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CH. 3 SPECIFIC AND PREVENTIVE RELIEF

CHAPTER 3
SPECIFIC AND PREVENTIVE RELIEF

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ARTICLE 1
GENERAL PRINCIPLES

§ 3101. Specific Relief, etc., When Allowed.
§ 3102. Specific Relief, How Given.
§ 3103. Preventive Relief, How Given.
§ 3104. Not to Enforce Penalty, etc.

§ 3101. Specific Relief, etc., When Allowed.

Specific or preventive relief may be given as provided by the laws of the Territory of Guam.

SOURCE: CC § 3366.

§ 3102. Specific Relief, How Given.

Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant;
2. By compelling a party himself to do that which ought to be done; or
3. By declaring and determining the rights of parties otherwise than by an award of damages.

SOURCE: CC § 3367.

§ 3103. Preventive Relief, How Given.

Preventive relief is given by prohibiting a party from doing that which ought not to be done.

SOURCE: CC § 3368.

§ 3104. Not to Enforce Penalty, etc.

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Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

SOURCE: CC § 3369.

NOTE: CC §§ 3370-3354 did not exist.

ARTICLE 2
SPECIFIC RELIEF

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PART 1
POSSESSION OF REAL PROPERTY

§ 3201. Judgment for Possession or Title.

§ 3201. Judgment for Possession or Title.

A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the Code of Civil Procedure, either by a judgment for its possession, to be executed by the police officer, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property.

SOURCE: CC § 3375.

NOTE: CC §§ 2276-2278 did not exist.

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PART 2
POSSESSION OF' PERSONAL PROPERTY

§ 3210 Judgment for Delivery.

§ 3211. Specific Delivery.

§ 3210. Judgment for Delivery.

A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure.

SOURCE: CC § 3379.

§ 3211. Specific delivery.

Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

SOURCE: CC § 3380.

NOTE: CC §§ 3381-3383 did not exist.

PART 3
SPECIFIC PERFORMANCE OF OBLIGATIONS

§ 3220. Performance May be Compelled.

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§ 3228. Agreement to Sell Not Enforceable for Want of Title.

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§ 3220. Performance May be Compelled.

Except as otherwise provided in this Part, the specific performance of an obligation may be compelled.

SOURCE: CC § 3384.

§ 3221. No Remedy Unless Mutual.

Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance. 1

SOURCE: CC § 3386.

§ 3222. Distinction Between Real and Personal Property.

It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

SOURCE: CC § 3387.

§ 3223. Contract Signed by One, May be Enforced by Other.

A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

SOURCE: CC § 3388.

§ 3224. Liquidated Damages No Bar.

A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

SOURCE: CC § 3389.

§ 3225. What Cannot be Specifically Enforced.

The following obligations cannot be specifically enforced:

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1. An obligation to render personal service;
2. An obligation to employ another in personal service;
3. An agreement to submit a controversy to arbitration;
4. An agreement to perform an act which the party has no power lawfully to perform when required to do so;
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

SOURCE: CC § 3390.

CROSS-REFERENCES: Regarding arbitration, see 7 GCA Chapter 42, the Civil Arbitration Law and Medical Mandatory Malpractice Act, enacted by P.L. 21-43:2 (1991) for the latest law on this subject.

§ 3226. What Parties Cannot be Compelled to Perform.

Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;
2. If it is not, as to him, just and reasonable;
3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or
4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

SOURCE: CC § 3391.

§ 3227. Parties Denied Specific Performance.

Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only

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partial, and either entirely immaterial, or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default.

SOURCE: CC § 3393.

§ 3228. Agreement to Sell not Enforceable for Want of Title.

An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

SOURCE: CC § 3394.

§ 3229. Relief Under Parties Claiming Under Obligor.

Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or encumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

SOURCE: CC § 3395.

PART 4

REVISION OF CONTRACTS

§ 3230. When Contract may be Revised.

§ 3231. Presumption, Intent of Parties.

§ 3232. Principles of Revision.

§ 3233. Enforcing the Revised Contract.

§ 3230. When Contract may be Revised.

When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it

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can be done without prejudice to rights acquired by third persons, in good faith and for value.

SOURCE: CC § 3399.

§ 3231. Presumption, Intent of Parties.

For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

SOURCE: CC § 3400.

§ 3232. Principles of Revision.

In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

SOURCE: CC § 3401.

§ 3233. Enforcing the Revised Contract.

A contract may be first revised and then specifically enforced.

SOURCE: CC § 3402.

NOTE: CC §§ 3402-3405 did not exist.

PART 5
RESCISSION OF CONTRACTS

§ 3240. When Rescission may be Adjudged.

§ 3241. Rescission for Mistake.

§ 3242. Rescinding Party to do Equity.

§ 3240. When Rescission may be Adjudged.

The rescission of a written contract may be adjudged, on the application of a party aggrieved:

- (1) In any of the cases mentioned in 18 GCA §89203; or,
- (2) Where the contracts unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,

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(3) When the public interest will be prejudiced by permitting it to stand.

SOURCE: CC § 3406.

§ 3241. Rescission for Mistake.

Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

SOURCE: CC § 3407.

§ 3242. Rescinding Party to do Equity.

On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

SOURCE: CC § 3408.

NOTE: CC §§ 3409-3411 did not exist.

PART 6

CANCELLATION OF INSTRUMENTS

§ 3250. Cancellation, When Ordered.

§ 3251. Instrument Obviously Void.

§ 3252. Cancellation in Part.

§ 3253. Reissuance of Documents.

§ 3250. Cancellation, When Ordered.

A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or cancelled.

SOURCE: CC § 3412.

§ 3251. Instrument Obviously Void.

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An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of the last section.

SOURCE: CC § 3413.

§ 3252. Cancellation in Part.

Where an instrument is evidence of different rights or obligations, it may be cancelled in part, and allowed to stand for the residue.

SOURCE: CC § 3414.

§ 3253. Reissuance of Documents.

An action may be maintained by any person interested in any private document or instrument in writing, which has been lost, destroyed or damaged by conflagration or other public calamity, to prove, establish, compel the reissuance, reexecution, and reacknowledgment of such document *or* instrument. If such document or instrument be a negotiable instrument, the court must compel the person in whose favor it is drawn to give a bond executed by himself and two sufficient sureties to indemnify the person reissuing, reexecuting, or reacknowledging the same against any lawful claim thereon.

SOURCE: CC § 3415.

NOTE: CC §§ 3416-3419 did not exist.

ARTICLE 3
PREVENTIVE RELIEF

§ 3301. Preventive Relief, How Granted.

§ 3302. Provisional Injunction.

§ 3303. Injunction, When Allowed.

§ 3304. Injunction, When not Allowed.

§ 3301. Preventive Relief, How Granted.

Preventive relief is granted by injunction, provisional or final.

SOURCE: CC § 3420.

§ 3302. Provisional Injunction.

Provisional injunctions are regulated by Title 7 [Civil Procedure] of this Code.

SOURCE: CC § 3421.

§ 3303. Injunction, When Allowed.

Except where otherwise provided by this Chapter, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

- (1) Where pecuniary compensation would not afford adequate relief;
- (2) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
- (3) Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,
- (4) Where the obligation arises from a trust.

SOURCE: CC § 3422.

§ 3304. Injunction, When Not Allowed.

An injunction cannot be granted:

First. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

Second. To stay proceedings in a court of the United States.

Third. To stay proceedings in another state or territory upon a judgment of a court of that state or territory.

Fourth. To prevent the execution of a public law, by officers of the law, for the public benefit.

Fifth. To prevent the breach of a contract, other than a contract in writing for the rendition or furnishing of personal services from one to another where the maximum compensation for such service is at the rate of not less than six thousand dollars (\$6,000.00) per annum and where the promised service is of a special, unique, unusual, extraordinary or

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intellectual character, which gives it peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, the performance of which would not be specifically enforced; provided however, that an injunction may be granted to prevent the breach of a contract entered into between any nonprofit cooperative corporation or association and a member or stockholder thereof in respect to any provision regarding the sale or delivery to the corporation or association of the products produced or acquired by such member or stockholder.

Sixth. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

SOURCE: CC § 3423.

NOTE: No CC §§ 3424-3428 existed.
