IN THE SUPREME COURT OF GUAM

DAVID J. LUJAN,
Plaintiff-Appellee/Cross-Appellee,

v.

DEBTRALYNNE S. QUINATA aka DEBBIE QUINATA and ALLAN A. QUINATA aka CORY QUINATA,
Defendants-Appellees/Cross-Appellants,

v.

ANA LUJAN, DAVID LEON GUERRERO, THE ESTATE OF GIL JUAN LEON GUERRERO, DECEASED (PR0042-07), THE ESTATE OF ROSITA QUINATA LEON GUERRERO, DECEASED (PR0041-07), JOHN LEON GUERRERO fka JOHN AGUIGUI and JESSE LEON GUERRERO fka JESSE AGUIGUI, DOES I THROUGH X, also ALL OTHER PERSONS, UNKNOWN, CLAIMING ANY RIGHT, INTEREST, OR LIEN IN SUCH LANDS, OR CLOUD UPON THIRD-PARTY PLAINTIFFS' TITLE THERETO,
Third Party-Defendants-Appellants/Cross-Appellees.

Supreme Court Case No.: CVA13-015
Superior Court Case No.: CV1472-07

OPINION

Cite as: 2014 Guam 20

Appeal from the Superior Court of Guam
Argued and submitted on February 18, 2014
Hagåtña, Guam

Appearing for Third-Party
Defendants-Appellants/Cross-Appellees:
Georgette Bello Concepcion, *Esq.*
Law Office of Georgette Bello Concepcion, P.C.
173 Aspinall Ave., Ste. 203
Hagåtña, GU 96910

Appearing for Defendants-Appellees/Cross-Appellants:
Curtis C. Van de veld, *Esq.*
The Vandeveld Law Offices, P.C.
123 Hernan Cortes Ave., 2nd Floor
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee/Cross-Appellee:
Mitchell F. Thompson, *Esq.*
Thompson, Gutierrez & Alcantara, LLC
238 Archbishop Flores St., Ste. 801
Hagåtña, GU 96910

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

TORRES, C.J.:

[1] This appeal concerns a plot of land, Lot 154-1NEW-R4, in Umatac over which three separate parties have been fighting for years. Defendants-Appellees/Cross-Appellants Debbie Quinata and Cory Quinata ("the Quinatas") currently reside on Lot 154-1NEW-R4 ("NEW-R4"); Plaintiff-Appellee/Cross-Appellee David J. Lujan ("Lujan") owns adjoining property ("Lot 154-1NEW-2") and claims an easement across NEW-R4; and Third-Party Defendants-Appellants/Cross-Appellees Ana Lujan, David Leon Guerrero, and the Estate of Gil Leon Guerrero ("the Estate") claim legal title to NEW-R4. The Estate and the Quinatas both appeal from the trial court's decision and order on summary judgment. The Estate argues that the trial court erred by holding that the Quinatas have an irrevocable license during their lifetime to use and occupy NEW-R4. The Quinatas argue that the trial court erred in entering summary judgment against their claim of adverse possession. Lujan argues for affirming the trial court's grant of summary judgment against the Quinatas' adverse possession claim and joins the Estate's reply brief.

[2] The Quinatas cannot prove that their possession of NEW-R4 was hostile to Rosita's[1] title to the property for purposes of adverse possession, and they have not established clear and satisfactory proof of an intention on the part of Rosita to convey title to NEW-R4 pursuant to an oral gift. Therefore the trial court's grant of summary judgment on adverse possession was appropriate. However, the trial court erred in *sua sponte* granting the Quinatas an irrevocable license to reside on NEW-R4 for their lifetimes without giving the Estate an opportunity to

[1] As explained herein, Rosita Q. Aguigui was the owner of Lot NEW-R4 until her death in 2004.

present arguments regarding the irrevocable license. Accordingly, we affirm in part and reverse in part the trial court's decision and order on the summary judgment motion.

