IN THE SUPREME COURT OF GUAM

URSULA U. FLEMING,
Plaintiff-Appellee,

v.

MARY ANN F. QUIGLEY AND JAMES R. QUIGLEY,
Defendants-Appellants.

OPINION

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Supreme Court Case No.: CVA01-021
Superior Court Case No.: CV1117-96

Appeal from the Superior Court of Guam
Argued and submitted on September 5, 2002
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice[1]; F. PHILIP CARBULLIDO, Associate Justice; JOHN A. MANGLONA, Designated Justice.

CARBULLIDO, J.:

[1] The Plaintiff-Appellee, Ursula U. Fleming ("Fleming"), filed an action in the Superior Court of Guam against the Defendants-Appellants, Mary Ann F. Quigley and James R. Quigley ("Quigleys"), for fraud and breach of fiduciary duties. Fleming sought damages and rescission of a Deed of Gift to real property, as well as attorney's fees and costs. The Superior Court found in favor of Fleming on her fraud and breach of fiduciary duties claims, and ordered that the Deed of Gift be rescinded, and that the property be transferred back to Fleming. Furthermore, the lower court ordered that money be paid to the Quigleys, which represented a set-off for amounts expended by the Quigleys for improvements made to the property against amounts expended by Fleming for improvements and attorney's fees and costs Fleming incurred in the suit. The Quigleys appeal the lower court's award of attorney's fees, arguing that the award of fees was made in contravention of the American Rule governing attorney's fees. We agree and therefore reverse that part of the lower court's judgment.

I.

[2] Fleming sued the Quigleys for fraud and breach of fiduciary duties. The suit arose out of a land transfer between the parties. In 1976, Fleming executed a Deed of Gift in favor of the Quigleys, transferring ownership of property in Barrigada to the Quigleys. The Quigleys thereafter

[1] The signatures on this Opinion reflect the titles of the justices at the time this matter was considered and determined.

constructed a home on the property. Fleming resided in the home. In 1995, the Quigleys attempted to evict Fleming from the property, claiming ownership by virtue of the 1976 Deed of Gift. Fleming then sued the Quigleys, claiming that the 1976 transfer via the Deed of Gift was procured through fraud and breach of fiduciary duties on the part of the Quigleys. Fleming ultimately sought to have the Deed of Gift rescinded and sought compensatory and exemplary damages, and attorney's fees and costs.

[3] The trial court found for Fleming on her fraud and breach of fiduciary duties claims and ordered that the Deed of Gift be rescinded, and that the property be transferred back to Fleming. Furthermore, the lower court awarded the Quigleys $19,044.16, which represents amounts expended by the Quigleys for improvements made to the property minus amounts expended by Fleming for her improvements, as well as attorney's fees and costs incurred by Fleming in the suit. This appeal followed. The Quigleys appeal only the lower court's award of attorney's fees.

II.

[4] This court has jurisdiction over the appeal of the underlying final judgment pursuant to Title 7 GCA § 3107(b) (1994).

III.

[5] The subject of the instant appeal is the award of attorney's fees to Fleming. The issue in this case is whether the trial court erred in awarding Fleming attorney's fees in an action to rescind a deed of gift based on fraud and breach of fiduciary duties.

A. The Parties Arguments.

[6] The Quigleys contend that under the American Rule, attorney's fees are not allowed unless authorized by contract or statute. The Quigleys argue that the award of attorney's fees was erroneous because it was awarded in contravention of the American Rule. In contrast, Fleming asserts that the lower court's award of attorney's fees was proper because various Guam statutes, interpreted through case law, allow the lower court to award attorney's fees in fashioning an equitable remedy or, in the alternative, as damages in a tort action alleging fraud and breach of fiduciary duties.

