IN THE SUPREME COURT OF GUAM

MARY ANN C. SABLAN,
Petitioner-Appellee,

v.

GUAM LAND USE COMMISSION and DEPARTMENT OF LAND MANAGEMENT,
Respondents-Appellants,

and

YOUNEX INTERNATIONAL CORPORATION,
Intervenor-Appellant.

Supreme Court Case No.: CVA11-007
Consolidated with CVA011-014
Superior Court Case No.: SP0223-07

OPINION

Cite as: 2011 Guam 29

Appeal from the Superior Court of Guam
Argued and submitted on October 28, 2011
Hagåtña, Guam

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

TORRES, J.:

[1] This appeal arises from an Amended Writ of Judicial Review issued by the trial court to Petitioner-Appellee Mary Ann C. Sablan declaring null and void the approval of an application for a zone variance previously granted by the Guam Land Use Commission ("GLUC") to Intervenor-Appellant Younex International Corporation ("Younex") for a condominium development in the neighborhood of Jonestown, Tamuning. In issuing the Amended Writ, the trial court determined that the GLUC exceeded its jurisdiction because the GLUC approved Younex's application without holding a properly noticed public hearing.

[2] The application under review by the trial court was a zone variance application and not a conditional use application, and the public hearing date and notice requirements for a variance application are distinct from the public hearing date and notice requirements for a conditional use application. The trial court erred in applying the conditional use application requirements, which mandated that personal written notice prior to the hearing be given to all property owners, including Sablan, who were within a radius of five hundred feet (500') of the project, and in determining that failure to meet the notice requirements rendered the approval by the GLUC null and void. Accordingly, we reverse and vacate the Amended Writ of Judicial Review.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] In 2007, Younex International Corporation proceeded with its plans to build a condominium project in the neighborhood of Jonestown, Tamuning. *See* Appellant's Excerpts of

Record ("ER")[1] at 188 (Am. Writ of Judicial Review, Apr. 5, 2011). Younex submitted Application No. 2007-74 to the Guam Land Use Commission seeking a height variance for the four 15-18 story condominiums that were part of its planned development. ER at 86 (Decl. of David B. Tydingco, Feb 24, 2011). A public hearing was held before the GLUC and notice of the hearing was published in the Pacific Daily News. However, Petitioner-Appellee Mary Ann C. Sablan, who lives within 500 feet of the project, was not personally provided notice of this hearing. Thereafter, the GLUC approved Younex's variance application with conditions and issued a Notice of Action. Younex began construction and undertook certain improvements to the infrastructure of the surrounding neighborhood. Younex has, to date, invested and expended around $70 million toward the subject development in reliance upon the issuance of the permits for zone variance. ER at 85 (Decl. of David B. Tydingco).

[4] After approval of the application by the GLUC, Sablan sought a writ of judicial review and injunction in the Superior Court, naming the GLUC and the Department of Land Management ("DLM") as respondents. Sablan challenged the approval of Younex's application for a zone variance, claiming she was entitled to personal written notice of the public hearing, but was not provided with such notice. Record on Appeal ("RA"), (Verified Pet. for Judicial Review, Dec. 26, 2007). An Amended Petition for Judicial Review was filed a few months later. ER at 1-11 (Am. Pet. for Judicial Review, Mar. 6, 2008). The GLUC and DLM moved to dismiss Sablan's petition for failure to join Younex in the suit and for failure to state a claim pursuant to Rule 12(b)(6) of the Guam Rules of Civil Procedure ("GRCP"). The following year,

[1] Because this is a consolidated case, there were separate excerpts of record filed by the Appellants (one by the GLUC and DLM, and one by Younex). *See* GLUC and DLM's ER (July 26, 2011), and Younex's ER (Sept. 2, 2011). Both sets of excerpts contain largely the same materials and documents; however, Younex's excerpts of record is more comprehensive than the GLUC and DLM's. Therefore, whenever this opinion makes reference to the "ER," such reference shall be to Younex's excerpts of record.

