IN THE SUPREME COURT OF GUAM

TRANS PACIFIC EXPORT CO.
Plaintiff-Appellant

vs.

OKA TOWERS CORPORATION
Defendant-Appellee

OPINION

Filed: January 12, 2000

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Supreme Court Case No. CVA98-019
Superior Court Case No. CV1232-97

Appeal from the Superior Court of Guam
Argued and submitted on May 10, 1999
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, PETER C. SIGUENZA, Associate Justice, and JOHN A. MANGLONA, Designated Justice.

SIGUENZA, J.:

[1] This matter is an appeal of the trial court's Judgment granting summary judgment in favor of Defendant-Appellee and the imposition of sanctions against the Plaintiff-Appellant pursuant to Rule 11 of the Guam Rules of Civil Procedure.

FACTUAL AND PROCEDURAL BACKGROUND

[2] On November 1, 1994, Trans Pacific Export Co. (hereinafter "Appellant") and Oka Towers Corp. (hereinafter "Appellee") entered into a contract for the purchase of rubber dock fenders. The total contract price was $11,675.70. Appellee failed to pay on the contract price. Subsequently, two actions against Appellee were filed by Appellant in the Small Claims Division of the Superior Court of Guam.[1] Appellant was not represented by counsel in the small claims actions because its corporate representative, Phillip Villanueva, and not counsel, filed the complaints.

[3] On or about July 7, 1995, Appellant submitted a Motion and Order of Dismissal of SD 1738-95 which was signed and ordered by the Referee and filed on August 3, 1995. On or about July 10, 1995, Appellant and Appellee executed a Stipulation for Dismissal with Prejudice of the other case, SD 1739-95, which was prepared by Appellee's counsel. On August 2, 1995, the Judgment of Dismissal was executed by the Referee and filed on August 3, 1995.

[4] On January 22, 1996, Appellant, now represented by counsel, filed a Motion to Set Aside the

[1] Both small claims cases were filed on June 12, 1995. Both were encaptioned Trans Pacific Export, Co. vs. Won Sik Park dba Oka Towers. Case number SD1738-95 alleged as its prayer for damages in the amount of $1,833.06 and case number SD1739-95 prayed for damages in the amount of $9,981.10.

Dismissals of SD1738-95 and SD1739-95. On February 13, 1996, the parties appeared in Small Claims Court on the motion and were ordered to re-appear on March 12, 1996 to address the motion. Appellant thereafter requested that the hearing be re-scheduled and the court re-set the hearing on the motion for March 26, 1996. On that date, Appellee's counsel appeared at the hearing; however, Appellant's counsel did not appear and the court then took the matter off calendar.

[5] On or about September 10, 1997, Appellant filed the instant suit in the Superior Court of Guam captioned Transpacific Export Company vs. Oka Towers Corporation, Civil Case No. CV1232-97, alleging two causes of action: (1) breach of contract and (2) misrepresentation and/or fraud. In addition to outlining the contract between the parties, the Complaint alleged that the Appellee's counsel procured the Stipulated Dismissal With Prejudice by intentionally, recklessly and negligently misrepresenting to Appellant the nature and effect of said dismissal. Appellee timely answered denying the allegations in the Complaint and alleged numerous affirmative defenses.

[6] Appellee subsequently filed a Motion for Summary Judgment arguing that Appellant is barred from bringing the instant suit. Appellant countered that it was wrongfully induced into signing the Stipulated Motion for Dismissal With Prejudice of the small claims case and that this inducement constituted extrinsic fraud. On March 4, 1998, a hearing on the motion occurred before the trial court and on March 16, 1998, the court rendered its Decision and Order.

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[7] The trial court held that the Appellant was barred from bringing the suit by virtue of the prior small claims cases. It reasoned that the rules applicable to small claims actions provide for specific instances when a party may seek relief from an adverse small claims judgment. Specifically, that an unsuccessful small claims plaintiff can only obtain relief upon an adverse judgment on a counterclaim filed against him. *See* Guam R. Civ. P. 92(j) (1995). The court held that the Appellant was essentially seeking a new trial by filing the present suit. Additionally, it was noted that the Appellant had a remedy in the small claims forum, i.e., to seek a motion to set aside the dismissal of the actions. It found that the Appellant did file such a motion; but that Appellant failed to appear at the hearing. Appellant's counsel argued that he did indeed appear, albeit fifteen minutes late and after the motion had been denied. But the court further observed that Appellant did not file a motion to reconsider nor did it seek any other type of relief from the denial of the motion to set aside the dismissal. Rather, it found that Appellant waited approximately one and a half years later then filed the present action.