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

[3] In the 1960's and 1970's Rosita Q. Aguigui ("Rosita") lived on the Umatac land in question, and in 1979 she was granted an undivided one-half interest in the lot as a co-tenant with her sister Rosalina. Sometime around 1979, Cory Quinata—Rosita's nephew whom she had raised as her own child—lived in a wooden home on the property.[3] Rosita gave Cory Quinata express permission to reside on the property. In 1983, Rosita and Rosalina, as co-tenants of Lot 153-2, executed a survey map which consolidated their lot with another lot [Lot 154-1] owned by their siblings Juan A. Quinata and Priscilla A. Quinata. In 1984, Rosita and her three siblings filed a verified petition for registration of their consolidated and re-parceled Umatac property. In this petition, Rosita and her siblings swore that "no one other than the petitioners have any estate or claims any interest in said land or any part thereof, in law or in equity, in possession, remainder, reversion expectancy." Record on Appeal ("RA"), tab 49, Ex. 4 (Pet. Reg. Title to Land, Mar. 17, 1984). Throughout this process, Rosita and her siblings were represented by Plaintiff/Cross-Appellee Lujan. *See id.*

[4] In 1985, the Superior Court ordered the Umatac property registered under Guam's Land Registration Act in the names of Rosita and her three siblings. The court found that Rosita and

[2] This section will discuss only those facts relevant to this appeal. Though this case has sprawled since its inception, the appeal is limited to a single decision and order and two main issues therein. *See* Record on Appeal ("RA"), tab 406 (Notice of Appeal, May 31, 2013); RA, tab 414 (Notice of Cross Appeal, June 6, 2013) (both listing the trial court's January 14, 2011 decision and order as the basis of appeal). The adverse possession and irrevocable license issues are the only ones before this court. All other claims raised throughout the litigation have been resolved either by motion to dismiss or by trial and will not be discussed.

[3] Cory Quinata claimed to have built a wooden house on the property in 1979, but this is disputed by the Estate and Lujan. *See* Plaintiff-Appellee/Cross-Appellee's Br. ("Lujan Br.") at 7-8 (Oct. 9, 2013). Transcripts from trial on the Quinatas' counterclaims reveal that Cory built a house on NEW-R4 only after a 1986 fire burnt the original home to the ground. Quinata v. Lujan, CVA13-015 (Mot. to Supp. Record on Appeal, Oct. 9, 2013).

her siblings were owners in fee simple of the Umatac property which had been partitioned and now described as Lot 154-1NEW-1, Lot 154-lNew-2, Lot 154-1NEW-4 and Lot 154-1NEW-R4. The siblings apportioned the lots between themselves with Rosita taking ownership of NEW-R4, Priscilla NEW-2, Juan New-1, and Rosalina New-4. In 1988, after Juan sold his plot to Alfred Saussotte, the remaining three siblings granted Saussotte an easement for ingress and egress to his property. In 1991, Rosita and her two sisters agreed to an easement of 20 feet on each of their plots of land including NEW-R4 and NEW-2, to include the "[n]orthern most [portion] closest to the old Merizo-Umatac Road." RA, tab 3, Ex. A (Grant of Easement, Sept. 19, 1991). In January 1992, Priscilla sold NEW-2 to Lujan. In 1999, the Lujans purchased NEW-4 from a grantee of Rosalina.[4]

[5] In 2004, Rosita died while still holding title to NEW-R4. After Rosita's husband—Gil Leon Guerrero—died in 2007, David Leon Guerrero was appointed administrator of the estates of both Rosita and her husband.

[6] In mid-2007, Lujan attempted to clear the easement across NEW-R4 to bring in contractors with dump trucks and back hoes to make improvements on his property, NEW-2. The Quinatas interfered with Lujan's use of the easement across NEW-R4, and Lujan filed suit for an injunction requiring the Quinatas to cease interfering with his right to use the easement.

[7] The Quinatas filed an answer, counterclaims, cross-claims, and third-party complaint, which alleged, *inter alia*, Willful Trespass, Unlawful Entry, Nuisance, Intentional Infliction of Emotional Distress, and Slander of Title against Lujan and the Estate. Along with various forms of damages, the Quinatas sought a declaration that the Quinatas are owners in fee simple of NEW-R4 and that Lujan's easement was void. Between the filing of Lujan's complaint and the

[4] A map of the relevant properties is attached as an appendix to this opinion.

Quinatas' amended answer, the Estate issued a Notice to Vacate NEW-R4, and Carmelita Aguigui—one of the three heirs of Rosita's estate—executed a quitclaim deed to the Quinatas for any interest she held in NEW-R4.

[8] The Estate filed a motion to dismiss the third-party complaint against it. The Superior Court granted the motion to dismiss on some claims, but allowed the Quinatas' Quiet Title, Slander of Title, and Declaratory Relief claims to go forward. Lujan subsequently filed a motion for summary judgment as to both the Quinatas' claims to title of NEW-R4 and the Quinatas' tort claims. The Estate joined in the motion for summary judgment.

[9] The Superior Court granted partial summary judgment against the Quinatas' claims. In its Decision and Order, the court first held that the Quinatas did not have title to NEW-R4 through adverse possession. In reaching this conclusion, the court reasoned that the Quinatas could not prove that their possession of NEW-R4 was hostile to the rightful owner, because Rosita had given the Quinatas permission to reside there. However, the court proceeded to hold that the Quinatas enjoy an irrevocable license to live on NEW-R4 during their lifetime. The court reached this conclusion by first finding a license—by way of Rosita's permission for the Quinatas to occupy NEW-R4—and then deeming it irrevocable by estoppel—due to the Quinatas reliance and improvements made to the property during their period of occupation.[5] Prior to this decision, no party had raised the argument of an irrevocable license, and the parties were not given an opportunity to argue the issue.

[10] The Estate moved for reconsideration, but the trial court did not grant the motion and instead entered final judgment. The trial court's two summary judgment holdings serve as the

[5] This decision and order also resolved all remaining claims in the case save the Quinatas' claims of Willful Trespass, Unlawful Entry, Nuisance, and Intentional Infliction of Emotional Distress. These claims went to trial and verdicts were returned against the Quinatas on each.

grounds for this appeal, with the Estate filing a timely appeal to argue that the trial court erred on the irrevocable license issue, and the Quinatas filing a timely cross-appeal to argue that the trial court erred on the adverse possession issue.

II. JURISDICTION

[11] This court has jurisdiction over this appeal pursuant to the following statutes: 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-125 (2014)), and 7 GCA §§ 3107(a) and 3108(a) (2005).

III. STANDARD OF REVIEW

[12] We review a trial court's decision on summary judgment *de novo*. *See, e.g.*, *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 7. "Summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Cepeda v. Gov't of Guam*, 2005 Guam 11 ¶ 9.

[13] Additionally, we review purely legal issues *de novo*. *See, e.g.*, *People v. Rios*, 2008 Guam 22 ¶ 8. "Whether the evidence presented by the claimant proves adverse possession is a question of fact." *In re Leon Guerrero*, 2005 Guam 1 ¶ 15. In the adverse possession context, "[w]hether use is adverse or permissive is a question of fact." *Miller v. Jarman*, 471 P.2d 704, 705 (Wash. Ct. App. 1970); *see also Clarke v. Clarke*, 66 P. 10 (Cal. 1901). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous." *In re Leon Guerrero*, 2005 Guam 1 ¶ 15 (quoting Guam R. Civ. P. 52).

//

//

//

IV. ANALYSIS

[14] The two issues on appeal are (1) whether the trial court erred in granting summary judgment against the Quinatas' adverse possession claim to Lot NEW-R4, and (2) whether the trial court erred in finding that the Quinatas hold an irrevocable license to occupy Lot NEW-R4.

[15] The Estate argues that the trial court erred in granting the Quinatas an irrevocable license to live on NEW-R4. According to the Estate, this error was twofold. First, the Estate argues that the trial court erred by granting summary judgment on an issue that no party had raised without giving the parties notice that it was considering an irrevocable license and an opportunity to present evidence or arguments against the grant. Second, the Estate argues that the trial court erred substantively, because there "was no factual or legal basis" for granting the Quinatas an irrevocable license. Third-Party Defendant-Appellant/Cross-Appellee's Br. ("Estate Br.") at 14-19 (Aug. 12, 2013). The Quinatas respond that the Estate "had a full and fair opportunity to air all issues relative to" the trial court's irrevocable license decision, because the Estate's summary judgment motion argued that "the Quinatas had no rights at all to" NEW-R4. Defendant-Appellee/Cross-Appellant's Br. ("Quinata Br.") at 17-20 (Sept. 10, 2013). Furthermore, the Quinatas assert that the evidence and law support the trial court's finding of an irrevocable license.

