Filed
Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

SHAWN MICHAEL Q. LUJAN,
Plaintiff-Appellee,

v.

ESTATE OF ISABEL CRUZ SANTOS ROSARIO
and ROSA CRUZ PEREZ,
Defendants-Appellants.

BARBARA C. CAMACHO,
Plaintiff-Appellee,

v.

NICOLE ANN CHARGUALAF, Administratrix of the
Estate of Isabel Cruz Santos Rosario
and ROSA CRUZ PEREZ,
Defendants-Appellants.

Supreme Court Case No.: CVA14-033
Superior Court Case Nos.: CV0505-12 & CV0861-12 (Consolidated)

OPINION

Cite as: 2016 Guam 28

Appeal from the Superior Court of Guam
Argued and submitted on August 18, 2015
Hagåtña, Guam

E-Received
10/14/2016 4:31:46 PM

Appearing for Defendants-Appellants:
Phillip Torres, *Esq.*
Torres Law Group
130 Aspinall Ave., Ste. 2A
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Michael J. Berman, *Esq.* (briefed)
Theresa G. Rojas, *Esq.* (argued)
Berman O'Connor & Mann
111 W. Chalan Santo Papa, Ste. 503
Hagåtña, GU 96910

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

TORRES, C.J.:

[1] Defendant-Appellant Estate of Isabel Cruz Santos Rosario ("Estate") appeals from the trial court's Decision and Order denying the Estate's prior Motion to Alter or Amend the Amended Judgment and the Amended Findings of Fact and Conclusions of Law.[1] The effect of the trial court's denial was to uphold the court's prior Amended Judgment in favor of Plaintiff-Appellee Shawn Michael Lujan. The Estate argues on appeal that (1) the trial court erred when awarding damages; (2) the trial court erred when determining that the Estate owed a duty to Shawn and breached that duty; (3) the trial court erred by not apportioning liability; and (4) the "*de minimis*" encroachment of a tree onto the Estate's property relieves it from liability to Shawn.

[2] Shawn argues that (1) damages were rightfully calculated and awarded; (2) the Estate owed a duty to Shawn and breached that duty; (3) apportioning liability would be improper; and (4) the Estate provides no authority for its assertion that a *de minimis* defense is available to relieve the Estate of liability.

[3] For the reasons set forth herein, we affirm, but remand with instructions to recalculate the award of special damages.

[1] In its Notice of Appeal, the Estate designated appeal from the "Decision and Order . . . entered in this action on September 30, 2014 and docketed on October 1, 2014." Record on Appeal ("RA"), tab 102 at 2 (Oct. 31, 2014). In its Statement of Jurisdiction, the Estate designated appeal from the same decision and attached a copy. Lujan v. Estate of Rosario, CVA14-033 (Statement of Jurisdiction at 2 (Nov. 10, 2014)) ("This Appeal is taken from the Decision and Order filed on September 30, 2014 and entered on the Docket on October 1, 2014").

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] On July 21, 2010, Shawn and Therese Lujan attended a Liberation Day Parade. While watching the parade from a public sidewalk along Marine Corps Drive, a tree branch fell from a nearby tree, injuring Shawn and killing Therese. Shawn brought an action for negligence against the Estate. In his complaint, Shawn alleged the Estate owned the land upon which the tree was located and was negligent in failing to maintain the tree. Therese's sister, Barbara, brought a separate action against the Estate. The two cases were consolidated.[2]

[5] The Estate impleaded the Government of Guam ("Government"), alleging that the tree was located at least in part on Government land. The trial court dismissed the Government from the suit upon a grant of summary judgment.

[6] After a bench trial, the Superior Court issued its Amended Judgment with accompanying Amended Findings of Fact and Conclusions of Law ("AFFCL).[3] Judgment was entered in favor of Shawn against the Estate for $133,325.28 with costs. Judgment was entered in favor of the Estate against Barbara's claims for loss of consortium.

[7] In its AFFCL, the trial court found that Shawn and Therese suffered injuries as a direct result of a tree falling on them, that the tree stood partly on the Estate's property, that the tree was "plainly and obviously" dead at the time of the accident, that Shawn suffered damages of $33,325.28 for medical expenses, and damages of $100,000.00 for pain and suffering. Record on Appeal ("RA"), tab 85 at 1-2 (Finds. Fact & Concl. L., Feb. 10, 2014). The trial court determined that the Estate, as the owner of land on which the tree was located, had a duty to

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[2] Both actions initially named Rosa Cruz Perez as a co-defendant, but the parties stipulated to dismiss her.

[3] Both documents were amended, to reflect the fact that Rosa Cruz Perez was dismissed from the lawsuit and no longer a named defendant.

prevent the tree from injuring bystanders, that the Estate breached that duty, and that Shawn and Therese did not assume the risk of their injuries.

[8] Barbara thereafter moved to alter or amend the Amended Judgment, arguing that she was entitled to damages for loss of consortium as Therese's sibling. The Estate opposed Barbara's motion and filed its own Cross Motion to Alter or Amend the Amended Judgment and Amended Findings of Fact and Conclusions of Law ("Cross Motion"), arguing that the trial court erred in determining that the tree was on the Estate's property and that the Estate is liable. Specifically, the Estate argued that the tree's extension onto the Estate's property was "*de minimis*," that the Estate had no actual or constructive knowledge that the tree was dead, that the Estate had no duty to Shawn and Therese, and that Shawn and Therese assumed the risk. RA, tab 94 (Opp'n Mot. & Cross Mot., Feb. 21, 2014). Shawn and Barbara opposed the Estate's Cross Motion, arguing that the Estate had not stated a proper basis for a motion to alter or amend.

[9] After a hearing, the trial court denied both motions to alter or amend. In its Decision and Order, the court ruled that Barbara could not recover under the wrongful death statute because she had not proven pecuniary loss. The court ruled that the Estate did not make an argument under any of the Guam Rules of Civil Procedure ("GRCP") Rule 59(e) bases for a motion to alter or amend but simply disagreed with the court's fact-finding.

[10] The Estate timely filed a Notice of Appeal appealing the denial of its Cross Motion.

II. JURISDICTION

[11] This court has jurisdiction over appeals from a final judgment pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 114-221 (2016)) and 7 GCA §§ 3107(b) and 3108(a) (2005).

III. STANDARD OF REVIEW

[12] The Estate's Cross Motion sought to amend the trial court's final judgment and findings pursuant to GRCP 52 and 59. *See* RA, tab 94 at 2-3 (Opp'n Mot. & Cross Mot., Feb. 21, 2014).

