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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

PIA MARINE HOMEOWNERS ASSOCIATION,
Plaintiff-Appellee,

v.

KINOSHITA CORPORATION GUAM, INC.,
Defendant,

SHIMIZU, CANTO, and FISHER,
Real Party in Interest-Appellant.

Supreme Court Case No.: CVA12-029
Superior Court Case No.: CV1385-07

OPINION

Cite as: 2013 Guam 6

Appeal from the Superior Court of Guam
Argued and submitted on February 15, 2013
Hagåtña, Guam

Appearing for Real Party in Interest-Appellant:
Thomas J. Fisher, *Esq.*
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Appearing for Plaintiff-Appellee:
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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] The trial court entered default judgment in favor of Plaintiff-Appellee Pia Marine Homeowners Association ("Pia Marine") against Kinoshita Corporation Guam, Inc. ("Kinoshita"), allowing Pia Marine to foreclose a lien on a condominium unit owned by Kinoshita and awarding Pia Marine attorney's fees. After almost one year, Pia Marine moved to vacate the judgment, arguing that the award of attorney's fees was made without proof by motion following judgment, as required by Guam Rules of Civil Procedure Rule 54(d)(2). The court granted the motion and vacated the judgment in its entirety. Shimizu, Canto, and Fisher ("SCF"), the law firm which had represented Pia Marine through the default judgment, filed the present notice of appeal, challenging that decision.

[2] We hold that because SCF was never a party to the case and does not meet the criteria to be a Real Party in Interest, it lacks standing to challenge the trial court's order vacating the judgment, including the award of attorney's fees. Accordingly, we dismiss the appeal for lack of subject matter jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Plaintiff-Appellee Pia Marine filed a complaint for foreclosure of a lien on Unit 1301 of the Pia Marine Condominiums, which was owned by Kinoshita. Pia Marine argued that Kinoshita owed $11,431.55 in unpaid fees relating to upkeep of the common grounds of the complex, as well as accruing interest. Pia Marine also sought "reasonable attorney's fees incurred by Plaintiff in prosecuting this action." Record on Appeal ("RA"), tab 2 at 4 (Compl.,

Nov. 9, 2007). Pia Marine had previously attached a lien to the property, and sought to foreclose upon it. By order of publication, a summons was served upon Kinoshita. The law firm of Shimizu, Canto, and Fisher ("SCF") represented Pia Marine at the time.

[4] Pia Marine moved for a default judgment, which the trial court granted. The court found that "legal service was had" on Kinoshita, but Kinoshita failed to enter an appearance. RA, tab 20 at 1 (Default Judgment, Mar. 22, 2010). The court found that Kinoshita owed Pia Marine $11,431.55, plus interest. The court awarded "to Plaintiff as reasonable attorney's fees for the prosecution of the matter the amount of $98,916.77." *Id.* at 2. It ordered sale of the unit by the Marshal, and following such sale that "out of the proceeds" the Marshal should pay taxes and fees, then Pia Marine its $11,431.55 plus interest, and then pay to Pia Marine's counsel the $98,916.77 out of the remainder. *Id.* at 2-3.

[5] Nearly a year later, Pia Marine, now represented by new counsel, moved for relief from the default judgment, under Guam Rules of Civil Procedure ("GRCP") Rule 60(b), arguing that the award of attorney's fees was not made according to law because no motion was submitted following judgment to establish the amount owed. Attorney Thomas Fisher appeared in opposition on behalf of SCF and Fisher and Associates.[1]

[6] The trial court granted the motion and vacated the default judgment. It first found that the motion was timely, stating "the motion was filed . . . within one year of the 'Default Judgment.'" RA, tab 34 at 2 (Dec. & Order, July 26, 2012). It also found, however, that no "default judgment" had been entered, because it had not entered a separate document on the

[1] It appears that between the default judgment and the motion for relief from judgment, Fisher formed a separate firm. According to the trial court's order, he represented both entities below.

docket, pursuant to GRCP 58. *Id.* at 2-3. That being so, it nevertheless found that a GRCP 60(b) motion was an appropriate vehicle for seeking relief, because such a motion can be brought to seek relief from not just a judgment, but also any other order issued by the court.