after reassignment of the case to another judge, Sablan filed what she titled "Amended Petition for Writ of Mandamus, Injunction, and Declaratory Relief," wherein she sought to bring Younex in as the real party in interest. ER at 12-23 (Am. Pet. for Writ of Mand.); ER at 25 (Dec. & Order, Nov. 27, 2009). The trial court, however, did not grant the request to file this Amended Petition because it was filed beyond a court-ordered deadline for the filing of an amended petition.[2] ER at 25. The trial court also denied the GLUC and DLM's motion to dismiss for failure to join Younex as the real party in interest, stating that complete relief sought by Sablan could be had in the absence of Younex as a party. *Id.* at 26.

[5] Following the evidentiary hearing on the Amended Petition for Judicial Review, the trial court granted Sablan a Writ of Judicial Review and declared null and void the decision of the GLUC approving Younex's application for a zone variance. Younex moved in the trial court to intervene, but the trial court denied the motion finding it was untimely. ER at 196-204 (Dec. & Order, Apr. 11, 2011). On Younex's appeal of the denial of intervention, the Supreme Court reversed the trial court and allowed Younex to intervene. *Sablan v. Guam Land Use Comm'n.*, 2011 Guam 12 ¶ 37. The GLUC and DLM timely filed a notice of appeal in Supreme Court Case No. CVA11-007, appealing the issuance of the Amended Writ of Judicial Review. *See* Not. of Appeal, Apr. 18, 2011. Once Younex was allowed to intervene, Younex also filed a notice of appeal, appealing the Amended Writ of Judicial Review. *See Sablan v. Guam Land Use Comm'n and Dep't of Land Mgmt. and Younex Int'l Corp.*, Supreme Court Case No. CVA11-014 (Not. of Appeal, Aug. 9, 2011). Finding that Supreme Court Case Nos. CVA11-007 and CVA11-014 warranted consolidation under Rule 3(b) of the Guam Rules of Appellate

[2] The trial court's denial of Sablan's request to file the Amended Petition for Writ of Mandate is not before this court on appeal.

Procedure, the Supreme Court ordered that the two cases be consolidated and proceed under the caption in Supreme Court Case No. CVA11-007.

II. JURISDICTION

[6] This court has jurisdiction over an appeal from a final judgment of the Superior Court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112-54 (2011)); 7 GCA §§ 3107(b), 3108(a) (2005). The Amended Writ of Judicial Review is considered an appealable judgment, adjudicating with finality all of the claims as to all of the parties. *See* Guam R. Civ. P. 54(a), (b) (2007).

III. STANDARD OF REVIEW

[7] A trial court's decision on a motion to dismiss for failure to join an indispensable party is reviewed for an abuse of discretion. *See Benavente v. Taitano*, 2006 Guam 15 ¶ 56; *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043 (9th Cir. 1983). This standard of review affords the trial court considerable deference, and the trial court's decision should not be disturbed unless the trial court applied the wrong legal standard or its findings of fact were clearly erroneous. *Cho v. Fujita Sanko Guam, Inc.*, 2009 Guam 21 ¶ 21. The hearing and notice requirements for applications for a zone variance are matters of statutory interpretation reviewed *de novo*. *Core Tech Int'l. Corp. v. Hanil Eng'g Contr. Co, Ltd.*, 2010 Guam 13 ¶ 16.

IV. ANALYSIS

A. Failure to Join a Necessary or Indispensable Party

[8] The GLUC and DLM argue that the trial court erred in denying their motion to dismiss Sablan's Petition for failure to timely join a necessary or indispensable party, namely Younex. Rule 19(a) of the GRCP provides in pertinent part:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if
>
> > (1) in the person's absence complete relief cannot be accorded among those already parties, or
> >
> > (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may
> >
> > > (i) as a practical matter impair or impede the person's ability to protect that interest or
> > >
> > > (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Guam R. Civ. P. 19(a).

