IN THE SUPREME COURT OF GUAM

DAVID J. LUJAN,
Plaintiff-Appellant,

v.

J.L.H. TRUST, a Cook Islands Trust, KEITH A. WAIBEL, an individual and trustee of J.L.H. Trust, ROGER SLATER, an individual, GRANT THORNTON, a Guam entity, and DOES 1-20,
Defendants-Appellees.

Supreme Court Case No.: CVA14-036
Superior Court Case No.: CV0776-09

OPINION

Cite as: 2016 Guam 24

Appeal from the Superior Court of Guam
Argued and submitted on February 18, 2016
Hagåtña, Guam

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

TORRES, C.J.:

[1] Plaintiff-Appellant David J. Lujan appeals the trial court's dismissal of his complaint for damages against the Junior Larry Hillbroom Trust (the "JLH Trust"), its trustee Keith A. Waibel, and his agents. Lujan represented the interests of Junior Larry Hillbroom ("Junior") and his guardians over the course of many years in seeking and obtaining a share of his deceased father's estate. Lujan subsequently represented the JLH Trust and its trustee, Waibel, after its creation in further matters related to the estate. Lujan alleges in tort and contract causes of action that Waibel mishandled the JLH Trust's funds and failed to remit him remuneration due under his contracts of representation. The instant appeal stems from the trial court's dismissal of Lujan's complaint following the defendants' motion under Rule 12(b)(6) of the Guam Rules of Civil Procedure ("GRCP"). For the reasons herein, we affirm in part and reverse in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Junior is a pretermitted heir (along with at least three others) of Larry Hillblom, who died in a plane crash in 1995, leaving an estate worth hundreds of millions of dollars. Junior's guardians retained Lujan to represent Junior's interests in the Hillblom estate. In 1998, the Guardianship Court approved Lujan's first retainer agreement (the "1998 Retainer"), which granted Lujan and co-counsels 38% of Junior's eventual recovery from his biological father's estate. Lujan states that his payment under the 1998 Retainer was, after deductions made for the fees and costs paid to co-counsel, less than 14%. In order to receive the expected funds from the Hillblom estate and in accordance with probate court requirements, the JLH Trust was settled in April 1999 under the law of the Cook Islands, with Waibel as trustee.

[3] Within the same year, Lujan and his co-counsel entered into an amended retainer agreement (the "1999 Retainer"), intended to apply to work done after the settlement and final distribution of the Hillblom estate, for the purposes of maximizing Junior's share in negotiations with other pretermitted heirs, as well as generating future revenue for the JLH Trust. The 1999 Retainer specified a higher contingency fee for this work in the amount of 56% of prospective funds for Lujan and his co-counsel. Lujan's individual portion of the 1999 Retainer was 26%. Waibel, as the appointed trustee, approved and signed the 1999 Retainer, as did the Guardianship Court in 2001. Waibel subsequently hired Grant Thornton, a Guam-based accounting firm, and particularly accountant Roger Slater, to conduct a trust accounting for the JLH Trust. Over the next several years, probate of the estate closed, distributing funds to the JLH Trust. Lujan alleged in his complaint that Waibel then committed numerous wrongful and unethical actions in handling the JLH Trust's funds, and withheld payments due to him under the retainer agreements.

[4] In 2009, Junior sued Lujan, his co-counsel, and Waibel, challenging the 1999 Retainer and the amount of fees and costs paid to Lujan and co-counsel. Junior was represented by attorney Graham Lippsmith of Girardi Keese, filing suit in California, before having that claim dismissed and re-filing in the District Court for the Northern Mariana Islands. Around this time, Lippsmith gave an interview about the case, sharply criticizing Lujan's scruples as an attorney, which was broadcast on Guam.

[5] Lujan then filed this suit in the Superior Court of Guam against the JLH Trust, Waibel, Grant Thornton, Slater, Girardi Keese, and Lippsmith. Lujan alleged six claims entitling him to relief: defamation against Girardi Keese and Lippsmith; intentional interference with contract against Waibel, Grant Thornton, and Slater; aiding and abetting a breach of fiduciary duty

against Waibel, Grant Thornton, and Slater; contribution against Waibel; equitable indemnification against Waibel; and breach of contract against Waibel and the JLH Trust. Lujan maintained that Waibel and his agents neglected to properly disclose the JLH Trust's receipt of millions of dollars, and failed to remit to Lujan the percentage of these funds required by the retainer contracts. Lujan also sought contribution and indemnification from Waibel for any damages owed to Junior in the federal lawsuit. In 2011, Lujan voluntarily dismissed the defamation claim against Girardi Keese and Lippsmith.

[6] The defendants removed the action to the District Court of Guam, arguing that the Guam-based Grant Thornton and Slater were joined as "sham defendants" to defeat complete diversity. However, on Lujan's motion, the District Court remanded the case to the Superior Court of Guam, reasoning that it was not clearly established under Guam law that Lujan had failed to state a valid claim against Grant Thornton and Slater.

[7] Now, back in local court, the JLH Trust, Waibel, Grant Thornton, and Slater filed motions to dismiss under GRCP 12(b)(6) for failure to state a claim upon which relief could be granted. After a hearing, the trial court issued its Decision and Order granting the motions, dismissing the claims for intentional interference with contract and breach of contract with prejudice, and the claims for aiding and abetting, contribution, and equitable indemnification without prejudice. Lujan filed a Petition for Permission to File an Interlocutory Appeal, and a motion to stay the Decision and Order, which we granted.

