IN THE SUPREME COURT OF GUAM

NISSAN MOTOR CORPORATION IN GUAM
Plaintiff-Appellee/Cross-Appellant,

vs.

SEA STAR GROUP INC.
Defendant-Appellant/Cross-Appellee.

Supreme Court Case No. CVA01-001
Superior Court Case No. CV1047-98

OPINION

Filed: April 9, 2002

Cite as: 2002 Guam 5

Appeal from the Superior Court of Guam
Argued and submitted on December 11, 2001
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice[1], JOHN A. MANGLONA, Designated Justice, and ANITA A. SUKOLA, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] Plaintiff-Appellee/Cross-Appellant Nissan Motor Corporation (hereinafter "Nissan") filed suit against Defendant-Appellant/Cross-Appellee Sea Star Group (hereinafter "Sea Star") to recover for property damage suffered by Nissan as a result of Sea Star's negligence. The trial court found Sea Star negligent, and awarded Nissan the estimated cost of repair for eleven of the fourteen damaged vehicles. The trial court also refused to award Nissan damages for its lost profits, finding that sale prices in the car industry are too speculative for measuring loss of income. Sea Star and Nissan appeal. We find that the trial court did not err in its findings, and therefore affirm the trial court's judgment.

I.

[2] Nissan sought recovery for fourteen vehicles that were damaged during Typhoon Paka. The vehicles were among several hundred new vehicles stored by Nissan on a lot adjacent to property owned by Sea Star. Sea Star maintained a twenty-seven-foot aluminum storage container on its property that was used as a satellite office. In preparing for the arrival of the typhoon, Sea Star attempted to secure the container by moving it up against a cyclone fence and pinning it to the ground by bending four rebar stakes around the container's edges. During Typhoon Paka's passage, the container was picked up and carried approximately 130 feet. It eventually landed on the fence separating Nissan and Sea Star's lots, coming to rest against the rear of five Nissan vehicles. Nissan also alleges that nine other vehicles suffered damage from the container's flying debris.

[1] The Chief Justice recused himself from hearing this matter. Justice Carbullido, as the senior member of the panel, was designated as the Acting Chief Justice.

[3] Nissan filed suit against Sea Star arguing that Sea Star negligently failed to secure its property and that this negligence resulted in the damage to Nissan's property. The trial court found in favor of Nissan, concluding that Sea Star failed to exercise ordinary care in securing the container. Nissan was awarded the estimated cost of repair on eleven of the fourteen damaged vehicles. With respect to the remaining three vehicles, the trial court determined that Nissan failed to establish that Sea Star was the proximate cause of the damage. This appeal followed.

II.

[4] This court maintains jurisdiction over final judgments of the Superior Court. Title 7 GCA §§ 3107, 3108(a) (1994).

III.

A. Sea Star's Appeal

[5] Sea Star asserts three findings by the trial court were in error: (1) that the maximum wind speed during Typhoon Paka was 150 miles per hour (mph); (2) that Sea Star owed Nissan a duty of care; and (3) that Sea Star failed to exercise reasonable care in securing its container.

1. Wind speed

[6] Sea Star argues that the trial court erred in finding that the maximum speed of Typhoon Paka's winds was 150 mph. We disagree. A lower court's findings of fact are reviewed for clear error. *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 (citation omitted).

[7] Experts for both parties did place the speed of Typhoon Paka's wind gusts at over 150 mph. Transcript vol. --, p. 157 (Bench Trial, July 17, 2000); Transcript vol. --, p. 28 (Continued Bench Trial, July 18, 2000). However, eyewitness testimony presented during the trial recalled that Nissan's container was tossed by the Typhoon's strong winds, and not specifically by a wind gust. Transcript vol. --, pp. 38-39 (Bench Trial, July 17, 2000). In light of this testimony, a specific finding by the trail court as to the maximum speed of Typhoon Paka's wind gusts was not necessary.

[8] The trial court's finding that "Typhoon Paka struck Guam with winds over one hundred and twenty-five miles per hour (125 mph) up to one hundred and fifty miles per hour (150 mph)" can be construed as a statement limited to the storm's *sustained* wind speeds. Experts for both parties testified that Typhoon Paka had sustained winds within the 125 mph and 150 mph range. Transcript vol. --, p. 154 (Bench Trial, July 17, 2000); Transcript vol. --, pp. 28-29, 37 (Continued Bench Trial, July 18, 2000). Thus, the evidence provided by both experts would support a finding by the trial court that the maximum sustained winds of Typhoon Paka were 150 mph.

[9] We do not have a definite and firm conviction that the trial court's finding as to maximum wind speeds was erroneous. Even if we were to conclude that the trial court's finding was in error, the error would be harmless, since extraordinary wind speed will not act to relieve Sea Star of its liability, as will be discussed further.

2. Duty

[10] Sea Star argues that policy considerations support relieving it of its duty to act as a reasonable landowner. "[T]he existence of a legal duty in a given factual situation is a question of law . . . ." *Andrews v. Wells*, 251 Cal. Rptr. 344, 347, 204 Cal. App. 3d 533, 538 (Ct. App. 1988). Questions of law are reviewed *de novo*. *Town House Dep't Stores, Inc. v. Ahn*, 2000 Guam 29, ¶ 5.

[11] Under Guam law, every landowner owes a duty to exercise reasonable care in the management of his property. Title 18 GCA § 90107 (1995). Section 90107 is derived from and identical in language to California Civil Code section 1714. 18 GCA § 90107; CAL. CIV. CODE § 1714 (West 1998). In *Rowland v. Christian*, 443 P.2d 561, 70 Cal. Rtpr. 97 (1968), *superceded by statute as stated in Perez v. S. Pac. Transp. Co.*, 267 Cal. Rptr. 100 (Cal. App. Ct. 1990), the Supreme Court of California recognized that a departure from the standard set forth in section 1714 required a balancing of several policy factors. *Rowland*, 443 P.2d at 564, 69 Cal. 2d at 100. Specifically, these factors are:

> the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Id.

[12] While we find that the above factors present sound policy arguments for departing from the reasonable person standard of care, applying these factors to the matter at hand does not persuade us that Sea Star should be relieved of its duty to Nissan. Typhoons are indigenous to this geographic region and frequently affect Guam. Moreover, damage caused by flying debris is one of the major threats posed during any typhoon. Thus, the harm suffered by Nissan was a foreseeable type of harm caused by a foreseeable type of event. There is also a direct and close connection between Sea Star's conduct and Nissan's injury. Sea Star's failure to properly secure the container allowed the container to be picked up by the storm's wind and moved onto Nissan's property, causing damage.

[13] Recognizing a duty among landowners to secure their property during a typhoon admittedly imposes a burden on the community, but it is not an extraordinary burden. Contrary to Sea Star's argument, a finding of duty in this instance does not effectively give rise to strict liability. We are not

adopting the position that during a typhoon landowners have an absolute duty to keep debris and other items from flying off their property and onto their neighbor's property. The duty imposed is a limited one, *to wit*, landowners must exercise reasonable care in securing their property when faced with an approaching typhoon. Given that Guam is often the target of passing typhoons, it makes good policy sense to hold landowners accountable when they fail to reasonably secure their property.

[14] The balance of factors does not present a strong policy reason for relieving Sea Star of its statutorily imposed duty. We decline to adopt as a matter of law the proposition that the mere occurrence of a typhoon bearing super-strength winds relieves Guam landowners of their duty to reasonably secure their property.

3. Causation

[15] The issues raised by Sea Star in its duty argument are more appropriately addressed by a discussion of causation. When a defendant argues that some force of nature has acted, and that this force should relieve the defendant of his liability, he is raising a defense that courts have labeled an "act of God." The theory underlying an act of God defense is that a defendant should not be held liable for an act that he could not foresee or protect against. *See* 6 AM. JUR. 3D *Proof of Facts* § 319, § 2 (1989); *see also Lee v. Mobile Oil Corp.*, 452 P.2d 857, 860 (Kan. 1969) ("When harm results from the intervention of an unforeseeable force of nature liability does not fall on the defendant."); *Fairbrother v. Wiley's, Inc.*, 331 P.2d 330, 336 (Kan. 1958) ("an 'Act of God' or '*vis major*' will shield a defendant from liability. One is not required to anticipate such phenomena, since their effects cannot be prevented by any reasonable means . . . ."). This raises an issue of causation, not duty. *See* 6 AM. JUR. 3D *Proof of Facts* § 319, § 7 (1989) ("Where the plaintiff asserts that the defendant was negligent in causing an injury or loss, the question whether liability can be avoided because of the occurrence of an act of God generally depends on how the matter of *causation* is resolved. . . . The importance of *causation* in determining the effect of

an act of God on a defendant's liability for negligence cannot be overstated.") (emphasis added); *see also Mancuso v. S. Cal. Edison Co.*, 283 Cal. Rptr. 300, 310 & n.18, 232 Cal. App. 3d 88, 103 & n.18 (Ct. App. 1991); *Fairbrother*, 331 P.2d at 336-37.

[16] Because we find that the act of God defense more appropriately addresses the substance of Sea Star's duty argument, we must review the trial court's finding of causation.[2] Determining whether an act of God severed the causal link, thereby relieving a defendant of liability is a factual issue, *Lee*, 452 P.2d at 861 ("Whether a particular flood is of such extraordinary and unprecedented nature as to constitute an 'act of God' is a question of fact for the jury."); *see also Olan Mills, Inc. v. Cannon Aircraft Executive Terminal, Inc.*, 160 S.E.2d 735, 743 (N.C. 1968) ("Proximate cause is ordinarily a question for the jury. It is to be determined as a fact from the attendant circumstances."), and thus reviewed for clear error, *Yang*, 1998 Guam 9 at ¶ 4.

[17] In order for an act of God to relieve a defendant of negligence liability, it must be shown that: (1) that the act is "so extraordinary that the history of climatic variations and other conditions of the particular locality afforded no reasonable warning of it" *Olan Mills*, 160 S.E.2d at 741; (2) that the defendant's own negligence did not combine with the act of God to cause the plaintiff's injury; and (3) that no precaution on the defendant's part could have prevented the injury. *See* 6 AM. JUR. 3D *Proof of Facts* § 319, § 1 (1989) (discussing the three elements necessary to sustain an act of God defense); *see also Mancuso*, 283

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[2] We note that Sea Star did raise this issue directly in its brief, citing to the Restatement (Second) of Torts § 451, which provides:

> An intervening operation of a force of nature without which the other's harm would not have resulted from the actor's negligent conduct prevents the actor from being liable for the harm, if
>
> (a) the operation of the force of nature is extraordinary, and
>
> (b) the harm resulting from it is of a kind different from that the likelihood of which made the actor's conduct negligent.

RESTATEMENT (SECOND) OF TORTS § 451 (1965). Sea Star argued that even assuming it was negligent in securing the container, the intervention of Typhoon Paka's extraordinary winds should prevent a finding of liability.

Cal. Rptr. at 310, 232 Cal. App. 3d at 103-04 ("The defense that an event was an 'act of God' exists and may be asserted in those limited cases where an *unanticipated* natural occurrence is the *sole* cause of a plaintiff's injury or damage."); *S. Pac. Co. v. Loden*, 508 P.2d 347, 351-52 (Ariz. Ct. App. 1973).

[18] A review of the record reveals that substantial testimony was presented before the trial court establishing the common occurrence of typhoons on Guam and in the surrounding area. Transcript, vol. --, pp. 13, 51, 155-56, 171-72 (Bench Trial, July 17, 2000). The direct passage of a typhoon with super-typhoon strength winds is not an unprecedented occurrence. Transcript, vol. --, pp. 159-60 (Bench Trial, July 17, 2000) (testimony that the rate of return for super-typhoons on Guam is approximately once every twenty years). Although Typhoon Paka was one of the larger typhoons to hit Guam in the last several years, a storm "cannot be termed an act of God merely because it is of unusual or more than average intensity." *Loden*, 508 P.2d at 352. Furthermore, the testimony indicated that Sea Star was given at least forty-eight hours advance warning of the storm and its anticipated strength. Transcript, vol. --, pp. 151, 170 (Bench Trial, July 17, 2000). Given that residents received forewarning of the storm's intensity and approach, and considering the history of typhoons on Guam, we find that "[t]he storm was not 'so far outside the range of human experience that ordinary care did not require that it should be anticipated or provided against.'" *Olan Mills*, 160 S.E.2d at 741 (citation omitted).

[19] The record also indicates that Sea Star's conduct combined with the winds of Typhoon Paka to contribute to Nissan's damage. If a defendant's negligence combines with a force of nature to produce injury, then the defendant may still be held liable. *Rubin v. Appel*, 194 So. 2d 318, 319 (Fl. Dist. Ct. App. 1967); *see also Mancuso*, 283 Cal. Rptr. at 310, 232 Cal. App. 3d at 104 ("If defendant's negligence combines with an 'act of God' to cause injury, liability will result.") (citation omitted); *Olan Mills*, 160 S.E.2d at 741 ("He whose negligence joins with the act of God in producing injury is liable therefor.") (citation omitted); *Fairbrother*, 331 P.2d at 336. Here, the trial court found that Sea Star failed to

exercise ordinary care in securing the container in preparation of the storm's arrival. Testimony by Nissan's expert witness suggested that the use of rebar to pin down the corners of a container is not a reasonable method of securing it. Transcript, vol. --, pp. 57-58 (Bench Trial, July 17, 2000). Both Nissan and Sea Star's experts discussed an alternative method of securing the container, known as the "chain and bind" or "blocking" method. Transcript, vol. --, pp. 57, 104-05 (Bench Trial, July 17, 2000). This method involves chaining or wiring a container to other, heavier objects, such as heavy equipment or cemented fifty-five gallon drums. Transcript, vol. --, pp. 57, 104-05 (Bench Trial, July 17, 2000). The testimony supported a finding by the trial court that it was Sea Star's failure to utilize a better method of securing its container, together with the winds of Typhoon Paka, that caused the damage to Nissan's property.

[20] Last, it must be shown that "no reasonable human foresight, prudence, diligence, and care" could have prevented Nissan's injury. *Fairbrother*, 331 P.2d at 336 (citation omitted); *see also Loden*, 508 P.2d at 352 ("Ordinary, expectable, and gradual weather conditions are not regarded as acts of God . . . because man had the opportunity to control their effects.") (citation omitted). As discussed above, Sea Star had available to it a more reasonable method of securing the container. Nissan's expert testified that use of the chain and bind method has prevented him from losing any of his containers. Transcript, vol. --, p. 60 (Bench Trial, July 17, 2000). Sea Star's expert witness testified that a properly secured container is less likely to blow or tumble during a typhoon. *Id.* at 121. The court could therefore find that had Sea Star utilized the chain and bind method, the container would not have been picked up by Typhoon Paka's winds, thereby preventing Nissan's injury. Because Sea Star could have prevented its container from harming Nissan and because Sea Star had a duty to do so, the act of God defense does not relieve Sea Star of liability.

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[21] After reviewing the record, this court does not have a definite and firm conviction that the trial court committed error. To the contrary, the record reveals significant support for the trial court's finding that it was the unreasonable conduct of Sea Star which caused Nissan's injury and that the intervention of Typhoon Paka's winds was not so extraordinary so as to supercede Sea Star's liability. As noted in *Rubin*, "it is within the knowledge of all who have long resided in this area that we are occasionally subjected to winds of hurricane force, and that these winds have a tendency to . . . send unsecured objects flying about. These storms are not beyond reasonable anticipation." *Rubin*, 194 So. 2d at 319. Thus, Typhoon Paka's extraordinary winds did not constitute an act of God which would have relieved Sea Star of its liability.

4. Breach

[22] Sea Star asserts that the trial court erred in finding that it acted unreasonably in securing the container. Breach is a factual question, *Andrews*, 251 Cal. Rptr. at 347, 204 Cal. App. 3d at 538, and thus reviewed for clear error, *Yang*, 1998 Guam 9 at ¶ 4. As cited above, the transcripts reveal that Sea Star knew the Typhoon was coming and took steps to secure its property in order to avoid objects getting blown away. It was the method utilized by Sea Star that is the focus of the breach question. Evidence before the trial court revealed that an alternative method of securing the container was available to Sea Star, but that Sea Star did not to utilize it. Nissan's expert testified that the use of rebar was not a reasonable means of securing the container, and that the chain and bind method was a more reasonable way to prevent the container from taking flight during the Typhoon. Transcript, vol. --, p. 56-59 (Bench Trial, July 17, 2000). Furthermore, Sea Star's expert testified that he secured his own containers by binding them to heavier objects. Transcript, vol. --, p. 104 (Bench Trial, July 17, 2000). Relying on the testimony of these experts, the trial court concluded that a reasonable landowner would secure a container using the chain and bind method. Thus, the evidence supports a finding that Sea Star did not exercise ordinary care when it

simply pinned its container to the ground with rebar instead of securing the container to heavier equipment.[3] Our review of the record does not create a definite and firm conviction that the trial court's findings were in error.

B. Nissan's Cross-Appeal

[23] Nissan appeals from the trial court's award of damages on eleven vehicles, and asks this court to award it damages for the vehicles' diminution in value. Nissan also appeals the trial court's denial of recovery for the remaining three vehicles, arguing that the trial court erred in finding that Nissan failed to establish proximate cause.

1. Damages

[24] The trial court denied Nissan recovery for its loss of income on the ground that measuring the loss based on Nissan's listed wholesale price was too speculative. Nissan counters by arguing that its request for "loss of income" was in essence a request for "diminution in value" damages. Nissan further argues that since the evidence revealed that repairs did not restore the vehicles to their pre-tort condition, Nissan is entitled to recover the vehicles' depreciated value in addition to the cost of repair.

[25] Nissan is correct in its assertion that in cases of automobile damage, recovery is often permitted for both the cost of repair and any remaining depreciation in the vehicle's value. *See Merchant Shippers Ass'n v. Kellogg Express & Draying Co.*, 170 P.2d 923, 926-27, 28 Cal. 2d 594, 600 (1946); *see also Byrne v. W. Pipe & Steel Co.*, 253 P.2d 776, 777, 81 Cal. App. 270, 274 (Dist. Ct. App. 1927); *Brown v. Rowland*, 104 P.2d 138, 141, 40 Cal. App. 2d Supp. 825, 828 (App. Dep't Super. Ct. 1940).

[3] In affirming the trial court's finding of breach, we emphasize the limited scope of our ruling. As an appellate court, our role is confined to reviewing findings of facts for clear error. The trial court here found it unreasonable for a commercial landowner to pin down a twenty-seven foot aluminum container to a coral base with number four rebar. The record before us supports this finding. However, this case should not be utilized as the catalyst for unreasonably holding commercial and residential landowners liable for property damage caused by flying debris during a typhoon. Our findings are confined to the facts of this case.

However, Nissan's claim to diminution in value damages suffers a fundamental defect.

[26] In order for Nissan to seek recovery for diminution in value damages, it should have raised the issue before the trial court. *See B.M. Co. v. Avery*, 2001 Guam 27, ¶ 32-33 (rejecting a claim for diminution in value damages because the relief was requested for the first time on appeal). Nissan argues that it established diminution in value damages at the trial level by presenting the court with evidence of its loss of income. In essence, Nissan's position is that its calculation for "loss of income" was in substance a measure of each vehicle's "diminution in value." Even if we accept Nissan's position and assume the matter was raised at the trial level, Nissan's argument is flawed. What Nissan presents to this court as a simple re-characterization of damages is in actuality a misapplication of damage principles.

[27] Loss of income is "measured by the amount of profit that a plaintiff could prove would have been generated had the plaintiff not been deprived of the use of the property . . . ." *United Trucking Rental Equip. Leasing, Inc. v. Kleenco Corp.*, 929 P.2d 99, 109 (Haw. Ct. App. 1996). As a retailer, Nissan's loss of income is measured by the price it could have sold a vehicle for before it was damaged versus the price it is able to sell a vehicle for after it is damaged. Nissan presented the trial court with a listing of the "wholesale price" of each vehicle damaged by Sea Star's negligence. Appellee/Cross-Appellant's Supp. Excerpts of Record, p. 38 (Exhibit 56). Nissan defines "wholesale price" as "the final selling price of a vehicle. . . . the bottom line price that we'd normally sell this vehicle for, every day." Transcript, vol. --, p. 19 (Reporter's Transcript of Extract of Proceedings on Appeal, July 17, 2000). Thus, Nissan's "wholesale price" is actually the retail or selling price of a vehicle, i.e., the price a *consumer* would have to pay to purchase the vehicle.

[28] In contrast, "wholesale price," as the term is generally used, refers to the price that a *retailer* pays to purchase the vehicle in a wholesale market. *See United Trucking*, 929 P.2d at 107 (defining retailer and explaining that retailers purchase goods on a wholesale market as opposed to retail market). The

distinction is important because when a retailer's goods are damaged, the measure of loss is different than when a consumer's goods are damaged. *See id.* ("Whether the retail or wholesale price will govern when calculating damages depends on the replacement market available to the injured party.") (citation omitted). Because the vehicles damaged on the Nissan lot were being held as stock, "the measure of damages is the difference between what the wholesale price of the car . . . would be immediately before the collision and the market value immediately after the damage occurred." *Whaley v. Crutchfield*, 294 S.W.2d 775, 779 (Ark. 1956); *see also Chevron Chemical Co. v. Streett Indus., Inc.*, 534 F. Supp. 801, 803 (E.D. Mo. 1982). *But see Brown*, 104 P.2d at 141, 40 Cal. App. 2d Supp. at 828 (measuring an automobile dealer's damages for a car held in stock by the difference between the car's sale price and list price). Thus, given the circumstances here, diminution in value should be measured by the cost to Nissan of buying the vehicle on the wholesale market and not Nissan's pre-damage, "bottom line", selling price.

[29] There is substantial policy that supports the distinction between a retailer and consumer for purposes of measuring damages. "The theory underlying this rule is that if the owner of lost or destroyed property is a retailer . . . the goods may be replaced at their wholesale value and subsequently sold at retail just as the original goods would have sold." *Chevron*, 534 F. Supp. at 803. Furthermore,

> when a court is dealing with a stock of goods held for sale, or even with a portion of such a stock, the value to be found is its value as a stock or part of a stock of goods, that is, its wholesale value, without the profit of resale which enters into the retail value; for at the time of valuation that profit has not yet been earned . . . .

Whaley, 294 S.W.2d at 779 (citation omitted). In other words,"awarding a retailer the retail market value of damaged or lost goods would be tantamount to giving the retailer his or her profits without the retailer having to incur the expense of selling the goods." *United Trucking*, 929 P.2d at 107 (citations omitted). Thus, "the damages award for lost or destroyed property should be based upon the market value, retail or wholesale, which will actually or as precisely as possible compensate the injured party." *Id.* (citation

omitted).

[30] The record before this court reveals no evidence presented by Nissan to the trial court as to the wholesale costs incurred in first acquiring the eleven damaged vehicles. Nissan provided testimony and exhibits establishing each vehicle's repair costs and Nissan's estimation of its lost profits. However, there is a complete absence of evidence showing the vehicles' diminished wholesale value, which is necessary to establish that Nissan suffered a loss over the cost of repairs already awarded by the trial court. Without evidence of the vehicles' wholesale values, this court has no basis for disturbing the trial court's award of damages. *Cf. Rhodes v. Firestone Tire & Rubber Co.*, 197 P. 392, 394-95, 51 Cal. App. 569, 574 (Dist. Ct. App. 1921) (holding that if the only evidence produced at trial pertained to cost of repair, a defendant cannot later seek a reduction of damages based on diminution in value when no evidence was presented to establish diminution in value).

2. Proximate Cause

[31] The trial court's determination that Nissan failed to establish that Sea Star's negligence proximately caused the damage to the Maxima, QX4, and Q45 is a factual finding. *Andrews*, 251 Cal. Rptr. at 347, 204 Cal. App. 3d at 538. Thus, it is reviewed under the clearly erroneous standard. *Yang*, 1998 Guam 9 at ¶ 4. "Proximate cause includes a determination that the negligent conduct of an actor is the cause-in-fact of the injury suffered as well as a determination that the act produced the injury in a natural and continuous sequence unbroken by any new independent cause which supersedes the negligent conduct of the original actor." *Daly v. Lynch*, 600 P.2d 592, 596 (Wash. Ct. App. 1979). The factual connection is the focus of our inquiry here.

[32] Nissan argues that there is no conflicting or ambiguous evidence to undermine its assertion that Sea Star's negligence proximately caused damage to the three vehicles. Nissan did present testimony that it was debris from the container that damaged the QX4 and Q45. Transcript, vol. --, p. 11 (Reporter's

Transcript of Extract of Proceedings on Appeal, July 17, 2000). Nissan also presented witnesses who testified that no other debris was found on the lot, Transcript, vol. --, p. 41 (Bench Trial, July 17, 2000); Transcript, vol. --, p. 10 (Reporter's Transcript of Extract of Proceedings on Appeal, July 17, 2000), thereby indirectly establishing that it was debris from the container that damaged the Maxima. While the record does contain evidence indicating it was Sea Star's conduct that damaged the three vehicles, we emphasize that it is within the purview of the trial court to weigh the credibility of witnesses and their testimony. *See Yang*, 1998 Guam 9 at ¶ 4 ("due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.") (citation omitted). As an appellate court, we must uphold the lower court's findings if the trial court could rationally have found as it did. *Id.* ¶ 7.

[33] Of the fourteen vehicles alleged to have been damaged by Sea Star, five were Quests, six were Pathfinders, two were Infinities (QX4 and Q45), and one was a Maxima. Appellee/Cross-Appellant's Excerpts of Record, p. 38 (Exhibit 56). The vehicles on Nissan's lot are arranged so that the similar models are placed together. Transcript, v. --, p. 31 (Reporter's Transcript of Extract of Proceedings on Appeal, July 17, 2000). Photos revealed that the container directly collided with the five Quests and that debris from the container was found in and around the six Pathfinders. Appellee/Cross-Appellant's Excerpts of Record, pp. 32-37 (Exhibits 33 through 38). In contrast, Nissan failed to provide any similar direct evidence placing debris in or around the area of the QX4 or Q45. Moreover, testimony presented by Nissan placed the Infinities approximately four rows over from the area of impact. Transcript, v. --, p. 11 (Reporter's Transcript of Extract of Proceedings on Appeal, July 17, 2000). The same testimony also established that there was debris other than the debris from Sea Star's container, such as loose gravel, which caused damage to vehicles on Nissan's lot. Transcript, v. --, p. 11 (Reporter's Transcript of Extract of Proceedings on Appeal, July 17, 2000). The record was completely devoid of any evidence with respect to the Maxima, except for the estimated cost of repairs.

[34] Therefore, the trial court had more than ample evidence to conclude that Nissan failed to show that Sea Star's negligence was the proximate cause of the damage to the Maxima, QX4, and Q45, and the trial court did not commit clear error in denying Nissan recovery for those vehicles.

IV.

[35] After reviewing the record and considering the written and oral arguments presented by both parties, we find that the record supports the findings of the trial court on each issue. Based on the above, the findings of fact and conclusions of law as issued by the trial court are hereby **AFFIRMED**.

JOHN A. MANGLONA
Designated Justice

ANITA A. SUKOLA
Justice *Pro Tempore*

F. PHILIP CARBULLIDO
Chief Justice, Acting