[13] GRCP 52 allows for amendment by the trial court of findings after entry of judgment upon motion by a party. GRCP 52(b). This may necessitate amending the judgment and "may accompany a motion for a new trial under Rule 59." *Id.* "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." GRCP 52(a). "A trial court's findings of fact following a bench trial are reviewed for clear error." *In re Guardianship of Moylan*, 2011 Guam 16 ¶ 12 (citing *Mendiola v. Bell*, 2009 Guam 15 ¶ 11). We have previously defined the clear error standard as follows:

> Under the clear error standard, this court will "only look at whether the trial court's finding of fact is supported by substantial evidence," and the trial court's decision will only be reversed if this court has a "definite and firm conviction that a mistake has been committed [by the trial court]."

Id. (alteration in original) (quoting *Fargo Pac. v. Korando Corp.*, 2006 Guam 22 ¶¶ 30, 32). "We will not substitute our judgment for that of the trial court." *Id.* (citing *Fargo Pac.*, 2006 Guam 22 ¶ 22).

[14] GRCP 59 allows for amendment of a judgment after entry upon motion of a party. GRCP 59(e). "The rule allows a court to reconsider and amend a previous order, but is an 'extraordinary remedy, to be used sparingly in the interest of finality and conservation of judicial resources.'" *Guam Bar Ethics Comm. v. Maquera*, 2001 Guam 20 ¶ 9 (quoting *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)). We have previously described such motions as follows:

> A Rule 59(e) motion may be granted (1) if the movant demonstrates that it is necessary to prevent manifest errors of law or fact upon which the judgment is based; (2) to allow the moving party to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if there is an intervening change in controlling law. Motions made under Rule 59(e) are aimed at reconsideration, not initial consideration, and thus cannot be used to present a new legal theory, raise arguments for the first time, or present evidence for the first time when they could have reasonably been raised earlier. Further, Rule 59(e) motions are both "procedurally and substantively deficient" if they simply reiterate in greater detail arguments previously made before the court. "Supplementing and further detailing previous arguments are not sufficient bases for reconsideration [under Rule 59(e)]."

Id. (alteration in original) (citations omitted) (quoting *Merchant v. Nanyo Realty, Inc.*, 1998 Guam 26 ¶¶ 8-9). "A denial of a Rule 59(e) motion is reviewed for an abuse of discretion." *Id.* ¶ 8 (citing *Ward v. Reyes*, 1998 Guam 1 ¶ 10; *Merchant*, 1998 Guam 26 ¶ 6). "A trial court abuses its discretion when its decision is based on clearly erroneous factual findings or an incorrect legal standard." *Agana Beach Condo. Homeowners' Ass'n v. Untalan*, 2015 Guam 35 ¶ 12 (citing *Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 11).

[15] "The interpretation of a statute is a legal question subject to *de novo* review." *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 8 (emphasis added) (citing *Apana v. Rosario*, 2000 Guam 7 ¶ 9).

[16] We review the measure of compensatory damages awarded for clear error as a finding of fact. *See below* IV.C.1. We will look only at whether the award is "supported by substantial evidence" and reverse only if we have a "definite and firm conviction that a mistake has been committed [by the trial court]." *In re Guardianship of Moylan*, 2011 Guam 16 ¶ 12 (alteration in original) (quoting *Fargo Pac.*, 2006 Guam 22 ¶¶ 30, 32).

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IV. ANALYSIS

A. Whether the Estate was the Owner of the Tree because it was Partly Located on Estate Property

[17] The trial court found that the Estate was the "owner of the real property on which the tree that injured [Shawn] was located," and thus "had a legal duty to take responsible action to prevent the tree from injuring bystanders." RA, tab 85 at 3 (Finds. Fact & Concl. L.).

[18] The Estate argues that it should owe no duty to the plaintiffs because it did not "reasonably" know that that tree was located on its land, and that it should not be assigned ownership of the tree because the tree encroached only slightly onto its property. *See* Appellant's Br. at 11-12 (Mar. 6, 2015).

[19] "Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common." 21 GCA § 9206 (2005). "The plain language of a statute is the starting point for statutory interpretation." *Castro v. G.C. Corp.*, 2012 Guam 6 ¶ 20 (citing *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6). "Absent clear legislative intent to the contrary, the plain meaning prevails." *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (citing *Aaron v. SEC*, 446 U.S. 680, 697 (1980)).

[20] The trial court found that the tree stood partly on the property of the Estate based on a licensed surveyor's testimony. *See* RA, tab 88 at 2 (Am. Finds. Fact & Concl. L., Feb. 11, 2014); Transcript ("Tr."), vol. 2 at 9 (Bench Trial, Aug. 28, 2013). Surveyor Francisco Leon Guerrero Castro testified on behalf of Shawn that the tree at issue encroached onto the Estate's property. Castro testified that he was "very certain" of this fact, "99 percent sure." Tr., vol. 2 at 10, 16 (Bench Trial, Aug. 28, 2013).

[21] Because the trial court's finding of fact that the tree was located on the property of the Estate was supported by substantial evidence in the form of the surveyor's testimony, this court

may not substitute its judgment for that of the trial court. *See In re Guardianship of Moylan*, 2011 Guam 16 ¶ 12 (citing *Fargo Pac.*, 2006 Guam 22 ¶ 22).

[22] The trial court assigned ownership of the tree to the Estate under 21 GCA § 9206, which by its plain language assigns common ownership of boundary trees to coterminous property owners. Because the trial court properly determined that the tree was located on the Estate's property, the Estate was rightfully considered a common owner of the tree under 21 GCA § 9206.

[23] The trial court found that the Estate did not present "any evidence beyond the bare allegations in its pleadings" in response to the Government's motion for summary judgment. RA, tab 60 at 3 (Dec. & Order, Aug. 16, 2013). For this reason, the Government—the other alleged common owner of the tree—was dismissed from this litigation, leaving the Estate as the singular remaining tortfeasor.[4]

[24] The Estate presents no authority for the proposition that it is not an owner of the tree because the tree encroached only slightly onto its property. *See* Appellant's Br. at 3, 15-16 ("Ownership . . . should not be reasonably imposed by such a *de minimis* encroachment of a tree trunk onto the Estate's property."). We decline, under the present facts and without citation to authority, to recognize a "de minimis" defense to negligence liability stemming from common ownership of coterminous property.

