IN THE SUPREME COURT OF GUAM

MARY CRUZ REYES aka MARY CRUZ PEREZ nka MARY CRUZ REYES PEREZ,
Plaintiff-Appellant,

v.

FIRST NET INSURANCE COMPANY and DOES 1-10, Inclusive,
Defendants-Appellees.

OPINION

Cite as: 2009 Guam 17

Supreme Court Case No.: CVA08-007
Superior Court Case No.: CV2090-03
Small Claims Case No.: SD1866-03

Appeal from the Superior Court of Guam
Argued and submitted on February 9, 2009
Hagåtña, Guam

For Plaintiff-Appellant:
William L. Gavras, *Esq.*
Law Offices of William L. Gavras, P.C.
101 Salisbury Street
Dededo, Guam 96929

For Defendant-Appellee First Net:
Joseph C. Razzano, *Esq.*
Teker Torres & Teker, P.C.
130 Aspinall Avenue, Ste. 2A
Hagåtña, Guam 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] Plaintiff-Appellant Mary Cruz Reyes Perez appeals from a judgment dismissing the Superior Court case for lack of subject matter jurisdiction because the matter was adjudicated in the Small Claims Court. Perez argues the small claims judgment against her was void because she moved for voluntary dismissal under Rule 41(a) of the Guam Rules of Civil Procedure before an answer or summary judgment motion was filed. Therefore, Perez contends she was not precluded under the doctrine of res judicata from bringing an action in the Superior Court. We hold a formal written answer is not required under the small claims rules and a defendant's appearance at an answering hearing set by the court coupled with a defendant's readiness to answer the claims made by the plaintiff constitutes an answer under Rule 41(a)(1). Because the Rosarios appeared to answer the claim before Perez filed her dismissal, Perez did not have an absolute right to a dismissal under Rule 41(a)(1). Finally, we conclude the small claims judgment precluded Perez from filing the Superior Court action under the doctrine of res judicata. We therefore affirm the Superior Court judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Perez filed suit in the small claims court against Inina Plucer-Rosario, Gyongi Plucer-Rosario, and Frank B. Rosario (collectively the "Rosarios") to recover damages for injuries she sustained in an automobile accident. A summons was issued directing the Rosarios to appear at a hearing and answer the claim filed by Perez. Because only Perez and Frank Rosario were present for the hearing, it was continued to October 8, 2003. Attorney Frederick Kerley appeared with the Rosarios on October 8, 2003, but Perez was not present. As a result, the Small

Claims Referee dismissed the case without prejudice. Subsequently, Perez filed a motion to set aside the dismissal, and a hearing was set on the motion. At the hearing on the motion, Perez informed the Referee she was mistaken about the hearing date and so the Referee set aside the dismissal. The trial was then scheduled for a later date.

[3] Before the scheduled trial date, Perez filed a negligence action in the Superior Court against Defendant-Appellee First Net Insurance Company ("First Net"), pursuant to 22 GCA § 18305, for injuries sustained in the automobile accident with the Rosarios. Perez also filed with the Superior Court an *ex parte* motion to consolidate both cases because the claims were identical, but the motion was denied. On the scheduled small claims trial date, Perez's counsel orally requested a dismissal without prejudice because he wished to proceed in the Superior Court. The Rosarios opposed the dismissal and on the same date filed a written opposition. The trial did not proceed, and no further hearings were scheduled.

[4] A few months later, an order dismissing the Small Claims case was signed in error by the Referee. A hearing was, however, set and all parties were present, but the trial was continued.[1] The parties and counsel appeared for trial on this continued date, but Perez informed the court her expert witness was not available to testify. The trial was then continued for the next day at 12:00 p.m. At 10:00 a.m. the following day, Perez filed a Memorandum as to Voluntary Dismissal and at the hearing renewed her request to dismiss the case without prejudice. The Rosarios again opposed, and the Referee denied Perez's request and proceeded with the trial. Perez did not present any evidence. The Referee entered judgment in favor of the Rosarios.

[1] The [Small Claims Court] or division is not a court of record. 7 GCA § 2101 (2005). It is unclear why the hearing was continued.

[5] In the civil case before the Superior Court, First Net moved to dismiss the complaint on the basis that the Superior Court lacked subject matter jurisdiction as a result of the entry of the small claims judgment. The Superior Court granted the motion and entered the judgment. Perez timely filed this appeal.