II. JURISDICTION

[8] This court has jurisdiction to hear this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-219 (2016)), and 7 GCA §§ 3107 and 3108(b) (2005).

III. STANDARD OF REVIEW

[9] The standard of review for conclusions of law is *de novo*. *Lamb v. Hoffman*, 2008 Guam 2 ¶ 11 (citing *Lizama v. Dep't of Pub. Works*, 2005 Guam 12 ¶ 13). Issues of statutory interpretation are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13 ¶ 3 (citations omitted).

[10] We review a dismissal for failure to state a claim pursuant to GRCP 12(b)(6) *de novo*. *Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 ¶ 9 (citing *First Hawaiian Bank v. Manley*, 2007 Guam 2 ¶ 6). In doing so, we "must construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party's favor." *Id.* (quoting *First Hawaiian Bank*, 2007 Guam 2 ¶ 9). Nevertheless, "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Id.* (quoting *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996)).

IV. ANALYSIS

[11] Lujan appeals the trial court's GRCP 12(b)(6) dismissal of his complaint for failure to state a claim upon which relief can be granted. Accordingly, resolution of the issues on appeal requires analysis of the following: defining the proper standard for adjudicating a GRCP 12(b)(6) motion on Guam, and then determining whether the trial court erred in ruling Lujan failed to state a claim for aiding and abetting a breach of a fiduciary duty, breach of contract against the JLH Trust and intentional interference against Waibel, or in dismissing the entire complaint, along with several minor issues.

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A. Whether the trial court erred in holding that this court has adopted the *Twombly* standard as the correct measure in adjudicating a GRCP 12(b)(6) motion to dismiss

[12] Lujan asserts that the trial court applied the incorrect standard in adjudicating the GRCP 12(b)(6) motion to dismiss. Appellant's Br. at 6 (Apr. 27, 2015). For decades, the Federal Rules of Civil Procedure ("FRCP") Rule 12(b)(6) standard dictated dismissal only when it "appear[ed] beyond doubt that the plaintiff [could] prove *no set of facts* in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (emphasis added) (footnote omitted). Then in 2007, the United States Supreme Court retired the "no set of facts" test, in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 562-63 (2007). Under the standard articulated in *Twombly*, while a complaint need not include detailed factual allegations, it requires more than mere "labels" and "conclusions," and "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 545. Thus, to survive an FRCP 12(b)(6) motion to dismiss, the plaintiff must now facially allege sufficient facts to "nudge[] their claims across the line from conceivable to plausible." *Id.* at 570. Two years later, the Court confirmed that the *Twombly* standard applies in all civil suits. *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009). Subsequently, as noted by the parties, many states have adopted or rejected this "plausible" language. Appellant's Br. at 7 n.7; Appellee's ("Waibel's") Br. at 14 (Sept. 22, 2015). The parties now dispute whether we have adopted the *Twombly* plausibility standard, or continue to utilize the *Conley* "no set of facts" test. *See* Appellant's Br. at 6-8; Waibel's Br. at 9-13.

[13] After review of our case law, the trial court determined that the standard on Guam to use in adjudicating a GRCP 12(b)(6) motion is that set forth in *Twombly*. Record on Appeal ("RA"), tab 135 at 17 (Dec. & Order, Oct. 29, 2014). Lujan now argues that the trial court overlooked the fact that this court in *Core Tech International Corp. v. Hanil Engineering & Construction*

Co., 2010 Guam 13, specifically qualified the *Twombly* language by also quoting *Taitano v. Calvo Finance Corp.*, 2009 Guam 9, and citing to *Conley*, and that the correct standard on Guam remains the "no set of facts" test. Appellant's Br. at 7. He also asserts, citing *Taitano*, 2009 Guam 9 ¶ 43, that the purpose of GRCP 12(b)(6) is to prevent impossible claims, while GRCP 11 serves the pleading gate-keeping function. *Id.* at 7-8. Waibel responds that *Twombly* was merely a clarification of the existing test, and did not create a new, heightened standard. Waibel's Br. at 13. Nevertheless, Waibel also argues for a heightened pleading standard in cases dealing with fiduciary duties, recognizing a presumption against an attorney modifying a fee agreement after an attorney-client relationship is established. *Id.* at 14-15.

[14] Following oral arguments in this matter, we issued our opinion in *Ukau v. Wang*, 2016 Guam 18, which explicitly defined the standard applicable to civil pleadings in the Superior Court. In *Ukau*, we held that due to the plain language of GRCP 8(a) and this court's historical interpretation of imposing a liberal, notice pleading requirement, the *Twombly* standard is inapplicable to local civil pleadings on Guam. 2016 Guam 18 ¶ 33. The trial court therefore erred in holding we have adopted *Twombly* and in applying the *Twombly* standard, as we maintain the *Conley* "no set of facts" test for local civil matters.