[25] The Estate argues that it had a reasonable belief that it did not in fact own the tree because it did not realize the tree was located on its property. Appellant's Reply Br. at 7 (Apr. 21, 2015). It claims that "[t]he sole issue to establish liability is not whether the tree is on the

[4] On appeal, the Estate did not raise the issue of whether the trial court erred by granting summary judgment in favor of the Government. Therefore, the dismissal of the Government as a party to the underlying case is not before this court on appeal. *See Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 7 n.3 (citations omitted) (stating that the Supreme Court will only review issues argued specifically in opening briefs).

Estate's property but whether the Estate, in management of the property, would have determined that the tree was on its property." *Id.* at 3. As discussed above, we have determined that the Estate was an owner of the tree. Therefore, the issue before us is whether the Estate, as owner, had a duty and violated that duty, as will be discussed in the following section.

[26] The Estate also argues in the alternative that, even as an owner in common, it would have only limited rights to the tree. *Id.* at 5. It argues that, as an owner in common, it was not permitted to cut down the rotten tree branch without exposing itself to liability to the coterminous property owner. *Id.* at 5-6 (citing 21 GCA § 23102 (action for waste) and 21 GCA § 23103 (trespass for removing tree)). This argument misinterprets Guam law.

[27] Title 21 GCA § 23102 states that "[i]f a . . . tenant in common of real property, commit[s] waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgement [sic] for treble damages." 21 GCA § 23102 (2005). Section 23103 states:

> Any person who cuts down or carries off any wood or underwood, tree, or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot, or cultivated grounds; or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to the government of Guam, for double the amount of damages which may be assessed therefor, in a civil action, in any court having jurisdiction.

21 GCA § 23103 (2005).

[28] The Estate's reading demonstrates a misunderstanding of these statutes. Under the Estate's reading, the statutes operate to prohibit it from maintaining its property. However, maintaining its property, in this instance, would involve removing a dead tree that has created a safety hazard. These statutes only create actions to remedy damages. Removing this dead tree would not create "waste" under 21 GCA § 23102. Removal of the dead tree would not create

"damages" because such removal would not diminish property value. To the contrary, removal of the dead tree would increase the value of both coterminous properties.

[29] As mentioned above, the trial court determined that the tree was located on the property of the Estate at the time of the incident. The plain language of 21 GCA § 9206 assigns ownership of boundary trees to coterminous property owners in common. Because the other owner was dismissed from the litigation, the Estate is considered the singular owner of the tree for the purposes of determining liability. The Estate failed to provide any authority evidencing legislative intent to the contrary that would persuade us to deviate from a plain language reading of 21 GCA § 9206. Our reading does not include a "de minimis" defense.

[30] The court's findings of fact were not clear error because they were supported by substantial evidence. The court's denial of the Estate's Cross Motion was not an abuse of discretion because the Estate did not show that the Amended Judgment was based on manifest errors of law or fact, or that granting the motion was necessary to prevent a manifest injustice.[5] Therefore, we affirm the finding of the trial court that the Estate was the owner of the tree.

B. Whether the Estate Owed a Duty to Shawn and Breached that Duty

1. Duty of Care

[31] Shawn alleged a single cause of action for negligence. RA, tab 3 at 2 (Compl., Apr. 26, 2012). The trial court found that the Estate had a duty to maintain the tree and breached that duty. RA, tab 88 at 3 (Am. Finds. Fact & Concl. L.). Specifically, the court held that the Estate "as the owner of the real property on which the tree that injured [Shawn] was located, had a legal duty to take responsible action to prevent the tree from injuring bystanders." *Id.*

[5] The remaining grounds for granting a GRCP 59(e) motion, such as discovery of new evidence or intervening change in controlling law, are inapplicable here.

[32] The Estate argues that it owes no duty to the plaintiffs because it did not "reasonably" know that that tree was located on its land, and it should not be liable because it had no knowledge that the tree was dead or rotten. Appellant's Br. at 11-12. Shawn argues that the trial court correctly applied the law of negligence and that no error exists with its legal conclusion that the Estate is liable for his injuries. Appellee's Br. at 3 (Apr. 6, 2015).

[33] "In a case for negligence, the establishment of tort liability requires the existence of a duty, the breach of such duty, causation and damages." *Guerrero v. McDonald's Int'l Prop. Co.*, 2006 Guam 2 ¶ 9 (citing *Leon Guerrero v. DLB Constr. Co.*, 1999 Guam 9 ¶ 14).

[34] Guam law establishes a property owner's general duty of ordinary care under 18 GCA § 90107:

> Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself.

18 GCA § 90107 (2005). In other words, "every landowner owes a duty to exercise reasonable care in the management of his property." *Nissan Motor Corp. v. Sea Star Grp. Inc.*, 2002 Guam 5 ¶ 11 (citing 18 GCA § 90107).

[35] To establish the legal standard applicable in this case, both the lower court and the Estate cite *McDonald's*, 2006 Guam 2, a "slip and fall" case based upon a theory of premises liability. *See* RA, tab 88 at 3-4 (Am. Finds. Fact & Concl. L.); Appellant's Br. at 12. *McDonald's* delineates two fundamental requirements for negligence based upon a theory of premises liability.

[36] First, a property owner must have actual or constructive knowledge of a dangerous condition for liability to attach:

> We follow the principle first enunciated in [*Nissan*, 2002 Guam 5], that a property owner must exercise reasonable care in the management of his property in view of the probability of injury to others, and we hold specifically that in order to be liable for injury caused by a harmful or dangerous condition on a property, there must be negligence on the part of the property owner itself. The owner must have caused the condition, or have actual or constructive knowledge of the existence of the condition in sufficient time to correct it.

McDonald's, 2006 Guam 2 ¶ 23. Second, a property owner has a duty to regularly inspect and repair his property:

> A plaintiff may demonstrate the necessary constructive knowledge of the dangerous condition if it is established that the property had not been inspected within a reasonable period of time so that a person exercising due care would have discovered and corrected the hazard.

Id. (footnote omitted).

[37] The Estate argues that *McDonald's* is inapplicable here because it "does not address vacant property where natural conditions give rise to injury." Appellant's Br. at 12. The Estate is correct that the facts in *McDonald's* are distinguishable from those of the present case. *McDonald's* involved a business owner's liability to a business invitee on its premises. *See generally McDonald's*, 2006 Guam 2. However, the *McDonald's* holding is based on the broad "principle first enunciated in [*Nissan Motor Corp.*]," and our statutory duty of ordinary care provided by 18 GCA § 90107. *Id.* ¶¶ 10, 23.

[38] *Nissan* involved damages sustained when a large storage container from one property travelled onto an adjacent property during a typhoon. 2002 Guam 5 ¶ 2. In *Nissan*, this court recognized a property owner's duty under 18 GCA § 90107, holding that a property owner has a duty to exercise reasonable care in securing its property when faced with an approaching typhoon. *See id.* ¶ 13. Therefore, *Nissan* supports the broader proposition that a property owner has a duty to exercise reasonable care in the management of his premises, maintaining them in a safe condition so as to prevent injury to others, whether the resulting injury occurs on the

original property or on an adjacent property. *See generally id.* This is true even when an injury is the result of a natural disaster. *See id.*

[39] In *Nissan*, we stated the following:

> Typhoons are indigenous to this geographic region and frequently affect Guam. Moreover, damage caused by flying debris is one of the major threats posed during any typhoon. Thus, the harm suffered by [Plaintiff] was a foreseeable type of harm caused by a foreseeable type of event. There is also a direct and close connection between [Defendant's] conduct and [Plaintiff's] injury. [Defendant's] failure to properly secure the container allowed the container to be picked up by the storm's wind and moved onto Nissan's property, causing damage.
>
> Recognizing a duty among landowners to secure their property during a typhoon admittedly imposes a burden on the community, but it is not an extraordinary burden. Contrary to [Defendant's] argument, a finding of duty in this instance does not effectively give rise to strict liability. We are not adopting the position that during a typhoon[,] landowners have an absolute duty to keep debris and other items from flying off their property and onto their neighbor's property. The duty imposed is a limited one, *to wit*, landowners must exercise reasonable care in securing their property when faced with an approaching typhoon. Given that Guam is often the target of passing typhoons, it makes good policy sense to hold landowners accountable when they fail to reasonably secure their property.

Id. ¶¶ 12-13.

[40] California case law provides further guidance since the relevant statutes, 18 GCA § 90107 (duty of ordinary care) and 21 GCA § 9206 (common ownership of line trees), are derived from the California Civil Code.[6] *See Sumitomo Constr. Co., Ltd.*, 1997 Guam 8 ¶ 7 ("Generally, when a legislature adopts a statute which is identical or similar to one in effect in another jurisdiction, it is presumed that the adopting jurisdiction applies the construction placed on the

[6] Title 18 GCA § 90107 mirrors California Civil Code section 1714(a). *Compare* 18 GCA § 90107 ("Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself."), *with* Cal. Civ. Code § 1714(a) ("Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself."). Title 21 GCA § 9206 mirrors California Civil Code section 834. *Compare* 21 GCA § 9206 (2005) ("Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common."), *with* Cal. Civ. Code § 834 (identical language).

statute by the originating jurisdiction." (citation omitted)); *see also Fajardo v. Liberty House Guam*, 2000 Guam 4 ¶ 17 (applying California case law where the Guam statute mirrored a California statute and "there [was] no compelling reason to deviate from that jurisdiction's interpretation" of the statute).

[41] Interpreting the California predecessor to the Guam duty of ordinary care statute,[7] California courts have consistently held that every individual is liable for injuries caused to others by the failure to use ordinary care in the skill or management of property, or the failure to exercise due care to avoid injury to others. *See Neighbarger v. Irwin Indus., Inc.*, 882 P.2d 347, 350 (Cal. 1994); *Lipson v. Superior Court*, 644 P.2d 822, 829 (Cal. 1982); *Sprecher v. Adamson Co.*, 636 P.2d 1121, 1128-29 (Cal. 1981); *Rowland v. Christian*, 443 P.2d 561, 563-64 (Cal. 1968) (superseded by statute on other grounds); *Marquez v. Mainframe*, 50 Cal. Rptr. 2d 34, 37 (Ct. App. 1996); *Medina v. Hillshore Partners*, 46 Cal. Rptr. 2d 871, 874 (Ct. App. 1995); *Sturgeon v. Curnutt*, 34 Cal. Rptr. 2d 498, 501 (Ct. App. 1994); *Fitch v. Lebeau*, 81 Cal. Rptr. 722, 725 (Ct. App. 1969).

[42] Further, every landowner has a duty to maintain property in his or her possession and control in a reasonably safe condition. *See* Cal. Civ. Code § 1714(a) (West 2014); *Ann M. v. Pac. Plaza Shopping Ctr.*, 863 P.2d 207, 212 (Cal. 1993) (disapproved of on other grounds by *Reid v. Google, Inc.*, 235 P.3d 988 (Cal. 2010)) ("California law requires landowners to maintain land in their possession and control in a reasonably safe condition."); *see also Rowland*, 443 P.2d at 568 (superseded by statute on other grounds) ("[E]veryone is responsible for an injury caused to another by his want of ordinary care or skill in the management of his property.").

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[7] Cal. Civ. Code § 1714(a).

[43] As explained in *Nissan*, "the Supreme Court of California recognized that a departure from the standard set forth [by statute] required a balancing of several policy factors." 2002 Guam 5 ¶ 11 (citing *Rowland*, 443 P.2d at 564). The factors are as follows:

> [T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Id. (quoting *Rowland*, 443 P.2d at 564).

[44] We now hold that the Estate had a duty to manage its property in a reasonably safe condition. As in *Nissan*, our finding of a duty, in this instance, does not give rise to strict liability. *See* 2002 Guam 5 ¶ 13 (holding that "a finding of duty [for a landowner in a specific case] does not effectively give rise to strict liability"). We are not adopting the position that all landowners have an absolute duty to prevent trees from falling onto adjacent property. The Estate's duty is a limited one, to exercise reasonable care in managing its property so as to prevent foreseeable injury to others.

[45] The Estate violated its duty by failing to exercise ordinary care in managing its premises. This satisfies the constructive knowledge requirement set forth in *McDonald's* as well as the broader requirement of reasonable care in the management of property set forth under 18 GCA § 90107 and explained in *Nissan*.

[46] We are not persuaded that a deviation from the ordinary standard of care is necessary. When considering the *Rowland* factors, the present case falls short. It is foreseeable that a plaintiff like Shawn would be harmed by a plainly and obviously dead tree branch. Based on the location and size of the tree, there is a high degree of certainty that a plainly and obviously dead

branch would fall and that such a fall would cause the type of injury sustained by Shawn. The Estate's failure to manage its property in a reasonably safe condition by inspecting and removing the obviously dead branch was a direct cause of the injury. A general policy of requiring property owners to manage their property in a reasonably safe condition[8] is of the utmost importance to protecting the public at large. The resulting consequences of enforcing such a duty are low and at a reasonably low cost to all parties.

[47] The trial court did not abuse its discretion to deny the Estate's Cross Motion because the Estate did not show that the court's Amended Judgment relied on manifest errors of law with respect to the Estate's negligence. The trial court did not err in assigning liability to the Estate for Shawn's injuries because the Estate owed a duty to Shawn to maintain its property in a reasonably safe condition and violated that duty. Further, we are not persuaded to reinterpret our statutorily-prescribed standard of care on policy grounds.

2. Restatement Approach

[48] The lower court relied in part upon the law of the Restatement (Second) of Torts to determine the duty owed by the Estate and whether the Estate breached that duty. RA, tab 88 at 4 (Am. Finds. Fact & Concl. L.). In its AFFCL, it stated the following rationale for finding duty and breach:

> [Shawn] cite[s] myriad authorities consistent with the Restatement view that an owner of property near an urban roadway is obligated to safeguard against the risk of injury posed by dangerous conditions on the property, including trees, to individuals on the nearby roadway, not just those who enter the property. The court applying this well established law, agrees with [Shawn].

Id. (citing Restatement (Second) of Torts § 363(2) & cmt. e (Am. Law Inst. 1965)).

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[8] We must take into account the specific facts and circumstances of each case when determining whether a property has been managed in a reasonably safe condition.

[49] The Estate argues that the applicable law governing this case is that of general negligence and not of the Restatement (Second) of Torts. *See* Appellant's Reply Br. at 1-3. Shawn argues that the Restatement (Second) of Torts approach is appropriate. Appellee's Br. at 10-18.

[50] Restatement (Second) of Torts § 363(2) distinguishes between urban and rural property owners, establishing a duty of reasonable care for urban property owners as follows: "A possessor of land in an urban area is subject to liability to persons using a public highway for physical harm resulting from his failure to exercise reasonable care to prevent an unreasonable risk of harm arising from the condition of trees on the land near the highway." Accompanying commentary elaborates upon this duty:

> In an urban area, where traffic is relatively frequent, land is less heavily wooded, and acreage is small, reasonable care for the protection of travelers on the highway may require the possessor to inspect all trees which may be in such dangerous condition as to endanger travelers. It will at least require him to take reasonable steps to prevent harm when he is in fact aware of the dangerous condition of the tree.

Restatement (Second) of Torts § 363 cmt. e.

[51] We have determined that the Estate violated its duty of ordinary care under our traditional negligence standard. A plain reading of Restatement (Second) of Torts § 363(2) does not provide a duty of care that would change this result. Assuming *arguendo* that we were to apply the Restatement, the Estate would nevertheless remain liable as it did not take reasonable steps to prevent the unreasonable risk presented by the tree to passersby on the roadway. Nevertheless, as a matter of law, we are asked to determine whether the Restatement (Second) of Torts § 363(2) is applicable in our jurisdiction.

[52] In *Sprecher v. Adamson Companies*, the California Supreme Court held that a landowner owed a legal duty of reasonable care to an adjacent landowner to protect him from harm caused by a natural condition, with resulting liability for breach of such duty. 636 P.2d 1121, 1127-29

(Cal. 1981). In its opinion, the court expressed approval of Restatement (Second) of Torts § 363(2), "recogniz[ing] that a possessor of land may be subject to liability for harm caused not just by trees but by any natural condition on the land." *Id.* at 1124 (citing Restatement (Second) of Torts § 363(2); Restatement (Second) of Torts § 840(2)).

[53] With *Sprecher*, the California Supreme Court acknowledged the Restatement (Second) of Torts approach to a landowner's duty to maintain natural conditions. *See generally id.* However, the opinion also extended the landowner's duty beyond the Restatement's proscribed limits. The court ruled that "mere possession with its attendant right to control conditions on the premises is a sufficient basis for the imposition of an affirmative duty to act." *Id.* at 1127. This holding is consistent with *McDonald's* and *Rowland*, as discussed above, with a focus on control over the property. It is not a wholesale adoption of the Restatement (Second) of Torts approach, but an incorporation of the Restatement (Second) considerations within a larger, general duty of ordinary care of the possessor of property. This view acknowledges the distinctions made by the Restatement—i.e., between urban and rural property; or injury to a plaintiff invitee versus a traveler on adjacent property—while reducing them to factors of consideration rather than binding elements:

> The question is whether in the management of his property, the possessor of land has acted as a reasonable person under all the circumstances. The likelihood of injury to plaintiff, the probable seriousness of such injury, the burden of reducing or avoiding the risk, the location of the land, and the possessor's degree of control over the risk-creating condition are among the factors to be considered by the trier of fact in evaluating the reasonableness of the defendant's conduct.

Id. at 1128-29.

[54] The *Sprecher* factors are functionally equivalent to the *Rowland* factors with the addition of "control" as a factor of consideration. *Compare id.*, *with Rowland*, 443 P.2d at 564. Returning to the present case, the evidence admitted at trial does not suggest that the Estate ever

lacked control over its property. Therefore, even if we were to adopt the California approach outlined in *Sprecher*, incorporating the Restatement (Second) distinction between urban and rural possessors of property into our analysis, the end result would be the same.

[55] Restatement (Second) of Torts § 363(2) specifically addresses situations in which a tree creates a dangerous condition to travelers on a highway, but adopting that section as the law of Guam would not affect the outcome of the present dispute. Although the Restatement (Second) of Torts § 363(2) may provide useful insight when determining the duty of care applicable in some future case, we need not adopt this approach to resolve the present dispute.[9]

C. Whether the Trial Court Erred when Awarding Shawn $133,325.28 in Damages

[56] The Estate argues on appeal that the trial court erred when calculating the amount of damages suffered by Shawn and that this miscalculation constituted an error in the AFFCL. Appellant's Br. at 18. The Estate did not make this argument in its Cross Motion. *See* RA, tab 94 at 2 (Opp'n Mot. & Cross Mot., Feb. 21, 2014).

[57] "[A]s a matter of general practice, 'this court will not address an argument raised for the first time on appeal.'" *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 78 (quoting *Univ. of Guam v. Guam Civil Serv. Comm'n*, 2002 Guam 4 ¶ 20) (citing *B.M. Co. v. Avery*, 2001 Guam 27 ¶ 33; *Guam Bar Ethics Comm.*, 2001 Guam 20 ¶ 39). "This rule applies where a party fails to raise an argument in a postjudgment motion." *Id.* (citing *Bueno v. City of Donna*, 714 F.2d 484, 493-94 (5th Cir. 1983)). "It is well-established that there can be no appellate review of allegedly excessive or inadequate damages if the trial court was not given the

[9] Our holding does not prohibit consideration of the status of a property owner when assessing the ordinary standard of care under 18 GCA § 90107. We accept that a trial court may vary in its assessment of "ordinary care or skill in the management of . . . property" based on the facts and circumstances surrounding each defendant. 18 GCA § 90107. To that extent, Restatement (Second) of Torts § 363(2) may offer some guidance.

opportunity to exercise its discretion on a motion for a new trial." *Bueno*, 714 F.2d at 493-94 (citations omitted).

[58] However, "the rule precluding appellate review of newly raised issues 'is discretionary.'" *Tanaguchi-Ruth*, 2005 Guam 7 ¶ 80 (quoting *Dumaliang v. Silan*, 2000 Guam 24 ¶ 12 n.1). "Our exercise of discretion to review an issue raised for the first time on appeal is reserved for extraordinary circumstances where review is necessary to address a miscarriage of justice or clarify significant issues of law." *Id.* ¶ 82 (citing *United States v. Munoz*, 746 F.2d 1389, 1390 (9th Cir. 1984)). We find that the question presented by the Estate presents a significant issue of law and although review of this question also involves consideration of a question of fact, the record with respect to this issue is sufficiently developed. We therefore exercise our discretion to review the issue.

1. Standard of Review

[59] This court has previously stated that "[t]he measure of damages is a mixed question of law and fact warranting *de novo* review." *Fargo Pac.*, 2006 Guam 22 ¶ 20. This statement was later cited in *Quan Xing He v. Government of Guam*, 2009 Guam 20 ¶ 24, *abrogated on other grounds by Kennedy v. Sule*, 2015 Guam 38 ¶ 17; and *Guam Resorts, Inc. v. G.C. Corp.*, 2013 Guam 18 ¶ 35. However, the Estate argues on appeal that the award of damages by the trial court constituted "error in the factual finding and conclusions." Appellant's Br. at 18. Resolving this question involves a review of the trial court's award based on the evidence presented at trial. This is a purely factual analysis. Therefore, we must now reassess our broad holdings in *Guam Resorts*, *Quan Xing He*, and *Fargo Pacific*, and clarify our standard of review.

[60] Federal circuits review an award of compensatory damages as a finding of fact under a clearly erroneous standard of review. *See, e.g.*, *Plain v. Murphy Family Farms*, 296 F.3d 975,

981 (10th Cir. 2002); *Crawford v. Falcon Drilling Co.*, 131 F.3d 1120, 1129 (5th Cir. 1997); *Tonry v. Sec. Experts, Inc.*, 20 F.3d 967, 972 (9th Cir. 1994), *abrogated on other grounds by Turner v. Anheuser-Busch, Inc.*, 876 P.2d 1022 (1994); *Tillery v. Hull & Co.*, 876 F.2d 1517, 1520 (11th Cir. 1989); *Lincoln Nat'l Life Ins. Co. v. NCR Corp.*, 772 F.2d 315, 320 (7th Cir. 1985). Similarly, other jurisdictions review an award of compensatory damages as a finding of fact to be overturned only if not supported by substantial evidence.[10]

[61] *Guam Resorts* was an appeal from a breach of contract case. *See* 2013 Guam 18 ¶ 1. The plaintiff appealed after the trial court calculated a somewhat arbitrary award based on twenty percent of the amount unpaid under the contract. *See id.* ¶ 48. The trial court reasoned that because only one of five breaches that occurred between the parties was unilateral on the part of the defendant, only one-fifth of the amount owed for breach was awardable to the plaintiff. *See id.* This court vacated the award because the amount was not appropriate under either a theory of compensatory damages or unjust enrichment. *See id.* ¶¶ 46-48 ("This amount [did] not correspond with either the amount of benefit unjustly gained by [plaintiff] or the losses suffered

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[10] *See, e.g.*, *Whitt Sturtevant, LLP v. NC Plaza LLC*, 43 N.E.3d 19, 29 (Ohio Ct. App. 2015) ("As long as there is competent, credible evidence to support the award of compensatory damages, the decision of the trier of fact may not be overturned on appeal." (citation omitted)); *Goldberg v. N.Y. State Div. of Human Rights*, 927 N.Y.S.2d 123, 125 (N.Y. App. Div. 2011) ("An award for compensatory damages . . . 'must be upheld if it . . . is supported by substantial evidence . . . .'" (quoting *Eastport Assocs., Inc. v N.Y. State Div. of Human Rights*, 897 N.Y.S.2d 177, 180 (N.Y. App. Div. 2010))); *Brandner v. Hudson*, 171 P.3d 83, 86 (Alaska 2007) ("We will overturn a trial court's award of compensatory damages only if it is clearly erroneous." (footnote omitted)); *Bell Leasing Brokerage, LLC v. Roger Auto Serv., Inc.*, 865 N.E.2d 558, 568 (Ill. App. Ct. 2007) ("A trial court's award of compensatory damages will be reversed if it is against the manifest weight of the evidence." (citation omitted)); *Mahana v. Onyx Acceptance Corp.*, 96 P.3d 893, 899 (Utah 2004) ("Whether the amount [of compensatory damages] awarded by the district court was supported by the evidence is a determination of fact that may be reversed on appeal only if clearly erroneous." (citation omitted)); *Eden Gate, Inc. v. D & L Excavating & Trucking, Inc.*, 37 P.3d 233, 238 (Or. Ct. App. 2002) ("We will affirm a trial court's decision on compensatory damages if any evidence supports it." (citation omitted)); *Hudson v. Vill. Inn Pancake House of Albuquerque, Inc.*, 35 P.3d 313, 319 (N.M. Ct. App. 2001) (holding that review of compensatory damages is "a question of whether substantial evidence supports the [trial court's] award"); *Acceptance Ins. Co. v. Brown*, 832 So. 2d 1, 19 (Ala. 2001) ("When reviewing a jury's compensatory-damages award, we examine the record to determine whether the award is supported by the evidence." (citation omitted)); *Gianoli v. Pfleiderer*, 563 N.W.2d 562, 566 (Wis. Ct. App. 1997) ("We will not disturb a court's compensatory damages award if there is any credible evidence to support the award." (citation omitted)); *Tessmar v. Grosner*, 128 A.2d 467, 472 (N.J. 1957) (holding that appellate court will not disturb award of compensatory damages if evidence afforded a reasonable basis for award).

by [defendant] in rendering work without being compensated."). We held that contract damages were allowable even if the amount is not precisely calculable if the trial court provides "a percentage which best approximates the amount of work completed, and base[s] its award on that number." *Id.* ¶ 50. Our analysis of the appropriateness of the award under a compensatory damages theory necessarily involved a Guam statute, 20 GCA § 2201, which governs the measure of damages resulting from a breach of contract. *Id.* ¶ 46.