[9] The trial court found that although Younex had an interest in the litigation and stood to be impacted by the court's disposition, the complete relief that Sablan sought – i.e., the nullification of the GLUC's application approval for failure of the GLUC to comply with statutory procedures – could be granted without having Younex as a party. ER at 26 (Dec. & Order, Nov. 27, 2009). The trial court further expressed that the failure to join Younex "does not subject [the GLUC and DLM] 'to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.'" ER at 27 (quoting GRCP 19(a)(2)(ii)) (Dec. & Order, Nov. 27, 2009).

[10] The GLUC and DLM argue on appeal that this ruling was in error, and that the failure to join Younex deprived the trial court of subject matter jurisdiction. *See* GLUC's Br. at 18 (July 26, 2011). The GLUC and DLM rely largely on the case of *Sierra Club, Inc. v. California Coastal Commission* for the assertion that the case should have been dismissed. In that case, Sierra Club sought a writ of mandate to set aside decisions of the California Coastal Commission

and regional commission authorizing a condominium project. *Sierra Club, Inc., v. Cal. Coastal Comm'n*, 157 Cal. Rptr. 190, 192 (Cal. Ct. App. 1979). More than sixty days after the decision had become final, Sierra Club filed an amended petition naming the condominium developer as the real party in interest. *Id.* The developer moved to dismiss the petition as untimely because the developer was not named as a party within the applicable time period. *See id.* at 193. The trial court granted the developer's motion and dismissed the petition against the developer, and also dismissed the petition against the coastal commission and the regional commission, based on its finding that the developer was an indispensable party to the action. *Id.* at 192. Sierra Club appealed, arguing that dismissal of the action was improper because the developer was not an indispensable party; and that even if the developer was an indispensable party, the court wrongly determined that the failure to make the developer a party within the required time period deprived the court of subject matter jurisdiction. *Id.* at 193.

[11] The appellate court held that the "[f]ailure to join an indispensable party is not a jurisdictional defect in the fundamental sense; even in the absence of an indispensable party, the court still has the power to render a decision as to the parties before it which will stand." *Id.* (citation and internal quotation marks omitted); *see also Tracy Press, Inc. v. Superior Court*, 80 Cal. Rptr. 3d 464, 471 (Cal. Ct. App. 2008) (failure to join an indispensable party is not a jurisdictional bar but is subject to the discretion of the court). The appellate court, however, upheld the trial court's dismissal, concluding that "the decision whether to proceed with the action in the absence of a particular party is one within the court's discretion . . . ." *Id.* The court further stated that where a plaintiff seeks some relief that, if granted, would injure a third party not joined, then that third party is indispensable. *Id.* at 194. The court held that the trial court did not abuse its discretion in finding that the developer was a necessary party to Sierra

Club's petition and in dismissing the action for failure to join the developer within the required time period. *Id.* at 194-95.

[12] The GLUC and DLM argue that the instant case is indistinguishable from the *Sierra Club* case. However, the cases are distinguishable because the trial court here found, in its discretion, that Younex *was not* a necessary party under GRCP Rule 19(a); conversely, in the *Sierra Club* case, the trial court found, in its discretion, that the developer *was* a necessary party. Moreover, as the *Sierra Club* court stated, "[i]t is for reasons of equity and convenience, and not because it is without power to proceed, that the court should not proceed with a case where it determines that an 'indispensable' party is absent and cannot be joined." *Sierra Club*, 157 Cal. Rptr. at 193, citing *Kraus v. Willow Park Pub. Golf Course*, 140 Cal. Rptr. 744, 750 (Cal. Ct. App. 1977).

[13] The GLUC and DLM's argument that the trial court's decision to proceed with Sablan's writ petition in the absence of Younex created problems of subject matter jurisdiction is incorrect. This particular argument implicates the trial court's discretionary determination grounded in equity and does not pose jurisdictional concerns. Even the case on which the GLUC and DLM primarily rely makes clear that proceeding without a necessary party is not a jurisdictional defect. *Sierra Club*, 157 Cal. Rptr. at 193. Moreover, the Decision and Order denying dismissal on this issue was not directly appealed by the GLUC and DLM.[3] Therefore, the court will not disturb the trial court's discretionary finding under these circumstances, and will instead proceed to the merits of the Amended Writ of Judicial Review declaring the action

[3] The Notice of Appeal states only that the GLUC and DLM are appealing the Amended Writ of Judicial Review. *See* Not. of Appeal (Apr. 18, 2011). The argument that the Superior Court erroneously proceeded without an indispensable party was only raised within the GLUC and DLM's brief. However, the primary issue on appeal argued by both the GLUC and DLM and by Younex is the notice requirements applicable to Younex's zone variance application.

of the GLUC null and void. Likewise, we reject the GLUC and DLM's argument that the trial court should have dismissed the case because of Sablan's delays in bringing her claim.

B. Notice Requirements for Variance Applications

[14] The primary question presented for review is purely one of statutory interpretation – namely, the notice requirements applicable to Younex's application for a variance. "We interpret statutes in light of their terms and legislative intent. 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." *Tumon Partners LLC v. Shin*, 2008 Guam 15 ¶ 8 (internal citations and quotation marks omitted); *see also Sumitomo Constr. Co., Ltd. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (citation omitted) ("It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself. Absent clear legislative intent to the contrary, the plain meaning prevails.").

[15] Chapter 61 of Title 21 GCA is entitled the Zoning Law. Separate sections within the chapter discuss the requirements of providing notice, including section 61303(c) governing an application for conditional use and section 61619 governing the filing of a variance application. Younex's application filed with the GLUC (GLUC FORM Revised May 2007) entitled Zoning Variance, was for a height variance, and according to the application, the nature of the request was in accordance with 21 GCA § 61617. ER at 93-94 (Zone Variance, Sept. 5, 2007). The GLUC Notice of Action approving the application with conditions likewise indicated Younex's request was for a Zone Variance. ER at 96 (Not. of Action, Nov. 30, 2007). The GLUC and DLM, as well as Younex, assert that Younex's application to exceed the height limitations for its proposed condominium development was clearly an application for a variance and not an application for a conditional use.

[16] In its Amended Writ, the trial court stated:

> Nonetheless, for reasons discussed below, the Court rejects [GLUC and DLM's] position that a Zone Variance application is completely unlike a Conditional Use application and the Notice requirements should not apply. . . . The Court notes that the Project could be considered to need both a zone variance as provided in 21 GCA § 61616(d), as the land is not zoned for the height of buildings the as-built project will have; as well as a Conditional Use as defined in 21 GCA §§ 61303(a) & 61306(b)(1)(2007).

ER at 191 (Am. Writ of Judicial Review, Apr. 5, 2011). The trial court concluded, however, that "the issue of the type of application is not properly before the Court." *Id.* Furthermore, Sablan never argued on appeal that Younex was required to submit a separate application for conditional use, in accordance with 21 GCA § 61303. Pursuant to Rule 13 of the Guam Rules of Appellate Procedure, the failure to adequately brief an issue may be deemed a waiver of the issue on appeal. *Gill v. Bischoff*, 2011 Guam 25 ¶ 6 n.2 (citations omitted). Because the issue of the type of application required was not before the trial court and was not raised by Sablan on appeal, it is not before this court on review.