[15] Academically, the trial court should reconsider each and every claim once more, employing the *Conley* "no set of facts" language. However, given that the issues are already before this court, we find it more prudent to substantively evaluate the merits of each claim at this time. *See Ukau*, 2016 Guam 18 ¶ 70 ("It is well-settled law that this court may, in its discretion, either remand or decide issues in the first instance if the record is sufficiently developed." (citation omitted)). Therefore, we proceed to examination of each challenged claim, inquiring whether "it appears beyond doubt that [Lujan] can prove no set of facts in support of

his claim which would entitle him to relief." *Taitano*, 2008 Guam 12 ¶ 9 (quoting *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1249 (9th Cir. 2007)).

B. Whether the trial court erred in holding Lujan failed to state a claim for aiding and abetting a breach of fiduciary duty

[16] Lujan claims that the trial court erred in ruling he had not identified any fiduciary duty owed to him by Waibel, and thus failed to state a claim for aiding and abetting a breach of such duty. Appellant's Br. at 13-16. A trustee clearly owes a beneficiary the highest duty of good faith. 18 GCA § 65201 (2005). However, there is no statute defining any similar duties a trustee would owe to an attorney retained by the trust.

[17] At trial, Lujan alleged that Waibel, Grant Thornton, and Slater committed tortious acts with the JLH Trust, amounting to a breach of fiduciary duty owed to Lujan. RA, tab 135 at 26-27 (Dec. & Order). Lujan then clarified that the source of this alleged duty was not by operation of a constructive trust, but argued that a trustee has an ascribed duty to pay out all monies owed (including to creditors), similar to the duty of a probate administrator. *Id.* at 28. In ruling, the trial court did not consider the merits of whether it could ever be possible for a trustee to owe a fiduciary duty to a lawyer hired by the trust. Instead, the court determined that for this particular case, without some defined and applicable fiduciary duty owed by Waibel to Lujan, a breach of that duty would naturally be impossible. *Id.* The court therefore found that as pleaded, Lujan had not identified a fiduciary duty for the defendants to breach. *Id.* at 28-29.

[18] Lujan now argues that like a probate estate, a trust is a collection of assets and liabilities. Appellant's First Reply Br. at 4 (Oct. 5, 2015) (citing *Galdjie v. Darwish*, 7 Cal. Rptr. 3d 178, 191-92 (Ct. App. 2003)). Further, personal representatives of probate estates owe certain fiduciary duties, including to creditors. *Id.* (citing *In re Estate of Boyd*, 634 N.W.2d 630, 639

(Iowa 2001)). Based on this probate analogy, Lujan alleges that Waibel had a similar fiduciary duty to pay Lujan his pro rata share of all money received by the JLH Trust under the retainers, and that he breached that duty by not doing so. *Id.*

[19] Waibel responds that Lujan's assertions have been vague and inconsistent throughout. Waibel's Br. at 16-18. He asserts that Lujan's original complaint alleged aiding and abetting a breach of *contract*, which Lujan then changed to fiduciary duty during oral argument, while also abandoning a theory of constructive trust. *Id.* at 16-17. Waibel therefore believes Lujan's inconsistencies have resulted in a failure to state a claim. *Id.* at 18. He maintains that the only obligation owed to Lujan was pursuant to the contracts, and there can be no tort liability for aiding and abetting a breach of contract. *Id.* at 20-21. Further, Waibel attacks Lujan's assertion that a client could owe its attorney a fiduciary duty as a backwards idea of how the relationship functions. *Id.* at 21-22. As for Lujan's analogy to an executor of an estate, Waibel argues that while probate administrators may owe many people fiduciary duties, a trustee merely has a duty to act "solely in the interest of the beneficiaries, or solely in furtherance of its charitable purpose." *Id.* at 22-23 (quoting Restatement (Third) of Trusts § 78(1) (Am. Law Inst. 2007)). Waibel cites to case law, most notably a matter wherein a California Court of Appeals stated, "[t]here is simply no authority, either in statute or the common law, for imposing such a duty on a trustee" and "[n]othing in the statutory scheme governing trusts, either expressly or implicitly, establishes a competing duty to withhold otherwise authorized distribution to beneficiaries to preserve trust assets in favor of a third party with a disputed claim." *Id.* at 23 (quoting *Arluk Med. Ctr. Indus. Grp., Inc. v. Dobler*, 11 Cal. Rptr. 3d 194, 201 (Ct. App. 2004) (citations omitted)). Essentially, Waibel argues that a trustee holds the property for the benefit of the beneficiary, and no other. *Id.* at 24. Finally, he contends that as a trustee is not separate from the

trust, a trustee could never aid and abet the actions of the trust, and therefore the dismissal of this claim should have been with prejudice. *Id.* at 25-26.

[20] It is only logical that in order for there to be a breach of fiduciary duty, there must first be a definite fiduciary duty in existence. Lujan was retained to perform legal services in exchange for payment under the retainers; the agreements contained no language imposing any duties other than the contractual variety regarding payment for legal services. While Lujan cites to the statutes defining a trust and imposing a duty of good faith on the trustee, that duty applies only towards the beneficiary of the trust, and Lujan was obviously not the beneficiary of the JLH Trust. Appellant's Br. at 15; *see* 18 GCA §§ 65102, 65201 (2005). Lujan is perhaps intimating that the retainer contracts created a voluntary trust with himself as the beneficiary, but such a theory would be plainly inaccurate; these were merely contracts for retaining Lujan's legal services. Therefore, contrary to Lujan's representation, these trust statutes do not in any establish that Waibel owed Lujan a fiduciary duty. As for the comparison to estate law, personal representatives of estates certainly owe specific statutorily defined duties to a limited class of parties. *See* 15 GCA §§ 2201-2229 (2005). However, there are no such statutory provisions for trustees, save for the fiduciary duty owed to the beneficiary in 18 GCA § 65201. We therefore reject this analogy to probate law.