[7] The trial court found that the basis for the attorney's fees was the homeowners association Bylaws filed in the Declaration of Horizontal Property Regime which provided that "the owner shall be required to pay the cost and expenses of such proceeding, the cost and expenses of filing the notice of lien, and all reasonable attorney's fees." *Id.* at 6-7. The court construed the motion as being brought under GRCP 60(b)(1), as the appropriate means of challenging an alleged "obvious" error of law. *Id.* at 4-5. The court found that the "obvious" error was that the amount of an award of attorney's fees must be proven at trial or raised in a motion after judgment, but in this case the attorney for Pia Marine simply inserted the amount into the proposed "Default Judgment" submitted to the court. *Id.* at 5-6. Thus, because Pia Marine had not proven attorney's fees at trial or submitted a motion after judgment, the court committed an error of law by granting that request as part of the judgment. *Id.* at 9. The court also noted that it was required, pursuant to GRCP 52(a), to make factual findings that the fee amounts were reasonable, but that it had failed to do so. *Id.* at 9-10.

[8] The trial court proceeded to find that it erred in entering the default judgment because there were numerous procedural defects relating to the foreclosure. Accordingly, it vacated the judgment in its entirety, not just the award of attorney's fees, and reinstated proceedings.

[9] SCF, represented by Fisher as part of Fisher and Associates, filed a timely appeal.

II. JURISDICTION

[10] Generally, this court has jurisdiction over an appeal from an order made after judgment of the Superior Court of Guam pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112–283 (2013)) and 7 GCA § 25102(b) (2005). However, because we determine that SCF lacks standing to bring this appeal, we are divested of jurisdiction to hear this case. *See Analysis*, below.

III. STANDARD OF REVIEW

[11] We may review our own jurisdiction *sua sponte* and will dismiss the appeal if we find jurisdiction to be lacking. *See People v. Angoco*, 2006 Guam 18 ¶ 2. Likewise, we may raise standing issues *sua sponte* and for the first time on appeal. *People v. Tennessen*, 2011 Guam 2 ¶ 12 (citations omitted).

IV. ANALYSIS

[12] At the outset, we must consider our own jurisdiction over the appeal. Specifically, SCF, not a party to the proceeding, did not intervene; rather, it styled itself a "real party in interest" and proceeded to participate in the proceeding, apparently without the trial court making any ruling on whether that was appropriate. *See* RA, Not. of Appeal (Aug. 24, 2012). Further, it is questionable as to whether the firm has standing to bring this appeal because it has not suffered an injury.

[13] In order for this court to have subject matter jurisdiction over an appeal, the parties must have standing. *See Benavente v. Taitano*, 2006 Guam 15 ¶ 14. Standing is a "threshold jurisdictional matter," and as such, this issue can be raised "at any stage of the proceedings, including for the first time on appeal." *Taitano v. Lujan*, 2005 Guam 26 ¶ 15 (citations and

internal quotation marks omitted). Though not governed directly by the U.S. Constitution's Article III requirements, standing may be based on the "common-law standing as governed by Article III, or upon statutory standing as governed by Guam statutory law." *Guam Mem'l Hosp. Auth. v. Superior Court*, 2012 Guam 17 ¶ 9. "[A] statute may confer standing upon a litigant where common-law standing would otherwise be lacking." *Id.* ¶ 21. The party seeking to establish injury has the burden of proving standing. *Id.* ¶ 10.

[14] In *Tennessen*, the defendant was being prosecuted for theft and other crimes, and then-Attorney General Douglas Moylan was ordered not to participate in the prosecution of the case, as a result of a conflict of interest. 2011 Guam 2 ¶¶ 2-3. The order was later vacated, but the trial court declined to do so *nunc pro tunc*, and Moylan sought to appeal that aspect of the decision. *Id.* ¶ 6. Moylan styled himself as a "Real Party in Interest" in the case, but did not enter an appearance as a party. *Id.* ¶¶ 5, 7.