[16] On cross-appeal, the Quinatas argue that the trial court erred in granting summary judgment against their claim of adverse possession to NEW-R4. The Quinatas argue that it was erroneous for the trial court to deny them adverse possession because they were granted permission to "occupy and own the land in a way that was adverse" to the title-holders' interests. *Id.* at 10. The Quinatas argued that a 1985 land registration of NEW-R4 did not bar their claim, because they were occupants of NEW-R4 and had not been personally notified of the proceeding

as required by 21 GCA § 29111. Cross-Appellee Lujan responds that the Quinatas' adverse possession claim was barred by the land registration and any challenge to the registration was untimely under 7 GCA § 11204. In the alternative, Lujan argues that the Quinatas failed to prove the requisite elements of an adverse possession claim.

A. Whether the Trial Court Erred in Granting Summary Judgment Against the Quinatas' Adverse Possession Claim

[17] The Quinatas first argue that the trial court erred in granting summary judgment against their claim of adverse possession, because "Rosita's permission to Cory was precisely to occupy and own the land in a way that was adverse to her interests and Cory did so and her permission constituted a permanent and irrevocable gift to Cory." Quinata Br. at 10. In making the argument for adverse possession, the Quinatas state that "Rosita orally gifted ownership of [NEW-R4] to Cory." *Id.* at 11; *see also* Quinata Reply Br. at 4 (Oct. 15, 2013) ("[S]he had orally gifted [NEW-R4] to Cory."). Though they do not specifically argue this theory, the Quinatas' statements appear to make a claim for an oral gift, so after deciding the adverse possession question, we will examine whether they may succeed on a claim to NEW-R4 as an oral gift.

1. Adverse Possession

[18] For a claim of adverse possession that is not based on a writing to succeed, the possessing party must prove five elements: (1) possession under circumstances sufficient to give reasonable notice to the owner, (2) possession hostile to owner's title, (3) possession claimed under color of title or claim of right, (4) continuous and uninterrupted possession for 10 years, *see* 7 GCA § 11212 (2005), and (5) that the possessor has paid all taxes levied on the property during the 10-year period. *See, e.g.*, *In re Application of Leon Guerrero*, 2005 Guam 1 ¶ 35. In this case, the

Quinatas cannot prove the second requirement—that their possession of NEW-R4 was hostile to Rosita's title to the property. "In order for possession to be hostile, for purposes of adverse possession, the use or possession of the property by the claimant must be without permission asked of, or given by, the true owner." 3 Am. Jur. 2d *Adverse Possession* § 44 (2014); *see also, e.g.*, *Miller v. Anderson*, 964 P.2d 365, 369 (Wash. Ct. App. 1998); *Jones v. Miles*, 658 S.E.2d 23, 26 (N.C. Ct. App. 2008); *Smith v. Krebs*, 768 P.2d 124, 126 (Alaska 1989). Throughout this litigation, the Quinatas have staked their claim to NEW-R4 on Rosita's allowing them to remain living on the property. *See, e.g.*, RA, tab 160 at 7 (Opp'n Mot. Summ. J., Nov. 10, 2009) ("Cory initially occupied [NEW-R4] on Rosita's oral conveyance . . . ."); Quinata Br. at 10 ("Rosita's *permission* to Cory was precisely to occupy and own the land." (emphasis added)); Quinata Reply Br. at 5 ("Rosita orally gifted [NEW-R4] to Cory."). This is clearly permissive use, which negates the requisite hostility of possession.

[19] The Quinatas cite to *Williams v. Stillwell*, 19 P.2d 773 (Cal. 1933), as a case with "almost identical facts." RA tab 160, at 8 (Opp'n Mot. Summ. J.). Though the underlying facts are somewhat similar, *Stillwell* is not persuasive here, because the opinion does not even mention the requirement of hostility and stresses that the possessor claimed title "primarily under a gift to him by his mother and not by adverse possession." *Williams*, 19 P.2d at 775. The trial court in that case had ruled that the plaintiff held title thanks to "an executed parol gift of said real property," and that was the judgment appealed from. *Id.* at 773. As such, the court's discussion of adverse possession is dicta at best and an incorrect analysis of adverse possession law at worst. Indeed, the court's claim that the possessor's "claim of title . . . is supported not only by the parol gift from his mother, but also by adverse possession of said real property," *id.* at 775, is a facially inconsistent statement in light of the requirement of hostility of possession. Because

the Quinatas cannot prove that their possession was hostile to Rosita, we affirm the trial court's summary judgment against the Quinatas' adverse possession claim.[6]

