# IN THE SUPREME COURT OF GUAM

**FRANKLIN J.K. LEONG,**
Plaintiff-Appellant

**vs.**

**JUN HUA DENG AND UNITED CORPORATION, LTD.**
Defendants-Appellees

# OPINION

Supreme Court Case No.:CVA00-027
Superior Court Case No.:CV0837-99

## Cite as: 2002 Guam 2

## Filed: March 8, 2002

Appeal from the Superior Court of Guam
Argued and submitted on September 4, 2001
Hagåtña, Guam


Appearing for Plaintiff-Appellant:
Peter F. Perez, Esq.
Suite 216 Union Bank Bldg.
Hagåtña, Guam 96910
194 Hernan Cortes Ave.
Hagåtña, Guam 96910

Appearing for Defendants-Appellees:
Jon A. Visosky, Esq.
Dooley Lannen Roberts & Fowler LLP
Suite 201, Orlean Pacific Plaza
865 South Marine Drive
Tamuning, Guam 96911

BEFORE: PETER C. SIGUENZA, JR., Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; BENJAMIN J.F. CRUZ, Justice Pro Tempore.

**CARBULLIDO, J.:**

**[1]** This appeal originated from a breach of contract action brought by Plaintiff-Appellant Franklin J.K. Leong (hereinafter "Leong") against Defendants-Appellees Pacific United Corp., Ltd. and its president, Jun Hua Deng (hereinafter collectively referred to as "Deng"). The trial court entered a judgment in favor of Deng and held that there was no enforceable agreement between Leong and Deng. Leong appeals the trial court's holding and challenges the trial court's finding of an agency relationship between him and Ernie Baldeviso (hereinafter "Baldeviso"), and the trial court's admission of parol evidence regarding a condition precedent to the enforceability of the contract between Leong and Deng. We agree with the trial court's finding of an agency relationship and the admission of the parol evidence. Accordingly, we affirm the trial court's holding that there was no enforceable agreement between Leong and Deng.

**I.**

**[2]** Leong, a former resident of Guam and a resident of Hawaii, was the owner of real property described as Lot 2403, Mangilao, Guam (hereinafter "Property"). Leong, an experienced real estate broker contacted a longtime friend on Guam, Jose Pegarido (hereinafter "Pegarido"), to help him market and sell the Property. To aid Pegarido in the promotion of the Property, Leong sent him the following materials: a vicinity map, a "Relocation Sketch," a proposed development study of the Property conducted years earlier by Duenas & Associates, an environmental impact statement also prepared by Duenas & Associates, and a "Deposit Receipt, Offer, and Acceptance" form offering

to sell the Property at $1.3 million.

**[3]** Pegarido then contacted Baldeviso, a distant relative and civil engineer familiar with potential buyers and developers, to market and sell the Property. Pegarido informed Leong that Baldeviso was trying to sell the Property and that Baldeviso now had the Property-related materials that Leong gave him. After Leong became aware of Baldeviso's participation, he spoke to Baldeviso several times on the phone. Moreover, Baldeviso's involvement with Leong extended beyond the Property and included two other Leong-owned properties that were also on the market.

**[4]** Baldeviso originally contemplated developing the Property with Pegarido. However, Baldeviso was unable to develop the Property with Pegarido, and instead approached and marketed the Property to Deng, with whom Baldeviso had previously shared a business relationship. Baldeviso created and provided Deng with a project analysis of the Property. The analysis assumed that the terrain on the Property was flat, and included an estimation of the costs of development based on that assumption.

**[5]** On July 18, 1998, Baldeviso presented a form entitled "Firm Counter Offer to Purchase Real Property" (hereinafter "Counter Offer") to Deng for his signature. In Baldeviso's presence, Deng signed the Counter Offer and filled in the purchase price of $1,000,000.00, the down payment amount of $200,000.00, the balance amount of $800,000.00, and the closing and occupancy date of August 31, 1998. Notwithstanding an "Agreement to Buy" clause[1] contained in the Counter Offer, Deng testified that he understood and that Baldeviso represented to him that the Counter Offer was

[1] The clause provided the following:

> Agreement to Buy: Buyer agrees to buy the property and the terms and conditions contained herein, and that this counter offer to purchase shall be binding if accepted by Seller.

Appellant's Excerpts of Record, p. 26 (Firm Counter Offer to Purchase Real Property)

only a letter of intent subject to his inspection and approval of the Property, since he had never seen the Property.

**[6]** Shortly thereafter, Baldeviso faxed the signed Counter Offer to Leong in Hawaii. Without discussing the terms of the Counter Offer with Deng, Leong signed the Counter Offer and faxed it back to Guam on July 20, 1998. When Deng finally inspected the Property on August 27, 1998, he discovered that contrary to Baldeviso's project analysis, the terrain on the Property was not flat. To develop the Property according to Baldeviso's analysis, significant grading and additional expenses would be necessary. On September 8, 1998, Deng sent a letter to Leong informing him that Pacific United was declining the purchase of the Property because of the unsuitability of the terrain.

**[7]** On April 26, 1999, Leong filed a First Amended Complaint alleging breach of contract and requesting specific performance for the purchase of the Property. Subsequently, Leong sold the Property to Yo Shin Corporation for $760,000.00 on January 11, 2000. On October 3, 2000, after a bench trial, the trial court issued its Findings of Fact and Conclusions of Law and a Judgment in favor of Deng. The trial court found that Baldeviso was acting as an agent on behalf of Leong and that the "evidence of agency and the condition of viewing the property prior to the purchase are admissible to dispute the intent of the parties to enter into an enforceable agreement at the time of the execution of the agreement." Appellant's Excerpts of Record, p. 16 (Findings of Fact and Conclusions of Law, Oct. 3, 2000). Leong filed a timely Notice of Appeal on October 26, 2000.

## II.

**[8]** This court has jurisdiction over an appeal from a final judgment pursuant to Title 7 GCA §§ 3107, 3108 (1998).

## III.

**[9]** The essence of this appeal is to determine the enforceability of the Counter Offer, signed by both Leong and Deng. Underlying the determination of the Counter Offer's enforceability are two dispositive issues that must be initially resolved: first, whether the trial court clearly erred in finding that an agency relationship existed between Leong and Baldeviso, and second, whether the trial court erred in admitting parol evidence regarding a condition precedent to the Counter Offer.

### A. Agency Relationship

**[10]** Whether a person is the agent of another is a question of fact. *Tedtaotao v. One-Eighth Undivided Interest in Lot 98,* CV95-00147A, 1996 WL 879472, at * 4 (D. Guam App. Div. Sept. 30, 1996); *Penthouse Int'l, Ltd. v. Barnes*, 792 F.2d 943, 947 (9th Cir. 1986) (citation omitted). We review findings of fact made by the trial court under a clearly erroneous standard. *Apana v. Rosario*, 2000 Guam 7, ¶ 9 (citation omitted); *Yang v. Hong,* 1998 Guam 9, ¶ 4. "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." *Yang*, 1998 Guam 9 at ¶ 7. Therefore, we will examine the record to determine whether the trial court clearly erred in finding that Baldeviso was Leong's agent with the authority to sell the Property and to agree that the sale of the Property was conditioned upon Deng's inspection and approval.

**[11]** Title 18 of the Guam Code Annotated characterizes an agency relationship as either actual or ostensible. *See* Title 18 GCA § 20104 (1992). The distinction between actual and an ostensible agency depends on whose perspective is examined. In contrast to an actual agency, which examines

the agent's viewpoint, an ostensible agency examines a third person's perspective.[2] This distinction is reflected from the following definitions of both actual and ostensible authority:

> Title 18 GCA § 20213 defines an actual authority as:
>
> "Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, *allows the agent to believe himself to possess*."

Title 18 GCA § 20213 (1992) (emphasis added). Title 18 GCA § 20214 defines ostensible authority as:

> "Ostensible authority is such as a principal intentionally, or by want of ordinary care, causes or *allows a third person to believe the agent to posses."*

18 GCA § 20214 (1992) (emphasis added).

**[12]** In either an actual or ostensible agency, the "principal need not expressly confer authority upon the agent." *Tedtaotao*, 1996 WL 879472 at * 4 (citing *Tomerlin v. Canadian Indem. Co.*, 394 P. 2d 571, 575, 61 Cal. 2d 638, 644 (1964)). Consequently, "both actual and ostensible authority may be implied if the principal's conduct causes anyone to believe that authority has been conferred upon the agent." *Id*. The significance of finding an agency relationship is that the agent's acts and representations to a third party are imputed to his or her principal. *See* Title 18 GCA § 20301 (1992); *see also Middlekauff v. Lake Cascade, Inc.*, 719 P.2d 1169, 1174 (Idaho 1986) (quoting *Branom v. Smith Frozen Foods of Idaho, Inc.*, 365 P.2d 958, 963 (Idaho 1961)) (stating that the principal "is bound by the acts of their agents which fall within the apparent scope of the authority of the agents. . . .").

[2] "An agency is actual when the agent is really employed by the principal." Title 18 GCA § 20105 (1992). "An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." Title 18 GCA § 20106 (1992).

**[13]** In the instant case, the trial court found that "Baldeviso, for the purposes of his conduct involving the Property, was an agent for the Plaintiff." Appellant's Excerpts of Record, p. 13 (Findings of Fact and Conclusions of Law, Oct. 3, 2000). The court's finding was based on evidence that Leong communicated with Baldeviso regarding the sale of the Property and that Deng believed Baldeviso had authority to sell the Property. *Id*. at 16. The court further found evidence that Deng relied on Baldeviso's assertions that the alleged contract to buy the Property was not enforceable until Deng could inspect and approve the Property. *Id*. Thus, the trial court concluded that Leong "by want of ordinary care conferred actual authority upon Baldeviso to act as his agent, and that . . . [Deng's] reliance on Baldeviso's representations are such that Baldeviso possessed actual authority to act on . . . " Leong's behalf. From our examination of the record, we hold that the trial court's finding that an actual agency relationship existed between Leong and Baldeviso was not clearly erroneous.

**[14]** Although Leong does not acknowledge that Baldeviso was his agent, as reflected above, the finding of an agency relationship requires an examination of either the agent's or the third person's perspective based on the principal's actions. *See* 18 GCA §§ 20213- 14. Because the trial court found an actual agency relationship, the focus of our examination is on Leong's actions, as the principal, and how his actions may have been perceived by Baldeviso, the alleged agent. Based on our examination of Leong's actions, we find that it was reasonable for Baldeviso to believe that he was Leong's agent. Leong was aware that Pegarido handed over the Property-related materials to Baldeviso and that Baldeviso was "advertising" the Property on Leong's behalf. Transcript vol. I, p. 45 (Bench Trial, March 9, 2000). Not only did Leong fail to oppose Baldeviso's receipt of the materials, Leong admitted "that . . . [he] felt comfortable with" Baldeviso's participation in the sale

of the Property. Transcript vol. I, p. 48 (Bench Trial, March 9, 2000). Even though Leong could not "recall how many times he spoke with Baldeviso . . . ," he admits to speaking with Baldeviso regarding the Property. Transcript vol. I, p. 46 (Bench Trial, March 9, 2000). Moreover, Leong also knew that Baldeviso created a project analysis of the Property and that Baldeviso was therefore making representations regarding the Property's potential for development. Transcript vol. I, p. 46 (Bench Trial, March 9, 2000).

**[15]** In his brief, Leong implies that Baldeviso was working as a consultant for Deng and not as an agent for him as evidenced by Baldeviso and Deng's previous business relationship. Appellant's Opening Brief, p. 21; Appellant's Reply Brief, p. 3. We find such implications unpersuasive in the face of Baldeviso's admission that he was also helping Leong market two other Leong properties. Transcript vol. II, p. 70-72 (Bench Trial, March 10, 2000). Moreover, with respect to the subject Property, it was Baldeviso who initiated the contact with Deng. Transcript vol. II, p. 3 (Bench Trial, March 10, 2000). Although Leong was cognizant that negotiations were being conducted on Guam regarding the Property, he never made any effort to contact Deng, a prospective buyer in this million-dollar transaction. Transcript vol. I, pp. 48, 57 (bench trial, March 9, 2000). When Leong received the facsimile regarding the Counter Offer, he was not at all "curious" as to whom the agreement was with. Transcript vol. I, pp. 49-53 (Bench Trial, March 9, 2000). Leong's seemingly lack of desire to contact the potential buyer of his Property, whom he had no previous relationship, reflects Leong's reliance on Baldeviso in the sale and representation of the Property. Therefore, the trial court's finding that Leong and Baldeviso had an actual agency relationship was not clearly erroneous. From Leong's actions, it was reasonable for Baldeviso to believe that he was conferred the authority to sell the Property on Leong's behalf. Consequently, representations that Baldeviso

may have made to Deng regarding the Property would be imputed to Leong.

**B. Parol Evidence**

**[16]** Whether parol evidence was properly admitted is a conclusion of law. *See Craftworld Interiors, Inc. v. King Enter.*, 2000 Guam ¶ 17. "The existence of a condition precedent is a question of fact." *D'Angelo v. Schultz*, 823 P.2d 997, 1001 (Or. Ct. App. 1992) (citations omitted). We review a mixed question of fact and law *de novo. Town House Dep't. Store v. Ahn*, 2000 Guam 29, ¶ 6 (citations omitted).

**[17]** The general rule is that a written contract "supercedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." Title 18 GCA § 86107 (1992). In interpreting such a contract, "the intention of the parties is to be ascertained from the writing alone, if possible . . . ." Title 18 GCA § 87105 (1992). An exception to this general rule is when "the taking effect of the contract, or any of its provisions, [is] contingent upon the happening of a future event . . . . " *Paratore v. Scharetg*, 128 P.2d 560, 561, 53 Cal. App. 2d 710, 713 (Ct. App. 1942). In that situation, "[p]arol evidence may be admitted to show the cause of [the contracts] nonperformance either in whole or in part . . . [and] may necessitate the admission in evidence of a preceding or contemporaneous oral agreement." *Id*.

**[18]** Although "parol evidence may be used to show a condition precedent[3] to a contract," *United States v. Everett Monte Cristo Hotel, Inc.*, 524 F.2d 127, 130 (9th Cir. 1975) (citation omitted) (footnote added), in determining whether parol evidence of a condition precedent is admissible, some courts have made a distinction between a condition precedent challenging the validity of a

[3] "A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed." Title 18 GCA § 80403 (1992).

contract and a condition precedent changing the terms of the agreement. *Hirsch v. S. Berger Imp. & Mfg. Corp.*, 414 N.Y.S.2d 324, 326-327 (1979). While parol evidence may be admitted to show the existence of a condition to the legal effectiveness of a written agreement, parol evidence may not be admitted to show a condition precedent, which contradicts, varies, or negates the terms of the written agreement. *See Hicks v. Bush*, 180 N.E. 2d 425, 427 (N.Y. 1962); *see also Meadow Brook Nat'l Bank v. Bzura*, 247 N.Y.S. 2d 787, 789-790 (1964); *In re Prior Bros., Inc.*, 632 P.2d 522, 526 (Wash. Ct. App. 1981) (citing to *Nelson Equip. Co. v. Goodman*, 254 P.2d 727, 729 (Wash. 1953)) ("[P]arol evidence may be admitted to show there is a condition precedent to the contract coming into existence."). Because a condition precedent that challenges the validity of the contract does "not constitute an oral contradiction or variation of the written instrument," parol evidence of such a condition is admissible. *Haraka v. Datry*, 252 S.E. 2d 71, 72 (Ga. Ct. App. 1979) (citations omitted); *see also Smilow v. Dickerson*, 54 A.2d 883, 886 (Pa. 1947). Guam's version of the parol evidence rule codifies the condition precedent exception to the general parol evidence rule. Title 6 GCA § 2511 (1994) states in pertinent part:

> When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, *except* in the following cases:
>
> 1. Where a mistake or imperfection of the writing is put in issue by the pleadings; or
> 2. Where the *validity* of the agreement is the fact in dispute.
>
> But this Section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in § 2515[4] [Circumstances

[4] Title 6 GCA § 2515 provides:

> For the proper construction of an instrument, the circumstances under which it is made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge or jury be placed in the position of those whose language he is or they are to interpret.

> to be Considered], or to explain an extrinsic ambiguity, or to establish illegality or fraud.

Title 6 G.C.A. § 2511 (1994) (*emphasis* and footnote added).

**[19]** In the case at bar, the trial court held that the "enforceability of the contract was contingent upon an inspection and approval by . . . [Deng]." Appellant's Excerpts of Record, p. 16 (Findings of Fact and Conclusions of Law, Oct. 3, 2000). The court's holding was grounded on its finding that "evidence of agency and the condition of viewing the property prior to the purchase [were] admissible to dispute the intent of the parties to enter into an enforceable agreement at the time of the execution of the contract." Appellant's Excerpts of Record, p. 16 (Findings of Fact and Conclusions of Law, Oct. 3, 2000). We agree.

**[20]** Although Deng signed the Counter Offer, an examination of the testimony of the three key players (Deng, Baldeviso, and Leong) in this transaction supports Deng's contention that the Counter Offer would not become valid until he inspected and approved the Property. We begin with Deng, who testified that he told Baldeviso that notwithstanding his signature in the Counter Offer, he needed to look at the Property before he "decide[d] anything." Transcript vol. II, p. 5 (Bench Trial, March 10, 2000). Deng further testified that Baldeviso told him, "No problem. After you see the property then you'll decide to pay or not to pay." Transcript vol. II, p. 5 (Bench Trial, March 10, 2000). Because neither Deng nor Baldeviso had ever seen the Property, Deng also claims that after he signed the Counter Offer, he rushed and pushed Baldeviso "to make arrangement to look at the property." Transcript vol. II, p. 5 (Bench Trial, March 10, 2000).

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Title 6 GCA § 2515 (1994).

**[21]** Next, we examine Baldeviso's testimony, which contains much ambiguity as reflected in the following: "My understanding is, [Deng] signed this, he wants to buy the property but he wants to see the property as scheduled so I did the scheduling. But I don't know what's in his mind. If he will - - it will turn around he will go ahead, I have no idea of that." Transcript vol. II, pp. 78-79 (Bench Trial, March 10, 2000). Although Baldeviso's responses were ambiguous, he did admit to two important points that would support Deng's assertion that Baldeviso had the authority to agree to the inspection and approval condition and that Baldeviso did in fact agree to such a condition. First, Baldeviso testified that Leong did not try to limit Baldeviso in what he was "trying to do in order to market or sell the property," which implies that Baldeviso would have the authority to agree to the inspection and approval condition. Transcript vol. II, pp. 66-67 (Bench Trial, March 10, 2000). Second, Baldeviso also testified that, "[b]efore Mr. Deng signed this counter offer, he mentioned to me that if I can schedule to see the property together," which reflects Deng's intent to see the Property even before he signed the Counter Offer. Transcript vol. II, p. 77 (Bench Trial, March 10, 2000).

**[22]** Lastly, we review the testimony of Leong, who admitted that he was an experienced real estate agent on Guam. Leong testified that it would be normal for the buyer to inspect the property prior to purchasing it. Transcript vol. I, p. 31-32 (Bench Trial, March 9, 2000). Leong further admitted that he was aware that no one saw the Property before July 18, 1998, and that he had never participated in a sale or known anyone to have bought a "million-dollar piece of property without seeing it first." Transcript vol. I, p. 59 (Bench Trial, March 9, 2000). In light of Leong's experience, Leong's testimony evidences the trial court's finding that Leong did not have a "reasonable [reliance] on the agreement knowing that . . . [Deng] had not had an opportunity to view

the Property." Appellant's Excerpts of Record, p. 13 (Findings of Fact and Conclusions of Law, Oct. 3, 2000).

**[23]** In essence, an examination of the record, with a special focus on the testimonies of Deng, Baldeviso, and Leong, reveals that the inspection and approval of the Property by Deng was a condition precedent of the Counter Offer taking effect. Because the condition precedent was of the type that affected the validity of the contract, we hold that the trial court did not err when it admitted parol evidence of that condition precedent. *See Prior Bros.* 632 P.2d at 526 (citations omitted) (finding that "parol evidence may be admitted to determine the issue of the validity of a contract or to impeach its creation.").

**IV.**

**[24]** We hold that the trial court's finding that an agency relationship existed between Leong and Baldeviso was not clearly erroneous. We also hold that the trial court did not err when it admitted parol evidence with respect to the condition precedent that disputed the validity of the Counter Offer. Consequently, since Deng's disapproval of the Property is not disputed, the condition precedent requiring Deng's prior approval of the Property was not satisfied. Therefore, the Counter Offer was not enforceable. The trial court is **AFFIRMED.**[5]

F. PHILIP CARBULLIDO
Associate Justice

PETER C. SIGUENZA, JR.
Chief Justice

[5] Justice *Pro Tempore* Benjamin J.F. Cruz dissents from the majority opinion and will file his dissent at a later date.