[62] *Quan Xing He* was an appeal from a personal injury case. 2009 Guam 20 ¶ 1. It involved three distinct issues with regard to damages: whether the terms of a settlement agreement limited the amount of a damages award; whether the trial court erred by denying a damages award for future pain and suffering; and whether the trial court erred by denying a damages claim for medical expenses. *See id.* ¶¶ 44, 69, 75. Our assessment of the settlement agreement involved contract interpretation. *See id.* ¶¶ 42-54. The trial court's decision to deny damages for future pain and suffering required our review of the evidence. *See id.* ¶¶ 69-74. Because the evidence at trial and the trial court's ultimate ruling appeared incongruous, we remanded for "clarification." *Id.* ¶ 74. Our review of the trial court's decision to deny damages for medical expenses involved examination of the evidence and application of relevant legal principles and caselaw. *See id.* *¶¶* 75-84.

[63] We did not declare a separate standard of review for each of the three distinct issues described but simply stated that "[t]he measure of damages is a mixed question of law and fact warranting *de novo* review." *Id.* ¶ 24 (citing *Fargo Pac.*, 2006 Guam 22 ¶ 20). It is not surprising, therefore, that our review of the settlement agreement and the medical expense damages issue were performed under a *de novo* standard. *See id.* However, when analyzing the trial court's decision to deny damages for future pain and suffering, we remanded because the

ultimate judgment did not seem to be supported by the evidence. *See id.* ¶ 74. This would suggest that we did not, in practice, review that issue *de novo* but instead reviewed it under a "substantial evidence" standard.

[64] Our original declaration, cited by *Guam Resorts* and *Quan Xing He*, that damages are reviewed *de novo*, is found in *Fargo Pacific*, 2006 Guam 22 ¶ 20 ("Fargo submits and Korando agrees that the measure of damages is a mixed question of law and fact warranting *de novo* review.").

[65] *Fargo Pacific*, like *Guam Resorts* and *Quan Xing He*, involved the interpretation of a contract. *See* 2006 Guam 22 ¶ 1. We were asked to determine whether damages awarded by the trial court as a result of breach of contract were appropriate and whether attorney's fees were recoverable under the terms of a contract between the parties.[11] *See id.* ¶ 2. Our decision again involved interpreting 20 GCA § 2201, interpreting the terms of the contract at issue, and reviewing the trial court's award of resulting damages. *See generally id.* However, when reviewing the damages award itself, we looked to whether the evidence presented at trial was "substantial." *Id.* ¶ 2 ("On appeal, we must determine whether the trial court's verdict is supported by substantial evidence . . . ."). That is, when reviewing whether the trial court's award of damages was in error, we applied the same substantial evidence standard. *See id.* ¶¶ 35, 38 ("We do not believe the trial court acted unreasonably in using the Maeda bid as a basis for determining the damages . . . . The trial court did not misunderstand the evidence . . . but reached a legally sound conclusion supported by substantial evidence.").

[11] We were also asked to determine whether the trial court erred in accepting and signing a proposed judgment without granting the opposing party an opportunity to review. *See Fargo Pac.*, 2006 Guam 22 ¶ 2. This issue is not relevant to the present discussion.

[66] Taking this into consideration, we must view the *Fargo Pacific* standard of review for damages, as declared in the opinion itself, as somewhat misleading. In *Fargo Pacific*, review of the measure of damages awarded was treated as would be a finding of fact. As is the case here, the analysis required review of the award in light of the evidence at trial.

[67] *Guam Resorts*, *Quan Xing He*, and *Fargo Pacific*, are distinguishable to the extent that they each involved determination of additional issues warranting *de novo* review. Here, the question presented by the Estate with regard to the accuracy of the compensatory damages award does not require, for example, interpretation of a contract or statute. Such issues are beyond the review of a measure of compensatory damages and complicated our analysis in *Fargo Pacific* and its progeny.

[68] The Estate asserts that the award of damages constitutes "error in the factual finding and conclusions." Appellant's Br. at 18. Based on the foregoing, we agree that the question presented is factual. This approach is consistent with other past opinions. *See Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 15 (reviewing award of punitive damages for substantial evidence); *Leon Guerrero v. DLB Constr. Co.*, 1999 Guam 9 ¶¶ 1, 20 (reviewing jury award of punitive and compensatory damages for substantial evidence).

2. Evidence and Findings at Trial

[69] In its AFFCL, the trial court found the following:

> Shawn suffered damages in the amount of $33,325.28 arising out of medical expenses incurred as a result of the injuries he sustained from the falling tree. . . .
>
> Shawn suffered damages in the amount of $100,000 arising out of the severe pain and suffering he experienced as a result of the injuries he sustained from the falling tree.

RA, tab 88 at 3 (Am. Finds. Fact & Concl. L.).

[70] Shawn's medical records admitted at trial show that he received treatment and was billed by Guam Memorial Hospital Authority ("GMHA") on seven separate occasions between July 21, 2010, and November 15, 2010.[12] Exs. 4B-H (Shawn Lujan's Medical Records, July 21, 2010 through Nov. 15, 2010). The billing statements show a "total amount billed" and a lesser "amount due." *Id.* The sum of the "amount billed" portion of the seven admitted statements is $28,863.31. *Id.* The sum of the "amount due" portion of the seven statements is $2,195.70. *Id.*

[71] Shawn testified at trial that his "total amount billed" was $25,048.03. Tr. at 67 (Bench Trial, Aug. 26, 2013). He testified that he paid "some" of the money he owed in medical expenses and no one has subsequently contacted him for further payment. *Id.* at 67. He added, "I guess they're taken care of." *Id.* at 68. Counsel for the Estate did not ask any questions regarding his medical bills or damages upon cross-examination.

