IN THE SUPREME COURT OF GUAM

JUNE U. BLAS
Plaintiff-Appellant,

v.

CARL Q. CRUZ,
Defendant-Appellee.

Supreme Court Case No.: CVA08-011
Superior Court Case No.: DM0835-05

OPINION

Cite as: 2009 Guam 12

Appeal from the Superior Court of Guam
Argued and submitted on May 5, 2009
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; RICHARD H. BENSON, Associate Justice *Pro Tempore.*

CARBULLIDO, J.

[1] This appeal involves the Superior Court's distribution of property, including a disputed debt, upon the divorce of June U. Blas from Carl Q. Cruz. Although June never signed or indicated consent to a written marital property settlement agreement, the Superior Court granted a motion by Carl to enforce settlement. The court found the parties had created a binding contract when a written agreement drafted by Carl accepted an offer to settle contained in a letter from June. The court then distributed the marital property and debts pursuant to the terms of Carl's draft, treating it as a stipulation of the parties. Because Carl's draft was in fact a counter-offer, terminating June's offer, we find there was no enforceable agreement between the parties. We reverse the portions of the Judgment that distribute the marital property and instruct the Superior Court on remand to distribute the property, including debts, in accordance with Guam's community property laws.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In March 2005, Plaintiff-Appellant June U. Blas and Defendant-Appellee Carl Q. Cruz separated after fourteen years of marriage. Appellant's Brief at 4 (Mar. 6, 2009). June filed for divorce shortly thereafter. *Id.* at 2. During the marriage, the couple had acquired both community property and community debts. Appellant's Excerpts of Record ("ER"), tab 5 at 28-29 (Answer and Am. Counterclaim, Nov. 1, 2005).

[3] In March 2008, June's counsel sent a letter ("June's letter") to Carl's counsel which offered three terms "in a sincere attempt to finally settle this case": namely, that Carl would receive audio equipment as his separate property; that June would receive as her separate

property a BMW and Toyota Highlander, household appliances, a computer and cameras; and that June would assume sole responsibility for the Toyota Highlander loan, a debt to Citibank, and a Home Depot debt. ER, tab 7, Ex. A at 37 (Ltr. from Atty. Phillips to Atty. Woodley, Mar. 18, 2008). A few weeks later, Carl's counsel drafted a proposed Settlement Agreement ("Carl's settlement draft") which reflected these three terms as well as others not included in June's letter. *Id.*, Ex. B at 38 (Appearance, Consent and Marital Settlement Agreement, Apr. 1, 2008). The additional terms in Carl's settlement draft addressed retirement benefits and military insurance and included a provision stating that it was intended to be a complete settlement, waiving any other claims against either party. *Id.* at 40-41. Carl's settlement draft included signature lines for June, Carl, and a Notary Public, none of which were ever completed. *Id.* at 42.

[4] In May 2008, Carl then filed a Motion to Enforce Settlement Agreement. ER, tab 7 at 32 (Not. of Mot. and Mot. to Enforce Settlement Agreement, May 19, 2008). Carl attached letters of negotiations and his draft Settlement Agreement as exhibits for the court's review. Appellant's Br. at 3. June opposed the Motion, arguing that although the parties had negotiated over several months, culminating in Carl's settlement draft, June had refused to accept it because it failed to address a Pentagon Federal Credit Union loan, ("Pentagon Federal debt") with an approximate balance of $9,149.00, acquired during the course of the marriage by June in her name only to refinance the mortgage of the marital home to avoid pending foreclosure. Appellant's Br. at 4; ER, tab 8 at 50 (Pl.'s Opp'n to Def.'s Mot. to Enforce Settlement Agreement, June 6, 2008).

[5] Although neither June's letter nor Carl's settlement draft discussed this debt, June had alleged it to be a community debt in her Complaint and Amended Complaint. ER, tab 1 at 7 (Comp., May 31, 2005); ER, tab 4 at 21 (Am. Comp., Oct. 26, 2005). In both his Answers and

Counterclaims, Carl acknowledged in part the debt but did not admit to its accuracy, stating in boilerplate that "Defendant admits so much of paragraph X [10] as [sic] alleges that there are community debts, but denies that the items listed are accurate, full and complete, and we reserve the right to amend the pleadings to add additional community debts." ER, tab 2 at 12 (Answer and Counterclaim); ER tab 5 at 27, (Answer and Counterclaim to Am. Comp., Oct. 28, 2005).

