, the Decision and Order does not only disqualify Attorney Pipes from the litigation but also allows Shin to either pursue or object to the appeal. The language of the Decision and Order modified the previously issued injunction and meets the definition of an injunction under section 20301 by requiring Attorney Pipes to refrain from representing Shin and from participating in the litigation involving the Fujita property.

[26] Having determined that the Decision and Order actually modified the Amended Preliminary Injunction we now must decide whether it is appealable as an order "granting or dissolving an injunction, or refusing to grant or dissolve an injunction" pursuant to section 7 GCA § 25102(f) (2005).

[27] Section 3108(b) of Title 7 affords this court immediate appellate jurisdiction of orders made available by statute. Section 3108(b) provides that "[o]rders other than final judgments shall be available to immediate appellate review as provided by law . . . ." 7 GCA § 3108(b) (2005). Under 7 GCA § 25102, "[a]n appeal in a civil action or proceeding may be taken from the Superior Court . . . [f]rom an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction . . . ." 7 GCA § 25102(f).[2] As explained by this court, "[t]hough a preliminary injunction is essentially interlocutory in nature," this court has "jurisdiction over this interlocutory appeal pursuant to . . . 7 GCA § 25102." *Hong Kong & Shanghai Banking Corp., Ltd. v. Kallingal*, 2005 Guam 13 ¶ 16; (quoting *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 14 (" [W]e have jurisdiction over this interlocutory appeal [of what the court deems to be equivalent to an injunction, preliminary in nature] pursuant to . . . 7 GCA § 25102 which states that '[a]n appeal in a civil action or proceeding may be taken from the Superior Court in the following cases: . . . (f) [f]rom

an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction,' and . . . GCA § 3108(b) which states that '[o]rders other than final judgments shall be available to immediate appellate review as provided by law.'" (citation omitted) (quoting 7 GCA §§ 25102(f) and 3108 (b)).

[28] Section 25102(f) was based on and derived from former section 963 of the California Code of Civil Procedure.[3] 7 GCA § 25102(f). Therefore, this court may look to California case law interpreting this section of the California Code of Civil Procedure, to aid in our interpretations of the same language. Where Guam statutes are derived from statutes of other jurisdictions, this court may find guidance in that jurisdiction's interpretation. *Sumitomo Constr. Co. v. Zhong Ye, Inc.*, 1997 Guam 8 ¶ 7 (citing Sutherland, . . . Stat. Const. ¶ 52.01 (5th ed.)) ("Generally, when a legislature adopts a statute which is identical or similar to one in effect in another jurisdiction, it is presumed that the adopting jurisdiction applies the construction placed on the statute by the originating jurisdiction.").

[29] In *Chico Feminist Women's Health Center v. Scully*, the California Court of Appeals considered an appeal taken from a trial court's order amending a preliminary injunction pursuant to section 904.1(f)[4] of the California Code of Civil Procedure.[5] 256 Cal. Rptr. 194, 196 (Ct. App.

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[2] Formerly Code of Civil Procedure § 936.1.

[3] Section 963 was repealed in 1968and Section 904.1 now sets forth the types of judgments and orders which can be appealed. *See ital.* 1968 Cal. Sta. 811; Cal. Civ. Proc. Code § 904.1(f). Identical to the language in 963, subdivision (f) of section 904.1 allowed an appeal to be taken "from an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction." Cal. Civ. Proc. Code § 904.1 at 6. The 1993 amendment of section 904.1 changed the designators of the subdivisions and paragraphs and so 904.1(f) is now 904.1(a)(6). *Id.*

[4] *Chico* was decided prior to the 1993 amendment which changed subsection (f).

[5] Subdivision (f) (now subdivision (a)(6) of Code of Civil Procedure section 904.1, which is identical to 7 GCA § 25102(f), provides that an appeal may be taken "[f]rom an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction." Cal. Civ. Proc. Code § 904.1(a)(6); *see also Chico Feminist Women's Health Center v. Scully*, 256 Cal. Rptr. 194, 198 n.2 (Ct. App. 1989).

1989). In *Chico*, upon plaintiff's petition, the trial court issued an order granting a preliminary injunction following a hearing which was not appealed. *Id.* at 196- 98, 206. Subsequently, plaintiff petitioned to amend the preliminary injunction and the trial court issued an order amending the preliminary injunction following a hearing. *Id.* at 198. Plaintiff and defendants then took an appeal from that order. *Id.* at 196. An issue before the court was whether defendants were able to use the modified preliminary injunction order "as an artificial springboard from which to launch an appeal that could have been taken earlier." *Id.* at 206. The court, in its resolution of that issue, articulated that "[a]n order modifying a preliminary injunction is appealable as 'an order granting an injunction.'" *Id.* at 206 (citing *People v. Associated Oil Co.*, 297 P. 536 (Cal. 1931)).

[30] TPLLC and Cho appeal from the order disqualifying Attorney Pipes from the litigation and allowing Shin to seek substitute counsel and to take whatever action Shin deemed appropriate. Based on the California case law interpreting section 904.1 of the California Code of Civil Procedure and stating that "[a]n order modifying a preliminary injunction is appealable as 'an order granting an injunction,'" we find the Decision and Order modified the Amended Preliminary Injunction and is appealable as an order granting an injunction under § 25102(f). *Id.* Accordingly, we have jurisdiction over the appeal pursuant to 7 GCA § 25102(f).

D. Whether Appellants have standing to bring this appeal

[31] Although we have jurisdiction to review the Decision and Order under section 25102(f) we still must address Shin's argument that TPLLC and Cho lack standing to bring the instant appeal. Shin maintains that TPLLC and Cho lack standing because Shin, as the client and the aggrieved party, determines who his counsel should be and his appeal strategy and goal. This court has articulated that "'[s]tanding is a threshold jurisdictional matter,'" *Benavente v. Taitano*, 2006 Guam

15 ¶ 14 (quoting *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 17). Therefore this court lacks "subject matter jurisdiction to hear a claim when a party lacks standing." *Id.* "The question of standing focuses on who may bring an action. In essence, the relevant inquiry is 'whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'" *Id.* (citation omitted) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975); *see also Guam Imaging Consultants, Inc.*, 2004 Guam 15 at ¶ 19.

[32] "'[A] party acquires standing either by suffering an injury in fact or as the beneficiary of express statutory authority granting standing.'" *Benavente*, 2006 Guam 15 at ¶ 18 (quoting *Tanner v. Town Council*, 880 A.2d 784, 792 (R.I. 2005)). "Where standing is statutorily conferred, the court's analysis begins with 'a straight statutory construction of the relevant statute to determine upon whom the Legislature conferred standing and whether the [Appellants] here fall in that category.'" *Id.* at ¶ 19 (quoting *Tanner v. Town Council*, 880 A.2d 784, 792 n.6 (R.I. 2005)). Standing, thus, "may be predicated upon the statutory grant of such . . . by the legislature." *Id.* at ¶ 20. "Therefore, where standing is statutorily conferred, we look first to the language of the relevant statute to determine whether a party has statutory standing." *Id.*

[33] Section 25104 of Title 7 of the Guam Code Annotated provides that "[a]ny party aggrieved may appeal in the cases prescribed in this Chapter." 7 GCA § 25104 (2005). Section 25102(f), which falls under the same chapter, provides that an appeal may be taken "[f]rom an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction." 7 GCA § 25102(f). A party, therefore, has standing to seek review of an order granting or dissolving the injunction by demonstrating that the party is legally aggrieved within the meaning of section 25104.

