IN THE SUPREME COURT OF GUAM

PARKLAND DEVELOPMENT, INC.
Plaintiff-Appellee

vs.

JOAQUIN B. ANDERSON and MYRT ANDERSON
Defendants-Appellants

Supreme Court Case No.:CVA98-004
Superior Court Case No.:CV1465-95

OPINION

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Appeal from the Superior Court of Guam
Submitted on the briefs, April 19, 1999
Hagåtña, Guam

Representing the Plaintiff-Appellee:
Anita P. Arriola, Esq.
Arriola, Cowan & Arriola
259 Martyr St., Ste. 201
Hagåtña, Guam 96910

Representing the Defendants-Appellants:
Wilfred R. Mann, Esq.
Berman O'Connor & Mann
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910

BEFORE: BENJAMIN J. F. CRUZ, Chief Justice; PETER C. SIGUENZA, Associate Justice, and RICHARD H. BENSON, Designated Justice.

SIGUENZA, J.:

[1] Joaquin B. Anderson and Myrt Anderson, appeal this matter based upon the trial court's denial of their Motion to Vacate Judgment pursuant to Guam Rule of Civil Procedure 60(b). The motion was filed subsequent to a judgment rendered against the Andersons at the close of a five-day trial in the Superior Court. Examining the trial court's decision, we find that the trial court did not abuse its discretion in denying the Appellant's motion below; accordingly, its decision is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

[2] This case arose out of a Development Management Agreement (DMA) which was entered into on March 20, 1989 by Defendants-Appellants Joaquin B. Anderson and Myrt Anderson (hereinafter the "Andersons") and Advance Development Corporation (hereinafter "ADC")for the development of the Andersons' property— Lot No. 3251-1-2, Chalan Pago, Pago, Guam. The project was divided into three phases of development. Phase I involved the construction of eleven (11) single family dwellings (hereinafter "SFDs") and required the Andersons to pre-sell the units before the developers became obligated to begin construction. On June 14, 1989, ADC assigned its rights in the project to Plaintiff-Appellee Parkland Development, Inc. (hereinafter "Parkland"). On July 17, 1989, the parties entered into a Modification Agreement wherein Parkland agreed to purchase eight (8) of the SFDs because the Andersons were unable to pre-sell the units.

[3] Construction on Phase I commenced in 1990; however, disputes between the parties arose and were submitted to arbitration. An Arbitration Award was issued on May 20, 1993 and such

award was upheld by the Superior Court in *Anderson v. Parkland Dev., Inc.*, Special Proceeding No. SP0056-94 (September 6, 1994). The Andersons were required to obtain all necessary certificates, licenses, permits, and approvals, including those affecting the main access road and the wetlands, so that construction could recommence as soon as reasonably possible. After the Andersons had failed to obtain all of the necessary documents, Parkland filed a motion for contempt with the trial court which was denied.

[4] On September 21, 1995, Parkland notified the Andersons of its intent to rescind the DMA based on the Andersons' failure to comply with the mandates of the Arbitration Award. Subsequently on October 10, 1995, Parkland filed a complaint for rescission and restitution in the amount of $1,363,465.95 or, alternatively, for breach of contract and resulting damages. The case proceeded to trial and a judgment for rescission and the above restitution, plus interest, was entered on the docket on June 24, 1997. The Andersons filed a motion to vacate the judgment pursuant to Guam Rule Civ. P. 60(b) (1994) on November 10, 1997, which the court denied in a written Decision and Order on January 20, 1998 finding that the Andersons had not established their attorney's gross negligence, and concluding that no exceptional circumstances were present which would warrant setting aside the judgment. A timely Notice of Appeal was then filed on February 17, 1998.

ANALYSIS

[5] The court has jurisdiction over this matter pursuant to 48 U.S.C. § 1424-3(d) (1984) and 7 GCA §§ 3107(b) and 3108. We review the trial court's ruling on a Rule 60(b) motion for abuse of

discretion. *Midsea Industrial, Inc. v. HK Engineering, Ltd.*, 1998 Guam 14, ¶ 4. Applying this standard, "[a] trial court decision will not be reversed unless [an appellate court] has a 'definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors.'" *Santos v. Carney*, 1997 Guam 4, ¶ 4 (citation omitted). Thus, our review being strictly limited, "we can only consider whether the denial of the motion was an abuse of discretion; we cannot reach the merits of the underlying judgment." *Kagan v. Caterpillar Tractor Co.*, 795 F.2d 601, 607 (7th Cir. 1986) (citation omitted).

[6] This court has previously addressed GRCP 60(b) as it relates to default judgments in *Midsea Industrial, Inc.*[1] This case, however, is an appeal from a denial of a Motion to Vacate Judgment pursuant to GRCP 60(b), based upon a judgment entered after the conclusion of a bench trial. Therefore, the court must consider different factors in determining whether the trial court abused its discretion in refusing to vacate its earlier judgment. The rule itself provides the means for obtaining relief from a judgment or order and states in relevant part:

> (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

[1] In *Midsea* the court adopted the three-part test enumerated by the Ninth Circuit in the case of *Falk v. Allen*, 739 F.2d 461 (9th Cir. 1984). 1998 Guam 14 at ¶ 5. The Appellant urges this court to apply the *Falk* test in this case; however, the *Falk* test is applicable to the vacation or setting-aside of default judgments. The standard for setting-aside a default judgment is distinct from the vacation of disputed and litigated issues. Default judgments are generally disfavored because they are considered drastic in nature and because there is a strong interest in having cases decided on their merits. *Id.* at ¶ 6. Therefore, we will not apply the *Falk* test to the facts of this case.

> 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 . . . .

GRCP 60(b). The court must also consider that "Rule 60(b)(6) 'provides for extraordinary relief and requires a showing of exceptional circumstances.'" *Kagan*, 795 F.2d at 609 (7th Cir. 1986) (citation omitted).

[7] On appeal, the Andersons made several arguments under the *Falk* test which are essentially useless because the *Falk* test is inapplicable in this situation. Therefore, their only remaining argument is based upon subsection (b)(6), whereby relief from the judgment may be granted for "any other reason justifying relief from operation of the judgment." GRCP 60(b).[2] The Andersons claim that their attorney at trial was grossly negligent in failing to raise, as affirmative defenses, Parkland's failure to comply with Guam's business licensing laws and the failure to obtain a contractor's license. The court will examine the trial court's ruling as it relates to subsection (b)(6).

[8] The Andersons rely heavily on the case of *Good Luck Nursing Home, Inc. v. Harris*, 636 F.2d 572 (D.D.C. 1980) to urge this court to grant relief from judgment. In *Good Luck Nursing Home*, the district court had granted a motion for summary judgment after the parties stipulated to certain facts; the appellee, three (3) months later sought to have that judgment set aside pursuant to Rule 60(b). *Id.* at 576. The appellate court affirmed the district court's decision to set aside the judgment based on Rule 60(b)(6). *Id.* at 576-77. Although a party has stipulated to facts and failed to present other key facts, he will ordinarily not be able to prevail under Rule 60(b); "[t]his does not mean,

[2]In their Rule 60(b) motion the Andersons argued vacation of the judgment pursuant to subsection (b)(1) and (b)(6); however, on appeal they abandoned their arguments as to subsection (b)(1) and only raise the issue under (b)(6).

however, that the district court is powerless to correct errors into which it is led by the parties' failure to make the key facts known." *Id.* at 577. The court there recognized that the omission of the key facts which called for reinstatement of the case was inexcusable. *Id.* In a footnote, the court also noted that it decided the case based upon subsection (b)(6), as the district court had, and not (b)(1) because the "mistake" was not of the type subsection (b)(1) was intended to remedy. *Id.* at 578 n.4. The court seemed to be result-oriented. In fact, in that same footnote, the court acknowledged the fact that it would not address the reason as to why it decided this case under subsection (b)(6) and not (b)(1), instead only indicating that "[b]ecause the motion was timely under either subsection, it is not crucial that a distinction between the two be made in this case." *Id.*[3]

[9] Additionally, the Andersons cite the case of *Patapoff v. Vollstedt's, Inc.*, 267 F.2d 863 (9th Cir. 1959), in which the court allowed reinstatement of the case where a client was erroneously advised by counsel to forego an affirmative defense. In *Patapoff*, the court focused on a policy to liberally construe Rule 60(b) in an interest to have cases decided on their merits. *Id.* at 865. However, in that case, the appellant, immediately sought relief from the judgment ten (10) days after the judgment was entered. *Id.* at 864. Building upon *Patapoff*, in *Meadows v. Dominican Republic*, 628 F. Supp. 599 (N. D. Calif. 1986), the court, citing *Patapoff* , stated that "allegedly erroneous legal advice is not sufficient to establish excusable neglect where the party is (1) fully informed of the relevant legal considerations, and (2) sufficiently sophisticated and experienced to protect its interests." *Id.* at 609.

[10] Other jurisdictions have vacated judgments based on the gross neglect of attorneys which

[3]Although this case has not been expressly overruled, it has been distinguished by several Circuit Courts. Furthermore, no Ninth Circuit opinions have followed the reasoning in the *Good Luck* case.

created exceptional circumstances and hardship under Rule 60(b). *See Boughner v. Secretary of Health, Ed. & Welfare*, 572 F.2d 976 (3rd Cir. 1978); *Lucas v. City of Juneau*, 20 F.R.D. 407 (D.Alaska 1957) and 15 A.L.R. Fed. 193 (holding that gross neglect and abandonment of the client by the attorney create an exception to the rule that a client is bound by the acts of an attorney and also constitute extraordinary circumstances permitting relief from a judgment under Rule 60(b)(6)). In contrast, however, the Seventh Circuit has not found extraordinary circumstances of gross negligence of an attorney to justify Rule 60(b) relief. *Reinsuance Co. of America, Inc. v. Administratia Asigurarilor de Stat*, 902 F.2d 1275, 1278 (7th Cir. 1990) (noting that the Seventh Circuit Court has never held that an attorney's gross negligence justifies relief under Rule 60(b)). In *Reinsurance*, the court further elaborated that the client's lack of diligence in pursuing the case contributed to the failure to demonstrate extraordinary circumstances which would warrant relief from the judgment. *Id.*

[11] The Ninth Circuit has also addressed the issue of an attorney's gross negligence, under Rule 60(b), in the context of failing to raise an affirmative defense of waiver. *See Allmerica Financial Life Ins. & Annuity Co. v. Llewellyn*, 139 F.3d 664 (9th Cir. 1997).[4] In *Allmerica*, Llewellyn had an insurance policy with Allmerica and filed a disability claim through which he was paid monthly benefits. *Id.* at 665. Allmerica later discovered that Llewellyn was not "disabled" under the terms of the policy and stopped paying the benefits. *Id.* A declaratory judgment was sought by Allmerica

[4]In its brief, Parkland attempts to distinguish away other cases which establish gross negligence as a basis for Rule 60(b) relief on the grounds that those cases do not involve relief sought from judgments resulting from fully litigated bench trials. Although reasoning exists as to why default judgments must be treated differently, there is no similar reasoning as to why judgments which are decided on their merits, such as summary judgment motions, should be similarly distinguished.

to declare that it was not further obligated to pay Llewellyn under the policy. *Id.* The trial court granted Allmerica's motion for summary judgment and denied Llewellyn's subsequent motion to vacate judgment pursuant to Rule 60(b). On appeal, Llewellyn claimed that defense counsel's failure to raise the affirmative defense of waiver provided the proper grounds for relief under Rule 60(b). *Id.* at 665-66. The court found this argument to be meritless.

[12] Furthermore, the court observed that:

> although Rule 60(b)(6) 'gives the district court power to accomplish justice,' such relief requires a showing of 'extraordinary circumstances.' The failure of Llewellyn's counsel to assert the affirmative defense of waiver does not, however, constitute such 'gross negligence or exceptional circumstances so as to justify the extraordinary relief available pursuant to Rule 60(b).'.

Id. at 666. (citations omitted)

[13] In this case, Parkland negotiated the assignment of the DMA with ADC in Singapore, but did not have a license to do business on Guam or a certificate of exemption in the alternative. A license was subsequently obtained by Parkland on July 19, 1989, approximately a month after the assignment occurred. The Andersons claim that, in light of the notoriety of *EIE Guam Corp. v. The Long-Term Credit Bank of Japan, Ltd.,* 1998 Guam 6,[5] defense counsel's failure to raise as an affirmative defense Parkland's violation of the business licensing laws constitutes gross negligence. Additionally, the Andersons claim that another affirmative defense existed which defense counsel also failed to raise— that Parkland was a contractor not in possession of a valid contractor's license

[5] The Andersons also cite to the Appellate Division case of *Archbishop of Guam, Apuron v. G.F.G. Corp.,* No. CR-95-00007A, 1995 WL 604383 (D. Guam App. Div. Oct. 2, 1995) in which the court held that substantial compliance with the business licensing laws was insufficient to satisfy the local business licensing requirements. The Andersons also allude to the notoriety of *EIE Guam Corp.*, as the issues in that case also involve the business licensing laws. *EIE Guam Corp.* had not yet been decided at the time the parties submitted their briefs. Although an opinion has since been issued, *EIE Guam Corp.* did not address *Archbishop* and, therefore, provides no guidance in this situation, even as to the validity of the defense raised. See *EIE Guam Corp.*, 1998 Guam 6.

therefore in violation of Chapter 70 of GCA Title 21.

[14] Parkland contends that case law supports the rule that gross negligence is not grounds for granting relief from a judgment. In the alternative, it argues that no supporting affidavits or other demonstrative evidence was presented before the trial court to establish gross negligence, should the court find it to be a proper grounds for vacation of judgment.

[15] In determining the law on Guam, this court has considered the law of several jurisdictions in the above-cited cases. In so considering these cases, two factors weigh heavily on this ruling—(1) that the matter was fully adjudicated and determined on the merits in a trial; and (2) that parties who may freely choose their attorneys should not be allowed to later avoid the ramification of the acts or omissions of their chosen counsel.[6] In the case at bar, the matter went through arbitration, an award was made and affirmed by the Superior Court. The Andersons failed to comply and this case was begun. Subsequently, a five (5) day trial in the lower court was conducted. Prior to the trial, the case was ongoing for a year and a half which provided the Andersons sufficient time to thoroughly defend themselves against Parkland's claims. Additionally, this court believes it to be a dangerous policy to allow a party to distance himself from the acts of his representative. *See Link v. Wabash Railroad Co.*, 370 U.S. 626, 634-45, 82 S.Ct. 1386, 1390-96 (1962).

[16] The failure of the Andersons' counsel to assert the affirmative defenses of lack of business license and of contractor's license does not constitute such gross negligence or exceptional

[6] Other remedies are available to civil parties whose attorney's conduct has fallen below that of a reasonable attorney placed in the same situation.

circumstances so as to justify the extraordinary relief available pursuant to Rule 60(b)(6).[7] We therefore find that the Superior Court did not abuse its discretion in denying the Andersons' Motion for Relief from Judgment. Defense counsel's failure to raise affirmative defenses cannot act to relieve the Andersons from the judgment received at trial.[8] The Andersons made no showing, and nothing in the record sufficiently indicates, that exceptional circumstances warranted the necessity of setting aside the judgment. Therefore, the court finds that the trial court did not abuse its discretion in denying the Andersons' motion to vacate its judgment.[9]

CONCLUSION

[17] Based on the authorities cited and upon a consideration of all the circumstances of the case, we conclude that the trial court did not abuse its discretion in denying the motion to vacate the judgment. The judgment is hereby **AFFIRMED**.

RICHARD H. BENSON
Designated Justice

PETER C. SIGUENZA
Associate Justice

[7] Our ruling is strictly limited to the interpretation under subsection (b)(6) as this was the only issue presented before the court.

[8] Although the Andersons cite the court to case law in support of their position, the court has chosen to take a different position on the law. Accordingly, the court will not address the cited cases as they relate to the facts of this case. This court is not bound by the precedent set by courts of other jurisdictions. *See People v. Quenga*, 1997 Guam 6, ¶ 13, n. 4.

[9] In so ruling, the court need not look to the merits of the Andersons' alleged meritorious defenses, as such arguments are moot.

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BENJAMIN J. F. CRUZ
Chief Justice