

IN THE SUPREME COURT OF GUAM

GUAM TAI-PAN DEVELOPMENT & CONSTRUCTION, INC.,
Plaintiff-Appellant,

vs.

YIGO ALTA ESTATES, INC., JOE W. THOMPSON,
AND STEPHEN M. ROAKE,
Defendants-Appellees.

OPINION

Supreme Court Case No.: CVA01-016
Superior Court Case No.: CV0446-99

Filed: November 21, 2002

Cite as: 2002 Guam 20

Appeal from the Superior Court of Guam
Argued and submitted on March 13, 2002
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*.

SIGUENZA, CJ.:

[1] This appeal arises from an action to void a contract for sale of real property and subsequently-executed mortgages. Plaintiff-Appellant Guam Tai-Pan Development & Construction, Inc. (hereinafter “Guam Tai-Pan”) appeals a partial summary judgment in favor of Defendant-Appellee Stephen Roake (hereinafter “Roake”). The trial court held that the Guam Business License Law (hereinafter “License Law”) did not render a contract executed with a non-licensed party void *per se* and that Roake, as a third party beneficiary, had standing to defend his rights under the contract. We affirm the trial court’s decision.

I.

[2] On or about September 25, 1996, Guam Tai-Pan and Defendant Yigo Alta Estates, Inc. (hereinafter “Yigo Alta”) executed a Contract For the Sale of Real Property¹ wherein Guam Tai-Pan agreed to sell and Yigo Alta agreed to purchase, Lot 7028-R5-5NEW, located in Yigo, Guam (hereinafter “Property”) for \$590,000.00. On the same date, the parties also executed a mortgage agreement and a promissory note, in which Yigo Alta conveyed a mortgage interest in the Property to Guam Tai-Pan to secure Yigo Alta’s balance due on the Property.

[3] On October 23, 1996, Yigo Alta, as mortgagor, conveyed a mortgage interest in the Property to Joe Thompson (hereinafter “Thompson”), a person who resides in Kenmore, Washington, as mortgagee, to secure Yigo Alta’s repayment of a \$65,000.00 promissory note. On December 5, 1996, Yigo Alta also executed a mortgage with Roake, to secure a promissory note in favor of Roake in the amount of

¹ The “Contract For Sale Of Real Property” contained the following subordination clause:

Subordination: The mortgage, and the lien hereof, shall be subordinate to any mortgage or mortgages securing the loan or loans the proceeds of which are to be utilized for installation of infrastructure, including but not limited to road, sewers, electricity, and water, and construction of single residence homes, and working capital, in an amount not to exceed the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

\$250,000.00. Yigo Alta borrowed the money from Roake, a retired pilot who resides in Seattle, Washington, for the purpose of constructing a structure on the Property. Pursuant to the subordination clause contained in the “Contract For Sale Of Real Property” signed by Guam Tai-Pan and Yigo Alta, the two respective parties executed a Subordination Agreement (hereinafter “Agreement”) on January 31, 1997. In the Agreement, Guam Tai-Pan agreed to subordinate its earlier recorded mortgage and give priority to Roake’s mortgage.

[4] Subsequently, Yigo Alta defaulted and failed to make any payments on the Guam Tai-Pan and Roake mortgages. Moreover, Yigo Alta failed to construct any structure on the Property as delineated in the Agreement. On March 3, 1999, Guam Tai-Pan filed a Complaint in Superior Court against Yigo Alta, Thompson, and Roake for the following counts: Count I, declaratory relief; Count II, fraud/misrepresentation; Count III, breach of contract; Count IV, foreclosure. The relevant portion of the Complaint for this Appeal, Count I, essentially sought to void the Contract for Sale of Real Property, the Mortgage, the Warranty Deed, and the Agreement executed between Yigo Alta and Guam Taipan and to adjudge title to the Property in Guam Tai-Pan. Roake, the only defendant appearing, filed an Answer to the Complaint on April 28, 1999. On May 28, 1999, an Entry of Default was entered against Yigo Alta and Thompson for their failure to respond to the Complaint.

[5] On May 4, 2000, both Guam Tai-Pan and Roake filed motions for partial summary judgment. Guam Tai-Pan moved for partial summary judgment on the basis that the Agreement was void and unenforceable because none of the Defendants had business licenses. Additionally, Guam Tai-Pan requested that the trial court grant summary judgment in its favor granting rescission of the Agreement based on the alleged constructive fraud and failure of consideration by Yigo Alta because no improvements were made on the Property. Roake filed a motion for summary judgment on the basis that a failure to obtain a business license does not void the underlying obligation. The trial court denied Guam Tai-Pan’s motions for declaratory judgment and for partial summary judgment, but granted Roake’s motion for partial summary judgment.

[6] The trial court declined to address the merits of the rescission issue because of Guam Tai-Pan's failure to plead any claim for relief in its complaint for rescission of the contract. However, the trial court found that the agreements executed by Guam Tai-Pan and Yigo Alta were not voided by Yigo Alta's failure to obtain a business license. The trial court held that although Yigo Alta was precluded from "us[ing] the courts [to] enforce the subordination agreements with Guam Tai-Pan until it obtains a business license," it was not precluded from enforcing the agreements, "which do not require judicial intervention." Plaintiff-Appellant's Excerpts of Record, tab 15, p. 5 (Decision and Order, Dec. 12, 2000). Moreover, the trial court also found that Roake, as the intended third-party beneficiary to the Agreement "ha[d] sufficient 'personal stake in the outcome of the controversy' between Guam Tai-Pan and Yigo Alta" to confer it "standing to oppose Guam Tai-Pan's motion to invalidate the subordination agreement." Plaintiff-Appellant's Excerpts of Record, tab 15, p. 5 (Decision and Order, Dec. 12, 2000). On July 11, 2001, a Stipulation and Order for Entry of Judgment was filed in the Superior Court's Docket. Guam Tai-Pan filed a timely Notice of Appeal on August 9, 2001 pursuant to Guam Rules of Appellate Procedure 4(a).

II.

[7] We have jurisdiction over this matter pursuant to Title 7 GCA §§ 3107, 3108 (1994). We review the trial court's grant of a summary judgment *de novo*. *Amsden v. Yamon*, 1999 Guam 14 ¶ 7. We review issues of statutory construction *de novo*. *Taijeron v. Kim*, 1999 Guam 16, ¶ 9; *People v. Quichocho*, 1997 Guam 13, ¶ 3. 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 and that the moving party is entitled to a judgment as a matter of law." Guam R. Civ. P. 56(c); *Amsden*, 1999 Guam 14 at ¶ 7.²

² The parties in this case do not assert any factual disputes. Rather, the issues presented in this appeal focus on the trial court's interpretation of the law.

III.

[8] We are called upon to address the following two issues in this appeal: (1) whether the trial court erred in holding that the effect of the License Law is not to void agreements, and (2) whether the trial court erred in holding that Roake, as a third party beneficiary, had standing to oppose Guam Tai-Pan's declaratory judgment motion to render the Agreement void.

A. License Law

[9] We begin our discussion by addressing whether the License Law renders a contract automatically void when it is executed by a non-licensed party in violation of the License Law.³ Guam Tai-Pan asserts that the trial court misinterpreted the License Law by holding that the restriction under the License Law does not *per se* void agreements between parties. We disagree.

[10] The License Law is codified in Chapter 70 of Title 11 of the Guam Code Annotated. The purpose of the License Law is to protect the general public welfare as expressed by 11 GCA § 70102, which provides:

The purpose of this Division is to provide for the licensing of businesses in the Territory of Guam in order that all necessary and reasonable control and regulation thereof may be practiced by the Government of Guam for the protection of the health, safety and morals of the people of Guam.

Title 11 GCA § 70102 (1994); *Taijeron*, 1999 Guam 16 at ¶ 12. Additionally, the License Law serves to “obtain compliance and collection of gross receipts taxes.” *EIE Guam Corp. v. Long Term Credit Bank of Japan, Ltd.*, 1998 Guam 6, ¶ 17.

[11] The License Law mandates that persons or entities engaged in commercial activities (with the exception of those enumerated in 11 GCA § 70130 (a)) are required to obtain a business license. Title 11 GCA § 70130 (1994). To ensure compliance with the License Law, the legislature expressly prescribes the penalties that a business or person would incur for refusal or failure to obtain a license such as the

³ Because the parties do not address whether Yigo Alta and Roake were required to obtain business licenses or whether their activities were covered by the License Law, we confine our review with the premise that Yigo Alta was required to obtain a license at the time they executed the Agreement and that the activities fell under the purview of the License Law.

closing of the business or being guilty of a misdemeanor. Of specific relevance, and at the heart of this case, are the License Law's restrictions on a non-licensed person's or entity's ability to enforce their rights through the court system as reflected in section 70130(d), which reads:

no commercial activity (including operating or leasing of real property) doing business on Guam without a business license may file suit in Guam courts until such time that a business license is obtained. *No person engaged in commercial activity without a business license may use the courts to enforce, directly or indirectly, any obligation, lien, or contract incurred during the period of such commercial activity without a business license;*

11 GCA § 70130(d) (emphasis added). Essentially, section 70130(d) contains two main clauses that restrict a non-licensed party's rights in court. The first clause prohibits the non-licensed person or business from "*fil[ing]* suit in Guam courts until such time that a business license is obtained." 11 GCA § 70130(d) (emphasis added). The second clause prohibits the non-licensed person or business from "*us[ing]* the courts to enforce, directly or indirectly, any obligation, lien, or contract incurred during the period of such commercial activity without a business license." 11 GCA § 70130(d) (emphasis added). While section 70130(d) restricts the non-licensed party's rights in courts, neither section 70130(d) nor any other section of the License Law expressly mandates the automatic voidance of the contract executed by a non-licensed person or business. In light of the License Law's specific enumeration of penalties, we find that the License Law's exclusion of the automatic voidance penalty reflects the legislative intent not to render a contract in violation of the License Law void *per se*. "It does not necessarily follow that, when the law prohibits and [sic] act, a contract made in contravention of it may be avoided." *Furlong v. Johnston*, 204 N.Y.S. 710, 712 (N.Y. App. Div. 1924), *affd.* 145 N.E. 910 (N.Y. 1924).

[12] In this regard, we follow the principle embraced by other courts. This principle provides that if a statute clearly spells out penalties for a violation of the statute, the court is precluded from *tacking on additional penalties*. See *Way v. Pacific Lumber & Timber Co.*, 133 P. 595, 595 (Wash. 1913) ("It is a general proposition, sustained by the weight of authority, that where a statute imposes a penalty for failure to comply with statutory requirements, the penalty so provided is exclusive of any other.") (citation omitted); see also *Furlong*, 204 N.Y.S. at 712 ("The Legislature may impose other penalties than

declaring such contract void.”); *Pratt v. Short*, 79 N.Y. 437 (N.Y. 1880). The principle also effectively renders inapplicable the general rule noted by *Guam Tai-Pan* that contracts in violation of a statute are void. *See Turney v. J.H. Tillman Co.*, 228 P. 933, 935 (Or. 1924) (expressing that “where a statute which prohibits a contract at the same time also limits the effect, or declares the consequences which shall attach to the making of it, the general rule that contracts prohibited by statute are void does not apply.”); *see also Arya Group, Inc. v. Cher*, 91 Cal. Rptr. 2d 815, 819, 77 Cal. App. 4th 610, 615 (Cal. Ct. App. 2000).

[13] Moreover, we find that the legislature’s inclusion of a substantial compliance clause in the License Law further evidences the legislative intent not to make such contracts automatically void due to non-compliance. The substantial compliance clause is found in section 70130(f) of the License Law and provides:

The courts shall liberally construe subsections (b) through (e) of this Section in favor of the landlord or business person and shall ignore technical deficiencies if the courts find there has been substantial compliance with the business license laws, rules, and regulations and if the courts find that the landlord or business person has filed on a timely basis (within thirty (30) days of the due date) gross receipts tax returns fully reporting all accountable revenues from the activity concerned for the periods in question;

11 GCA § 70130(f) (1994). At least one court has similarly recognized that the inclusion of a substantial compliance provision reflects the legislative intent not to make the underlying contract void *ab initio*. *See Davidson v. Hensen*, 954 P.2d 1327, 1336 (Wash. 1998) (“The very applicability of the substantial compliance doctrine . . . argues that a contract subject to the statute is not void, but the enforceability thereof is limited based on public policy.”).

[14] Our current construction of the License Law is consistent with and clarifies our previous opinion, *Taijeron v. Kim*, 1999 Guam 16, where this court applied the provisions of the License Law in a breach of a lease claim where the lessor apparently did not have a license. In *Taijeron*, this court held that “by the statute’s terms, the . . . [lessor] can not maintain a suit in the courts of Guam to seek relief for the violations of the lease provisions that occurred during the period she did not have a business license.” *Taijeron*, 1999 Guam 16 at ¶ 13. However, even though the *Taijeron* opinion failed to expressly pronounce that the underlying lease was not invalid, the *Taijeron* court did not completely bar the lessor’s

relief because it further held that the “[lessor] can certainly maintain an action for a breach of the lease that occurred during the time she was in possession of a business license” *Id.* at ¶ 26.

[15] In sum, we hold that a contract executed by a non-licensed party under the License Law, is not void per se.⁴

B. Standing

[16] We lastly address whether the trial court erred in holding that Roake, as a third party beneficiary, had standing to oppose Guam Tai-Pan’s declaratory judgment motion to render the Agreement void. Guam Tai-Pan argues that there is an internal inconsistency in the trial court’s holding because it found that Roake, as a third party beneficiary, had standing to oppose Guam Tai-Pan’s invalidation of the Agreement while at the same time finding that Yigo Alta could not enforce the Agreement because of its failure to obtain a business license. For the following two reasons, we are unpersuaded by Guam Tai-Pan’s assertion that Roake lacked standing to defend the validity of the Agreement.

[17] First, it was Guam Tai-Pan who named Roake as a party to this suit. By naming him as a party in its Complaint, which sought to void the Agreement, Guam Tai-Pan, in effect, recognized not only Roake’s interest in the Agreement, but also the existence of a concrete dispute it had with Roake. “The purpose of the standing requirement is to ensure that the *plaintiff* has a concrete dispute with the defendant,” *see Hall v. Norton*, 266 F.3d 969, 976-77 (9th Cir. 2001) (emphasis added), and by being a named defendant to the present suit, Roake was compelled to defend his interest under the Agreement. Roake correctly argues that the License Law while precluding the *enforcement* of a contract in court, does not expressly deny the party from *defending* their claims. *See Parker v. McQuade Plumbing & Heating*,

⁴ We express our concern regarding Guam Tai-Pan’s prayer to automatically void any agreements it executed with Yigo Alta based on Yigo Alta’s failure to obtain a business license in light of Guam Tai-Pan’s representation to Roake that Yigo Alta was a “duly licensed corporation in the Territory of Guam” as reflected by the Warranty Deed. Plaintiff-Appellant’s Excerpts of Record, tab 1, Exhibit D (Warranty Deed, Sept. 25, 1996); *see* Plaintiff-Appellant’s Excerpts of Record, tab 8 (Stephen Roake Opposition to Guam Tai-Pan Dev. & Const., Inc. Motion for Summary Judgment, July 5, 2000). Roake could effectively argue that such a misrepresentation on Guam Tai-Pan’s part estops them from asserting Yigo Alta’s non-licensed status as a reason to void a contract relied on by Roake. If such a misrepresentation did occur, we do not believe an automatic voidance of the Agreement would necessarily advance “the protection of the . . . morals of the people of Guam” as intended by the License Law. 11 GCA § 70102.

Inc., 335 N.W. 2d 7, 8 (Mich. Ct. App. 1983) (finding that even though “the statute prevents an unlicensed contractor from suing to collect on the contract . . . the statute nowhere prohibits an unlicensed contractor from defending a breach of contract suit on its merits.”).⁵ We find that the License Law “removes an unlicensed [party’s] power to *sue*, not the power to *defend*.” *Id.* (second emphasis added).

[18] Second, Roake, as third party beneficiary to the Agreement, has a statutorily recognizable interest. Title 18 GCA § 85204 provides that “[a] contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.” 18 GCA § 85204 (1992). The ability of a third-party beneficiary to enforce their rights under the contract is also recognized by caselaw. *Kansas City N.O. Nelson Co. v. Mid-Western Constr. Co.*, 782 S.W. 2d 672, 677 (Mo. Ct. App 1989) (“Third party beneficiary is the nomenclature given to one who is not privy to a contract nor to its consideration but to whom the law gives a right to maintain a cause of action for breach of contract.”); *see also Arlington Trust Co. v. Estate of Wood*, 465 A.2d 917 (N.H. 1983); *Young Refining Group v. Penzoil Co.*, 46 S.W.3d 380, 387 (Tex. App. 2001). Consequently, had the situation been reversed and it was Roake who sought a motion for declaratory relief to enforce his rights under the Agreement, he would have been able to do so pursuant to Title 18 GCA § 85204. Guam Tai-Pan’s assertion that the Agreement violated the License Law would then serve as an affirmative defense to Roake’s claim. *See* 11 GCA § 70130(g). Although Roake would then have “the burden of proof . . . to establish that the provisions of [the License Law] do not act as a bar to his . . . claim or cause of action,” 11 GCA § 70130(g), even under this *reversed* scenario, the License Law does not necessarily affect Roake’s *standing* to bring the claim. Thus, we find that Roake had standing to properly defend his rights, as a third-party beneficiary, under the Agreement.

⁵ In this regard, we are unconvinced by Guam Tai-Pan’s alternative argument regarding the Agreement’s unenforceability “even if the [c]ourt finds that [it is] not void.” Plaintiff-Appellant’s Opening Brief, p. 14. Although the License Law precludes a non-licensed party from using the courts to enforce the contract that was incurred “during the period of such commercial activity without a business license,” 11 GCA § 70130(d), Roake has not filed a claim or counter-claim requesting for the *judicial enforcement* of the Agreement. *See* Defendant-Appellee’s Reply Brief, pp. 28-29.

IV.

[19] We hold that the License Law does not automatically void contracts executed by a non-licensed party. We also find that Roake had standing as a third party beneficiary to defend his claims under the Agreement. Accordingly, the trial court's judgment is **AFFIRMED**.