[34] The term "aggrieved party" has been defined as "[o]ne whose legal right is invaded by an act complained of, *or whose pecuniary interest is directly and adversely affected* by a decree or judgment." *Alabama Dept. of Envtl. Mgmt. v. Legal Envtl. Assistance Found., Inc.*, 973 So. 2d 369, 378, (Ala. Civ. App. 2007)(quoting *Birmingham Racing Comm'n v. Alabama Thoroughbred Ass'n, Inc.*, 775 So. 2d 207, 210 (Ala. Civ.App. 1999)); *see also Rymal v. Baergen*, 686 N.W.2d 241, 265-266 (Mich. Ct. App. 2004) (defining the term "aggrieved party" as "'one whose legal right is invaded by an action, or whose pecuniary interest is directly or adversely affected by a judgment or order'") (quoting *Dep't. of Consumer & Indus. Servs. v. Shah*, 600 N.W. 2d 406 (1999)). "'The word 'aggrieved' refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation.'" *Legal Envtl. Assistance Found., Inc.*, 973 So. 2d at 378 (quoting Black's Law Dictionary 65 (6th ed. 1990)). Moreover, an aggrieved party is one who has "suffered a concrete and particularized injury, as would a party plaintiff initially invoking the court's power." *Federated Ins. Co. v. Oakland County Road Comm'n*, 715 N.W.2d 846, 850 (Mich. 2006).

[35] The proceedings below concern the MOA and the legal rights and pecuniary interests of TPLLC and Cho are directly affected by the Decision and Order. SER at 1-15 (Verified Compl., Sept. 5, 2007). Significantly, TPLLC and Cho are also plaintiffs in the proceedings *sub judice*, thus parties to the underlying action and directly bound to the Decision and Order issued by the Superior Court. Therefore, TPLLC and Cho are legally aggrieved within the meaning of section 25104 and they have standing to pursue the instant appeal.

E. Mootness

[36] In the later-filed motion to dismiss, Shin asserts that the dismissal of the *Shin I* appeal in CVA07-002[6] renders the current appeal moot because "there [is] no longer any controversy over who could represent. . . . Shin on that appeal." Appellee's Mot. to Dismiss at 1 (Aug. 14, 2007). Shin argues that the dismissal of the *Shin I* appeal has rendered it impossible for this court to grant any effectual relief therefore, we should dismiss this appeal. Appellee's Mot. to Dismiss at 4-5 (Aug. 14, 2007).

[37] "'It is a well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction. . . .'" *Sullivan v. McDonald*, 913 A.2d 403, 405 (Conn. 2007) (quoting *Private Healthcare Sys., Inc. v. Torres*, 898 A.2d 768, 773 (Conn. 2006)). "A claim becomes moot only when the issues are no longer live or the parties lack a legally cognizable interest in the outcome." *Town House Dep't Stores*, 2000 Guam 32 ¶ 9 (quoting *United States v. Ripinsky*, 20 F.3d 359, 361 (9th Cir. 1994)). "The test for mootness is whether 'the issues involved in the trial court no longer exist' because intervening events . . . [have] render[ed] it impossible for the [reviewing] court to grant the complaining party effectual relief." *Id.* (quoting *In re A Minor*, 537 N.E.2d 292 (1989)) (ellipsis and alterations in original). "An appeal is considered moot when it 'presents or involves no actual controversy, interests or rights of the parties, or where the issues have ceased to exist.'" *Richardson*, 688 N.E.2d at 635 (quoting *First Nat'l Bank v. Kusper*, 456 N.E.2d 7, 10 (Ill. 1983)). Thus, an appeal is dismissed as moot "when, by virtue of an intervening event, the

[6] Our dismissal of the *Shin I* appeal was by court order, and, in a subsequent opinion, this court explained that the dismissal was based on jurisdictional grounds. *Shin v. Fujita Kanko Guam, Inc.*, 2007 Guam 18 ¶ 2 n.1, ¶ 21. This court expressed that the issue on appeal, the propriety of the denial of a motion to amend a complaint, did not present "'exceptional circumstances' necessary'" to warrant our interlocutory review. *Id.* at ¶ 21, (quoting *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16 ¶ 6).

appellate court cannot grant effectual relief whatever in favor of the appellant." *Town House Dep't Stores, Inc.*, 2000 Guam 32 ¶ 9; *see also, In re Matter of Inspection of Minnesota Auto Specialties, Inc.*, 346 N.W.2d 657, 658 (Minn. 1984) ("If, pending an appeal, an event occurs which makes a decision on the merits unnecessary or an award of effective relief impossible, the appeal will be dismissed as moot."); *Sullivan*, 913 A.2d at 405 ("'When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot.'") (quoting *Torres*, 898 A.2d at 773).

[38] Shin's motion for modification sought permission from the trial court to file a pleading "in the Supreme Court of Guam stating that he objects to [Attorney Pipes] pursuing the appeal as [Attorney Pipes] is proceeding against his former client's intentions and interests; or, in the alternative Mr. Pipes be substituted with other counsel." SER at 37 (Ex parte Mot. to Modify Amend. Prelim. Inj.). The Superior Court subsequently granted Shin's motion for modification, SER at 35-55; ordering that Attorney Pipes be disqualified from representing Shin in *Shin I*, *Shin II*, or any other related case. ER, tab 6 at 1-7. The Decision and Order also stated that Shin be allowed "to take whatever action Shin deems appropriate." ER, tab 6 at 7. TPLLC and Cho contend that the Decision and Order issued is limited to Shin's choice of counsel for the *Shin I* appeal and does not permit Shin to take any action other than the actions he previously took with respect to the *Shin I* appeal. Thus, Shin would apparently still be bound by the Amended Preliminary Injunction from dismissing or settling the Fujita suits and releasing the notice of lis pendens in the Fujita suits.

[39] At oral argument, TPLLC and Cho agreed that if the words "to take whatever action Shin deems appropriate" were construed to allow Shin to take whatever action he deemed appropriate concerning the *Shin I* appeal, then this appeal would be moot because the *Shin I* appeal has been

dismissed. Shin's counsel also conceded at oral argument that the words in the Decision and Order "to take whatever action Shin deems appropriate" only related to Shin's conduct regarding the *Shin I* appeal. Based on the parties' representations at oral argument that they share an identical construction of the scope of the Decision and Order,[7] it appears that the Amended Preliminary Injunction was modified merely to allow Shin to substitute counsel and make decisions regarding the *Shin I* appeal. Since the *Shin I* appeal has now been dismissed by this court, we agree with the parties that, under theses circumstances, the appeal of the Decision and Order is now moot. Accordingly, we will not address whether the Superior Court abused its discretion in modifying the Amended Preliminary Injunction and the appeal is dismissed.

III. CONCLUSION

[40] We lack jurisdiction over the instant appeal under 7 GCA § 3107(b) since the appeal of the modification of the Amended Preliminary Injunction was not filed in this court as an original proceeding. We further decline to exercise jurisdiction under 48 U.S.C. § 1424-1(a)(1) because it does not readily appear that the Superior Court acted in excess of its power or that there are extraordinary circumstances warranting exercise of our supervisory power. The Decision and Order modifying the Amended Preliminary Injunction is, however, appealable as an order granting or dissolving an injunction as provided by 7 GCA § 25102(f). TPLLC and Cho as aggrieved parties also have standing to appeal the Decision and Order. Therefore, we have jurisdiction to review their appeal under 7 GCA § 25102(f). Because the parties concede that the language of the Decision and Order "to take whatever action Shin deems appropriate" is limited in scope only to the taking of action in the *Shin I* appeal, which has since been dismissed, the current appeal is rendered moot.

[7] If the language was not interpreted in this manner then the parties agreed the issue might not be necessarily moot.

Thus, we need not determine whether the lower court abused its discretion in granting the *Ex Parte* motion to modify the Amended Preliminary Injunction. Accordingly, this appeal is **DISMISSED**.

Original Signed By: **Richard H. Benson**

RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: **John A. Manglona**

JOHN A. MANGLONA
Justice *Pro Tempore*

Original Signed By: **Robert J. Torres**

ROBERT J. TORRES
Chief Justice