[21] Rather, it appears that Lujan is here alleging a breach of contract alone. This is indicated by Lujan's summation of the "fiduciary" duty owed to him: "Waibel's duty was to pay Lujan his pro rata share of all money received by the JLH Trust *pursuant to the contracts*." Appellant's Br. at 15 (emphasis added). If there was indeed a breach of the terms of these contracts, contract law should be adequate to handle a dispute premised solely on failure to perform. Indeed, Lujan offers no argument as to why contract law would be insufficient to resolve this quarrel.

[22] In summation, a trustee owes no fiduciary duty to the other party of a trust contract solely due to trustee status; contract law governs this contractual dispute. Therefore, the trial court correctly dismissed Lujan's claim for aiding and abetting a breach of a trustee's fiduciary duty, as no such duty is possible under Guam law.

C. Whether the trial court erred in dismissing Lujan's claims for breach of contract against the JLH Trust and intentional interference with contract against Waibel

[23] Lujan argues that the JLH Trust breached the retainers, and that Waibel, acting separately from the trust, intentionally interfered with those contracts. Appellant's Br. at 8-9, 16. Both of these claims implicate the doctrinal inquiry of what exactly a trust is, and what the roles and relationships are between trust and trustee. Only if a trust is a legally separate entity capable of independent actions could Lujan sue the JLH Trust itself (apart from Waibel) for breach of contract on the retainers. Further, only if a trustee can act in an individual capacity separate from the trust could Waibel intentionally interfere with a trust contract. *See Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 791 P.2d 587, 589-90 (Cal. 1990) (defining the elements of intentional interference to include the actions of a third party to the contract). We therefore examine the role and relationship of trusts and trustees under Guam law and the impact on Lujan's claims.

[24] Guam's statutory scheme regarding trusts derives from a former version of California's trust statutes. *See* 18 GCA §§ 65101-66603 (2005), SOURCE; Cal. Civ. Code §§ 2215-2289 (repealed 1986). Where we have adopted California statutes, California case law interpreting those statutes stands as persuasive authority. *See People v. Hall*, 2004 Guam 12 ¶ 18 (finding that California case law interpreting a California statute from which a Guam statute was derived is persuasive authority, and adopting such case law "absent a compelling reason to deviate." (citation omitted)). This court has yet to consider the two inquiries relevant here: the unity or

separation of trust and trustee (which we examine in relation to the current claims), and whether a trustee may be sued personally.

1. Breach of contract against the JLH Trust

[25] Lujan can sustain a claim for breach of contract against the JLH Trust itself only if the trust is a legally separate entity capable of suing and being sued. Otherwise the only viable suit would be against Waibel, the trustee. The trial court reasoned, "a trust is not an entity with an independent legal personality, able to contract in its own name and sue or be sued on its own." RA, tab 135 at 25 (Dec. & Order). Therefore, the only breach of contract claim could be against Waibel, as the court held that "the trustee, not the trust itself, is the real party in interest in litigation involving trust property, and the only party capable of being sued by a third party." *Id.* Based on this reasoning, Lujan's breach of contract claim against the trust itself would be legally impossible.

[26] The trial court cited 18 GCA § 66301, which states that "[a] trustee is a general agent for the trust property," whose acts "bind the trust property to the same extent as the acts of an agent bind [the agent's] principal." 18 GCA § 66301 (2005); *see also* RA, tab 135 at 24 (Dec. & Order). Lujan believes this statute is an indication that a trust functions as a principal and constitutes a separate entity. Appellant's Br. at 18. Lujan further asserts that the *Galdjie* court (relied on by the trial court) found similar language to mean that a trustee is "a juristic person in a court of law," and that "the trust estate is to be considered an entity chargeable as a principal for the acts of the trustee, its agent." Appellant's Br. at 18 (quoting *Galdjie*, 7 Cal. Rptr. 3d at 190). Lujan argues that the logical consequence of that court's ruling and citations is to make a trust chargeable as a principal, which is not reconcilable with holding that a trust is not an independent entity. Appellant's Br. at 18.

[27] Waibel mainly contends that a trust relationship varies from the structure of a corporation; whereas a corporation is a legal entity separate from shareholders and officers, the trust is not independent of its trustee. Waibel's Br. at 33 (citing *Ziegler v. Nickel*, 75 Cal. Rptr. 2d 312, 314-15 (Ct. App. 1998)). Therefore, the trustee always enters and performs contracts on behalf of the trust, and if there is a breach or tort, the trustee is the real party in interest in the lawsuit. *Id.* (citing *Moeller v. Superior Court*, 947 P.2d 279, 283 n.3 (Cal. 1997)).