[6] The Superior Court heard legal arguments on Carl's motion to enforce settlement. Appellant's Br. at 3, citing Transcripts ("Tr.") at 2, 5, 7, 12 (Mot. To Enforce Settlement Agreement, June 17, 2008). *See also* ER, tab 14 at 70 (Docket, Oct. 27, 2008). In his reply to June's Opposition on the Motion to Enforce Settlement, Carl argued that the disputed loan "was not a part of the settlement agreement." He contended that

> It is undisputed that neither the offer from Plaintiff's attorney nor the acceptance in the form of the Agreement from Defendant's attorney mention the loan with Pentagon Federal Credit Union. . . . It just shows that this loan, which was not admitted to be a correct community debt for which defendant admitted any responsibility, was not a part of the settlement agreement.

ER, tab 9 at 53, 54 (Reply Opp'n, June 10, 2008).

[7] At the conclusion of the hearing, the Superior Court found that June's letter contained an offer to settle which was accepted through Carl's settlement draft, creating a valid contract. Appellant's Br. at 3, citing to Tr. at 12 (Mot. To Enforce Settlement Agreement); Appellant's Br. at 7. June objected on several grounds, discussed below. The court subsequently filed an Order After Hearing, ordering that the parties comply with the terms of the Settlement Agreement. ER, tab 10 at 55 (Order After Hearing, July 7, 2008). In this Order, the court stated merely: "[t]he Court finds that there was a clear offer and acceptance and there was a meeting of the minds. Therefore, the Court will order the agreement between the parties as reflected in the offer and acceptance be enforced." *Id.*

[8] The Superior Court granted a mutual divorce on the grounds of irreconcilable differences. *See* ER, tab 11 at 58 (Interlocutory J. of Divorce, Sept. 24, 2008). The Judgment, sub-captioned "stipulation," incorporated the terms of Carl's draft settlement agreement, treating it as the stipulation of both parties. *Id.* at 57. June was ordered to pay the Pentagon Federal debt, without any additional finding by the Superior Court as to its character as community or separate property. *Id.* at 58. A Final Judgment of Divorce incorporating the Interlocutory Judgment's provisions was filed the same day. ER, tab 12 at 61 (Final J. of Divorce, Sept. 24, 2008).

[9] June timely appealed. ER, tab 13 at 63 (Notice of Appeal, Oct. 24, 2008). Carl has elected not to file a brief in opposition, instead filing a letter pursuant to Guam Rule of Appellate Procedure 17(e) informing this court "[t]hat it appears financially imprudent for me to pay my attorney $5,000 to file a brief and represent me in this appeal where my financial exposure will not even be $5,000.00." Decl. of Def.-Appellee, Mar. 12, 2009.

II. JURISDICTION

[10] This court has jurisdiction over an appeal of a final judgment of divorce. 7 GCA §§ 3107(b), 3108(a) (2005); *Navarro v. Navarro*, 2000 Guam 31 ¶ 5.

III. STANDARD OF REVIEW

[11] This court applies contract principles to the interpretation of settlement agreements. *See Leon Guerrero v. Moylan*, 2000 Guam 28 ¶¶ 8-9; *Camacho v. Camacho*, 1997 Guam 5 ¶¶ 30-35. Principles of contract interpretation are legal questions reviewed de novo. *Aetna Cas. & Sur. Co., Inc. v. Pintlar Corp.*, 948 F.2d 1507, 1511 (9th Cir. 1991). We thus review the Superior Court's interpretation of the parties' Agreement, including whether any agreement existed, de novo.

IV. DISCUSSION

[12] June contends the Superior Court erred when it found that Carl's settlement draft was an enforceable contract. She argues the court incorrectly considered evidence of the parties' negotiations in determining whether the parties had entered into an agreement, and that mutual assent essential to the formation of a contract was lacking. She further argues that a debt not explicitly included in the Settlement Agreement, the Pentagon Federal debt, was a community debt that should not have been assigned to her as her sole and separate obligation. We consider each of these arguments in turn.