II. JURISDICTION

[6] This court has jurisdiction over an appeal from a final judgment of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 110-243 (2008)); 7 GCA §§ 3107(b), 3108(a) (2005).

III. STANDARD OF REVIEW

[7] Dismissal under Rule 41(a) is a question of law reviewed *de novo*. *Matthews v. Gaither*, 902 F.2d 877, 879 (11th Cir. 1990) (citing *Williams v. Ezell*, 531 F.2d 1261, 1264 (5th Cir. 1976); *Pilot Freight Carriers, Inc. v. Int'l Bhd. of Teamsters*, 506 F.2d 914, 916 (5th Cir. 1975)). This court reviews *de novo* a dismissal of a complaint for lack of jurisdiction. *Sananap v. Cyfred, Ltd.*, 2008 Guam 10 ¶ 7 (citing *Sac & Fox Nation of Okla. v. Cuomo*, 193 F.3d 1162, 1165 (10th Cir. 1999)).

IV. DISCUSSION

[8] To determine whether the Superior Court lacked jurisdiction, we must first address whether Guam Rules of Civil Procedure Rule 41(a) applies in the small claims court and its effect on a small claims judgment. [2]

A. Voluntary Dismissal under Rule 41(a)(1)

[9] Perez contends the Superior Court did not lack jurisdiction in the civil case because the small claims Referee was precluded from entering a judgment once Perez requested a voluntary

[2] On November 18, 2008, this court issued an order granting Perez's request to supplement the record to include the Small Claims record, which request was unopposed by First Net.

dismissal under Guam Rules of Civil Procedure ("GRCP") Rule 41(a)(1). Perez submits she had an absolute right to dismissal under Rule 41(a) when no answer or summary judgment motion was filed by the Rosarios. Appellant's Br. at 6 (Sept. 30, 2008). Because the small claims judgment was void, Perez argues the Superior Court erred in concluding it lacked subject matter jurisdiction.

[10] First Net asserts that Perez did not file and serve a notice of dismissal on the Rosarios in the small claims case as required under Rule 41(a)(1). Appellee's Br. at 8 (Nov. 4, 2008). First Net argues the small claims rules do not require a formal answer to be filed and asserts an answer was made during the October 8, 2003 hearing when the Rosarios initially appeared. Because the Rosarios appeared and were ready for trial on more than one occasion, and Perez refused to present evidence of her claim, First Net asserts that the Referee acted properly in entering judgment for the Rosarios. Further, the small claims judgment precluded Perez from filing the same claim in the Superior Court.

[11] In *Trans Pacific Export Co. v. Oka Towers Corp.*, this court stated that the "Guam Rules of Civil Procedure govern the procedure in all suits of a civil nature . . . ." and noted that Rule 41(a) addresses the dismissal of actions. 2000 Guam 3 ¶ 18. Perez relies on the language in *Trans Pacific* to support her position that because Rule 41(a) applies in a small claims case, the Referee had no discretion to deny the dismissal where the Rosarios did not file an answer before the dismissal request was made. Appellant's Br. at 6. The plaintiff-appellant in *Trans Pacific* filed two separate small claims cases which were both dismissed. 2008 Guam 3 ¶¶ 2-3. The first case was dismissed after appellant filed a motion for dismissal. *Id.* ¶ 3. The second case was dismissed after the parties filed a stipulated motion for dismissal. *Id.* Appellant later filed the same claim in the Superior Court. *Id.* ¶ 5.

[12] In determining the effect of the dismissals, this court concluded that the dismissals were deemed a final adjudication on the merits, and, therefore, the appellant was precluded under the doctrine of res judicata from bringing a claim in the Superior Court after the identical claims were dismissed in the small claims court. *Id.* ¶¶ 19-20. Although we found that Rule 41(a) addressed the dismissal of a case, *id.* ¶ 18, this court did not examine the specific requirements under 41(a)(1). The issue of whether appellant had an absolute right to dismissal under Rule 41(a), as Perez argues, was not before the court in *Trans Pacific* The language from *Trans Pacific* that the civil procedure rules govern a small claims action must be read in the context of that case and the purpose of the small claims rules. We now examine further the requirements under Rule 41(a)(1) and its applicability in a small claims case.