B. The American Rule.

[7] The award of attorney's fees in United States jurisdictions is governed by what is commonly referred to as the "American Rule." Under the American Rule, parties bear their own litigation expenses, including attorney's fees.[2] *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247, 95 S. Ct. 1612, 1616 (1975) ("In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser."); *see Guam Radio Servs. v. GEDA*, 2000 Guam 23 at ¶ 9 ("Traditionally, a court did not have the power to grant the prevailing party attorney's fees unless lawmakers specifically provided them with such authority in a statute.") (citing *Alyeska Pipeline*, 421 U.S. at 247, 95 S. Ct. at 1616). There are several recognized

[2] The American practice is distinct from the practice in England, where courts regularly award attorney's fees to the prevailing party pursuant to statutory authority. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247, 95 S. Ct. 1612, 1616 (1975). As the *Alyeska* Court explained: [a]t common law, costs were not allowed; but for centuries in England there has been statutory authorization to award costs, including attorney's fees. Although the matter is in the discretion of the court, counsel fees are regularly allowed to the prevailing party." *Id*. at 247, 95 S. Ct. at 1616; *see also See* Lawrence D. Rose, Note, *Attorney's Fee Recovery in Bad Faith Cases: New Directions for Change*, 57 S. CAL. L. REV. 503, 504 (1984) ("The prevailing rule that a successful litigant may not shift his costs of counsel to the other party is aptly styled American: the vast majority of civil law countries award attorney's fees to the prevailing party as an item of compensatory damages.").

exceptions to the American Rule. If an exception applies, fee-shifting is allowed. The exceptions to the American rule include where attorney's fees are: (1) authorized by statute, (2) authorized by contract, or (3) allowed in judicially-established equitable circumstances[3]. *Young v. Redman*, 128 Cal. Rptr. 86, 91 (Ct. App. 1976).

[8] There are differing theories regarding the origins of the American Rule in the United States. *See* Lawrence D. Rose, Note, *Attorney's Fee Recovery in Bad Faith Cases: New Directions for Change*, 57 S. CAL. L. REV. 503, 506-07 (1984). However, courts have recognized that "[t]he American Rule is based upon the philosophy that 'one should not be penalized for merely defending or prosecuting a lawsuit, and that the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponents' counsel." *Young*, 128 Cal. Rptr. at 91 (citation omitted); *see Shimman v. Int'l Union of Operating Eng'rs*, 744 F.2d 1226, 1231 (6th Cir. 1984) ("[T]he American Rule protects the right to go to court and litigate a non-frivolous claim or defense."). "Other factors supporting the rule against fee shifting include the difficulties of proof inherent in litigating the question of what constitutes reasonable attorney fees, and the possibility of a threat being posed to the principle of independent advocacy by having the earnings of the attorney flow from the pen of the judge before whom he argues." *Young*, 128 Cal. Rptr. at 91-92.

[9] In determining the propriety of the trial court's award of attorney's fees to Fleming, an initial question is whether the American Rule is recognized in this jurisdiction. As the Quigleys point out, the American Rule was arguably codified in Guam as section 1021 of the Guam Code of Civil

[3] The commonly recognized equitable exceptions to the American Rule include the common fund, substantial benefit, private attorney general, third-party tort, and bad faith theories of recovery. *See Trope v. Katz*, 45 Cal. Rptr. 2d 241, 245, 902 P.2d 259, 263 (1995); *Young v. Redman*, 128 Cal. Rptr. 86, 92 (Ct. App. 1976).

Procedure, which provided:

> Compensation of attorneys. Costs to parties. The measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to costs and disbursements, as hereinafter provided.

Guam Civ. Proc. Code § 1021 (1970). Section 1021 mirrored California Code of Civil Procedure § 1021 as it existed prior to a 1933 amendment. *Compare id., with* Cal. Code Civ. Pro. § 1021, stat. notes. Section 1021 of the California Code of Civil Procedure is California's codification of the American Rule. *See City & County of San Francisco v. Sweet*, 48 Cal. Rptr. 2d 42, 47, n.7, 906 P.2d 1196, 1202 (1995) ("The California version of this 'American' rule is codified in Code of Civil Procedure section 1021."); *Trope v. Katz*, 45 Cal. Rptr. 2d 241, 244, 902 P.2d 259, 262 (1995) ("The Legislature codified the American rule in 1872 when it enacted Code of Civil Procedure section 1021 . . . ."). We find that section 1021 of the Guam Code of Civil Procedure similarly codified the American Rule in this jurisdiction. *See Fajardo v. Lib. House Guam*, 2000 Guam 4, ¶ 17 (adopting the California courts' interpretation of the insurance statutes after finding that there was no compelling reason to deviate therefrom).

[10] Notably, however, section 1021 of the Guam Code of Civil Procedure was repealed and reenacted in 1975 as Title 7 Guam Code Annotated §§ 26601(f) and (g),[4] which provide:

[4] 7 GCA § 26601 provides in its entirety:

Compensation of Attorneys; Cost to Parties.

(a) In any action for damages for personal injury or death, whether based on tort or contract law, or otherwise, no attorney representing any party to such action shall contract for, or charge or collect on a contingent fee basis any fee for his services for such party in excess of the following limits:

(1) Fifty percent (50%) on the first One Thousand Dollars ($1,000.00) recovered;

(2) Forty percent (40%) on the next Two Thousand Dollars ($2,000.00) recovered;

(3) Thirty-three and one-third percent (33 1/3%) on the next Forty-seven Thousand Dollars ($47,000.00) recovered;

(4) Twenty percent (20%) on the next Fifty Thousand Dollars ($50,000.00) recovered;

(5) Ten percent (10%) on any amount recovered over One Hundred Thousand Dollars ($100,000.00); and

> (f) In all cases not included within the scope of subsection (a) of this section alone, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, expressed or implied, of the parties.
>
> (g) Parties to actions or proceedings are entitled to costs and disbursements, as hereinafter provided.

Title 7 GCA §§ 26601(f), (g) (1994).

[11] The former Code of Civil Procedure § 1021 has thus been integrated into the statutory provision governing the payment of attorneys. Title 7 GCA § 26601 now primarily governs contingency fee arrangements. However, despite the amendment to the language of former section 1021, 7 GCA § 26601(f) still instructs that the "measure and mode of compensation of attorneys . . . is left to the agreement . . . of the parties." 7 GCA § 26601(f). Court's in California have interpreted that particular language in their section 1021 as instructing that "the allocation of attorney fees is left to the agreement of the parties." *Xuereb v. Marcus & Millchap, Inc*., 5 Cal. Rptr. 2d 154, 156 (Ct. App. 1992). Specifically, California courts have interpreted the phrase "agreement, express or implied, of the parties" as governing the allocation of attorney's fees between *opposing*

> (6) Where the amount recovered is for the benefit of an infant or incompetent and the action is settled without trial the foregoing limits shall apply, except that the fee on any amount recovered up to Fifty Thousand Dollars ($50,000.00) shall not exceed twenty-five percent (25%).
>
> (b) No attorney shall enter into such contingent fee arrangement with his client without first advising the client of this right and affording the client an opportunity to retain the attorney under an arrangement whereby the attorney would be compensated on the basis of the reasonable value of his services.
>
> (c) Such contingent legal fee shall be computed on the net sum recovered by the client after deducting disbursements made in connection with the institution and prosecution of the client's claim and litigation.
>
> (d) The contingent legal fee within the permissible maximum limits shall include legal services rendered on any appeal or review or on any retrial, but this shall not be deemed to require an attorney to take an appeal.
>
> (e) If, at the conclusion of any such action for damages, an attorney considers that the contingent fee within such maximum limits to be insufficient, he may apply to the court, with written notice to the client, for an increase in the fee, which the court after a hearing may grant in such amount, if any, as is deemed reasonable in all of the circumstances.
>
> (f) In all cases not included within the scope of subsection (a) of this section alone, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, expressed or implied, of the parties.
>
> (g) Parties to actions or proceedings are entitled to costs and disbursements, as hereinafter provided.

Title 7 GCA § 26601 (1994).

parties, and not between the attorney and his client. *See Trope*, 45 Cal. Rptr. 2d at 245, 902 P.2d at 263 (determining that under section 1021, opposing parties may enter into an "agreement, express or implied" allocating attorney's fees). We are persuaded by this interpretation.

[12] Subsection (a) of the section 26601 refers to the limits imposed in contingency arrangements between an "*attorney*" and a "*party*." 7 GCA § 26601(a). By contrast, subsection (f) refers to agreements "*of the parties*." 7 GCA § 26601(f). Thus, we find that subsection (f) refers to agreements between opposing parties. Accordingly, 7 GCA § 26601(f), like its predecessor, reflects the American Rule in this jurisdiction, which prevents fee-shifting unless authorized by contract or statute.[5] *Trope*, 45 Cal. Rptr. 2d at 244, 902 P.2d at 263 (recognizing that the American Rule was codified in 1872 by Code of Civil Procedure § 1021).

[13] Even assuming section 26601(f) is not a codification of the American Rule in this jurisdiction, the Rule has been recognized by this court in *Guam Radio Services v. GEDA*, 2000 Guam 23, ¶ 9. Moreover, the American Rule has attained "common law" status in the United States; that is, it has developed as part of American jurisprudence (i.e., through case law) both at the federal and state levels, and is not a rule established through statute. *See Woodward v. Bruner*, 104 Cal. App. 2d 83, 85, 230 P.2d 861, 862 (Ct. App. 1951) (recognizing the American Rule as a long-established rule at common law that has been "universally adopted by American courts"); *Sanchez v. Rowe*, 870 F.2d 291, 294 (5th Cir. 1989) (recognizing the American Rule regarding attorney's fees as part of the "federal common law"). In fact, requiring that the American Rule be made

[5] To the extent that section 26601(f) can be read as governing a client's fee arrangement with his attorney, such an interpretation would also support a conclusion that the American Rule applies in this jurisdiction. Read this way, the statute implies that attorney's fees are generally a matter to be left to the party and his attorney in the litigation, which, in essence, is an articulation of the American Rule that each party is generally responsible for his or her own attorney's fees. *See Gray v.Don Miller & Assocs.*, 198 Cal. Rptr. 551, 554, 674 P.2d 253, 256 (1984) (reciting the American Rule and exceptions).

applicable only if codified is to a large degree contrary to the American Rule itself, which provides that attorney's fees are not recoverable *unless allowed by statute* or contract. The American Rule has been so commonplace as a judge-made rule that legislation has been enacted in several jurisdictions to mark a complete departure from the American Rule. *See* Lawerence D. Rose, *supra*, at 507-08 (recognizing that Alaska, Arizona, Nevada, Oregon, and Washington "have explicitly abandoned the rule in certain circumstances"). Thus, a finding that there is no statute which specifically codifies the American Rule in this jurisdiction would be of limited consequence. Because the American Rule has developed through case law in the United States at both the federal and state levels, a more appropriate inquiry here is whether the legislature has specifically rejected the American Rule. While there are various specific statutes allowing attorney's fees in particular types of cases in Guam,[6] the parties have not cited, and we have not found, any statute in this jurisdiction which has abrogated the American Rule as a general concept.[7] Thus, in the absence of contrary authority, and in light of the historical application of the American Rule in civil suits in the United Stated[8] and this court's prior recognition of the rule in *Guam Radio Services v. GEDA*, we hold that the American Rule is applicable in this jurisdiction. Any abrogation of the rule on a wide-scale basis should be left to the legislature. *See Young*, 128 Cal. Rptr. at 93-94 (declining to adopt

[6] *See, e.g.*, Title 7 GCA § 26603 (1994) ("Costs and r*easonable attorneys fe*es shall be allowed of course to a government of Guam employee upon a judgment in the employee's favor in cases against the government of Guam in which the employee seeks to enforce plaintiff's employment rights as a government employee.") (emphasis added); Title 4 GCA § 4406.1 (1996); Title 5 GCA § 7112 (1993); Title 5 GCA § 34138 (1996); Title 7 GCA § 11311.1 (1996); Title 15 GCA § 1617 (1993); Title 21 GCA § 60314 (1996).

[7] Additionally, the fact that the legislature has specifically allowed attorney's fees in some statutes indicates the legislature's awareness of the American Rule which disallows an award of fees to the prevailing party as a general matter.

[8] The American Rule has been severely criticized over the years. *Young*, 128 Cal. Rptr. at 91 n.2. It has nonetheless been adhered to by American courts. *Id*. at 91.

the bad faith equitable exception to the American Rule and finding that "any power of the trial court to impose such sanctions should be created by the legislative branch of government with appropriate safeguards and guidelines"); *Alyeska*, 421 U.S. at 249-50, 95 S. Ct. at 1618 ("In 1796, [the U.S. Supreme Court] appears to have ruled that the Judiciary itself would not create a general rule, independent of any statute, allowing awards of attorneys' fees in federal courts. . . . Th[e] Court has consistently adhered to that early holding.").

[14] Having so held, we must now determine whether the lower court erred in departing from the American Rule by awarding attorney's fees to Fleming. An award of attorney's fees is generally reviewed for an abuse of discretion. *See Guam Radio Servs.*, 2000 Guam 23 at ¶¶ 5, 10 (reviewing the lower court's denial of attorney's fees under the Sunshine Act for an abuse of discretion). However, the lower court's "departure from the American Rule limiting awards of attorney's fees is reviewed *de novo* . . . ." *Home Sav. Bank v. Gillam*, 952 F.2d 1152, 1161 (9th Cir. 1991); *Perry v. O'Donnell*, 759 F.2d 702, 704 (9th Cir. 1985) ("The district court's interpretation of the judicial exceptions to the American Rule, which ordinarily precludes an award of attorney's fees, is a legal question subject to *de novo* review."). Specifically, "a determination of the legal basis for an award of attorney fees [is reviewed] de novo as a question of law." *Sessions Payroll Mgmt, Inc. v. Noble Constr. Co.*, 101 Cal. Rptr. 2d 127, 131 (Ct. App. 2000) (reviewing whether the lower court's award of attorney's fees was proper); *see also Braach v. Graybeal*, 988 P.2d 761, 762 (Mont. 1999) (holding that the lower court's determination that there was no legal authority for an award of attorney's fees was a "conclusion of law"). We first identify the reasons for the lower court's award of attorney's fees.

C. The Lower Court's Decision.

[15] Fleming asserts that the lower court awarded attorney's fees as part of an equitable remedy. Fleming argues that this is evident via the lower court's ruling in its Amended Findings of Facts and Conclusions of Law. There, the lower court ordered:

> [T]hat Plaintiff, *as an equitable remedy*, reimburse defendants, MARY ANN F. and JAMES R. QUIGLEY for the fair market value of the improvements made by them to the subject property, less the amount expended by the Fleming family for the following: typhoon repairs, building and property taxes, mortgage payments, reasonable attorney's fees for the retention of Del Priore as counsel, reasonable attorney's fees for the retention of Arriola, Cowan & Arriola as counsel and costs of suit.

Appellee's Excerpts of Record, Tab. B, p. 9 (Amended Findings of Facts and Conclusions of Law, Sept. 28, 2001) (emphasis added). Fleming further argues that the court's intention to include attorney's fees as an equitable award is further evidenced by the difference between the court's first Findings and Conclusions and the court's Amended Findings and Conclusions. In its *original* Findings of Facts and Conclusions of Law, the court articulated its award as follows:

> [T]he court hereby:
>
> . . .
>
> (2) Awards Ursula U. Fleming reasonable attorneys fees in the amount of Twenty-Nine Thousand Three Hundred Seventeen and 50/100 ($29,317.50) Dollars.
>
> (3) Orders that Plaintiff, as an equitable remedy, reimburse defendants, Mary Ann F. Quigley and James R. Quigley for the value of the improvements made by them to the subject property ($65,898.00) less the amount expended by the Fleming family on property taxes ($960.00) and mortgage payments ($41,767.00), which value equals Sixty Two Thousand Ninety-One and no/100 ($62,091.00) Dollars.

Appellee's Excerpts of Record, Tab A, p. 8-9 (Findings of Facts and Conclusions of Law, Aug. 9, 2002).

[16] As shown above, in its *original* Findings and Conclusions, the lower court separated its award of attorney's fees from the remainder of the award. Fleming argues that because, in its *Amended* Findings and Conclusions, the court included its award of attorney's fees *together with* its equitable award for improvements made to the property, the lower court's award of attorney's fees was meant to be factored in as part of its overall equitable award.

[17] Fleming's contention is plausible; however, several aspects of the record undermine this conclusion. First, at a hearing on April 23, 2001, Fleming argued that she was seeking attorney's fees as "damages awarded by th[e] Court on plaintiff's fraud claim." Transcript, vol. --, p. 2-3 (Hearing Regarding Attorney's Fees, April 23, 2001). The trial court agreed, and found that "the fees are reasonable *as damages for the losses [Fleming] sustained*." Transcript, vol. --, p. 10 (Hearing Regarding Attorney's Fees, April 23, 2001) (emphasis added). The Quigleys' attorney thereafter requested clarification from the court as follows: "[I]s the Court making a specific finding that these are damages – compensatory damages?" Transcript, vol. --, p. 11 (Hearing Regarding Attorney's Fees, April 23, 2001). The court answered as follows: "The Court is finding that these are recoverable as damages, yes, for the losses that they've sustained in order to try to recover the property. Yes." Transcript, vol. --, p. 11 (Hearing Regarding Attorney's Fees, April 23, 2001). Thus, it is clear from the transcripts of the hearing regarding attorney's fees that the lower court awarded the fees as compensatory damages.

[18] Second, the Final Judgment, which was issued on the same date as the Amended Findings and Conclusions, specifically provides that the attorney's fees award is to be included as *damages*, rather than as an equitable remedy. The Judgment provides:

> That the Defendants recover from Plaintiff the total sum of $19,044.16, which reflects the Court's equitable remedy to the Defendants for the fair market value of the improvements made by them to the subject property, less sums expended by the Plaintiff for property taxes, mortgage payments and typhoon repairs, *and less damages due to Plaintiff for attorney's fees and costs of suit herein*.

Appellant's Excerpts of Record, Tab B, p. 2 (Judgment, Sept. 28, 2001) (emphasis added). We find no reason to interpret the term "damages" in the Judgment in a manner inconsistent with the court's determination at the April 23, 2001 hearing.

[19] Therefore, notwithstanding the somewhat ambiguous language of the Amended Findings and Conclusions and the lack of explanation for the attorney's fees award, all other portions of the record which shed light on the attorney's fees award indicate that the lower court awarded attorney's fees to Fleming as *damages*, and specifically, compensatory damages; not as an equitable award.

1. Attorney's Fees as Compensatory Damages.

[20] As stated earlier, under the American Rule, attorney's fees are generally not recoverable unless authorized by statute, contract, or under equitable circumstances. The American Rule applies generally to tort cases, including fraud actions. *See Glendale Fed. Sav. & Loan Ass'n v. Marina View Heights Dev. Co.*, 135 Cal. Rptr. 802, 831 (Cal. Ct. App. 1977); *In re Marriage of McNeill*, 206 Cal. Rptr. 641, 647 (Ct. App. 1984), *disapproved of on other grounds by In re Marriage of Fabian*, 224 Cal. Rptr. 333, 340 n.13, 715 P.2d 253, 260 (1986); *Ellis v. Flink*, 374 So.2d 4, 5 (Fla. 1979); *Stevenson v. Stevenson*, 680 P.2d 642, 647 (Okla. Ct. App. 1984); *Roberts v. Mission Valley Concrete Indus.*, 721 P.2d 355, 357 (Mont. 1986); *City Messenger of Hollywood, Inc. v. City Bonded Messenger Serv., Inc.*, 254 F.2d 531, 534 (7th Cir. 1958) (interpreting Illinois law); *see also Spanier v. Fid. & Guar. Co.*, 623 P.2d 19, 29 (Ariz. Ct. App. 1980); *Beiser v. Evered*, 135 A.2d 741, 743 (Conn. C. P. 1957).

[21] The parties agree that there was no contract providing for an award of attorney's fees in this case. Thus, unless there is a statute which allows for fee-shifting, or unless this case falls within an equitable exception, the award of attorney's fees to Fleming as compensatory damages would be improper.

a. No Statutory Exception to American Rule.

[22] Fleming contends that the award of attorney's fees was authorized under Title 20 GCA § 2225. That section governs damage awards for tort actions and provides:

> For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by Titles 13, 14, 18, 19, 20, and 21 of this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

Title 20 GCA § 2225 (1992).

[23] The question which arises is whether the attorney's fees in this case are recoverable as damages proximately caused by the Quigleys' tortuous acts. We find that they are not. Title 20 GCA § 2225 mirrors California Civil Code § 3333. We find persuasive the cases in which California courts have held that attorney's fees cannot be awarded as an element of damages under their identical statute. *See Gray*, 198 Cal. Rptr. at 556, 674 P.2d at 258 (rejecting the argument that the plaintiff was entitled to attorney's fees "as an element of damages in actions for fraud in which the defendant is a fiduciary").

[24] *Pederson v. Kennedy*, 180 Cal. Rptr. 740 (Ct. App. 1982), is on point on this issue. In *Pederson*, the issue before the court was whether attorney's fees could be awarded under California Civil Code § 3333 as an "element of compensatory damages in a judgment against a fiduciary based upon a finding of fraud." *Pederson*, 180 Cal. Rptr. at 741. The court answered in the negative. The

court found that "although the broad language of section 3333 would seem to require an award of attorney's fees to make the wronged party whole, California follows the general American rule that fees are not recoverable." *Id*. The court acknowledged case law allowing attorney's fees as damages under the "third-party tort" or "tort of another" exception to the American Rule. Under that exception, attorney's fees which are expended in a suit resulting from the tort of another are allowed as damages in a later suit against the original tortfeasor. *Id.* at 742. The *Pederson* court found that absent facts which would bring the case within that exception to the American Rule, attorney's fees should not be recoverable. Based on its holding, the *Pederson* court reversed the lower court's award of attorney's fees to the plaintiff which were expended in prosecuting the underlying two-party suit.

[25] Similarly, in *Woodward v. Bruner*, 104 Cal. App. 2d 83, 230 P.2d 861 (Ct. App. 1951), the court interpreted section 3333 as excluding attorney's fees. *Woodward*, 104 Cal. App. 2d at 85, 230 P.2d at 862. Specifically, the court opined: "We read the language of . . . [section 3333], as of the day [it was] enacted, and in the light of the then long-established rule of the common law, universally adopted by the American courts, and conclude the legislature did not intend to expand our law of damages so as to include within its scope attorney fees." *Id.*

[26] Moreover, the interpretation given by the California courts is consistent with the general rule announced by other courts that, under the American Rule, attorney's fees are not allowed as an element of damages in torts for breach of fiduciary duty or fraud.[9] *See Martin v. Paskow*, 339 So.2d

[9] It has been recognized that attorney's fees are recoverable as an element of damages "with respect to certain intentional malicious torts." *Martha A. Gottried, Inc. v. Amster*, 511 So.2d 595, 600 (Fla. Dist. Ct. App. 1987). However, these exceptions are limited "to certain specific intentional and willful bad faith or fraudulent acts, such as wrongful attachments, false imprisonment, malicious prosecution and slander of title, where courts have found the award to be uniquely appropriate to the cause of action." *Id.* Fleming has cited cases wherein the court allowed attorney's fees in theses scenarios. *See e.g. Wright v. Rogers*, 172 Cal. App. 2d 349, 358, 342 P.2d 447, 453 (Ct. App. 1959) (allowing

266, 267-68 (Fla. Dist. Ct. App. 1976) (rejecting the appellee's argument that attorney's fees should be allowed as an element of damages "in cases where the proof of fraud is specific, certain and conclusive"); *Ellis*, 374 So.2d at 5 (citing the American Rule and holding that attorney's fees "are not a recoverable element of damages or costs in an ordinary action for the tort of fraud"); *Stevenson*, 680 P.2d at 647 ("Damages for [fraud] actions do not include attorney's fees. In Oklahoma attorney's fees are not recoverable unless provided by contract or statute."); *Roberts*, 721 P.2d at 357 (reversing an award of attorney's fees in an action for fraud and misrepresentation because "[i]t long has been the rule in Montana that absent either statutory authority or agreement between the parties, attorney's fees are not awarded"); *City Messenger of Hollywood, Inc.*, 254 F.2d at 534 ("There is no basis under Illinois law for the assessment of treble damages or the payment of attorney fees based on claims [for fraud and deceit]."); *see also Spanier*, 623 P.2d at 29 (rejecting the argument that "a corollary to the general rule applying to litigation based on the wrongful act of the defendant, [is] that attorney's fees are recoverable in every fraudulent conveyance action"); *Beiser*, 135 A.2d at 743. Thus, we interpret 20 GCA § 2225 consistently with the American Rule, and hold that the statute does not authorize the award of attorney's fees to Fleming as compensatory damages.

b. No Equitable Exception to the American Rule.

[27] Furthermore, the trial court's award of attorney's fees as compensatory damages is not allowed under any equitable exceptions to the American Rule. Courts have relied on their "inherent equitable authority" to develop several exceptions to the American Rule. *Trope*, 45 Cal. Rptr. 2d

attorney's fees in a slander of title case). Because the instant case does not fall within these classes of cases, the cases cited by Fleming are of limited persuasive value here.

at 245, 902 P.2d at 263. However, attorney's fees have generally only been allowed as compensatory damages in fraud type situations under the "third-party tort" or "tort of another" theory. The theory has been articulated as follows:

> A person who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover compensation for the reasonably necessary loss of time, attorney fees and other expenditures thereby suffered or incurred.

Twentieth Century-Fox Film Corp. v. Harbor Ins. Co., 149 Cal. Rptr. 313, 319 n.9 (Ct. App. 1978) (quoting Restatement of Torts § 914).

[28] As stated earlier, the American Rule applies to fraud cases, and attorney's fees are generally not allowed as compensatory damages for fraud. However, in fraud cases, the plaintiff is allowed attorney's fees *as an element of damages* where "plaintiff, as a proximate result of defendant's fraud, is required to prosecute or defend an action against a third party for the protection of his interest. In such cases reasonable attorney's fees incurred in connection with the third party lawsuit are recoverable as damages caused by defendant's tortious act." *Glendale Fed. Sav. & Loan*, 135 Cal. Rptr. at 831 (citation omitted).

[29] The facts of the instant case do not implicate the "third-party tort" theory. Here, Fleming sued the Quigleys for fraud and breach of fiduciary duties, and was granted attorney's fees incurred in that action. Fleming was not suing for attorney's fees expended in a prior suit against a third party which was a result of the Quigleys' fraud. Therefore, Fleming was not entitled to attorney's fees as compensatory damages under the "third-party tort" equitable exception to the American

Rule.[10]

[30] Thus we hold that attorney's fees were not legally authorized as compensatory damages in this case either by statute or under an equitable exception to the American Rule.

2. Punitive Damages or Equitable Award.

[31] Fleming also urges this court to affirm the trial court's award of attorney's fees as exemplary damages under Title 20 GCA § 2120, or as an equitable award. We decline to do so.

[32] Punitive damages are awardable in the discretion of the lower court. *See* Title 20 GCA § 2120 (1992) ("In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example by way of punishing the defendant."). Similarly, courts have the inherent discretionary power to award attorney's fees in accordance with equitable principles in specified circumstances. *See Alyeska*, 421 U.S. at 259, 95 S. Ct. at 1622 (recognizing the "inherent power in the courts to allow attorney's fees in particular situations"); *Young*, 128 Cal. Rptr. at 92 (recognizing specific circumstances wherein an award of attorney's fees is warranted in accordance with equity) ("Each of the nonstatutory exceptions which appellate decisions in this state have grafted upon the [American Rule, as codified,] . . . is based

[10] Note that Fleming cites *Brandt v. Superior Court*, 210 Cal. Rptr. 211, 693 P.2d 796 (1985), in support of her argument that California courts have interpreted section 3333 of the Cal. Civ. Code as allowing attorney's fees in an action for damages based on misrepresentations by a fiduciary. *See* Appellee's Brief, p. 10. However, *Brandt* involved a claim by an insured against its insurer to obtain benefits due under the policy, the fact of which amounted to a breach of the duty of good faith and fair dealing. *See Brandt*, 210 Cal. Rptr. at 213, 693 P.2d at 798. The California court awarded attorney's fees in the action, however, the court essentially bifurcated the insured's two claims, the bad faith claim and the claim for benefits under the policy. *Id*. The court held that the insured may only recover attorney's fees in the latter circumstance, and may not recover fees expended in prosecuting the bad faith action to recover the benefits. Thus, while the *Brandt* court allowed attorney's fees incurred in that very suit, upon closer inspection, it becomes apparent that the court's allowance of attorney's fees as damages is more akin to the third-party tort situation where the party's expenditure of attorney's fees in prosecuting a separate claim is considered to be damages because they are incurred as a result of the other party's tortuous acts. In any event, it does not appear that the rule announced in *Brandt* has been extended beyond the insurance context.

upon inherent equitable powers of the court.").

[33] As stated earlier, the lower court awarded attorney's fees as compensatory damages. Because the court did not decide to make a discretionary award of attorney's fees to Fleming as either punitive damages or as an equitable remedy, we decline to render that decision in the first instance on appeal.

[34] In light of our holding, it is unnecessary to address the Quigleys' argument that the amount of attorney's fees awarded to Fleming was unreasonable.

IV.

[35] In sum, we hold that the American Rule applies in Guam. We find that, consistent with the American Rule, attorney's fees are not allowed as compensatory damages in fraud cases under Title 20 GCA § 2225. Furthermore, attorney's fees may be allowed as damages only under the third-party tort exception to the American Rule. However, the facts of this case do not support recovery under that theory. Therefore, the lower court erred in awarding attorney's fees as compensatory damages. Accordingly, the lower court's award of attorney's fees is hereby **REVERSED** and the case is remanded for the entry of a judgment consistent with this Opinion.