A. Consideration of Evidence of Negotiations

[13] June contends that the Superior Court erred when it considered evidence of settlement negotiations, namely, June's letter in March 2008 offering to finally settle the case, for purposes of determining whether she and Carl had formed a settlement agreement. Appellant's Br. at 7; ER, tab 7, Ex. A at 37 (Ltr. from Atty. Phillips to Atty. Woodley).[1] She argues that the court's consideration of June's letter violated Guam Rule of Evidence 408, which bars evidence of conduct or statements made in attempting to compromise a claim. Appellant's Br. at 8; 6 GCA § 408 (2005). June misapprehends Rule 408, which does not preclude consideration of the communications between the parties for purposes of determining whether a settlement agreement exists.

[14] The Guam Rules of Evidence are essentially identical to their like-numbered counterparts in the Federal Rules of Evidence. *People v. Jesus*, 2009 Guam 2 ¶ 32 n.8. Therefore, interpretations of the Federal Rules of Evidence from other jurisdictions are persuasive authority.

[1] We note also that June's letter characterized as the settlement offer was signed by June's counsel and not by June herself.

See, e.g., People v. Farata, 2007 Guam 8 ¶ 29 & n.2. Federal Rule of Evidence 408 bars compromise evidence only when offered as evidence of the "validity," "invalidity," or "amount" of the disputed claim. Fed. R. Evid. 408, Commentary. Extensive case law finds Rule 408 inapplicable when compromise evidence is offered for a purpose other than to prove the validity, invalidity, or amount of a disputed claim. *See, e.g., Cates v. Morgan Portable Bldg. Corp.*, 780 F.2d 683, 691 (7th Cir. 1985) (Rule 408 does not bar evidence of a settlement when offered to prove a breach of the settlement agreement, as the purpose of the evidence is to prove the fact of settlement as opposed to the validity or amount of the underlying claim); *Basha v. Mitsubishi Motor Credit of Am., Inc.*, 336 F.3d 451, 454 n.4 (5th Cir. 2003) (settlement-related letters between parties were admissible where not used to establish liability, but, rather, to interpret parties' settlement agreement).

[15] Evidence related to a settlement agreement is admissible where it is not offered to prove liability, but rather is offered to prove the terms of the settlement agreement. *See, e.g., Taylor v. Taylor,* 650 So. 2d 662, 663 (Fla. Dist. Ct. App. 1995). June's letter was not barred by Rule 408 from being competent evidence to support the court's inquiry into whether an offer and acceptance had occurred creating an enforceable agreement.

B. Creation of a Binding Contract

[16] June contends the Superior Court erred in finding that the essential elements of a contract had been established. Appellant's Br. at 10. Specifically, June contends the parties lacked mutuality of consent as to the terms, or lack thereof, negotiated between them. *Id.*

[17] The court found that June's letter contained an offer to settle which was accepted through Carl's settlement draft, creating a valid contract. Appellant's Br. at 3, citing to Tr. at 12 (Mot. To Enforce Settlement Agreement); Appellant's Br. at 7. In its Order, the court found:

> that there was a clear offer and acceptance and there was a meeting of the minds. Therefore, the Court will order the agreement between the parties as reflected in the offer and acceptance be enforced.

ER, tab 10 at 55 (Order After Hearing, July 7, 2008).

[18] Principles of contract interpretation are legal questions reviewed de novo. *Aetna Cas. & Sur. Co., Inc.*, 948 F.2d at 1511. "A divorce decree incorporating a settlement agreement is simply a consent decree." *Leon Guerrero*, 2000 Guam 28 ¶ 8 (citing *Richardson v. Edwards*, 127 F.3d 97, 101 (D.C. Cir. 1997)). Rules of construction for contracts are used to interpret the consent decree according to the parties' intent. *Id.*; *see also Camacho*, 1997 Guam 5 ¶¶ 30-35. Essential elements of a contract include an offer, acceptance, and consideration. *See* 18 GCA § 85102 (2005). "In order to meet their burden in establishing the existence of a contract, . . . plaintiffs must show: 'an offer encompassing all essential terms, unequivocal acceptance by the offeree, consideration, and an intent to be bound.'" *Mobil Oil Guam, Inc. v. Tendido*, 2004 Guam 7 ¶ 34 (quoting *Magill v. Nelbro Packing Co.*, 43 P.3d 140, 142 (Alaska 2001)). Consent of the parties to a contract must be free, mutual and communicated by each to each other. 18 GCA § 85301 (2005). "Consent is not mutual, unless the parties all agree upon the same thing in the same sense." 18 GCA § 85316 (2005).