[13] Rule 41(a)(1) of the GRCP provides that a plaintiff may without a court order voluntarily dismiss an action by filing a notice of dismissal before service by the opposing party of an answer or of a motion for summary judgment. Guam R. Civ. P. ("GRCP") 41(a)(1)(i) (2007). Unlike the GRCP, the small claims rules do not contain a provision for voluntary dismissal by a plaintiff. The Small Claims Division was enacted by Public Law ("P.L.") 20-28 and is included in 7 GCA §§ 4201 to 4208.[3] Section 4206 required the Judicial Council to establish rules and regulations for the Small Claims Division. The rules which were established in accordance with P.L. 20-28 were approved and adopted by the Judicial Council in 1999.[4] Section 2 of the Small

[3] The Small Claims Division was enacted as Chapter III-B of Title 1 of the Code of Civil Procedure on June 13, 1989. Although the enactment of the Small Claims Division was not included in the Supreme Court Act, the Compiler included the Public Law in Title 7 under the presumption that it was never repealed by the Supreme Court Act and also because it was referred to in Article 1 of Chapter 4. *See* 7 GCA § 4201, SOURCE (2005).

[4] Prior to the adoption of the Small Claims Rules in 1999, the original Small Claims Rules were included as Rule 92 of the Guam Rules of Civil Procedure in Appendix A of Title 7. Rule 92 was not amended to include the rules established and approved by the Judicial Council. As a result, when the Rules of Civil Procedure were amended in 2008 under Promulgation Order No. 06-006-02, the old rules governing Small Claims matters were inadvertently recodified as M.R. 5.1 of the Local Rules of the Superior Court. The rules which were in effect in 2008 and which should have been included in the promulgation order were the rules approved in 1999. Therefore, the rules adopted

Claims Rules states that the Small Claims Rules prevail when there is an inconsistency or ambiguity with the Guam Rules of Civil Procedure and the Small Claims Rules. Based on this language, it is clear the Rules of Civil Procedure apply in some instances to small claims cases. Specifically, we address whether it should apply in this case.

[14] "The general purpose of [a] voluntary dismissal under Rule [41(a)(1)] is to permit the plaintiff to take a voluntary nonsuit and start over so long as the defendant is not prejudiced." *Total Containment, Inc. v. Aveda Mfg. Corp.*, No. 90-4788, 1990 WL 290146, at *2 (E.D. Pa. Dec. 7, 1990) (citations omitted). The intent of the rule is to "fix the point at which the resources of the court and the defendant are so committed that dismissal without preclusive consequences can no longer be had as of right." *In re Piper Aircraft Distrib. Sys. Antitrust Litig.*, 551 F.2d 213, 220 (8th Cir. 1977).

[15] The question which must be resolved is whether the Rosarios' appearance at a small claims hearing is equivalent to the filing of an answer such that Perez cannot avail herself of Rule 41(a)(1). The small claims rules do not contemplate the use of a formal complaint, answer or elaborate discovery procedures. Indeed, the small claims procedure encourages two parties to argue their differences informally before a referee. To initiate a small claims action, a plaintiff must file a complaint or declaration which shall be in a simple nontechnical form, establishing a claim and a summons directing a defendant to appear at a scheduled hearing to answer the claims made by the plaintiff. Guam Small Claims R. & P. ("GSCRP") 92(17), (18) & (20).

[16] Perez urges us to conclude that for a dismissal to be ineffective a written answer or motion for summary judgment must be filed. However, the small claims rules do not require a

and approved by the Judicial Council in 1999 as required by P.L. 20-28 are the applicable rules. In any event, application of the rules in effect in 1992 would not change the result of this case as a formal answer is not required.

defendant to file a formal answer. A written answer is only required when a defendant files a counterclaim which must be served on the plaintiff prior to the time defendant must appear. GSCRP 92(19). We believe that requiring a defendant to file a written answer would defeat the purpose of the small claims court, which is established for informal proceedings and speedy adjudication. Therefore, we conclude that a defendant's appearance at an answering hearing set by the court coupled with a defendant's readiness to answer the claims made by the plaintiff is equivalent to the filing of an answer under Rule 41(a)(1). In our view, this result is consistent with avoiding formality in small claims proceedings.

[17] In this case, once Perez filed her Declaration in the small claims court a summons was issued directing the Rosarios to appear at a scheduled hearing on October 1, 2003. SER at 1 (Summons, Sept. 3, 2003). From the time Perez filed her claim, seven court hearings were scheduled, and the Rosarios were present at every hearing.[5] There is nothing in the record to suggest the Rosarios were not prepared to answer the claim or proceed to trial. Failure of Perez to present evidence to prove her claim resulted in a judgment in favor of the Rosarios.