[15] We stated that whether a party is in fact a "real party in interest" is governed by the Guam Rules of Civil Procedure, and specifically GRCP 17, rather than the party's own designation. *Id.* ¶ 13. We looked to the analogous Federal Rules of Civil Procedure ("FRCP") Rule 17 in determining its meaning, holding that the Federal Rules define it as "the party that has a substantive right that is enforceable under the applicable substantive law." *Id.* (citing *Scheufler v. Gen. Host Corp.*, 895 F. Supp. 1416, 1418 (D. Kan. 1995). We explained that "[o]rdinarily, an appeal from a judgment may be taken only by a party-litigant adversely affected by it[,] but occasionally when they are the real parties in interest, attorneys are entitled to a day in court." *Id.* (quoting *Lipscomb v. Wise*, 643 F.2d 319, 320 (5th Cir. 1981)) (internal quotation marks omitted). In order to be a real party in interest, however, a litigant must meet standing

requirements. *Id.* (noting the overlap between the two questions). Hence, whether or not SCF qualifies as a real party in interest requires a determination of whether it has standing.

[16] To establish constitutional standing, a party must show:

> (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Id. ¶ 14 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000)). The issue here is whether SCF was in fact injured by the order vacating, among other things, the award of attorney's fees. In other words, we must determine if the award of attorney's fees was an award to SCF itself or, if not, whether SCF nevertheless suffered sufficiently direct harm through the trial court's order vacating the default judgment that it ought to have standing.

[17] Attorneys may appeal orders specific to them, such as an order of sanctions against the attorney. *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 854-55 (10th Cir. 1993). However, generally an award of attorney's fees is to the party, not the attorney. *Pontarelli v. Stone*, 978 F.2d 773, 775 (1st Cir. 1992) (citing *Benitez v. Collazo-Collazo*, 888 F.2d 930, 933 (1st Cir. 1989)). In the federal system, for instance, numerous statutes permit an award of attorney's fees to the prevailing party. The United States Supreme Court, in discussing the Equal Access to Justice Act, 28 U.S.C.A. § 2412(d), stated, "We have long held that the term 'prevailing party' in fee statutes is a 'term of art' that refers to the prevailing litigant," and thus any award made pursuant to that statute is to the party, not the attorney. *Astrue v. Ratliff*, 130 S. Ct. 2521, 2525-26 (2010). Likewise, the Court has interpreted the Civil Rights Attorney's Fees

Awards Act as conferring a right upon the client, not the attorney, to seek attorney's fees under that statute. *Evans v. Jeff D.*, 475 U.S. 717, 730-32 & n.19 (1986). Similarly, the Tenth Circuit held that an order awarding or denying attorney's fees under the Fair Labor Standards Act is applicable to the client, not the attorney. *Weeks v. Indep. Sch. Dist. No. I-89*, 230 F.3d 1201, 1213 (10th Cir. 2000). The Seventh Circuit held that an attorney lacked standing to bring an appeal on behalf of his client where client had disclaimed him as counsel, on theory that client owed him money, because "[h]e is not and never has been a party to the litigation; he has no interest therein; he has been restrained merely because he claimed to be an agent of [his former client] who, as we have pointed out, has taken no appeal." *De Korwin v. First Nat'l Bank of Chi.*, 235 F.2d 156, 158-59 (7th Cir. 1956).

[18] Instructive is a case involving a plaintiff's attorney who appealed an order denying her motion to overturn a later, modified settlement agreement on the grounds that the agreement reduced the amount of money to her client and, therefore, her fee, which was contractually set as a percentage of the award. *Seymour v. Hug*, 485 F.3d 926, 928-29 (7th Cir. 2007). The Seventh Circuit held that the attorney lacked standing to bring the appeal. *Id.* at 930. Among other reasons, the agreement for fees was between the attorney and her client, and the settlement agreement itself did not specify any such entitlement to her. *Id.* at 929-30. It was the plaintiff's actions that led to a subsequent settlement agreement and lower fees, and such a dispute "is a traditional contract claim that should be brought in another proceeding." *Id.*