2. Oral Gift

[20] The Quinatas claim that "Rosita orally gifted ownership of [NEW-R4] to Cory," but they do not make the legal argument necessary to find an oral gift. Quinata Br. at 11. This claim, however, is potentially stronger than the claim for adverse possession, and we will examine whether the Quinatas have a claim to title of NEW-R4 based on an oral gift.[7]

[21] The Guam statute of frauds prohibits the transfer of real property without an instrument in writing. 21 GCA § 4101 (2005). There was no such written instrument in this case. However, oral promises to convey real property may be enforceable "under extreme circumstances in order to prevent an injustice to the donee." *In re Guardianship of Moylan*, 2011 Guam 16 ¶ 39. Such gifts will be recognized "only upon clear and satisfactory proof of the identity of the property and of an intention on the part of the donor to presently convey title to the real property." *Id.* (quoting *Husheon v. Kelley*, 124 P. 231, 235 (Cal. 1912)). Courts are generally suspicious of gift claims that are made for the first time after the alleged donor's death, *see, e.g.*, *Humble v. Gay*, 143 P. 778, 778, 520 (Cal. 1914), "[b]ecause of the facility with which, after a donor is dead, a fraudulent claim of ownership may be founded on a pretended gift," *Blonde v. Jenkins' Estate*, 281 P.2d 14, 14 (Cal. Dist. Ct. App. 1955).

---

[6] Because we reach this conclusion, we need not address the arguments regarding the validity of the 1985 land registration. We note, however, that there are three exceptions to the one-year limitation for contesting a land registration under 21GCA § 29146: (1) where the registered deed is forged or (2) void due to executor's legal disability, *see* 21 GCA § 29139 (2005), and (3) where a party holding color of title was not notified of the land registration proceeding, *see Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 ¶ 65-67. None of these exceptions apply in this case.

[7] We examine the oral gift question because our review is *de novo*, the record is established on this issue, and the Quinatas have argued (without legal analysis) that they were the beneficiaries of an oral gift.

[22] Here, we have clear and satisfactory proof that Cory Quinata was permitted to live on NEW-R4, but there is conflicting evidence that Rosita's permission was intended to convey title to the property. The only evidence presented in support of an oral gift of title were somewhat ambiguous affidavits of interested parties and relatives, *see, e.g.*, RA, tab 48 (Decl. of Cory Quinata, Aug. 11, 2008); RA, tab 163 (Decl. of Debbie Quinata, Nov. 10, 2009). Weighing against the Quinatas' argument, we have the only piece of evidence on the issue that comes directly from Rosita—that is, her participation in the 1985 land registration proceeding and her attendant statement under oath that "no one other than petitioners have any estate or claims any interest in said land or any part thereof, in law or in equity in possession, remainder, reversion expectancy." RA, tab 49, Ex. 4 (Pet. Reg. Title to Land). It is very difficult to square this sworn statement with a previous intention to convey title to a property to anyone else; a more reasonable explanation coinciding with Cory's known residence on NEW-R4 is that Rosita permitted Cory to live on the lot, but had no intention of "convey[ing] title to the real property." *In re Guardianship of Moylan*, 2011 Guam 16 ¶ 39 (quoting *Alpha Stores, Ltd. v. Croft*, 140 P.2d 688, 691 (Cal. Dist. Ct. App. 1943)). Thus, the Quinatas have not established a "*clear and satisfactory* proof . . . of an intention on the part of the donor to presently convey title to the real property," *id.* (emphasis added) (quoting *Alpha Stores*, 140 P.2d at 691), and they cannot claim title to NEW-R4 pursuant to an oral gift.

B. Whether the Trial Court Erred in Granting the Quinatas an Irrevocable License to Occupy NEW-R4

[23] There are two aspects to the Estate's argument that the trial court erred in granting the Quinatas an irrevocable license to occupy NEW-R4. First, the Estate argues that it was error for the trial court to grant summary judgment for the non-moving party on grounds that had not been

raised or argued by the parties. Estate Br. at 10-14. Second, the Estate argues that the trial court erred as a matter of substantive law by granting the Quinatas an irrevocable license. *Id.* at 14-19.

1. Whether the trial court erred in granting the Quinatas an irrevocable license, *sua sponte* and without giving the Estate notice.