[8] With respect to the allegation of fraud, the court found that this issue should have been raised before the Small Claims Court in its Motion to Set Aside the Dismissal. The same rationale was propounded by the trial court in that the Rules of Small Claims Court provide that a plaintiff cannot seek a new trial if a judgment is received on his claim. *See* Guam R. Civ. P. 92(j). The judgments in those cases become final and are conclusive upon plaintiff and that even if the Appellant's allegations of extrinsic fraud were true the Superior Court cannot address the issue by way of the present suit.

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[9] Lastly, Appellee filed a Motion for Costs and Fees pursuant to Rule 11 of the Guam Rules of Civil Procedure. The trial court granted the Appellee's motion. It reasoned that, as demonstrated in its Decision and Order in the earlier Summary Judgment Motion, Appellant's Complaint was not well-founded in law and that it did not have an appropriate basis upon which to institute the action. The trial court held that had the Appellant made a reasonable inquiry into its remedies under the rules which apply to small claims matters, it would have realized that the present action could not have been maintained as it was bound by a judgment in the Small Claims Court on its claims.

[10] This court has jurisdiction pursuant to 7 Guam Code Annotated Section 3107(b) (1994).

DISCUSSION

[11] A grant of summary judgment is reviewed *de novo*. *Guam v. Marfega Trading*, 1998 Guam 4, ¶ 9; *Kim v. Hong*, 1997 Guam 11, ¶ 5; *Iizuka Corporation v. Kawasho Int'l*, 1997 Guam 10, ¶ 7. Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Guam R. Civ. P. 56(c) (1995). There is a genuine issue, if there is sufficient evidence which establishes a factual dispute requiring resolution by a fact-finder. *Iizuka*, 1997 Guam 10 at ¶ 7. However, the dispute must be as to a material fact. *Id*. "A 'material' fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. . . .Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." *Id.* (citation omitted).

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[12] If the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot merely rely on allegations contained in the complaint, but must produce at least some significant probative evidence tending to support the complaint. *Id*. at ¶ 8. (citing *Anderson v. Liberty Lobby*, 477 U.S. 242 at 249, 106 S.Ct. 2505 at 2510 (1986)). In addition, the court must view the evidence and draw inferences in the light most favorable to the non-movant. *Id.* (citation omitted).

A- Breach of Contract Claim

[13] For the reasons below, we hold that, as a matter of law, the doctrine of *res judicata* precludes Appellant from maintaining the breach of contract claim in the Superior Court. The concept of *res judicata*, as distinguished from collateral estoppel, has been articulated as follows:

> Under the doctrine of *res judicata*, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit precludes re-litigation of issues actually litigated and necessary to the outcome of the first action.

Parklane Hoisery Co. v. Shore, 429 U.S. 322, 327, n.5, 99 S.Ct. 645 (1979).

[14] Guam's statutory codification of the doctrine of *res judicata* is found in 6 GCA § 4209 which provides:

> § 4209. Effect of Judgment or Final Order. The effect of a judgment or a final order in an action or special proceedings before a court or judge of Guam, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows:
>
> 1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person;
>
> 2. In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for

> the same thing under the same title and in the same capacity, provided that they have notice, actual or constructive, of the pendency of the action or proceedings.

6 GCA § 4209 (1994).

[15] In the case of *Caswell Realty v. Andrews Co. et al.*, 496 S.E.2d 607 (N. C. Ct. App. 1998), the Court of Appeals in North Carolina addressed a situation similar to the case at bar.[2] The essential facts were that the plaintiff was the lessor of two pieces of realty which were leased to defendant Andrews in two separate leases. Andrews breached one of the leases and plaintiff filed an action for breach of contract. Prior to trial, the parties settled the case whereby defendant made the payment of a sum certain, the second lease was terminated, and a stipulation for the dismissal, with prejudice, of the suit was made. There was evidence that the stipulation was entered into based upon representations by Andrews of its inability to perform its obligations under a second lease with the plaintiff. However, plaintiff subsequently discovered that Andrews had been negotiating an asset purchase with defendant Nash. Plaintiff asserted that had it known of the asset purchase, it would not have settled its claim with Andrews. On this basis, plaintiff filed a Rule 60 motion to set aside the settlement and stipulation of dismissal of the case. After filing the Rule 60 motion, plaintiff filed suit against Andrews and Nash for breach of the second lease. Plaintiff subsequently filed a third action against both defendants on the same grounds identified in its Rule 60 motion in the first suit. The defendants moved to dismiss that suit based upon the following principles: (1) plaintiff's basis for attacking the stipulation of dismissal in the first case was alleged intrinsic fraud and such a claim can only be asserted by a Rule 60 motion, not by an independent action; (2) plaintiff's action was barred