[19] The trial court here found that the award of attorney's fees was made pursuant to GRCP 54. That provision, in turn, creates a mechanism for a party to move for fees after judgment, but requires that the party "must specify the judgment and the statute, rule, or other grounds entitling

the moving party to the award." GRCP 54(d)(2)(B). In other words, the rule itself does not create a substantive right to fees: that must come from some other source. This is consistent with the treatment given to the nearly-identical FRCP 54(d)(2) by federal courts. *See, e.g.*, *Feldman v. Olin Corp.*, 673 F.3d 515, 517 (7th Cir. 2012); *MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1280 (9th Cir. 1999); *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1223-24 (3d Cir. 1995). Here, the substantive basis for the recovery of fees are the homeowners association Bylaws filed in the Declaration of Horizontal Property Regime which required the owner to pay "all reasonable attorney's fees" incurred by Pia Marine in case of foreclosure. RA, tab 34 at 7 (Dec. & Order).

[20] While much of the above case law comes from federal courts interpreting federal statutes, we find the weight of the case law persuasive on the facts of this case. Generally the award of attorney's fees is an award to the party itself, not the attorney. *See Astrue*, 130 S. Ct. at 2525. Nothing suggests that is not also true here. Pia Marine sought "reasonable attorney's fees incurred by Plaintiff" in its complaint. RA, tab 2 at 4 (Compl.). The court awarded the fees pursuant to an agreement which provided that "the owner shall be required to pay the cost and expenses of such proceeding, the cost and expenses of filing the notice of lien, and all reasonable attorney's fees." *See* RA, tab 34 at 7 (Dec. & Order). The court made the award "to Plaintiff as reasonable attorney's fees for the prosecution of the matter." RA, tab 20 at 2 (Default Judgment). The court instructed the Marshal to use the proceeds of the sale of the unit to pay Pia Marine and then SCF, but such an action was ministerial in execution of the judgment and did not confer upon SCF a substantive legal right to the award of attorney's fees beyond any it already had. *See* 7 GCA § 23103 (2005) (outlining procedures for execution of judgment by a

marshal); *Wells Fargo Fin. Leasing, Inc. v. D & M Cabinets*, 99 Cal. Rptr. 3d 97, 106 (Ct. App. 2009) (marshals and sheriffs acting in execution of judgments are doing so in a ministerial capacity only).

[21] All indications in this case point to the award of attorney's fees being treated as it normally is in American jurisprudence: as an award to the party, not the attorney. As a consequence, an order vacating that award inflicts an injury upon, if anyone, Pia Marine, not SCF. Indeed, if SCF performed work that is chargeable to or is otherwise still owed funds by Pia Marine, it may seek such money in a separate action between itself and the client.[2] *See, e.g.*, *Seymour*, 485 F.3d at 930. The order vacating the judgment did not deprive SCF of an enforceable substantive right; SCF suffered no injury, and thus cannot appeal the order. *See Tennessen*, 2011 Guam 2 ¶ 13.

[22] Further, in the absence of Article III or common law standing, there is no statute otherwise conferring standing upon SCF. SCF bears the burden of proving standing, and it has not pointed to any authority. *See Guam Mem'l Hosp. Auth.*, 2012 Guam 17 ¶ 10.

[23] Accordingly, SCF is not a real party in interest, and we lack subject matter jurisdiction over the present appeal. *See Benavente*, 2006 Guam 15 ¶ 14. We thus decline to address the merits.

V. CONCLUSION

[24] SCF is not a real party in interest and lacks standing to bring the present appeal or challenge the trial court order vacating the default judgment and the award of attorney's fees

[2] Any money owed by Pia Marine to SCF would be on the basis of the fee agreement, and this opinion does not address any issues in that respect beyond whether SCF has standing to appeal the present case.

because it suffered no injury, as the award was to Pia Marine. Accordingly, we **DISMISS** the appeal for lack of subject matter jurisdiction.

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