

IN THE SUPREME COURT OF GUAM

**IN THE MATTER OF THE DISSOLUTION OF
OKA TOWERS CORPORATION,**

Petitioner-Appellee,

TRANS PACIFIC EXPORT CO.,

Claimant-Appellant.

OPINION

Filed: May 2, 2000

Cite as: 2000 Guam 16

Supreme Court Case No. CVA98-022
Superior Court Case No. CV1285-97

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

Appearing for the Appellant:

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would provide the means for Appellant to act on its claim (Motion for Award of Petitioner's Attorneys Fees and Costs, June 2, 1998). The court issued an Order for Payment of Petitioner's Attorneys Fees and Costs on July 30, 1998. See Appellant's EOR 4. Appellate court articulated its findings by stating that Appellant's court articulated its findings by stating that Appellee was entitled to its attorneys fees and costs incurred in defending against a claim that should not have been maintained from the outset. See Appellant's EOR 4. Appellant's EOR 4. Judgment Appellant's Voluntary Dissolution of Oka Towers Corporation and Payment of Voluntary Dissolution of Oka Towers Costs. See Appellant's EOR 5.

DISCUSSION

[6] Jurisdiction of this court is not disputed and vests pursuant to Title 7 of the Annotated sections 3107 and 3108 (1994).

[7] We review orders imposing Rule 11 sanctions. *Hartmarx Corp.*, 496 U.S. 384, 405, 110 S.Ct. 2447, 2461, 496 U.S. 384, 405, 110 S.Ct. 2447, 2461 (1990). A court imposing sanctions when it bases its decision on an erroneous assessment of the evidence. *Mark Indus Ltd. v. Sea Captain's Choice, M* 732 (9th Cir. 1995).

[8] Rule 11 of the Guam Rules of Civil Procedure provides, in relevant part:

Rule 11. Signing of Pleadings, Motions, And Other Papers; Sanctions. Every pleading, motion, or other paper of a party shall be stated. A party who is not represented by an attorney or party constitutes a certificate by the

its corporate existence is terminated.³ We are of the view that We are of the view that it We are of the view that toto seek to protect its interest by filing the objection and claim in the instant mto seek to protect its interest by brought brought in good faith.brought in good faith. brought in good faith. Appellant proceeded to properly proceed using the statutory procedure for resolution of claims in using the statutory procedure for resolution of application application already contained an averment of the pending civil case between itself and Appellant and of of an outstanding debt owed to Universe Insurance of an outstanding debt owed to Universe Insurance Underwriting fact alone does not preclude fact alone does not preclude the respective creditor/claimant from filing their objection. The resolution of Appellant s claims in the earlier civil case was still pending at the time the objection was filed.⁵ Moreover, Appellee s petition to dissolve came shortly after Appellant had instituted its breach of contract and fraud claims. We find nothing frivolous or improper in Appellant s pursuit of some protection of its interests by Appellant s pursuit of its claim against Appellee.

[12] In fact, it appeared that the trial court felt that Appellant s claim of March 10 was proper. *See* Transcript, vol. --, pp. 20-24 (Hearing on Award of Petitioner s Attorneys Fees and Costs, June 2, 1998). The

³A corporation may be voluntarily dissolved by the Superior Court. The application for dissolution must be in writing and must set forth the application for dissolution that dissolution was resolved by the affirmative vote of the stock issued or subscribed. *See* Title 18 GCA § 5104 (1992). Notice for the application of dissolution must be published and the date on which the right of objection to the application must be published and the date on which the right of objection to the dissolution of the corporation must be published. (1992). Any person may file objections to the dissolution of the corporation that arises from the application and the objection there to shall be tried by the court. *Id.*

⁴The record indicates that another creditor objected to the Appellee s dissolution, although it did not assert its claim. *See* Transcript, vol. --, p. 29 (Hearing on Motion for Award of Attorneys Fees and Costs, June 2, 1998).

⁵Had the civil case been undecided at the time dissolution was granted, then the court would have appointed a receiver for lawful distribution to shareholders, creditors or other interested parties. *See* 18 GCA § 5107.

Designated Justice

Associate Justice

BENJAMIN J. F. CRUZ
Chief Justice