[2] *See also Caswell Realty v. Andrews et al*, 466 S.E.2d 310 (N. C. Ct. App. 1996), which was the Court of Appeal's disposition of the suit seeking relief from the settlement and damages for fraud, *infra*.

by *res judicata* and collateral estoppel; (3) an independent action for damages due to alleged fraud in the procurement of a judgment (stipulation of dismissal) is not permissible until the subject judgment is set aside; and (4) failure to state a claim. *Caswell*, 496 S.E. 2d at 609-10. The trial court granted summary judgment and the Court of Appeals affirmed. *Id*. at 610.

[16] In the suit for breach of the second lease, the defendants filed motions that were identical to the ones filed by the defendants in the suit involving the other lease. The court held that "in order to successfully assert the doctrine of *res judicata*, a defendant must prove the following essential elements: (1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits." *Id*. (citation omitted). *See also Fowler et al v. Vineyard*, 405 S.E. 2d 678, 680 (Ga. 1991) (a case in which the Georgia Supreme Court required that the first action must have involved an adjudication by a court of competent jurisdiction, that the two actions must have an identity of parties and subject matter, and that the party against whom the doctrine is raised must have had a full and fair opportunity to litigate the issues in the first action). The court held that the voluntary dismissal with prejudice in the first suit was an adjudication on the merits and that there had been a sufficient identification of the causes of action in the first suit and the suit for breach of the second lease so as to call the doctrine of *res judicata* and/or collateral estoppel into play. *Caswell*, 496 S.E. 2d at 610.

[17] In this case, both small claims cases and the suit in Superior Court were attempts by the Appellant to collect damages for the Appellee's breach of its contract to pay for the rubber dock fenders. Therefore, there is a commonality of the causes of action and of the parties in both the Superior and Small Claims courts. The issue becomes whether there was a judgment on the merits in the prior small claims actions.

[18] The Guam Rules of Civil Procedure govern the procedure in all suits of a civil nature, including civil actions, domestic actions, special proceedings and criminal matters of which the court has jurisdiction. *See* Guam R. Civ. P. 1 (1995). Rule 41 addresses the dismissal of actions. It provides in relevant part:

> Rule 41. Dismissal of Actions.
>
> (a) Voluntary Dismissals: Effect Thereto.
>
> (1) By Plaintiff; By Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court an action based upon or including the same claim.
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> (2) By Order of Court. Except as provided by paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Guam R. Civ. P. 41(a)(1) and (2) (1995).

[19] Appellant, in Small Claims Case SD1738-95, filed a Motion and Order of Dismissal which was ordered by the Small Claims Referee; but because it was not specified in the Order the dismissal was without prejudice. However, Appellant filed a separate and Stipulated Motion for Dismissal With Prejudice on the other Small Claims Case SD1739-95, and a Judgment by the Referee was subsequently entered. Both the Order and Judgment were filed in court on August 3, 1995.

[20] As to SD1739-95, the stipulated motion is a final adjudication of the case. *See Israel v. Carpenter*, 120 F.3d 361, 365 (2nd Cir. 1997) ("Ordinarily, a stipulation of dismissal 'with prejudice' as to a pending action is unambiguous; like any such dismissal, it is 'deemed a final adjudication on the merits for res judicata purposes on the claims asserted or which could have been asserted in the suit.'"). Further, a final judgment extinguishes all claims with respect to all or any part of the transaction, or series of connected transactions out of which the previous action arose. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 24 (1982). Thus, because SD 1738-95 is also based upon the same contract, further action to re-litigate the case is foreclosed because of the dismissal with prejudice.

B- Fraud Claim

[21] Turning to the second cause of action alleged in the Complaint, the trial court ruled, as a matter of law, that the allegation of fraud was not properly before it and that it should have been litigated in the Small Claims forum. We agree.