[24] The Estate argues that the trial court erred in granting summary judgment on an irrevocable license, where no party had argued for such a result. *Id.* at 10-13. "[D]istrict courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence." *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). The Estate argues that it was reversible error for the trial court to find an irrevocable license without both giving the Estate notice that it was considering an irrevocable license and affording the Estate the opportunity to present evidence to argue against an irrevocable license. Estate Br. at 10-14. The Quinatas counter that because the Estate argued "that the Quinatas had no rights at all to [NEW-R4] except for a conditional right to use property . . . the Estate had ample opportunity to litigate the existence of a lifetime irrevocable license." Quinata Br. at 17-21.

[25] Before a court may grant summary judgment for a non-moving party, it is typically required to give both notice of the grounds upon which summary judgment may be granted and an opportunity for the moving party to present evidence and arguments on those grounds. *See, e.g.*, *Berkovitz v. HBO*, 89 F.3d 24, 29 (1st Cir. 1996); *B.F. Goodrich v. Betkoski*, 99 F.3d 505, 522 (2d Cir. 1996), *overruled on other grounds by New York v. Nat'l Servs. Indus.*, 352 F.3d 682, 684 (2d Cir. 2003); *Heisler v. Metro. Council*, 339 F.3d 622, 631 (8th Cir. 2003). This notice requirement before summary judgment may be awarded *sua sponte* "is not an unimportant technicality, but a vital procedural safeguard," and it retains its "mandatory character even when

the district court contemplates awarding summary judgment *sua sponte* against a party that itself had moved for summary judgment." *Massey v. Congress Life Ins. Co.*, 116 F.3d 1414, 1417 (11th Cir. 1997). Where no such notice has occurred, appellate courts reverse where the losing party suffered prejudice. *See, e.g., Kannady v. City of Kiowa*, 590 F.3d 1161, 1170-71 (10th Cir. 2010); *Fabric v. Provident Life & Accident Ins. Co.*, 115 F.3d 908, 914-15 (11th Cir. 1997). By requiring a showing of prejudice, the standard is similar to our rule in reviewing Guam Rules of Civil Procedure ("GRCP") 12(b)(6) and 12(c) decisions, in that failure to give notice is not per se reversible error, *Yokeno v. Lai*, 2014 Guam 18 ¶ 26, though the standards are distinct due to the different procedural circumstances in which they arise.

[26] Here, the facts surrounding the two grounds for decision are sufficiently different that the Estate did not have a fair opportunity to present its evidence and arguments on the irrevocable license issue. The trial court considered a motion for summary judgment founded on land registration and adverse possession issues. *See* RA, tab 142 (P. & A. Mot. Summ. J., Aug. 14, 2009); RA, tab 160 (Opp'n Mot. Summ. J.). As detailed above, adverse possession evidence and arguments included, *inter alia*, the duration of the Quinatas' occupation of NEW-R4, Rosita's permission, the validity of notice in the land registration proceeding, and the land registration's impact on the Quinatas' adverse possession claims.

[27] In contrast, the equitable remedy of irrevocable license has much to do with what improvements were made on the property, how much they cost the possessing party, and to what extent they increased the value of the property. *See, e.g., Harber v. Jensen*, 97 P.3d 57, 61-62 (Wyo. 2004); *Mund v. English*, 684 P.2d 1248, 1249-50 (Or. Ct. App. 1984). These arguments are not central to or similar to those required for a claim of adverse possession. The Estate makes three substantive arguments against the grant of an irrevocable license for the lifetime of

the Quinatas, none of which significantly overlap with arguments against an adverse possession claim. First, the Estate argues the trial court has in application bestowed a life estate on the Quinatas, and that such a right cannot be considered a license as licenses can only grant rights less than that of an estate. Estate Br. at 14-15. Second, the Estate argues the license is unenforceable, because Rosita's grant of permission/license for the Quinatas to reside on NEW-R4 was conditioned on their paying the property taxes, and the Quinatas allegedly failed to pay property taxes for some of the years they resided on the property. *Id.* at 15-17. Third, the Estate argues that the license is only irrevocable "to the extent necessary for [Cory Quinata] to realize upon the capital and labor expended by him in improving the property." *Id.* at 18-19. Furthermore, since the doctrine of irrevocable license is not explicitly accepted or defined in Guam law, *see, e.g.*, *Gutierrez v. Guam Power Auth.*, 2013 Guam 1 ¶¶ 21-29, arguments could have included whether the court should recognize irrevocable license at all and, if so, how we should define its potential scope and duration.

[28] One of the principal reasons appellate courts require trial courts to give notice is to facilitate and improve *de novo* appellate review. *See, e.g.*, *Hispanics for Fair and Equitable Reapportionment v. Griffin*, 958 F.2d 24, 25 (2d Cir. 1992) (per curiam). Without a fully-developed record at trial, an appellate court is disadvantaged in its review of the facts and its attendant decision in law. This presents a particularly negative circumstance when the appellate court is squarely presented with a doctrine for the first time and seeks to determine whether or not to adopt the doctrine and how to define its parameters. Because the failure to give notice and an opportunity to be heard prevented the Estate from presenting evidence and arguments relevant

to the irrevocable license issue before the trial court made its decision, we reverse the trial court's decision on irrevocable license.[8]

[29] Though the Estate was able to raise many of the current arguments in its motion for reconsideration, the trial court dealt with them only summarily, stating, "Even reviewing Estate Defendants additional arguments regarding the license, the Court disagrees that the finding was clearly erroneous." RA, tab 292 at 4 (Dec. & Order Mot. Recons., July 28, 2011). Furthermore, the presence of a ruled-on motion for reconsideration does not preclude a later reversal for failure to give notice before granting *sua sponte* summary judgment. *See, e.g.*, *First Fin. Ins. Co. v. Allstate Interior Demolition Corp.*, 193 F.3d 109, 120 (2d Cir. 1999) (reversing district court for failure to give notice despite presence of a subsequently denied motion for reconsideration); *Herbst v. Cook*, 260 F.3d 1039, 1043-44 (9th Cir. 2001) (habeas case holding that motion for reconsideration was not substitute for pre-dismissal notice); *see also Penobscot Indian Nation v. Key Bank of Me.*, 112 F.3d 538, 563 (1st Cir. 1997) (reversing for failure to give notice even where no motion for reconsideration was filed below). Such holdings make sense, because the standard for a motion to reconsider an interlocutory order under GRCP 54(b) is more exacting than that of initial trial court review—requiring "clearly or manifestly erroneous findings of fact or conclusions of law." *Jones v. Casey's Gen. Stores*, 551 F. Supp. 2d 848, 854 (S.D. Iowa 2008) (citations and internal quotation marks omitted); *see also* RA, tab 292 at 2-3 (Dec. & Order Mot. Recons.). On remand, the Estate will be afforded an opportunity to present evidence

[8] In addition to the reversible error of failing to give notice, summary judgment appears also to have been inappropriate, because there may be disputes of material fact. For example, the Estate argues that the Quinatas' initial license to remain on NEW-R4 was conditioned on payment of property taxes and that they failed this condition. *See* Estate Br. at 15-17. The trial court recognized that "[t]here is a question of fact as to who paid taxes on the property throughout the years," but determined that it need not resolve the question because the Quinatas' adverse possession claim failed on other grounds. RA, tab 247 at 8 n.8 (Dec. & Order Mot. Summ. J., Jan 24, 2011). The court did not address the factual question of who paid property taxes in its irrevocable license decision.

and arguments, and the trial court will have the opportunity to weigh the evidence and thoroughly consider arguments, which it has to this point only considered under the motion for reconsideration standard.

V. CONCLUSION

[30] We affirm the trial court's grant of summary judgment against the Quinatas' adverse possession claim. The Quinatas cannot obtain title to the property under either an adverse possession or an oral gift theory. Rosita's explicit permission to Cory to reside on NEW-R4 negates the requisite hostility of possession for adverse possession. There is no oral gift, because such gifts are limited to extreme circumstances in which "clear and satisfactory proof" exists that the title owner had a present intention to convey title. *In re Guardianship of Moylan*, 2011 Guam 16 ¶ 39.

[31] We reverse and remand the trial court's grant of an irrevocable license. On remand, the Estate must have an opportunity to present evidence and arguments regarding whether or not the Quinatas should be found to hold an irrevocable license to reside on NEW-R4 for their lifetimes. The Estate's extensive arguments on appeal make clear that the Estate would have made different arguments and sought and presented different evidence had it known that the trial court was considering granting an irrevocable license rather than determining whether the Quinatas had adversely possessed NEW-R4.

//

//

//

//

//

[32] Therefore, we **AFFIRM** in part, **REVERSE** in part, and **REMAND** this case for proceedings not inconsistent with this opinion.