[28] Guam's trust definition statute has not departed from regarding a trust as a relationship rather than an entity; it uses language of obligation and not entity creation. *See* 18 GCA § 65102 ("A voluntary trust is an obligation arising out of a personal confidence in, and voluntarily accepted by, one for the benefit of another." (emphasis omitted)). This section was modeled after California Civil Code section 2216. *See id.*, SOURCE. Under California law, unlike a corporation, a trust is not a legal entity distinct from stockholders and officers, deemed a person for many legal constructs; rather it is a fiduciary relationship with respect to property. *Ziegler*, 75 Cal. Rptr. 2d at 314 (citations omitted). Indeed, the trust is not an entity separate from the trustee and the trustee holds legal title to property owned by a trust. *Moeller*, 947 P.2d at 285 (citations omitted); *see also Pillsbury v. Karmgard*, 27 Cal. Rptr. 2d 491, 495 (Ct. App. 1994). Since a trust is not a legal entity, it "cannot sue or be sued, hold title to property, own property, or enter into contracts." *See* 60 Cal. Jur. 3d *Trusts* § 1 (2016) (footnotes omitted). Therefore, the correct suit for breach of contract is against the trustee, and not the trust itself. *See Aulisio v. Bancroft*, 179 Cal. Rptr. 3d 408, 414 (Ct. App. 2014) (citations omitted) (stating that the trustee is the proper representative of the trust in litigation). Further, while Lujan points out that some aspects of agency law apply to the trust/trustee relationship, it is important to recognize that actions of the trustee "bind the trust *property* to the same extent as the acts of an agent bind [the

agent's] principal." 18 GCA § 66301 (emphasis added). The statute does not dictate that there is a trust *entity* that is bound by the actions of the trustee as a principal; only that the trust *property* is committed in a similar way as a principal would be bound. So, while aspects of agency law apply to a trust/trustee relationship, an important difference remains in binding trust property, rather than implicating a separate trust principal.

[29] Summarily, a trust is not an entity capable of suing or being sued; the legally correct suit is by or against the trustee. Therefore, Lujan can allege no set of facts that would state a viable claim for breach of contract against the JLH Trust and the trial court was correct in that dismissal.

2. Intentional interference with contract against Waibel

[30] Lujan also asserts that he properly stated a viable cause of action for intentional interference with contract against Waibel. Appellant's Br. at 8. The elements of intentional interference with contract are: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *CRST Van Expedited, Inc. v. Werner Enters., Inc.*, 479 F.3d 1099, 1105 (9th Cir. 2007) (quoting *Quelimane Co. v. Stewart Title Guar. Co.*, 960 P.2d 513, 530 (Cal. 1998)).

[31] A contracting party generally has no cause of action against the other party for conspiring to breach their own contract or for wrongfully interfering with their own contract. *McGreevy v. Daktronics, Inc.*, 156 F.3d 837, 841 (8th Cir. 1998) (citation omitted). The tort cause of action for interference only lies against outsiders to the contract. *Applied Equip. Corp. v. Litton Saudi Arabia, Ltd.*, 869 P.2d 454, 459 (Cal. 1994) ("California recognizes a cause of action against

noncontracting parties who interfere with the performance of a contract . . . ."); *see also Shoemaker v. Myers*, 801 P.2d 1054, 1068 (Cal. 1990); *Kelly v. Gen. Tel. Co.*, 186 Cal. Rptr. 184, 188 (Ct. App. 1982); *Dryden v. Tri-Valley Growers*, 135 Cal. Rptr. 720, 726 (Ct. App. 1977). As elucidated above, a trust is not a legally separate entity apart from the trustee. Therefore, it is necessarily impermissible to sue a trustee for interfering with a trust contract, as the trustee cannot be considered a stranger to that contract.

[32] The trial court dismissed the intentional interference claim based on the requirement of a non-contracting party, finding that since Waibel was *the* representative of the trust and legally inseparable, he could not interfere with a trust contract. RA, tab 135 at 25 (Dec. & Order). However, Lujan argues that the trial court erroneously concluded that Waibel was a party to both retainer agreements. Appellant's Br. at 10. Throughout the lower court's opinion, the court alternately referred to the retainers as "the contracts" or "the contract."[1] RA, tab 135 at 19, 22, 26 (Dec. & Order). This was an erroneous amalgamation, as the 1998 Retainer and 1999 Retainer were made for different purposes, between different parties, and contained no provisions of merger. For proper disposition, the contracts must be analyzed individually.

a. The 1998 Retainer

[33] The 1998 Retainer memorialized an agreement between Naoko Imeong (Junior's guardian) and Lujan. Waibel did not sign the agreement, as the trust was not yet in existence, though the document committed funds that would later be controlled by Waibel as trustee. The 1998 Retainer specified that Lujan would receive 38% of the gross amount distributed to Junior,

[1] It is perhaps no wonder that the trial court equated the two retainers as one contract, as it is unclear from the complaint which contract (or both) Lujan is suing under. In his complaint Lujan alleged that "Waibel schemed with Does 1 through 20 to cause the Trust not to pay Lujan funds he was due *under one or both of the Retainers*." RA, tab 3 at 10 (Compl., May 11, 2009) (emphasis added). Then, in his second cause of action for intentional interference with contract, Lujan stated that "Defendants have intentionally induced the Trust to breach the *Retainers*." *Id.* at 13 (emphasis added).

along with out-of-pocket expenses; it seems to have been designed to compensate Lujan for services during litigation and up until receiving the settlement.