[22] A dichotomy is presented in the instant case and the inquiry should be whether Appellant's cause of action for fraud is a separate independent action where it is alleged that a fraud was perpetrated upon Appellant or, as the trial court found, that the allegation of fraud was as to fraud perpetrated upon the court and that the suit was essentially an attempt by the Appellant to set aside the judgments in the small claims cases. For the reasons below, we hold that summary judgment was proper because Appellant has failed to demonstrate that an issue of material fact exists if the claim is to fraud upon it and that, as a matter of law, the issue of fraud upon the court should have been properly brought in the Small Claims Court.

i. Cause of Action for Fraud Upon Appellant

[23] The elements of fraud include: 1) a misrepresentation; 2) knowledge of falsity (or scienter); 3) intent to defraud to induce reliance; 4) justifiable reliance; 5) resulting damages. *Milne Employees Ass'n. v. Sun Carriers*, 960 F.2d 1402, (9th Cir. 1991); *See also Bank of the West v. Valley National Bank of Arizona*, 41 F.3d 471, (9th Cir. 1994). The absence of any of these required elements will preclude recovery. *Wilhelm v. Pray*, 186 Cal. App. 3d 1324, (1986).

[24] A review of the record revealed that none of Appellant's responses to the Appellee's motion for summary judgment included affidavits, testimony or other evidentiary materials. At the hearing, however, unsworn comments from Appellant's corporate representative were elicited during argument. Transcript, Part I at pp.15-16 (Motion for Summary Judgment, March 4, 1998). This is important because if the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot merely rely on allegations contained in the complaint, but must produce at least some significant probative evidence tending to support the complaint. *Anderson v. Liberty Lobby*, 477 U.S. at 249, 106 S.Ct. at 2510.

[25] Here the gravamen of the fraud complaint is that Appellee and its agent, counsel, had a duty to disclose a fact, that is the nature of a dismissal with prejudice, which it did not do or allegedly misrepresented to Appellant, and that Appellant reasonably relied upon those misrepresentations to its detriment.[3] In addition to the fact that there was no evidence, either in the pleadings or otherwise,

[3] Appellant, in the Complaint, based its argument on the statutory provisions regarding fraud as contained in Title 18, Article 3 of the Guam Code Annotated. *See* EOR at 11-12. Sections 85101 *et seq*. are the general provisions of Guam law with respect to contractual obligations. The definitions of fraud in the above-referenced provisions are with respect to the vitiation of consent of a party to a contract to be bound.

It is also noted that, in the preliminary allegations of the Complaint, Appellant alleges an improper *ex parte* contact by Appellant's counsel and Appellee occurred and that as a direct, foreseeable and proximate result of the failure

of the substance of the alleged misrepresentations, the allegations in the Complaint are problematic for the following reasons.

[26] First, the Complaint does not name Appellee's counsel, the tortfeasor, as a defendant in the matter. It is Appellee's counsel who ostensibly committed the fraud upon Appellant, yet the former is conspicuously absent as a party.

[27] In addition, there was no allegation, other than the alleged improper *ex parte* contact between Appellee's counsel and Appellant's representative, of circumstances that call for the imposition of a duty to disclose. There was no allegation of a fiduciary relationship between counsel and Appellant. The Rules of Professional Conduct proscribe certain types of communication when a lawyer deals with persons other than clients. *See* Rules 4.1 *et seq*., Guam Rules of Professional Conduct (1994). And none of those circumstances are implicated in this case.

[28] Thus, to the extent that the Appellant has failed to demonstrate a genuine issue of material fact, i.e., a duty to disclose, we hold that summary judgment against Appellant was warranted.

ii. Cause of Action for Fraud Upon the Court

[29] An alternate view of the allegations contained in the Complaint is that the Appellant seeks to challenge the dismissal with prejudice and the subsequent efficacy of the judgment thereto as void because of fraud. A review of the argument at the motion hearing tends to indicate that this was the intent of Appellant with respect to the fraud element of the Complaint. Much of the focus was upon whether an extrinsic fraud was adequately demonstrated for purposes of the summary judgment

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to disclose the nature of a dismissal with prejudice Appellee is barred from re-filing the case in the future. *See* EOR 1 at 8.

motion. Thus, it appears that the Appellant sought to set aside the judgment of dismissal with prejudice by the Small Claims Court in the present suit before the Superior Court.

[30] Ordinarily, a party seeks relief from a judgment by way of a motion brought under Rule 60 of the Guam Rules of Civil Procedure. The rule in its entirety provides:

> Rule 60. Relief from Judgments or Order.
>
> (a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party, and after such notice, if any, as the court orders. During pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.
>
> (b) Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or if it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment of suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as required by law, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by independent action.

Guam R. Civ. P., Rule 60 (1995).

[31] In this case, the Appellant had filed a Motion to Set Aside the Dismissals of both small claims

cases on January 22, 1996. Although not articulated, it must be assumed that the basis for the motion was the allegation of fraud. After reviewing the minute entries of the cases, it does not appear that the Small Claims Court has disposed of the motion and that hearing on the motion was to be re-scheduled. In fact, it was admitted by counsel that Appellant elected to proceed before the Superior Court. *See* Transcript, Part I at pp. 6-7 (Motion for Summary Judgment, March 4, 1998). The issue becomes whether adjudication of this motion can occur before the Superior Court.

[32] Although the normal procedure to attack a judgment should be by motion in the court that rendered the judgment, 11 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE CIVIL 2d § 2868 (1995); *see also Pumphrey v. K.W. Thompson Tool Co.*, 62 F. 3d 1128 (9th Cir. 1995); *In re Intermagnetics America, Inc.*, 926 F. 2d 912 (9th Cir. 1991) and *Lapin v. Shulton*, 333 F. 2d 169 (9th Cir. 1964), Rule 60(b) contains a residual clause that provides:

> [T]his rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as required by law, or to set aside a judgment for fraud upon the court.

Guam R. Civ. P. Rule 60(b).

[33] Thus, the following are grounds for relief from a judgment under this clause: lack of personal notification, fraud upon the court, or an independent action for extrinsic fraud. *In re Marriage of Miller*, 902 P. 2d 1019, 1022 (Mont. 1995). "Fraud upon the court embraces only that species of fraud which subverts or attempts to subvert the integrity of the court itself, or fraud perpetrated by officers of the court so that the judicial machinery cannot perform in an impartial manner." *Id.* (citation omitted); *see also Intermagnetics*, 926 F. 2d at 916; and *Pumphrey*, 62 F. 3d at 1131.

[34] In the second law suit of the *Caswell* trilogy outlined above, specifically 466 S.E. 2d 310

(N.C. Ct. App. 1996), the issue of a collateral attack upon the judgment of another court was addressed. On appeal, the plaintiff argued that it filed a valid independent action against the original settlement and stipulation of dismissal. The court observed that in North Carolina "that in order to sustain a collateral attack on a judgment for fraud it is necessary that the allegations of the complaint set forth facts constituting extrinsic fraud or collateral fraud in the procurement of the judgment, and not merely intrinsic fraud, that is, arising within the proceeding itself and concerning some matter necessarily under the consideration of the court upon the merits." *Id.* at 312. (citation omitted). Further, it observed:

> Fraud is extrinsic when it deprives the unsuccessful party an opportunity to present his case to the court. If an unsuccessful party to an action has been prevented from fully participating therein there has been no true adversary proceeding, and the judgment is open to attack at any time. A party who has been given proper notice of an action, however, and who has not been prevented from full participation, has had an opportunity to present his case to the court and to protect himself from any fraud attempted by his adversary. Fraud perpetrated under such circumstances is intrinsic, even though the unsuccessful party does not avail himself of his opportunity to appear before the court.

Id. (citation omitted). The Court of Appeals reasoned that the plaintiff had full opportunity to present its case to the court. *Id*. The fraud which plaintiff complained of allegedly took place during settlement negotiations between the parties and was intrinsic. *Id*. It held that the plaintiff could not attack such alleged fraud through an independent action. *Id*.

[35] Similar to *Caswell*, Appellant here filed a Motion to Set Aside the Dismissals in the Small Claims Court. Appellant had a full opportunity to present its case to the court. A review of the record did not reveal whether the Appellant took any steps to secure a new hearing date for its motion to set aside the dismissal until, a year and a half later, to secure the same remedy by filing this suit.

[36] Additionally, in *Caswell*, the plaintiff, as an alternative to setting aside the settlement and

stipulation of dismissal, sought damages premised upon fraud, negligent misrepresentation and unfair and deceptive practices. The appellate court held that because the prior settlement cannot be attacked collaterally though this independent action, it is still wholly in effect. *Id*. The plaintiff could not recover damages for fraud unless and until the judgment denying him the right to recover is vacated. *Id*. (citation omitted). Here, Appellant's cause of action cannot similarly proceed. Rule 60(b) specifically provides that "[A] motion made under this subdivision (b) does not affect the finality of a judgment or suspend its operation." Guam R. Civ. P. Rule 60(b). Thus, unless and until the relief is granted by the court that issued the judgment, it is still final and enforceable as against the parties. Appellant's ability to pursue the Motion to Set Aside in the Small Claims forum has not been barred. The record indicates that the hearing on the motion was to be re-scheduled. Therefore, we hold that Appellant should not be able to collaterally attack the judgment in the small claims cases by the filing of this action in the Superior Court.

C- Sanctions

[37] The last issue on appeal is whether the trial court erred when it ordered Appellant to pay fees and costs as sanctions pursuant to Rule 11 of the Guam Rules of Civil Procedure. The imposition of sanctions is reviewed for an abuse of discretion. *Sea Food Grotto v. Leonardi* , 1999 Guam 30, ¶ 12; *Adams v. Duenas*, 1998 Guam 15, ¶ 10; *People v. Tuncap*, 1998 Guam 13, ¶ 11; *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405, 110 S.Ct. 2447, 2461 (1990). A court abuses its discretion in imposing sanctions when it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Mark Indus Ltd. v. Sea Captain's Choice, Inc*., 50 F. 3d 730,

(9th Cir. 1995). Guam Rules of Civil Procedure Rule 11, in its entirety, provides:

> Rule 11. Signing of Pleadings, Motions, And Other Papers; Sanctions. Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by an affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Guam R. Civ. P. 11 (1995).

[38] The Ninth Circuit has observed "[T]hat the theme of the Rule discourages wasteful, costly litigation battles by mandating the imposition of sanctions when a lawyer's position, after reasonable inquiry, will not support a reasonable belief that there is a sound basis in law or in fact for the position taken. *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F. 2d 1531, 1538 (9th Cir. 1986). "If, judged by an objective standard, a reasonable basis for the position exists in both law and in fact at the time that the position is adopted, then sanctions should not be imposed."*Id*. (citation omitted). *See also Townsend v. Holman Consulting Corp.*, 914 F. 2d 1136, 1140 (9th Cir. 1990); *Zalvidar v. City of Los Angeles*, 780 F. 2d 823, 828-32 (9th Cir. 1986).

[39] In the case of *In re Grantham Brothers*, 922 F. 2d 1438 (9th Cir. 1991), the Ninth Circuit affirmed the imposition of Rule 11 sanctions upon a plaintiff who had filed a collateral attack upon the earlier judgment of a bankruptcy court's sale order. *Id*. at 1442. The court held that the plaintiff's complaint contained an impermissible collateral attack upon the bankruptcy court's order. It found that the failure of the plaintiffs to seek any review, reconsideration, or stay of the bankruptcy court's order precluded the collateral attack contained in its complaint, and that the district court did not abuse its discretion in assessing sanctions for it. *Id.*

[40] As is the case here, the trial court observed that the Appellant was attempting to re-litigate its contract action in Superior Court when it had essentially been precluded by operation of the dismissal with prejudice of the earlier case in Small Claims Court. The remedy for relief was to set aside the dismissal before the Small Claims Court. Moreover, counsel for Appellant was aware that the motion to set aside that was brought before the Small Claims Court was still pending and that it had decided to attempt to set aside that dismissal by filing the suit in Superior Court. Transcript, Part I at pp. 6-7 (Motion for Summary Judgment, March 4, 1998). There is no indication in the record that Appellant sought to re-calendar the motion. Rather, the inference is that Appellant sat on the situation until approximately a year and a half later to litigate the efficacy of the small claims judgment in another forum.

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[41] Therefore, we hold that the lower court did not abuse its discretion when it imposed the sanctions pursuant to Rule 11.

CONCLUSION

[42] In conclusion, the trial court was correct in determining that, as a matter of law, the cause of action for breach of contract, was precluded by the earlier judgment in the Small Claims cases. With respect to the cause of action for fraud, we hold that Appellant could not proceed either as an independent action for fraud or as a collateral attack upon the judgment in Small Claims Court. Lastly, the lower court did not abuse its discretion by imposing sanctions because the Appellant failed to conduct a reasonable inquiry into its remedies to attack the small claims judgments but rather, impermissibly sought to set aside the judgment by this collateral attack in the Superior Court.

[43] We therefore **AFFIRM** the lower court's grant of summary judgment and its imposition of Rule 11 sanctions upon Appellant.

JOHN A. MANGLONA
Designated Justice

PETER C. SIGUENZA
Associate Justice

BENJAMIN J. F. CRUZ
Chief Justice