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**

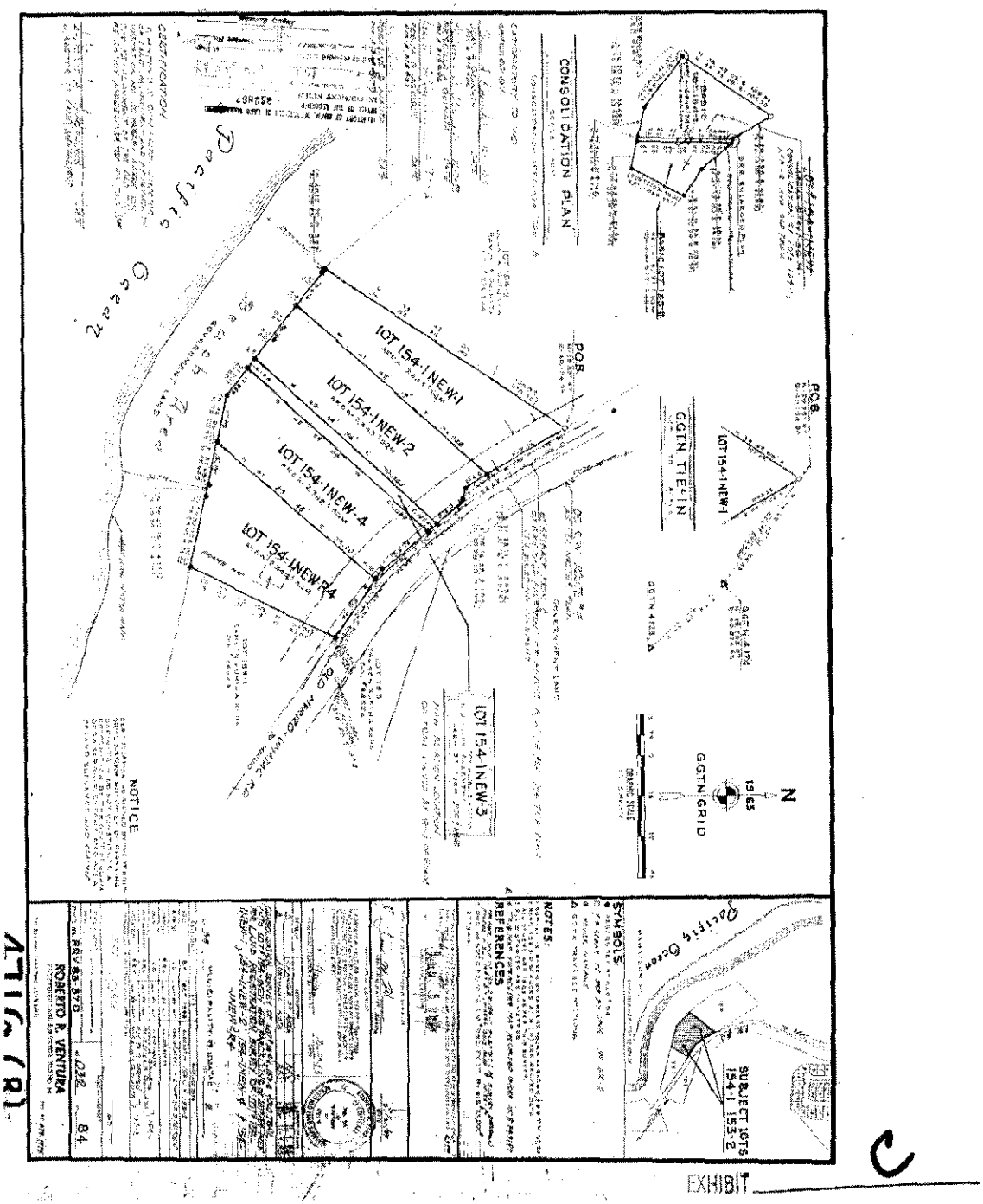
ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam

AUG 18 2014

By: MELDA B. DUENAS
Assistant Clerk of Court
Supreme Court of Guam

Appendix


LOT 154-1 NEW-1
LOT 154-1 NEW-2
LOT 154-1 NEW-4
LOT 154-1 NEW-R4
LOT 154-1 NEW-3
CONSOLIDATION PLAN
GGTN TIE-IN
GGTN GRID
N
POB
NOTICE
SYMBOLS
NOTES
REFERENCES
SUBJECT LOTS
154-1, 153-2
ROBERTO R. VENTURA
EXHIBIT C