[19] It is hornbook law that, to ensure mutual consent of the parties to an offer, an offer must be mirrored by its acceptance to create a binding contract. Because the offeror is entitled to receive what it has bargained for, if a purported acceptance includes additional terms to which the offeror did not assent, the consequence is not merely that the addition is not binding and that no contract is formed, but that the offer is rejected, and that the offeree's power of acceptance thereafter is terminated. *See, e.g.*, *Benya v. Stevens & Thompson Paper Co., Inc.*, 468 A.2d 929, 931 (Vt. 1983) (internal citations omitted) ("The law relative to contract formation has long been

well settled . . . . For an acceptance of an offer to be valid, it must substantially comply with the terms of the offer. An acceptance that modifies or includes new terms is not an acceptance of the original offer; it is a counteroffer by the offeree that must be accepted or rejected by the original offeror."); *C. H. Leavell & Co. v. Grafe & Assocs., Inc.*, 414 P.2d 873, 878 (Idaho 1966) ("An acceptance of an offer, in order to create a binding contract, must unqualifiedly and unequivocally agree to all the material terms of the offer and must not include any new conditions or provisions."); *see also* 2 Williston on Contracts § 6:11 (4th ed. 1991) (collecting cases). Although nearly all jurisdictions have statutorily modified this common law "mirror-image" rule to promote finding a contract in certain situations involving arms-length negotiations, such as a contract for the sale of goods under the Uniform Commercial Code, we are aware of no such statutory modification that applies in this jurisdiction in the context of a marital settlement agreement.

[20] Here, June's letter, the purported offer, did not address savings accounts, checking accounts, military life insurance, retirement benefits, or the disputed Pentagon Federal debt, all of which were alleged in the Amended Complaint for Divorce as community property. ER, tab 4 at 20, 21 (Am. Compl.). In contrast, Carl's settlement draft, the purported acceptance, did include some of the terms addressed by the Amended Complaint, such as the disputed Pentagon Federal debt, retirement benefits, and military life insurance benefits. ER, tab 7, Ex. B at 38-42 (Appearance, Consent, and Marital Settlement Agreement). Further, Carl's settlement draft alone included a provision stating that it was intended to be a complete settlement, waiving any other claims against either party. *Id.* at 41. Although Carl's counsel may have argued at the hearing that Carl's settlement draft "just mirrors" the terms of June's letter, we disagree. See Appellant's Br. at 11. The Superior Court erred when it determined that the parties entered into

an enforceable contract, because the draft Settlement Agreement did not mirror the offer but rather added new terms not in the offer. In such circumstances, Carl's purported acceptance in fact operated as a counter-offer, cancelling the initial offer.

C. Distribution of Property

[21] June, in her prayer for relief, has asked us to reverse the Superior Court's judgment incorporating the Settlement Agreement and to remand consistent with Guam laws. Appellant's Br. at 19. "Experienced family judges and lawyers know that the best resolution of marital disputes is that reached by agreement of the parties themselves." *In re Marriage of Cream*, 16 Cal. Rptr. 2d 575, 582 (Ct. App. 1993). A husband and wife "may enter into any engagement or transaction with the other" respecting property, subject "to the general rules which control the actions of persons occupying confidential relations with each other". 19 GCA § 6111(a) (2005). Although a husband and wife generally cannot contract to "alter their legal relations," they may do so with respect to property. 19 GCA § 6111(b). There has been no valid settlement between June and Carl, therefore, no contract concerning disposition of their property. Consequently, we reverse the portions of the Judgment that purported to dispose of the marital property pursuant to the settlement agreement, including property distributed in items 2 through 11 of the Interlocutory Judgment of Divorce. We remand to the Superior Court for the purpose of characterizing the parties' property as community or separate prior to redistribution. This reversal does not affect the validity of the judgment's grant of mutual divorce on the grounds of irreconcilable differences. See ER, tab 11 at 58 (Interlocutory J. of Divorce).

[22] On remand, the Superior Court must "make such order for the disposition of the community property" as provided by 19 GCA § 8411(b). 19 GCA § 8412 (2005). Where a divorce is granted on "any other ground than that of adultery or extreme cruelty, the community

property shall be equally divided between the parties" if necessary pursuant to a court order for its partition and sale. 19 GCA § 8411(b) (2005). The Superior Court may exercise its broad discretion to determine the manner in which marital property is divided in order to accomplish an equal division and determine the value of community assets. *See Navarro*, 2000 Guam 31 ¶ 8; *Sinlao v. Sinlao*, 2005 Guam 24 ¶ 24 (determining that the trial court should examine each case's particular circumstances and consider the overall equality of the award of marital property). However, in characterizing the parties' debts, the court must apply the basic community property principles provided by statute.

[23] "Property acquired during marriage by either husband or wife . . . is presumed to be community property." 19 GCA § 6105(a) (2005). Community debt is defined by exclusion in 19 GCA § 6102(b) as "a debt contracted or incurred by either or both spouses during marriage which is not a separate debt." 19 GCA § 6102(b) (2005). Subsection 6102(a) specifically enumerates five instances where a debt may be attributed to one spouse alone. *See* 19 GCA § 6102(a) (2005). These include (1) a debt incurred before marriage or after its dissolution, (2) a debt incurred to provide maintenance to a former spouse, (3) a debt designated as a separate debt by a judgment or decree of court, (4) a debt identified to the creditor in writing at the time of its creation as the separate debt of the contracting spouse, (5) or a debt arising from certain torts. *Id.*[2]

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[2] *Separate debt* means:

> (1) a debt contracted or incurred by a spouse before marriage or after entry of a decree of dissolution of marriage;
>
> (2) a debt contracted or incurred by a spouse after entry of a decree entered pursuant to § 8401 of this Title unless the decree provides otherwise;
>
> (3) a debt designated as a separate debt of a spouse by a judgment or decree of any court having jurisdiction;
>
> (4) a debt contracted by a spouse during marriage which is identified by a spouse to the creditor in writing at the time of its creation as the separate debt of the contracting spouse; or

[24] The mere fact that a debt is signed by only one spouse is not sufficient to transform a debt into one "identified by a spouse to the creditor in writing at the time of its creation as the separate debt of the contracting spouse." 19 GCA § 6102(a)(4). Section 6102(b) provides that any debt "contracted or incurred by *either or both* spouses during marriage which is not a separate debt" is a community debt. 19 GCA § 6102(b) (emphasis added). This indicates that a community debt may be contracted or incurred by either spouse during marriage. *See Beneficial Fin. Co. of N.M. v. Alarcon*, 816 P.2d 489, 491 (N.M. 1991) (interpreting an almost identical statute to find that, because of the "either or both" language, a community debt can be made by one spouse alone). Thus, it is presumed that a debt created during marriage is a community debt, and the party asserting otherwise bears the burden of demonstrating that the debt is a separate one. *Id.*

[25] June alleged throughout the litigation and on appeal that the Pentagon Federal debt was a community debt, "as the initial mortgage and the subsequent loan for its repayment, i.e., the Pentagon Federal debt was incurred during the course of the marriage." Appellant's Br. at 17. At the hearing, June testified that the debt was acquired before the separation, and there is no evidence that this was rebutted. *See* Appellant's Br. at 19. Nothing in the record indicates that the Pentagon Federal debt falls under any of the enumerated categories defining a separate debt in 19 GCA § 6102(a). The only basis we can discern from the record on appeal for Carl's argument that the Pentagon Federal debt was separate and sole property of June was that the loan was exclusively under June's name. Appellant's Br. at 17. If Carl asserts on remand that the

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> (5) a debt which arises from a tort committed by a spouse before marriage or after entry of a decree of dissolution of marriage, a tort committed by one spouse against the other spouse or a separate tort committed during marriage.

19 GCA § 6102(a) (2005).

Pentagon Federal debt is June's separate property, he must bear the burden of rebutting the general presumption in this jurisdiction that the debt created during the marriage was a community debt.

VI. CONCLUSION

[26] The Superior Court erred when it granted Carl's motion to enforce settlement. Because Carl's purported acceptance did not mirror June's "offer" letter, the parties entered no enforceable settlement. The portions of the Superior Court's judgment that purported to distribute property pursuant to the parties' stipulation are **REVERSED**. On remand, the court must characterize the property, including the Pentagon Federal debt, as community or separate property and order its division pursuant to Guam's statutory law.

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Richard H. Benson**
RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Chief Justice