[72] The Estate claimed in its opening brief that the trial court "did not properly calculate out of pocket medical expenses." Appellant's Br. at 7. The Estate also cited a figure ($2,442.74) for Shawn's liability that appears to be based on the sum of the "amount due" listed on Shawn's medical records but does not directly match that sum. *Compare* Appellant's Br at 18 ("[H]is liability or amount due is . . . $2,442.74 . . . ."), *with* Exs. 4B-H (Shawn Lujan's Medical Records, July 21, 2010 through Nov. 15, 2010) (showing amounts due that total $2,195.70).

[73] The special damages found by the trial court for medical expenses ($33,325.28) are $4,461.97 more than the amount billed by GMHA as evidenced by Shawn's Medical Records ($28,863.31). Exs. 4B-H (Shawn Lujan's Medical Records, July 21, 2010 through Nov. 15,

[12] Shawn's medical bills are listed on the Exhibit List of Shawn Michael Q. Lujan as exhibit number four. RA, tab 68 at 2 (Ex. List of Shawn Michael Q. Lujan, Aug. 23, 2013). These bills were labeled at trial as Plaintiffs' Exhibits 4A-H. *See* Tr. at 3 (Bench Trial, Aug. 26, 2013). Although eight medical records were introduced, only seven were formally admitted. *See id.* at 64, 65, 68 (introducing Ex. 4A but admitting only 4B-H). For this reason, our calculations only take into consideration the seven admitted exhibits, Exhibits 4B-H.

2010). The trial court's figure ($33,325.28) is $8,277.25 more than the figure to which Shawn testified at trial ($25,048.03). The record does not contain an explanation for either discrepancy.

[74] On appeal, the Estate assigns error generally to the trial court's calculation of special damages. Appellant's Br. at 7, 17-18. However, it is clear from the record that the Estate failed to provide any evidence at trial to establish a lesser amount than that awarded by the trial court. Equally perplexing, the trial court's award amount is inconsistent with both the amount billed to Shawn by GMHA and his testimony at trial. Therefore, the figures provided by both the Estate on appeal and the trial court in its findings are inconsistent with the evidence.

[75] We are unable to determine, based on the evidence, whether an error was committed, clear or otherwise, in the calculation of special damages. Because the trial court's award of $33,325.28 does not precisely track the figures provided by the evidence, it is not clear whether the trial court misunderstood the evidence, committed a clerical error when drafting its findings, or considered evidence not included in the record on appeal. We must therefore remand to the trial court for recalculation of the award amount or further clarification.

[76] The trial court did not provide an explanation or methodology for determining its award for general damages for pain and suffering. Nevertheless, Shawn's testimony substantially supports the court's findings. Tr. at 54 (Bench Trial, Aug. 26, 2013). He testified that he suffered a leg injury that caused him to be hospitalized for nine days. *Id.* at 55, 56. His injury required surgery and the attachment of an "external fixation" to his leg that remained attached to his leg for approximately six months. *Id.* at 56, 57. During that six-month period, Shawn experienced pain, trouble sleeping, and difficulty walking. *Id.* at 58. He testified that his injury left him unable to seek full-time employment for one year after the accident. *Id.* at 60. Taken together, these examples of the inconvenience and pain caused by his injury provide substantial

support for an award of $100,000.00 for pain and suffering. We cannot say with any conviction that a mistake has been made by the trial court.

[77] In summary, we affirm the decision of the trial court to award special damages, but nonetheless remand for a recalculation of the award amount to reach a figure that is consistent with the evidence or for further clarification. We affirm the award of $100,000.00 for pain and suffering because the trial court's determination was reasonable given the amount of inconvenience and harm suffered by Shawn as a result of the accident.

D. Whether the Trial Court Erred by Electing not to Apportion Liability

[78] The Estate argues that because Guam is a comparative negligence jurisdiction, the trial court erred by not apportioning liability for negligence among the parties. Appellant's Br. at 6-7, 13-17. Like the damages issue, the Estate did not raise this argument in its Cross Motion. *See* RA, tab 94 (Opp'n Mot. & Cross Mot., Feb. 21, 2014). Nevertheless, we exercise our discretion to decide this issue as it is a purely legal question. *See Tanaguchi-Ruth*, 2005 Guam 7 ¶ 80 (quoting *Dumaliang*, 2000 Guam 24 ¶ 12 n.1).

[79] Title 7 GCA § 24603 describes the method in which the trial court must apportion responsibility among joint tortfeasors, stating as follows: "In determining the percentage shares of tortfeasors in the entire liability, their relative degrees of fault shall be considered by the trier of fact. A tortfeasor entitled to contribution shall recover from each remaining tortfeasor an amount which is based on the percentage of causal negligence attributable to each." 7 GCA § 24603 (2005).

[80] We have established that the Estate was an owner in common of the tree. At the outset of the underlying action, the Estate impleaded the Government. When the Government moved for summary judgment, the Estate failed to present any evidence beyond the allegations in its

pleadings that would indicate that the Government shared in liability for the tree. As a result, the trial court granted the Government's motion, dismissing it from the underlying case. The Estate did not appeal that ruling. Therefore, any liability derived from negligent maintenance of the tree cannot be attributable to the Government because it is no longer a party in this matter. By the terms of the apportionment statute, the Government is not a "tortfeasor" or a "remaining tortfeasor" and cannot have liability apportioned to it. The trial court determined that Shawn did not assume the risk of his injury and the Estate did not challenge that finding on appeal, therefore no liability may be properly apportioned to him.

[81] We hold that the trial court was not required to apportion liability amongst the parties because it ruled that Shawn was not negligent and granted summary judgment in favor of the Government, leaving no remaining parties with whom to apportion liability. The Estate is the singular remaining tortfeasor in this action.

V. CONCLUSION

[82] We hold that the trial court did not abuse its discretion and affirm its decision to deny the Estate's Cross Motion because the Estate was the owner of the tree, owed a duty to Shawn, and breached that duty. We affirm the trial court's decision to award special damages and also general damages in the amount of $100,000.00. However, we direct the trial court to recalculate the amount of special damages for Shawn's medical bills to an amount consistent with the evidence or further clarify its award. We also affirm the decision of the trial court to not apportion liability amongst the parties.

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[83] For the reasons set forth above, we **AFFIRM**, but **REMAND** with instructions to recalculate the award of special damages.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice