

IN THE SUPREME COURT OF GUAM

TOWN HOUSE DEPARTMENT STORES, INC.

Plaintiff-Appellee

vs.

HI SUP AHN

Defendant-Appellant

AMENDED OPINION

(The title page of this opinion was amended pursuant to a "Notice of Amendment to the Title Page of the Opinion Issued on October 6, 2000", filed on October 10, 2000)

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Appeal from the Superior Court of Guam

Argued and submitted May 10, 1999

Hagåtña, Guam

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

CRUZ, C.J.:

[1] This matter comes before this court based upon a deficiency judgment involving the default of a personally-guaranteed business loan to purchase certain goods. A portion of the proceeds of the loan were recovered by the creditor's resale of the goods. The trial court determined that the price received for the goods and the resale in general was "commercially reasonable." The Defendant-Appellant contends that the trial court failed to address whether or not the sale price was "fair and reasonable." We reverse this decision and remand this case to the trial court ordering it to address the issue of whether the sale price was "fair and reasonable."

FACTUAL AND PROCEDURAL BACKGROUND

[2] This case arises out of a sales contract between Town House Department Stores, Inc. (hereinafter "Town House") and T&K Construction Development, Inc. (hereinafter "T&K"). The contract provided for the sale of furniture and furnishings from Town House to T&K for use in their construction project for a sum in excess of \$350,000.00. The agreement was executed in December 1994 by Mr. Hi Sup Ahn (hereinafter "Ahn"), then president of T&K.

[3] Shortly thereafter, T&K experienced financial troubles and the payments to Town House fell into arrears. In December 1995, Ahn met with representatives of Town House to restructure the terms of the contract. An agreement was reached whereby Ahn personally guaranteed the debt. T&K's financial situation continued to spiral downward, leading the company to default on its payments to its primary construction contractor, L.G. Construction, Inc. (hereinafter "L.G."). Eventually, T&K abandoned the project and left the furniture in the building. Town House seized the furniture and sold it to L.G. for

approximately \$150,000.00. Town House then sued Ahn for the deficiency. After denying a motion for summary judgment filed by Town House, the Superior Court, following a two-day bench trial, held in favor of Town House. Ahn filed a timely notice of appeal on September 16, 1998.

JURISDICTION

[4] This court has jurisdiction over this matter pursuant to 48 U.S.C. § 1424-3(d) (1984) and Title 7 GCA § 3107, (1994).

DISCUSSION

[5] The applicable standard of review for the issue raised in this case is a point of contention between the parties. The issue raised is whether the trial court erred in not making a specific finding that the goods were resold at a price which was fair and reasonable. Ahn submits that the issue is a question of law reviewed *de novo*. *Camacho v. Camacho*, 1997 Guam 5, ¶ 24. However, Town House argues that the issue is a finding of fact which is reviewed under the clearly erroneous standard. *Yang v. Hong*, 1998 Guam 9, ¶ 4.

[6] Both parties are correct as to the applicable standards of review for questions of fact and law. The question then becomes an interpretation of the manner in which the issue has been framed on appeal. The court views the issue that Ahn seeks for this court to review as a mixed question of fact and law which is reviewed *de novo*. *See Apana v. Rosario*, Crim. No. 95-00024A, 1995 WL 604354, at *1 (D. Guam Ap. Div. Sept. 29, 1995); *Shiroma v. Ysrael*, Civ. No. 86-0029A, 1987 WL 109889, at *2 (D. Guam Ap. Div. July 17, 1987).

[7] The trial court conducted a thorough analysis on the resale transaction to determine whether it was consummated in a “commercially reasonable” manner pursuant to Title 13 GCA § 9504, (1993). Extensive detail was evident in the court’s findings of fact and legal conclusions.

[8] Nevertheless, Ahn contends that the trial court ignored its obligation to consider the matter via Guam R. Civ. P. 70(a). Rule 70(a) of the Guam Rules of Civil Procedure states that “[n]o deficiency judgment after repossession of personal property shall be granted unless it shall appear to the satisfaction of the court by proper evidence that said property was resold for *a fair and reasonable price.*” (emphasis added). Town House counters that the trial court’s finding that the resale price was “commercially reasonable,” as opposed to “fair and reasonable,” is a trivial distinction without a difference.

[9] Though we commend the trial court on its thorough discussion and analysis we still hold that the trial court erred in not specifically considering whether the price received from the resale was “fair and reasonable.” Rule 70(a) is of a local derivation and has no federal equivalent. The language of Rule 70(a) provides that a specific consideration and finding related to the *price* received is a necessary prerequisite for a deficiency judgment. Since §9504 operates more broadly in that the required analysis focuses on the commercial reasonableness of “ever[y] aspect of the disposition ...” the intended operation of Rule 70(a) becomes evident. Excluding the presence of Rule 70(a), it is possible that a resale could be found to be “commercially reasonable” and a deficiency judgment obtained even though the price received was neither “commercially reasonable” nor “fair and reasonable.” Thus, Rule 70(a) operates to increase the importance of the price received in the final analysis of granting a deficiency judgment.

[10] Although the trial court stated on several occasions that the price received was “commercially reasonable,” other language cited by the court emphasized that the lack of such a finding was not fatal to its ultimate conclusion that the resale was “commercially reasonable.” Unfortunately, such is not the case for Rule 70(a)’s required finding that the price received was “fair and reasonable.” A deficiency judgment

may not be issued without such a finding. Therefore, because it is unclear from the trial court's record that the price received from the resale was considered specifically pursuant to Rule 70(a) and found to be "fair and reasonable" for purposes of granting a deficiency judgment, the mandatory finding required by Rule 70(a) remains unsatisfied.

[11] Ahn also refers to Guam R. Civ. P. 52(a) for the proposition that "[r]equests for findings are not necessary for purposes of review." Ahn appears to be implying that the trial court did not comply with the provisions of Rule 52 (a), which demands that courts clearly set out their findings of facts and conclusions of law. This Court agrees. Although the trial court was meticulous in its consideration of whether or not the resale was "commercially reasonable" pursuant to §9504 requirements, the same effort was notably absent in its consideration of whether the price received was "fair and reasonable" pursuant to Rule 70(a). Since the finding required by Rule 70(a) is mandatory, Ahn is correct in arguing that Rule 52(a) remains unsatisfied.

[12] Town House counters that GRCP 52(a) does not require an overly extensive discussion on the findings of fact. However, courts have found that Rule 52(a) allows an appellate court to vacate a decision when the trial court has not provided sufficient details for the higher court to conduct an informed review. WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 2577 (2nd ed. 1994). Here, had Ahn complained specifically that the price received was in fact not "fair and reasonable" in violation of Rule 70(a), there would clearly be insufficient details for this court to conduct an informed review. In fact, there is a total lack of any specific discussion as to the price having been found to be "fair and reasonable" pursuant to Rule 70(a). Thus, although this Court declines to consider whether or not the price received was fair and reasonable, this Court holds that the trial court failed to comply with Rule 52(a) by providing the sufficient details necessary for this Court to conduct an informed review.

[13] Finally, Town House condemns Ahn for motioning for a new trial without complaining about the specificity of the findings first as is suggested by Guam R. Civ. P. 52(b). Had Ahn pursued a GRCP 52(b) motion in the court below, this appeal apparently would have been moot. Particularly in a situation such as this, the court would encourage availment of GRCP 52(b) so as to avoid wasting the parties' and the courts' time and resources. Here, the lack of such a motion by Ahn has no effect on the disposition of this case because the trial court did not comply with GRCP 52(a) by providing the mandatory finding required by Rule 70(a). In the final analysis, Rule 52(a) and Rule 70(a) together necessitates that the trial court provide more substance to its decision.

[14] The trial court is in the best position to weigh evidence, determine the credibility of witnesses' testimony, and analyze all the matters presented in this case. Though the decision rendered by the trial court was impressive, this court still holds that the trial court erred by not ensuring that the requirements of Rule 70(a) were duly considered.

CONCLUSION

[15] We **REVERSE** this decision and **REMAND** this case to the trial court ordering it to address the issue of whether the sale price was "fair and reasonable."

PETER C. SIGUENZA
Associate Justice

RICHARD H. BENSON
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice