

**IN THE SUPREME COURT OF GUAM**

**ESTATE OF EDWARD C. BENAVENTE,  
ESTATE OF PEDRO S.N. CASTRO**

Plaintiff-Appellant

**vs.**

**LEON G. MAQUERA**

Defendant-Appellee

**OPINION**

**Filed: February 7, 2000**

**Cite as: 2000 Guam 9**

Supreme Court Case No. CVA98-011

Superior Court Case No. CV0024-90

Appeal from the Superior Court of Guam  
Argued and Submitted on August 16, 1999

Hagåtña, Guam

Appearing for Plaintiff-Appellant:

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BEFORE: RICHARD H. BENSON, Acting Chief Justice<sup>1</sup>, JOHN A. MANGLONA, Designated Justice, and JOHN C. DIERKING, Justice *Pro Tempore*.

BENSON, J.:

[1] This case raises issues of Guam law concerning the fiduciary duty attorneys owe clients in transactions with their clients. Appellee, Leon G. Maquera (“Maquera”), an attorney, provided legal services to Appellant, Pedro S.N. Castro (“Castro”).<sup>2</sup> In exchange for services rendered, Castro conveyed a piece of property to Maquera. Castro then sought to set aside the conveyance, alleging that Maquera, as a practicing attorney, had a fiduciary duty toward Castro, his client, which Maquera had breached. The trial court found that because Castro had not proven the existence of a trustee relationship, Maquera had not breached a fiduciary duty. Thus, the trial court denied Castro the relief sought. Upon review of the matter, we find that the lower court erred in failing to apply the law of fiduciaries to this case. Accordingly, the decision of the lower court is reversed and the matter is remanded to the trial court.

### FACTUAL AND PROCEDURAL BACKGROUND

[2] The Appellant, Castro, was a man of limited education, finishing only the sixth grade. The Appellee, Maquera, is an attorney of approximately 42 years experience. Sometime in 1982, Maquera met Castro. Thereafter, Maquera began to provide legal services to Castro. The parties did not execute a written fee agreement regarding the legal services rendered nor did Maquera keep records documenting

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<sup>1</sup>The three full-time Justices, including the Chief Justice recused themselves from hearing this matter. Justice Benson, as the senior member of the panel was designated as the Acting Chief Justice.

<sup>2</sup>The Plaintiff, Pedro S.N. Castro, passed away on June 1, 1992. Castro’s estate, the Plaintiff-Appellant, Estate of Pedro S.N. Castro was substituted, although for purposes of this opinion, the Plaintiff-Appellant will be referred to as Castro.

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time spent for work performed. Over the years, Maquera handled a number of legal matters for Castro, most of which dealt with land transactions. Although the two men did not socialize together, a casual friendship developed.

[3] On or about December 17, 1987, after completing some legal work for Castro, the parties discussed the matter of outstanding legal fees owed Maquera. At the time, Maquera estimated that the amount owed was somewhere between \$12,000.00 and \$45,000.00.<sup>3</sup> For remuneration of services, Maquera suggested that Castro give him a particular piece of property that Castro owned.<sup>4</sup> Therefore, on or about January 4, 1988, Castro gave Maquera a Quitclaim Deed to the subject property. The property is located in Harmon, zoned R-2 and is approximately 5,000 square meters in size.

[4] This property was subject to an Agreement to Buy and Sell between Castro and a Mr. Calvert, which was entered into on or about April 4, 1970. It was Castro's understanding that the agreement was still valid, although payments had not been made since 1971. The property had also been subject to a Marshal's sale in the amount of \$500.00 pursuant to a judgment against Castro.<sup>5</sup> Maquera thought that Castro believed that this amount represented the value of the land.<sup>6</sup> Prior to the conveyance of this property to Maquera, Castro neither sought the advice of another attorney, nor did he have the property appraised. There was no writing governing the transaction.

[5] After receiving the deed to the property, Maquera took steps to clear the title. He filed an Affidavit

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<sup>3</sup>We find it disturbing that a practicing attorney's failure to maintain his records left a question of what was owed for legal services somewhere between maybe \$12,000 and \$45,000, a difference of \$33,000.

<sup>4</sup>Transcript, vol. I p. 8 (Bench Trial, November 24, 1997).

<sup>5</sup>Plaintiff, Edward C. Benavente purchased this property at the Marshal's sale. On May 13, 1996, Plaintiff Benavente was dismissed out of this case, leaving the Estate of Castro.

<sup>6</sup>Transcript, vol. I pp. 9-11 (Bench Trial, November 24, 1997).

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of Cancellation of the Calvert transaction on or about January 4, 1988. He then exercised a right of redemption and paid \$525.00 toward the satisfaction of the judgment against the subject property. Maquera then placed title to the property in his own name, subsequently deeding the property to his wife. On or about December 30, 1988, Maquera and his wife sold the property to C.S. Chang and C.C. Chang for the amount of \$320,000.00.

[6] Castro filed an action against Maquera, on or about October 12, 1990.<sup>7</sup> Castro was granted

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<sup>7</sup>During this same time period, the Guam Bar Ethics Committee held hearings regarding the Defendant's actions with respect to the matter. *Guam Bar Ethics Committee v. Leon G. Maquera*, SP0075-94 (Jun 12, 1996). As a result of these hearings in May of 1996, the Superior Court of Guam sitting as an Ethics Panel, issued an order, finding the Defendant's conduct inappropriate and in violation of the Rules of Professional Conduct 1.5(a) and 1.8(a). (in 7 GCA Appendix F) (1994).

Rule 1.5 Fees.

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;
2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent.

Rule 1.8 Conflict of Interest: Prohibited Transactions.

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

1. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
  2. the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction;
- and
3. the client consents in writing thereto.

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summary judgment on October 18, 1993. However, on appeal, the grant of summary judgment was reversed and the case remanded to Superior Court. At a bench trial, the lower court found in Maquera's favor. This appeal followed.

### ANALYSIS

[7] This court has jurisdiction under 7 GCA sections 3107 and 3108 (1994). Castro alleges that there were errors made of both law and fact. The court reviews *de novo* the trial court's interpretation of the law. *Sumitomo Construction v. Zhong Ye, Inc.*, 1997 Guam 8, ¶ 9. Whereas "[f]indings of facts made by a judge after a bench trial are subject to the clearly erroneous standard of review." *Yang v. Hong*, 1998 Guam 9, ¶ 4.

[8] The thrust of Castro's appeal is that Maquera breached a fiduciary duty owed Castro because of their attorney-client relationship. "The relation of attorney and client is of a fiduciary character and the Civil Code (section 2235) clearly provides that all transactions between a trustee and his beneficiary during the existence of the trust, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration and under undue influence." *Clark v. Millsap*, 242 P. 918, 925 (Cal. 1926) (citation omitted). Castro argues that the trial court was bound by California authority, from which our statutes are based. *See Roberto v. Aguon*, 519 F.2d 754 (9th Cir. 1975) (holding that California decisions, with regard to identical statutes are controlling on Guam courts if they predate the enactment of Guam's statutes). Specifically, 18 GCA section 65208 (1992) which is based upon former California Civil Code section 2235, states as follows:

**§ 65208. Presumption against trustees.** All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee

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remains, by which he obtains any advantage from his beneficiary, **are presumed to be entered** into by the latter **without sufficient consideration, and under undue influence**. (emphasis added).

[9] This means that if an attorney chooses to deal with his client and thereby gains an advantage, the attorney has the burden of showing by the evidence that the transaction was fair. *Plxweve Aircraft Co. v. Greenwood*, 61 Cal. App. 2d 21, 24, 141 P.2d 933, 935 (1943). “[A] cause of action has been stated for appropriate relief when facts are alleged which show that an attorney has entered into a transaction with his client and has obtained an advantage therefrom. The burden of showing the transaction to be fair in such a case is one of affirmative defense.” *Id.*

[10] Additionally, Castro claims that attorneys as fiduciaries are made subject to the law governing trustees. *See* 18 GCA § 65105. Section 65105 provides that “[e]very one who voluntarily assumes a relation of personal confidence with another is deemed a trustee . . . .” *Id.* Therefore, Castro claims that he is entitled to recover under 18 GCA section 65210 (1992)<sup>8</sup>, which states as follows:

**§ 65210. Liability for breach.** A trustee who uses or disposes of the trust property, contrary to § 65202 of this Chapter, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

Castro argues that the lower court erred in failing to consider this position.

[11] The trial court found that Castro’s cause of action rested upon Maquera’s violation of various Rules of Professional Conduct, one of which was a violation of his fiduciary duties. The lower court stated that

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<sup>8</sup>While Castro claims he is entitled to the full amount Maquera received for the land, or \$320,000.00, Castro is seeking that amount, minus the maximum amount alleged due as attorney fees of \$45,000.00, minus the \$525.00 Maquera paid to redeem the property, and minus another \$500.00 Maquera spent in clearing the title. Transcript, vol II. p. 63 (Bench Trial, January 23, 1998). Accordingly, Castro requests judgment for the balance, or \$273,975.00. Transcript, vol II. p. 63 (Bench Trial, January 23, 1998). This is despite the fact that Castro reimbursed Maquera the funds he expended to redeem the property. Transcript, vol II. p. 63 (Bench Trial, January 23, 1998); Appellee’s Excerpt of Record at 14-15.