[18] Perez relies on *American Soccer Co., Inc. v. Score First Enterprises* for the proposition that she had an absolute right to dismissal under Rule 41(a)(1). 187 F.3d 1108 (9th Cir. 1999). The facts in *American Soccer*, however, are distinguishable. The appellees in *American Soccer* attempted to file an answer the day after appellant filed its notice of dismissal. *Id.* at 1109. In this case, the Rosarios were present at the October 8, 2003 hearing to answer the claim, which date was before Perez filed the Memorandum as to Voluntary Dismissal. Because we find that the Rosarios' appearance at the October 8, 2003 hearing constituted service of an answer under

[5] Only Frank Rosario was present at the initial hearing on October 1, 2003, because Gyongi and Inina were off-island.

Rule 41(a)(1), the Memorandum filed by Perez was not timely because it was filed after the hearing on October 8. Thus, unlike the appellant in *American Soccer*, Perez did not have an absolute right to dismissal under Rule 41(a)(1).

B. Res Judicata

[19] We now address whether the small claims judgment precluded Perez from filing the Superior Court action under the doctrine of res judicata.

[20] Res judicata embraces two doctrines, claim preclusion and issue preclusion. *Taybron v. Allstate Ins. Co.*, No. C 06-04066 JSW, 2006 WL 2460830, at *1 (N.D. Cal. Aug. 23, 2006) (citing *Pitzen v. Super. Ct.*, 16 Cal. Rptr. 3d 628, 632-33 (Ct. App. 2004)). "Issue preclusion bars a plaintiff from relitigating issues actually adjudicated in a prior proceeding. Claim preclusion treats a judgment, once rendered, as the full measure of relief to be accorded between the same parties on the same claim or cause of action." *Id.* (citing *Pitzen*, 16 Cal. Rptr. 3d at 633). To establish claim preclusion, one must demonstrate the following elements: "(1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits." *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 10 (quoting *Trans Pac.*, 2000 Guam 3 ¶ 16). Further, "[r]es judicata precludes matters which were raised, or could have been raised, in the prior proceeding." *Taybron*, 2006 WL 2460830, at *1 (emphasis omitted).

1. Final judgment on the merits

[21] This court must first determine whether the small claims judgment in favor of the Rosarios for Perez's failure to proceed at trial is a final judgment on the merits. The original connotation of a judgment on the merits is "one in which the merits of [a party's] claim are in fact adjudicated [for or] against the [party] after trial of the substantive issues." *Semtek Int'l Inc.*

v. Lockheed Martin Corp., 531 U.S. 487, 502 (2001) (alteration in original) (citation omitted). A judgment "on the merits" usually triggers the doctrine of res judicata or claim preclusion. *Id.* (citations omitted). In this case, the small claims judgment was entered in favor of the Rosarios after Perez refused to proceed at trial.

[22] Rule 41(b) provides for involuntary dismissal upon motion by the defendant of an action or claim for failure of the plaintiff to prosecute. GRCP 41(b). Unless specified by the court, a dismissal under Rule 41(b), other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party, operates as an adjudication on the merits.[6] *Id.* Although the rule is phrased in terms of dismissal on the motion of the defendant, it is clear that the power is inherent in the court and may be exercised *sua sponte* whenever necessary to "achieve the orderly and expeditious disposition of cases." *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962). The absence of notice as to the possibility of dismissal does not render such a dismissal void. *Id.* at 632.

[23] The federal courts in applying FRCP 41(b) have found dismissal proper when a plaintiff is not ready to present his or her case at trial or if the plaintiff refuses to proceed at the trial. *See, e.g., Zagano v. Fordham Univ.*, 900 F.2d 12, 14 (2d Cir. 1990) ("It is beyond dispute that a district court may dismiss a case under Rule 41(b) when the plaintiff refuses to go forward with a properly scheduled trial."); *Smith v. United States*, 834 F.2d 166, 171 (10th Cir. 1987) (dismissal for failure to prosecute under Rule 41(b) was proper when taxpayer declined to proceed to trial

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[6] GRCP Rule 41(b), which is identical to Fed. R. Civ. P. ("FRCP") Rule 41(b), reads:

> For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule . . . operates as an adjudication upon the merits.

GRCP 41(b).

due to allegedly inadequate discovery); *Lopez v. Aransas County Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978) (trial court did not abuse its discretion in dismissing action with prejudice for want of prosecution when, after court properly denied plaintiffs' motion for continuance and ordered action to proceed to trial, plaintiffs' attorney refused to call any witnesses).

[24] Moreover, the effect of a Rule 41(b) dismissal on the merits bars a plaintiff from refiling the same claim. *But see Semtek Int'l Inc.*, 531 U.S. at 504 (holding that a dismissal barred refiling of the same claim in the district where the action was filed but did not apply for claim-preclusive effect in other courts).

[25] The small claims judgment in this case was "dismissed on the merits" because Perez refused to proceed at trial and present evidence after ordered by the Referee. ER at 64 (J., June 6, 2005). The judgment is therefore akin to a dismissal for failure to prosecute under Rule 41(b), and, as a result, the dismissal operates as an adjudication on the merits.

2. Identity of the causes of action in Small Claims Court and the Superior Court

[26] "The central criterion in determining whether there is an identity of claims between the first and second adjudications is 'whether the two suits arise out of the same transactional nucleus of facts.'" *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001) (quoting *Frank v. United Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2000)).

[27] The small claims declaration filed by Perez was a claim for damages resulting from injuries sustained in an automobile accident. The complaint filed in the Superior Court was an action brought under Guam's direct action statute codified at 22 GCA § 18305, which reads:

> On any policy of liability insurance the injured person or his heirs or representatives shall have a right of direct action against the insurer within the terms and limits of the policy, whether or not the policy of insurance sued upon was written or delivered in Guam, and whether or not such policy contains a provision forbidding such direct action, provided that the cause of action arose in

> Guam. Such action may be brought against the insurer alone, or against both the insured and insurer.

22 GCA § 18305 (2005).

[28] Although the parties in the small claims action and the Superior Court case are not identical, the substance of the claim in both suits arises from the same accident. The small claims case was essentially a tort action for damages while the Superior Court action was a contract claim brought under Guam's direct action statute. The two suits arise out of the same transactional nucleus of facts; thus, this element is satisfied.

3. Identity of the parties or their privies in the two suits

[29] The Louisiana Supreme Court, in an action brought under its direct action statute, held that an identity of parties exists when the "same parties, their successors, or others appear so long as they share the same 'quality' as parties." *Welch v. Crown Zellerbach Corp.*, 359 So. 2d 154, 156 (La. 1978). "For res judicata purposes, the insured and the insurer not only share the same quality as parties, but in essence their identities are virtually merged into one, to the extent of the policy limits." *Hannie v. Wall*, 569 So. 2d 1044, 1050 (La. Ct. App. 1990).

[30] In this case, the small claims case was filed against Inina Plucer-Rosario, Gyongi Plucer-Rosario, and Frank B. Rosario. Inina was the driver of the vehicle owned by Gyongi and Frank. The Superior Court action was filed against First Net and Does 1-10. The complaint filed in the Superior Court alleged that "as a direct and proximate result of the negligence of Inina," Perez sustained injuries from the accident. ER at 2 (Comp., Dec. 16, 2003). The complaint also alleged that First Net insured the vehicle owned by Gyongi. Neither Inina, Gyongi, nor Frank was named as a defendant in the Superior Court action. The parties in both actions share the

same qualities, and their identities merge into one. We conclude that Perez was barred under the doctrine of res judicata from bringing the action against First Net in the Superior Court.

V. CONCLUSION

[31] Rule 41(a) allows a plaintiff to dismiss an action without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer. In this case, however, Perez did not file the notice of dismissal until after the Rosarios answered, since a formal written answer is not required under the small claims rules and a defendant's appearance at an answering hearing set by the court coupled with a defendant's readiness to answer the claims made by the plaintiff constitutes an answer under Rule 41(a)(1). Because the Rosarios appeared and were prepared to answer the claim before Perez filed her Memorandum as to Voluntary Dismissal, Perez did not have an absolute right to a dismissal under Rule 41(a)(1). Finally, the small claims judgment is a dismissal under Rule 41(b) for want of prosecution and is considered a judgment on the merits for res judicata purposes. Hence, Perez was precluded from filing the Superior Court action. Accordingly, the judgment of dismissal is **AFFIRMED.**

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

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

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