[34] While the JLH Trust eventually controlled the relevant assets referred to in the 1998 Retainer, the trust itself (via Waibel) was not a contracting party to the agreement. Therefore, if Waibel wrongfully withheld payment due Lujan under the 1998 Retainer, the trustee would be a stranger to the contract, and Lujan could allege interference with the terms between Lujan and Junior's guardian. *See Applied Equip.*, 869 P.2d at 459. It is unclear from the pleadings whether Lujan is suing for intentional interference with contract on the 1998 Retainer, but a well-pleaded claim would be viable against Waibel to survive a GRCP 12(b)(6) motion to dismiss. Therefore, it was appropriate to dismiss the intentional interference claim as pleaded, but Lujan shall have leave to amend his claim under the 1998 Retainer.

b. The 1999 Retainer

[35] As for the 1999 Retainer, Waibel was undeniably a party. As the JLH Trust was now in existence, Waibel signed the 1999 Retainer as trustee, procuring Lujan's legal services on behalf of the trust. Moreover, while the previous agreement was litigation focused, the 1999 Retainer seems more designed to maximize the value of the trust's assets *after* the trust was settled. As detailed above, a trust is not a legally separate entity from the trustee, thus it is generally impermissible to sue a trustee for interference with a trust contract. Because Waibel, as trustee, was a party to the 1999 Retainer, he was not a stranger to that contract, and therefore his interference would be legally impossible. *See Applied Equip.*, 869 P.2d at 459.

[36] No matter the general prohibition on this type of suit, Lujan argues that whereas Waibel was a party to the retainers as a trustee, he interfered with the contracts in his *individual* capacity. Appellant's Br. at 10-12. Under this logic, although a trustee and trust are in effect the same

entity, Waibel's actions outside the scope of his duties as trustee would be deemed his alone, and he therefore could intentionally interfere with the retainer agreements.

[37] Waibel argues that neither the complaint, nor any cited authority indicate that splitting the actions of a trustee is legally permissible. Waibel's Br. at 30. In support, Waibel cites authority rejecting the idea of splitting a trustee into representative and individual capacities in varying circumstances. *See, e.g.*, *United States v. Griswold*, 124 F.2d 599, 601-02 (1st Cir. 1941) (declining to split the personality of trustees); *Loring v. United States*, 80 F. Supp. 781, 786 (D. Mass. 1948) (finding that a trustee does not act in two capacities); *Kiyose v. Trs. of Ind. Univ.*, 333 N.E.2d 886, 891 (Ind. Ct. App. 1975) (dismissing claim that trustees acted in representative and individual capacities); Waibel's Br. at 30-31. Waibel also argues that it is not possible to argue he acted in an individual capacity simply because he is alleged to have acted in his own self-interest, when the actions were performed on behalf of the trust. Waibel's Br. at 31.

[38] In the corporate context, "[o]wnership and control of an entity do not by themselves relieve a defendant from tort liability for interfering with the entity's contracts," and agents of corporations can often be held liable. *Wanland v. Los Gatos Lodge, Inc.*, 281 Cal. Rptr. 890, 899 (Ct. App. 1991), *modified*, (June 28, 1991) (citations omitted). The determination of liability centers on whether the owner, director or manager was acting to protect the interests of the entity. *Shapoff v. Scull*, 272 Cal. Rptr. 480, 484 (Ct. App. 1990), *disapproved on other grounds by Applied Equip.*, 869 P.2d 454.

[39] However, while this principle certainly has a basis in the law of corporations (separate legal entities), there is no similar such legal foundation for splitting these capacities between trusts and trustees. Lujan sets forth no authority indicating that splitting the actions of a trustee is ever legally permissible. Additionally, although Waibel's cited cases are not precisely on point

for the current issue, they are informative to show various courts' reasoning on the general lack of a capability to separate the actions of trustees. The dearth of support for this notion is logical, given that a trust is not a separable entity like a corporation; the trustee is more closely tied to the trust (and in many respects "is" the trust) than is an agent to its corporation. *See Moeller*, 947 P.2d at 285.

[40] We therefore hold that we may not split Waibel's actions into representative and personal capacities on the 1999 Retainer. The trial court correctly dismissed with prejudice the intentional interference with contract claim with respect to the 1999 Retainer, as Lujan can present no set of facts that would entitle him to relief in this manner.

3. Personal liability

[41] Much of the parties' dispute regarding individual versus representative capacity truthfully centers on whether a trustee would be liable only as a representative of the trust and for trust assets, or if they could be held personally liable. Guam's trust statutes define the personal liability of a trustee to the beneficiary when they have used trust property for their own gain, but do not define the same when dealing with a third party. *See* 18 GCA §§ 65210-65211 (2005). The question then becomes whether a plaintiff such as Lujan could collect from trust property alone, or from the trustee personally as well.

[42] Citing to California law (explored in depth below) and Guam's trust statutes, Waibel maintains that a trustee may only be sued in a representative capacity and cannot be held personally liable. Waibel's Br. at 34-37. Lujan believes that Waibel is asking for "unfettered agent immunity," and expresses concerns with the implications of granting such a mantle of complete indemnification for all acts committed by a trustee. Appellant's Br. at 9. He argues that this court should reject the idea of "absolute agent immunity" for a trustee, and permit

splitting a trustee's actions into individual and representative capacities. *Id.* at 11. He continues by citing to Superior Court cases (allowing personal liability in certain situations) and the different eras of trust law in California. *Id.* at 11-12. Lujan also maintains that the trial court erred in ignoring modern California law and 18 GCA § 20402, which provides that an *agent* can be personally responsible to third parties for wrongful acts. *Id.* at 12.