[17] Thus, the issue before us is simply the determination of which notice requirements applied to Younex's zone variance application, and not whether Younex's proposed actions also required it to submit a conditional use application. Consequently, we find that the notice requirements that govern Younex's application are those prescribed for zone variance applications, as contained in section 61619. That section of the Zoning Law, as it stood in 2007 when the GLUC hearing was held,[4] stated in full:

> **Hearing Date-Notice.** Upon the filing of a *variance application*, the [Guam Land Use] Commission shall fix a reasonable time for hearing the same and *shall give notice* thereof to the applicant and *may give notice* to any other parties in interest. All hearings shall be conducted in the affected municipality and shall be

[4] The Guam Legislature subsequently amended this statute in 2010. *See* n.6, *infra*.

> in accordance with the rules established by the commission, but any party in interest may appear in person, or by designated attorney or agent. At least one such hearing shall be conducted after six o'clock p.m.

21 GCA § 61619 (2005) (emphases added) (original emphasis omitted). Pursuant to this statute, the GLUC was only mandated to give notice of the hearing to the applicant (in this case Younex), and *may* (but was not mandated to) give notice to other interested parties. The trial court, however, found that the statute that governed the GLUC's notice obligation with respect to the hearing on Younex's application is not section 61619, but rather, section 61303(c). ER at 191-92 (Am. Writ of Judicial Review, Apr. 5, 2011). That section of the Zoning Law requires in part:

> In any hearing or meeting on an application for conditional use whether based on an original or amended site plan, in each of the zones, the [Guam Land Use] Commission shall require the applicant to give personal written notice at least ten (10) days prior to the hearing to property owners within a radius of five hundred feet (500') or if personal notice is not possible, then written notice to the last known address of such owner at least twenty-five (25) days prior to the hearing by certified mail, return receipt requested.

21 GCA § 61303(c) (2005).

[18] Although the trial court seems to have recognized the distinction between an application for conditional use and an application for a variance, it hinged much of its analysis on the portion of the Zoning Law relative to fees for notification, concluding as follows:

> [The] Guam Legislature did not include charges that apply to notices for both Conditional Uses as well as Zone Variances public hearings if they did not wish to have the DLM reimbursed by applicants for the required notifications that are sent to property owners within a five hundred foot (500') radius of either a Conditional Use application location or a Zone Variance application location. There can be no other logical explanation for the requirement to charge fees for Zone Variance public hearings if the notices are not required to be provided.

ER at 192 (Am. Writ of Judicial Review). The statutory language to which the trial court was referring is found in the Conditional Use article of the Zoning Law, which states in relevant part:

> **(d) Charges for Notification of Surrounding Property Owners.** These charges *shall* apply to all Guam Land Use Commission public hearings, to include Conditional Uses, Zone Change (Summary and Split Zone Changes), Zone Variances, Subdivision Variances, Wetlands, or Seashore Clearances. The Department *shall* charge the applicant with all costs incurred in carrying out the requirements of Subsections (b) and (c) of this Section, and all costs and fees so collected *shall* be deposited in the Department of Land Management Land Survey Revolving Fund (LSRF) to be expended for the Division of Planning as the Director of Land Management may determine.

21 GCA § 61303(d) (2005). The statute then goes on to enumerate fees for certified mail, paper, envelopes, man-hours for research, and equipment use. *Id.* The trial court thus concluded that because the section of the law dealing with fees related to notifications for public hearings specifically includes public hearings for zone variances, then this can only logically be interpreted to mean that the notice requirements of section 61303(c) apply to applications for zone variances. ER at 192 (Am. Writ of Judicial Review). However, the sentence in section 61303(d) referring to zone variances is separate from the sentence specifically referencing section 61303(c), such that the two sentences should not be read as including zone variance applications within the notice requirements for conditional use applications set forth in section 61303(c).[5]

[19] The more logical reading is that because the zone variance statute, at section 61619, *mandates* the GLUC to give personal notice of the public hearing *to the applicant* and *permits* the GLUC to give notice *to other interested parties*, the charges contemplated in section

[5] We recognize that the type of application submitted by an applicant may not in itself be determinative of the hearing and notice provisions to apply, and nothing herein precludes a court in future cases from examining the substance of a particular application and the proposed project to determine the applicable hearing and notice requirements. However, in this case, there appears to be no dispute that the only issue that needs to be addressed is the hearing and notice requirements for a variance application, because the type of application is not an issue.