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Castro's reliance upon Maquera's alleged violation of his fiduciary duties and subsequent discipline was misplaced in the present civil action. Although the trial court repeatedly stated that the Ethics Panel of the Superior Court of Guam's sanctioning of Castro, would have no bearing on its decision, it seemed to have completely influenced its analysis. *Estate of Edward C. Benavente v. Leon G. Maquera*, CV0924-90 (Super. Ct. Guam Mar. 16, 1998). Citing to Title 7 GCA, Appendix F-4 the trial court noted that "[t]he Rules of Professional Conduct are rules of reason." *Id.* at 13.

[12] The court considered section F-6, which states that:

Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability.

7 GCA App. F at 6-7 (1994).

Based upon the foregoing, the trial court concluded that "[t]o find that Defendant breached his fiduciary duties to Plaintiff, the Court must necessarily find that Defendant violated the Rules of Professional Conduct and also violated the attorney/client relationship. Even if this Court were to make such a finding, as has been stated previously, such finding cannot serve as a basis for civil liability in this case." *Estate of Edward C. Benavente*, CV0924-90 (p. 34).

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[13] Therefore, the trial court focused on the civil causes of action contained in the complaint, such as actual fraud, unjust enrichment and rescission.<sup>9</sup> The lower court stated that in order for Castro to prevail on a count of fraud, it was incumbent upon Castro to prove both that Maquera acted with the intent to deceive another, and that merely acting with negligence was not enough. *See* 18 GCA § 85308. The trial court rendered its decision finding that Castro failed to adequately prove his case with respect to any of his claims.

[14] A reading of the lower court's opinion would suggest that if an attorney is disciplined, he cannot later be subjected to a cause of action for the act or acts that gave rise to the disciplinary action. This court does not agree with the lower court's interpretation. We find that while the discipline of an attorney should not necessarily be the basis for a suit, such discipline certainly cannot and should not render an attorney immune from further civil liability.

[15] "The attorney-client relationship is 'highly fiduciary.'" *Sears, Roebuck & Co. v. Goldstone & Sudalter, P.C.*, 128 F.3d 10, 15 (1st Cir. 1997) (citation omitted). Under 18 GCA section 65208, there is a rebuttable presumption against trustees. Transactions between an attorney and client where an attorney obtains an advantage from his client are presumed to be without sufficient consideration and under undue influence exercised by the attorney. *See Oliner v. Gershunoff*, 195 Cal. App. 3d 1288, 1294 (1988). The primary effect of these two presumptions is to shift the burden of proof to the attorney. *See Beery v. State Bar of California*, 43 Cal. 3d 802, 812, 239 Cal. Rptr. 121, 126 (1987); *See also Hick v. Clayton*, 67 Cal. App. 3d 251, 262, 136 Cal. Rptr. 512, 518 (1977) (finding that [the former] California

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<sup>9</sup>While the claims of indemnity and contribution and rescission were originally alleged in the Complaint, and discussed in the trial court's Decision and Order, the matter addressed at trial was whether or not Maquera breached his fiduciary duty which would have given rise to a cause of action for damages.



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Civil Code section 2235 applies to the attorney-client relationship).

[16] In order for an attorney to overcome the presumption of undue influence which arises where the attorney enters into a business transaction with his client, the attorney is required to establish by “clear and satisfactory” extrinsic evidence that: (1) the business transaction entered into between the attorney and client had been equitable to the client in all material respects; (2) prior to entering into the business transaction with the client, the attorney made full disclosure to the client of all material information relating to the business transaction; and (3) the client had consented to the business transaction after full disclosure had been made by the attorney to the client. *Oliker*, 195 Cal. App. 3d at 1294-95.

[17] Looking to the record, we find that it was Maquera, not Castro, who suggested that Castro deed the subject piece of property in lieu of payment for services.<sup>10</sup> Maquera knew that Castro did not understand the true value of the property and the effect of the Marshal’s sale. Yet, Maquera did not choose to explain to Castro the true nature of the property, nor did he suggest that Castro seek legal advice from another attorney.

[18] Maquera argues that although Castro may have not been very educated, he was not “a babe in the woods” when it came to land transactions.<sup>11</sup> However, whether or not Castro may have understood more than a sixth grade education would indicate, it was for Maquera to show that the transaction was fair. Clearly, the transaction was to Maquera’s advantage, as he realized a return of \$320,000.00 on a debt of possibly \$45,000.00. It would be almost impossible to suggest otherwise. The trial court erred in finding that the burden of proof rested upon Castro and in failing to apply the principle of fiduciary duty to the facts.