[43] Both parties cite to *Galdjie*, 7 Cal. Rptr. 3d 178, which offers a detailed summation of trust law in California. *See id.*; Waibel's Br. at 35-36. As we adopted our trust laws from that jurisdiction, this overview is helpful to our current inquiry, offering a clearer picture of Guam's trust law as it now stands, and an indication of how to venture forward. The progression of California trust law regarding trustee liability can be divided into three eras: common law, the early California approach, and the modern view. Guam currently maintains the early California approach.

[44] Historically at common law, the trustee held legal title of the trust, and the trustee was essentially the owner of the property. *Galdjie*, 7 Cal. Rptr. 3d at 187-89. Hence, where a tort was committed or a contract breached, the trustee was sued individually by third parties and was personally responsible for all liabilities incurred in the course of trust administration. *Id.*; *see* Restatement (Third) of Trusts § 105(b) (Am. Law Inst. 2012). However, the trustee could seek reimbursement from trust assets. *See Taylor v. Davis*, 110 U.S. 330, 335 (1884) ("[W]hen a trustee acts in good faith for the benefit of the trust, he is entitled to indemnify himself for his engagements out of the estate in his hands, and for this purpose a credit for his expenditures will be allowed . . . .").

[45] California's early approach then began to shift primary liability towards the trust itself. California enacted former Civil Code section 2267, which provided: "A trustee is a general agent

for the trust . . . . His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal." *Galdjie*, 7 Cal. Rptr. 3d at 190 (citation omitted). This is the language we adopted and maintain. *See* 18 GCA § 66301. It was "intended to make the trustee in his representative capacity a juristic person in a court of law and to provide that he may be sued as such and the trust property . . . taken under a judgment recovered against him as trustee." *Galdjie*, 7 Cal. Rptr. 3d at 190 (citing George G. Bogert & George T. Bogert, *Trusts & Trustees* § 712 (2d ed. 1982)). The California Supreme Court indicated that "[t]rust property is bound by the acts of the trustees within the scope of their authority," but did not explicitly clarify whether or not the trustee remained individually liable as it had been under common law. *Id.* (citations omitted). This is the ambiguous situation in which we now find ourselves. However, other jurisdictions adopted similar language, and did resolve this issue. The Montana Supreme Court interpreted an identical provision to mean that the actions of the trustee bound and committed trust assets in the same way a principal is bound by actions of its agent. *Id.* (citing *Tuttle v. Union Bank & Trust Co.*, 119 P.2d 884, 888 (Mont. 1941)). Further, the court found that generally only the trust property was liable, but the trustee could be held personally liable if personally at fault. *Tuttle*, 119 P.2d at 888 ("[W]here there are no intervening equities against the trustee personally . . . the trustee is not personally liable but . . . the remedy is an action against it as trustee, and . . . judgment against it in that capacity is limited in its application to the trust estate."). Indeed, Montana interpreted the ambiguity to favor what became the contemporary view.

[46] In 1986, California repealed its trust statute, in favor of the explicitly clear modern approach, wherein a trustee is personally liable for obligations arising in the course of trust administration only if the trustee, in some manner, has acted improperly in administering the

trust. *Galdjie*, 7 Cal. Rptr. 3d at 190-91; *see also* Restatement (Third) of Trusts § 106 (Am. Law Inst. 2012). Otherwise, a plaintiff's recovery is limited to trust assets. *Id.* This had the effect of limiting the personal liability of a trustee to where they have committed a wrongful act or omission: "A trustee . . . cannot be held personally liable [for breach of contract or a tort] unless the party seeking to impose such personal liability on the trustee demonstrates that the trustee *intentionally or negligently* acted or failed to act in a manner that establishes personal fault." *Haskett v. Villas at Desert Falls*, 108 Cal. Rptr. 2d 888, 898 (Ct. App. 2001) (citations omitted).

[47] Importantly, while California statutorily adopted this modern approach, Guam's statutes maintain the language of the prior California versions. *See* 18 GCA §§ 65101-66603 (2005). So, while California has now expressly limited personal liability of trustees (absent personal fault by the trustee), the earlier persuasive California statutes and case law do not contain this direct answer. In this uncertain landscape, we find *Tuttle* informative. The Montana Supreme Court interpreted their statute containing the same language now before us, to generally forbid suing the trustee personally, but only if "there are no intervening equities." *Tuttle*, 119 P.2d at 888. Moreover, this decision was in line with what California eventually made explicitly clear by amending its statute, and indeed with the modern approach in general. *See* Unif. Trust Code § 1010(b) (Unif. Law Comm'n 2000) ("A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property . . . only if the trustee is personally at fault.").