61303(d) as they relate to public hearings for zone variances are meant to apply only when the GLUC chooses to give notice to other interested parties *as permitted.* "A statute should be construed to give effect to all of its provisions so that no part would be superfluous or insignificant." *Macris v. Richardson*, 2010 Guam 6 ¶ 15 (citations omitted). To read the statutes as the trial court does would render section 61619, in which the Legislature specifically provided the notice procedures for hearings on applications for variances, "superfluous" and "insignificant." The mere fact that the charges for notification of surrounding property owners are found as a subsection of the conditional use article should not be taken as effectively negating the clear intent of the Legislature in providing for distinctly different notice and hearing requirements for a variance application and a conditional use application. *See* 21 GCA §§ 61619, 61303(c).

[20] This court has stated that "[t]he plain meaning rule for statutory interpretation provides that if the language of a statute is clear and there is no ambiguity, then there is no need to interpret the language by resorting to the legislative history or other extrinsic aids." *People v. Angoco*, 1998 Guam 10 ¶ 5 (internal quotation marks omitted). Guam's Zoning Law is clear and unambiguous regarding what notice requirements the Legislature intended would apply to public hearings for variances and what it intended would apply to public hearings for conditional uses, thus obviating the need for this court to review extrinsic aids or legislative history. Nonetheless, the Legislature's subsequent action in amending section 61619, specifically dealing with the hearing date and notice requirements for variance applications, further evidences its clear intent

to not mandate personal written notice to property owners within a radius of five hundred feet (500') of the proposed project.[6]

[21] The governing notice provisions for Younex's variance application, therefore, were those set forth in section 61619, prior to its amendment in 2010. The GLUC was required to give notice of the hearing to the applicant, Younex, and was further permitted to give notice of the hearing to any other parties in interest. There was no requirement that personal written notice be given to property owners within a 500-foot radius of the planned development, which included Sablan. As such, the trial court erred in issuing the Amended Writ of Judicial Review and declaring null and void the GLUC's approval of Younex's application for zone variance.

V. CONCLUSION

[22] We hereby **REVERSE** and **VACATE** the Amended Writ of Judicial Review based on the trial court's erroneous interpretation of the Zoning Law because the notice requirements for a conditional use application did not apply to Younex's application for a zone variance. The Guam Legislature provided for public hearing date and notice requirements for variance applications that were distinct from the public hearing date and notice requirements for conditional use applications. *Compare* 21 GCA § 61619 (2005) with 21 GCA § 61303(c). In accordance with those requirements, personal written notice of the hearing date for a zone variance application was not required to be given to residents within a 500-foot radius of

[6] In 2010, the Guam Legislature revisited this section of the Zoning Law when it made amendments pursuant to Guam Public Law 30-173:1 (July 16, 2010). The 2010 amendments placed additional mandatory requirements on an applicant for zone variance, including erecting a sign containing information about the application and the public hearing. *See* 21 GCA § 61619 (as amended by Pub. L. 30-173:1). Although these new provisions are inapplicable to Younex's 2007 variance application, they show that the Legislature, even when amending the statute to confer additional notice requirements upon the applicant, still did not mandate personal written notice to property owners within a 500 foot radius of the planned project.

Younex's planned development. Consequently, Sablan was not required to be given personal written notice, and the trial court erred in determining that the GLUC exceeded its jurisdiction because the GLUC approved the Younex application without holding a properly noticed public hearing.

Because we reverse and vacate the Amended Writ based on the trial court's legal error with respect to the notice requirements applicable to Younex's hearing, we need not reach Younex's alternative assignment of error, which is that the trial court wrongly issued the writ and nullified Younex's permits without considering Younex's constitutionally protected interest.

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

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

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