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<sup>10</sup>Transcript, vol. I p. 8 (Bench Trial, November 24, 1997).

<sup>11</sup>Transcript, vol. II p. 65 (Bench Trial, January 24, 1998).

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[19] The trial court further found that there was insufficient evidence presented to show that Castro did not intend for Maquera to receive the property, and in fact that it was Castro who “offered to deed the property at issue” to Maquera. *Estate of Edward C. Benavente*, CV0924-90 (p.28). This reasoning begs the question of why, if Castro had wanted Maquera to have the property, he subsequently filed this litigation. The trial court found that Castro suggested the conveyance. However, a review of the record indicates it was Maquera who suggested the conveyance, not Castro.<sup>12</sup>

[20] Maquera claims that at the time of the transaction, there no longer was a fiduciary duty owed, because he had finished providing legal services to Castro and cites *Ellis v. Poindexter*, 137 S.E. 595, 596 (N.C. 1927)(holding that where a contract for attorney’s fees was made after termination of the litigation, the relationship of attorney and client no longer existed and it was competent for the parties to then contract for the payment of the past services). This court is not convinced that merely because Maquera states that the relationship of attorney-client had ended that in fact it had.

[21] The record shows that the parties had an on-going relationship for a number of years.<sup>13</sup> Maquera himself indicated that Castro would call on him as needed.<sup>14</sup> This was not a situation where the attorney was retained for the limited purpose of obtaining a divorce or quieting title. There is no testimony or evidence presented that Maquera was seeking payment for all services rendered because he was seeking to conclude his professional relationship with Castro. Even if Maquera’s contention were accepted, the transaction occurred “while the influence acquired by the trustee” remained. 18 GCA § 65208. The

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<sup>12</sup>Transcript, vol. I p. 8 (Bench Trial, November 24, 1997).

<sup>13</sup>Transcript, vol. I pp. 4-5 (Bench Trial, November 24, 1997).

<sup>14</sup>Transcript, vol. I pp. 4-5 (Bench Trial, November 24, 1997).

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record also shows that after Maquera redeemed the property he delivered to Castro a check containing Castro's proceeds from a previous case with Maquera's cost in redeeming the property deducted from the check's amount.<sup>15</sup>

[22] “An attorney's duty of fidelity to his client involves far more than refraining from exercising undue influence. His fiduciary duty is of the very highest character. For this reason all business dealings between attorney and client whereby the attorney benefits are closely scrutinized for any unfairness on the attorney's part.” *Magee v. State Bar*, 58 Cal. 2d 423, 431, 374 P.2d 807, 811 (1962) (citation omitted). “In civil cases there are no transactions respecting which courts . . . are more jealous and particular, than dealings between attorneys and their clients, especially where there is great intellectual inequality, and comparative inexperience on the part of the latter.” *Eschwig v. State Bar*, 1 Cal. 3d 8, 14, 459 P.2d 904, 909-10 (1969) (citation omitted).

[23] From the evidence, it is clear that Maquera breached his fiduciary duty with respect to Castro. In his dealings with Castro, Maquera placed himself in a position where his self-interest in the transaction prevented his giving disinterested advice to Castro. At no time prior to or contemporaneous with the conveyance did Maquera suggest to Castro that before entering into such an agreement Castro should consult independent counsel. It is doubtful that had the exact transaction concerned Castro and another lawyer, Maquera would have advised Castro to proceed with the transaction. From Maquera's own testimony, he understood that Castro thought the property in question was valued at the price of \$500.00, the amount the property was sold for at a Marshal's sale. Maquera did not seek to disabuse Castro of such a belief.

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<sup>15</sup>Appellee's Excerpt of Record at 14-15.

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[24] As stated in *Yang*, “[a] finding is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below committed a mistake.” 1998 Guam 9 at ¶ 7 (citation omitted). In reviewing the record before us, this court finds that there was substantial evidence in the record to support a finding that Maquera had in fact, breached his fiduciary duty toward Castro. The trial court erred as a matter of law in failing to apply the law of fiduciaries to the facts.

### CONCLUSION

[25] Therefore, the decision of the trial court is **REVERSED**. Accordingly, this matter is **REMANDED** to the trial court with directions to enter judgment for Castro in the amount of \$274,500.00, representing what the Appellee wrongfully gained from the sale. Castro is also entitled to his costs of the appeal.

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JOHN C. DIERKING  
Justice Pro Tempore

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JOHN A. MANGLONA  
Designated Justice

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RICHARD H. BENSON  
Chief Justice, Acting