[48] We hereby follow the *Tuttle* reasoning, and interpret our statutes in a manner consistent with current California law and the modern approach. Under 18 GCA § 66301, judgment against a trustee is generally limited to the trust property, but where there are intervening equities in favor of a beneficiary or third party, a trustee may be held personally liable. *See Tuttle*, 119 P.2d

at 888. Effectively, we largely disallow personal recovery against the trustee, save for situations where personal recovery would be warranted by negligent or intentional conduct establishing personal fault.

[49] To be clear, we reject any splitting of a trustee's personality into individual and representative capacities. However, we recognize Lujan's ability to seek damages from Waibel personally under breach of contract or intentional interference claims where there is an allegation of wrongful conduct.

D. Whether the trial court erred in dismissing Lujan's entire complaint

[50] If no party moves to dismiss a claim, and the court does not dismiss that claim, then as a matter of course the complaint remains valid for that claim. Here, the trial court dismissed with prejudice the breach of contract claim against the JLH Trust, and the intentional interference claim against Waibel. RA, tab 135 at 29 (Dec. & Order). The court also dismissed the claim for aiding and abetting a breach of fiduciary duty against Waibel with leave to amend. *Id.* at 30. However, with no mention of the breach of contract claim against Waibel, the court then stated that "[i]n toto, the Plaintiff's complaint is dismissed." *Id.*

[51] Lujan argues that Waibel never moved to dismiss the breach of contract claim against Waibel, and that the court indeed affirmed that a breach of contract claim could be brought against him. Appellant's Br. at 19. Waibel argues that Lujan's complaint was a mess of legal impossibility, and that the court allowed Lujan to correct deficiencies in his pleadings. Waibel's Br. at 37.

[52] Waibel and the JLH Trust moved only to dismiss the breach of contract claims against the JLH Trust. RA, tab 135 at 19 (Dec. & Order). Indeed, the trial court ruled that since it is impossible for the JLH Trust to be sued or sue in its own name, the only breach of contract claim

could be against Waibel. *Id.* Most importantly, there was no mention in the motion for dismissal or the Decision and Order as to why the breach of contract claim against Waibel should be dismissed. Therefore, regardless that the claim is viable, it was neither moved against by the defendants nor analyzed by the trial court, and should not have been cut down by the trial court's decision.

[53] Dismissing Lujan's complaint "in toto" was error, as the breach of contract claim against Waibel was not included in the dismissal proceedings. We therefore reverse the complete dismissal of Lujan's complaint.

E. Whether additional issues raised by the JLH Trust hold merit

[54] There are several issues asserted by the JLH Trust that do not warrant extensive analysis and are easily resolved. Stated simply, these issues hold no merit.

1. Statute of limitations

[55] The JLH Trust alleges a deficiency in Lujan's complaint. When a claim is time-barred on its face, the plaintiff must allege specific facts that toll the statute of limitations or invoke an exception to the general rule. *Amsden v.Yamon*, 1999 Guam 14 ¶¶ 15-16. An action based upon any contract, obligation or liability founded upon an instrument in writing, must be brought within four years after the cause shall have accrued. 7 GCA § 11303 (2005).

[56] The JLH Trust argues that the complaint (filed in 2009) failed to allege when the last event occurred which Lujan claims entitles him to relief, and that the last date given was in 2002. Appellee's (JLH Trust's) Br. at 8 (July 27, 2015). Thus the complaint was allegedly, on its face, outside of the statute of limitations. *Id.* at 8-9. Lujan replies that the JLH Trust overlooks language in the complaint asserting that the trust received money due Lujan on a date within the year before the filing of his complaint. Appellant's Second Reply Br. at 3-4 (Aug. 10, 2015).

[57] An examination reveals that Lujan's 2009 complaint alleged that "within the last year, the Trust received a substantial amount of money . . . . By the terms of his Retainers, Lujan is entitled to a percentage." RA, tab 3 at 11 (Compl.). Lujan's complaint is therefore not facially outside of the statute of limitations for bringing a suit, and the *Amsden* reasoning does not apply in this case. The JLH Trust appears to have simply overlooked this language.

2. Phrasing of the issues

[58] The JLH Trust quotes verbatim the issue statements from Lujan's petition to appeal compared to the issue statements in Lujan's opening brief. JLH Trust's Br. at 2-3. The JLH Trust believes that since the issue statements are worded differently, they are now outside the jurisdiction of this court's review. *Id.* Lujan responds that the wording is not identical, but the core legal issues remain the same. Second Reply Br. at 1.

[59] Upon review, the JLH Trust's argument is frivolous, as they are indeed the same legal issues, merely phrased differently.

V. CONCLUSION

[60] We have not adopted the *Twombly* heightened plausibility standard for local civil pleadings, and Guam maintains the *Conley* "no set of facts" pleading standard. The trial court did not err in dismissing Lujan's claims for aiding and abetting a breach of fiduciary duty and breach of contract against the JLH Trust. The court also correctly dismissed Lujan's claim for intentional interference with contract as pleaded, but Lujan shall have leave to amend this claim under the 1998 Retainer. However, it was error to dismiss Lujan's entire complaint, as the breach of contract claim against Waibel was still viable. Finally, we reject the notion of splitting the actions of a trustee into representative and personal capacities, but we hereby recognize that a trustee may be held personally liable where they have acted wrongfully.

[61] Accordingly, the trial court's dismissal is **AFFIRMED** in part, **REVERSED** in part, and this matter is hereby **REMANDED** for further proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice