

**IN THE SUPREME COURT OF GUAM**

**GUAM HOUSING and URBAN RENEWAL AUTHORITY,**  
**a public body corporate and politic,**  
Plaintiff

**vs.**

**PACIFIC SUPERIOR ENTERPRISES CORPORATION, and**  
Defendant-Appellant

**MANU MELWANI,**  
Defendant-Appellee

**OPINION**

**Filed: April 23, 2001**

**Cite as: 2001 Guam 08**

Supreme Court Case No. CVA00-009  
Superior Court Case No. CV0887-96

Appeal from the Superior Court of Guam  
Argued and submitted on October 27, 2000  
Hagåtña, Guam

Appearing for the Defendant-Appellant:

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice (Acting),<sup>1</sup> JOHN A. MANGLONA, Designated Justice, and MITCHELL F. THOMPSON, Justice *Pro Tempore*

**SIGUENZA, C. J.:**

[1] This is an appeal of a judgment dismissing the Complaint in Interpleader filed by the Guam Housing and Urban Renewal Authority against Pacific Superior Enterprises Corporation and Manu Melwani. The Guam Housing and Urban Renewal Authority does not appeal the Final Judgment; however, Melwani seeks review of the lower court’s dismissal. We find that the lower court erred in its conclusion that Melwani’s disavowal of surety status precluded his recovery of the interpleaded funds. Therefore, we reverse the trial court’s judgment and remand for further proceedings.

**I. FACTUAL BACKGROUND**

[2] Pacific Superior Enterprises Corporation (hereinafter, “PSEC”), a local contractor, was the successful bidder on four contracts with the Guam Housing and Urban Renewal Authority (hereinafter, “GHURA”). The contracts involved the renovation and repair of several of GHURA’s residential housing units. The approximate contract price for all four contracts was \$1,517,804. As part of the bid process, PSEC was required to provide a performance or cash bond to guarantee the completion of the projects; however, the option of providing a cash escrow in the amount of 20% of the contract price was also offered. PSEC was unable to secure a performance bond from a surety company. Consequently, it entered into an agreement with Manu Melwani (hereinafter, “Melwani”) wherein the latter agreed to provide the sum of \$303,564.80 (20% of the contract price) and in return he would receive \$257,266.00 or 16.94%

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<sup>1</sup>The Chief Justice recused himself from deciding this matter. Associate Justice Peter C. Siguenza, Jr., as the senior member of the panel, was designated as the Acting Chief Justice.

of the gross aggregate amount of the contracts (Melwani labels this as a “premium” for the service he provided). Both Melwani and PSEC claim to have directly deposited the cash bonds with GHURA.

[3] Each of the contracts entered into by PSEC and GHURA called for the completion of the projects on dates certain. The latest of these dates was September 9, 1994. However, by October 1994, none of the projects had been completed. GHURA had contacted Melwani and informed him that PSEC had abandoned the projects and was in default on the contracts. GHURA also informed Melwani that if he did not complete the projects then he would forfeit the cash bond advanced on behalf of PSEC.

[4] On or about, October 6, 1994, Melwani engaged the services of Pacific Tri-Star, Inc. (hereinafter, “Pacific Tri-Star”) to complete the contracts and allegedly expended the sum of \$272,051.01 for materials, supplies, labor and equipment towards completion of the projects. Additionally, Melwani claims that \$97,000.00 is still due and outstanding to various suppliers and laborers from the work performed by Pacific Tri-Star. Further, it appears that PSEC directed GHURA to make all payments on the subject contracts “jointly in the name of Pacific Superior and its Surety which is namely Manu P. Melwani”. On March 14, 1995, PSEC rescinded its earlier authorization that payments be made jointly to itself and Pacific American Title. It further requested that future checks be made payable solely to PSEC.<sup>2</sup>

[5] On or about April 13, 1995, counsel for Melwani informed GHURA that Melwani was the surety, that because of PSEC’s default Melwani, as surety, had to step in and take over all of the GHURA projects. Counsel further informed GHURA that the projects were now completed and requested that all of the bond money and the outstanding payments be released to Melwani.

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<sup>2</sup>Neither party explains how Pacific American Title became the co-payee.

[6] On June 14, 1996, GHURA filed a Complaint in Interpleader in the Superior Court of Guam. Named as defendants were PSEC and Melwani. The gravamen of the Complaint was that GHURA and PSEC had entered into contracts for the repair and renovation of certain housing units owned by GHURA. The subject contracts were fully performed and an aggregate amount of \$411,978.15 represented the unpaid sums due on the contracts. GHURA alleged that it believed that Melwani provided cash bonding to PSEC on the subject contracts in lieu of surety bonding, and that both Melwani and PSEC claim all of the outstanding balances on the subject contracts. Consequently, GHURA claimed that it was unable to determine the validity of the conflicting claims and who should be paid. Additionally, GHURA disclaimed any interest in the outstanding balance. The Complaint prayed for the relief that the Defendants be interpleaded and that they litigate their respective rights to the outstanding balances, that GHURA be discharged from any and all liability on account of the claims, and that it be allowed to deposit the disputed amount into the court. The Complaint further prayed that the parties be enjoined from instituting any action against GHURA for the recovery of any amounts arising from the subject contracts.

[7] On July 1, 1996, Melwani answered the Complaint and claimed that he was entitled to the sum of \$424,335.20 representing the amount expended to complete the projects by hiring other contractors, laborers and materials. He also filed a Cross-Claim against PSEC alleging that he had entered into a bonding agreement with PSEC for the subject contracts and that he was owed \$257,266 as a premium for such services.

[8] On August 8, 1996, PSEC filed both its Answer to the Cross-Claim and its Answer, Counter-claim and Third Party Claim to the Complaint in Interpleader. PSEC averred that Melwani was not its surety and claimed all amounts alleged in the Complaint. PSEC further counter-claimed against GHURA for the

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amount of \$400,384.50 for delays and non-negotiated change orders owed to PSEC by GHURA and alleged that GHURA wrongfully made partial payments on the contracts in the sum of \$266,870.43 to PSEC and Pacific Title Insurance and Escrow Company (hereinafter “PATIECO”). PSEC also filed cross-claims against Third Party Defendants, Pacific Tri-Star, Inc. and PATIECO, alleging that those entities were alter egos of Melwani and that any liability incurred by them should be assessed against Melwani. It was also alleged that Melwani misappropriated funds from a joint account he had with PSEC without prior authorization from PSEC, that Melwani prevented PSEC from paying certain taxes, that Melwani and PATIECO caused GHURA to issue six checks totalling \$266,870.43 jointly payable to PSEC and PATIECO, that Melwani and Pacific Tri-Star wrongfully asserted false claims against the funds owed by GHURA to PSEC, and that Melwani, Pacific Tri-Star, and PATIECO all engaged in willful and oppressive conduct entitling PSEC to an award of exemplary damages. Melwani thereafter filed a responsive pleading generally denying all of the allegations.

**[9]** On May 15, 1997, GHURA deposited into the registry of the Superior Court the amount of \$411,978.15 pursuant to an Order Granting Interpleader and Discharging the Plaintiff. The Order also provided that Melwani and PSEC would litigate, between themselves, their respective claims to the deposited funds. Additionally, it provided that Melwani and PSEC were enjoined from instituting or maintaining any claim or action against GHURA for the interpleaded funds.

**[10]** On August 27, 1999, PSEC filed a Motion for Summary Judgment arguing that Melwani was not a surety and therefore had not been entitled to be interpleaded and that consequently, the Order granting Interpleader and Discharging GHURA was improper. On November 19, 1999, a new trial judge issued a Decision and Order granting PSEC’s Motion for Summary Judgment. The lower court held that

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Melwani's claim against PSEC was not based upon the contracts between PSEC and GHURA, nor was it for the specific property involved in the dispute between the latter. The court then ordered that the money deposited by GHURA be released to PSEC. Final Judgment pursuant to Rule 54(b) was filed on March 17, 2000. Melwani made a Motion for Reconsideration which was denied by Judge Bordallo on April 4, 2000. Melwani filed his Notice of Appeal immediately thereafter.

## II. DISCUSSION

[11] This court has jurisdiction pursuant to Title 7 GCA §§ 3107 and 3108(a) (1994). A grant of summary judgment is reviewed *de novo*. *Guam v. Marfega Trading Co.*, 1998 Guam 4, ¶ 9; *Kim v. Hong*, 1997 Guam 11, ¶ 5; *Iizuka Corp. v. Kawasho Int'l (Guam), Inc.*, 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). "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). 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, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2510 (1986)). "In addition, the court must view the evidence and draw inferences in the light most favorable to the non-

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movant.” *Id.* (citation omitted).

### A. Motion for Reconsideration

[12] We first dispose of Melwani’s argument that the lower court committed error because it entertained PSEC’s second motion for partial summary judgment which was essentially a time-barred motion for reconsideration. As authority for the proposition, he cites to Rule 59 and 60 of the Guam Rules of Civil Procedure and this court’s holding in *Merchant v. Nanyo Realty, Inc.*, 1998 Guam 26. PSEC counters that the lower court merely reconsidered an interlocutory order and that such orders are freely reversible. We agree and conclude that the lower court did not abuse its discretion in this regard.

[13] A motion for reconsideration is reviewed for an abuse of discretion. *Merchant*, 1998 Guam 26 at ¶ 6 (citation omitted). However, it is a general rule that an order granting interpleader is interlocutory. *See Ergo Science, Inc. v. Martin*, 73 F. 3d 595, 597 (5th Cir. 1996). Interlocutory orders are subject to reconsideration by the court at any time. *Cf. Preaseau v. Prudential Ins. Co. of America*, 591 F. 2d 74, 79-80 (9th Cir. 1979) (citations omitted) (holding that an order denying summary judgment is interlocutory and subject to reconsideration at anytime).

[14] The trial court in this case analyzed the propriety of the earlier order granting interpleader status in the context of the “law of the case” doctrine. Under that doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case. *See People v. Hualde*, 1999 Guam 3, ¶ 13 (citations omitted). “The doctrine is not a limitation on a tribunal’s power but rather a guide to its discretion.” *Id.*

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A court has discretion to depart from the law of the case where: (1) the first decision was clearly erroneous; (2) an intervening change in the law has occurred; (3) the evidence on remand is substantially different; (4) other changed circumstances exist; or (5) a manifest injustice would otherwise result. Failure to apply the doctrine of the law of the case absent one of the requisite conditions constitutes an abuse of discretion.

*Id.* (citations omitted).

[15] The trial court here reasoned that, at the time the interpleader was granted, Melwani had asserted surety status. However, by the time the case was assigned to the present trial judge, Melwani was disclaiming surety status. We find no fault in the lower court's conclusion that such a change in position is a change of circumstances warranting its reconsideration of the order granting interpleader. The pleadings in this case reveal that Melwani, at the initial stages of the litigation, had grounded his claim to the interpleaded funds solely on the basis of his alleged status as a surety. Subsequent disavowal of that status could certainly have affected the propriety of the decision to allow the interpleader action to proceed. Thus, we do not find that the trial court here abused its discretion in reconsidering the order granting the interpleader.

### **B. Equitable Subrogation**

[16] Turning to the main issue of this case, specifically, whether the trial court erred in concluding that there was not a genuine issue of material fact which justified maintenance of the instant interpleader action, we conclude that there are issues of material fact which precluded the grant of summary judgment. Guam's interpleader provisions state:

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not



identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

Guam R.Civ. Pro. 22; and

[W]henver conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation, or any portion thereof, such person may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. The order of substitution may be made and the action of interpleader may be maintained, and the applicant or plaintiff be discharged from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical, but are adverse to and independent of one another.

Title 7 GCA § 12114 (1993).

[17] “The purpose of interpleader is to prevent a multiplicity of suits and double vexation.” *City of Morgan Hill v. Brown*, 71 Cal. App. 4th 1114, 1122, 84 Cal. Rptr. 2d 361, 365 (Ct. App. 1999)(citations omitted). “The right to the remedy by interpleader is founded, however, not on the consideration that a person may be subjected to double liability, but on the fact that he is threatened with double vexation in respect to one liability.” *Id.* at 1122, 84 Cal. Rptr. 2d at 365-66. Interpleader is proper if the claims relate to the same thing, debt, or duty held by the stakeholder. *Id.* at 1123, 84 Cal. Rptr. 2d at 366; *see generally Libby, McNeill and Libby v. City Nat’l Bank*, 592 F.2d 504 (9th Cir. 1978)(discussing the Federal statutory and Rule 22 interpleader actions).

[18] In *City of Morgan Hill*, the plaintiff filed a complaint in interpleader against a law firm and Seltzer, a former attorney with the firm. As a result of the representation by the firm, legal fees were owed. Seltzer, who had done work for the plaintiff while employed with the firm, made a claim to the fees as did the firm itself. The plaintiff was allowed to interplead the two parties, to deposit the funds with the court, and to be

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discharged from the case. The parties were left to litigate the ownership of the fees. Neither Seltzer nor the firm objected. Subsequently, the firm filed a summary judgment motion of the interpleader action. The lower court granted the motion and the appellate court affirmed. The court reasoned that Seltzer was unable to demonstrate that she and the firm assert the right to the same thing, debt, or duty owed by the plaintiff. *Id.* at 1123-24, 84 Cal. Rptr. 2d at 366. It concluded that all Seltzer had was a right against the firm for compensation pursuant to her internal agreements with the firm. *Id.* at 1125, 84 Cal. Rptr. 2d at 367.

[19] The interpleaded funds, the stake, represent the aggregate balance due on the four contracts that GHURA alleges as outstanding and unpaid. The record, as developed below, does not indicate that the funds deposited into the Superior Court's Registry include the cash escrow to secure PSEC's performance.

[20] Melwani asserts that under the theory of equitable subrogation, he would be entitled to the interpleaded funds. If it does result in the validity of Melwani's claim against the interpleaded funds then he, rather than PSEC, would be entitled to the funds on deposit. The difficulty here is that the trial court's justification for the dismissal of the interpleader action lay exclusively with the disavowal, by Melwani, of his status as the surety of PSEC. The lower court essentially reasoned that Melwani's claim against PSEC, and consequently upon the money deposited by GHURA, was premised upon Melwani's status as a surety of PSEC, then he would not be entitled to the specific property involved in the dispute between PSEC and GHURA when he now admits that he was not the surety of PSEC. The trial court did not address Melwani's equitable subrogation claim although PSEC seems to acknowledge that the argument was before the trial court. Our review of the record, examination of the doctrine of equitable subrogation, and the trial court's failure to address Melwani's theory leads us to conclude that genuine issues of material fact exist which preclude the grant of summary judgment in this case and consequently that the dismissal of the

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interpleader action was in error.

[21] Generally stated, equitable subrogation “allows a person who pays off an encumbrance to assume the same priority position as the holder of the previous encumbrance.” *Mort v. United States*, 86 F. 3d 890, 893 (9th Cir. 1996) (citation omitted). It is appropriate where (1) the subrogee made the payment to protect his own interest, (2) the subrogee did not act as a volunteer, (3) the subrogee was not primarily liable for the debt paid, (4) the subrogee paid off the entire debt, and (5) subrogation would not work any injustice to the rights of others. *Han v. United States*, 944 F. 2d 526, 529 (9th Cir. 1991) (citations omitted).

[22] PSEC argues that Melwani was not entitled to be equitably subrogated to its claim against GHURA because he had disavowed any status as a surety. PSEC cites to no authority for the proposition that equitable subrogation is limited to that context. To be sure, it has been applied where a surety relationship exists. *See Golden Eagle Ins. Co. v. First Nationwide Fin. Corp.*, 26 Cal. App. 4th 160, 169-70, 31 Cal. Rptr. 2d 815, 821-22 (Ct. App. 1994). However, courts have utilized the doctrine in other circumstances. *See e.g., Rhine v. Kemmerrer (In re Kemmerrer)*, 114 Cal. App. 2d 810, 251 P.2d 345 (Ct. App. 1952)(holding that equitable subrogation was available to person who had incurred expenses for the care and interment of decedent and had priority over a family allowance from decedent’s estate)<sup>3</sup>; *and Mort*, 86 F.3d at 890 (holding that equitable subrogation applied and inured to the benefit of

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<sup>3</sup>That case also observed:

Since the doctrine was first ingrafted on equity jurisprudence, it has been steadily expanding and growing in importance and extent, and is no longer, as formerly, limited to sureties and quasi sureties, but is now broad and expansive and has a very liberal application.

114 Cal. App. 2d at 814, 251 P.2d at 347 (citation omitted).

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purchasers of property which had a tax lien imposed upon it). Thus, the existence of a surety relationship is not determinative in the application of equitable subrogation.

[23] The issue then becomes whether Melwani has come forward with significant probative evidence that tends to support proper invocation of the doctrine of equitable subrogation in order to be entitled to the interpleaded funds. If so, then irrespective of whether he was or was not a surety, Melwani would be substituted in place of PSEC and all its claims for payment on the contracts. An examination of the factors outlined above leads us to conclude that Melwani may have had a valid claim to the specific funds in dispute.

[24] The facts show that Melwani's completion of the various projects was undertaken to protect the cash deposits made to GHURA that represented the guarantee of PSEC's performance of the contracts. That is, Melwani's interjection into the controversy was premised on the concern that the cash deposits would be forfeited. Melwani's actions tend to indicate that he was protecting his own interest rather than to meddle into relations between PSEC and GHURA. *Cf. Han*, 944 F. 2d at 530. Moreover, the record does not indicate that Melwani had acted as a mere volunteer when he undertook to complete the contracts. In determining whether a person acts as a volunteer, the Ninth Circuit Court of Appeals has held

A volunteer, stranger, or intermeddler is one who thrusts himself into a situation on his own initiative, and not one who becomes a party to a transaction upon the urgent petition of a person who is vitally interested, and whose rights would be sacrificed did he not respond to the importunate appeal. . . Parties may be considered volunteers if, in making a payment, they have no interest of their own to protect, they act without any obligation, legal or moral, and they act without being requested to do so by the person liable on the original obligation.

*Mort*, 86 F.3d at 894 (citations and internal quotations omitted).

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[25] Here, GHURA was operating under the assumption that Melwani was PSEC's surety in requesting that Melwani complete the projects. PSEC disputes whether it was in default of the contracts yet seems to agree that someone else, other than itself, completed the projects. It was not the person originally liable for performance, *i.e.* PSEC, who had requested that Melwani take over or otherwise ensure that completion of the projects occurred. It was GHURA who had sought Melwani's assistance; and GHURA had a vital interest in seeking completion of the renovation/construction of its housing units. Although mistaken in its belief that Melwani was a surety, GHURA sought and apparently received satisfaction from Melwani.

[26] Further, there is no dispute that Melwani was not primarily liable to GHURA for completion of the projects. The renovation and repair of GHURA residential housing units was PSEC's obligation under the contracts with GHURA. It is not disputed that PSEC's obligation under the contract with GHURA, that is, the renovation and repair of the housing units, was fully performed and its duty discharged. *Cf. Han*, 944 F.2d at 530. We see neither injustice nor prejudice in the invocation of equitable subrogation in this case. GHURA would have discharged its obligations and duty to perform under the contracts. PSEC, who ostensibly did not complete its performance under the contracts, could hardly be seen to complain that it was entitled to the balance of the contracts for work it did not perform.

[27] PSEC disputes Melwani's claim that he completed the GHURA projects. PSEC alleges that it was Pacific Tri-Star and not Melwani who should be equitably subrogated because it was Pacific Tri-Star which actually completed the contract work. While Melwani may have hired Pacific Tri-Star to provide the materials and labor to complete the contract work, that does not mean that Pacific tri-Star thereby obtained a right to receive the remaining proceeds of the GHURA contracts.

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[28] Melwani asserts that he expended funds in the amount of \$272,051.01, including amounts paid to Pacific Tri-Star, to complete PSEC's performance under the GHURA contracts. Record on Appeal, Vol. I, tab 36 (Decl. of Manu Melwani). Melwani also asserts that he owes an additional amount of \$97,000.00 to various laborers and material suppliers for those contracts. *Ibid.* Because we must review the evidence and draw inferences in the light most favorable to the non-movant, *Iizuka*, 1997 Guam 10 at ¶ 8, we conclude that Melwani may be able to invoke the doctrine of equitable subrogation to establish a claim to the interpleaded funds.

[29] PSEC's argument that Pacific Tri-Star is the party to whom equitable subrogation is appropriate completely misses the point. The doctrine of equitable subrogation:

is a broad equitable remedy, not limited to circumstances where these five factors are met, but is appropriate whenever one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter.

*Han*, 944 F. 2d at 529 (citation and internal quotations omitted).

[30] As demonstrated above, Melwani fits the description of one entitled to application of the doctrine, in contrast with Pacific Tri-Star, whose claim for payment, if any, would be against Melwani, the person who engaged its services. Pacific Tri-Star had no interest to protect under the GHURA-PSEC contracts. Pacific Tri-Star was merely the replacement contractor engaged by Melwani to complete the renovation and repairs.

[31] It should also be noted that, as Melwani's cross-claim against PSEC for the payment of a premium for the bonding agreement does not implicate the interpleaded funds, the cross-claim is thus no basis for maintaining the interpleader action. *See e.g., Libby, McNeill, and Libby*, 592 F. 2d at 509 (holding that interpleader is designed to protect a stakeholder from multiple liability only when based upon the specific

fund proffered by the interpleader plaintiff).

### C. Assignment

[32] Finally, we hold that Melwani's alternative theory for reversal of the judgment below is without merit. Melwani argued on appeal that he was entitled to the interpleaded funds by virtue of assignment of the proceeds to his benefit. Although we agree with the lower court's conclusion that there was no assignment, our decision rests on distinct grounds. The trial court had determined after review of several promissory notes provided by Melwani that no assignment of the proceeds of the contracts between PSEC and GHURA had been made to Melwani and could not serve as a basis for resisting dismissal of the interpleader action. On appeal, however, Melwani argues that a letter dated October 6, 1994, from PSEC to GHURA directing that "all payment requests made to Pacific Superior Enterprises shall be made henceforth jointly in the name of Pacific Superior and its Surety which is namely Manu P. Melwani" constituted a valid assignment. Defendant-Appellant's Excerpts of Record at 1 (Exh.6).

[33] Although no particular form of assignment is necessary, to be effective "it must be a manifestation to another person by the owner of the right indicating his intention to transfer, without further action or manifestation of intention, the right to such other person, or to a third person. . . ." *United Cal. Bank v. Behrends*, 251 Cal. App. 2d 720, 725, 60 Cal. Rptr. 128, 133 (Ct. App. 1967) (citations and internal quotations omitted). We do not see how the above-referenced letter could serve as an assignment of the contract proceeds. Nowhere on the document at issue does the word "assignment" appear. Without direction to other undisputed facts, it is difficult to conclude, on the letter itself, that an unequivocal manifestation of intent by PSEC to transfer his right to receive payment on the contracts to Melwani occurred or was even intended.

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[34] Therefore, we conclude that, on the record before us and as a matter of law, there was no assignment of the contract proceeds which would serve as a basis for reversing the dismissal of the interpleader complaint.

### III. CONCLUSION

[35] Therefore, we find that the summary judgment in favor of PSEC and the subsequent dismissal of the Complaint in Interpleader was in error. Although the lower court found that Melwani's admission that he was not the surety of PSEC precluded recovery of the interpleaded funds; it failed to address Melwani's argument that he was entitled to the funds under the theory of equitable subrogation notwithstanding the non-existence of a surety relationship. In light of the fact that there was no consideration of the viability of Melwani's claim under this theory, we determine that a genuine issue of a material fact, the ownership of the funds, precluded summary judgment. We consequently **REVERSE** the judgment below and **REMAND** the case for further proceedings consistent with this opinion.

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JOHN A. MANGLONA  
Designated Justice

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MITCHELL F. THOMPSON  
Justice *Pro Tempore*

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PETER C. SIGUENZA, JR.  
Chief Justice (Acting)