IN THE SUPREME COURT OF GUAM

THOMAS PANGELINAN TORRES,
Plaintiff-Appellee,

vs.

THOMAS C. TORRES, ANTHONY C. TORRES, MICHAEL C. TORRES, ROBERT C. TORRES, and DEPARTMENT OF LAND MANAGEMENT, GOVERNMENT OF GUAM,
Defendants-Appellants.

Supreme Court Case No. CVA04-002
Superior Court Case No. CV0301-96

OPINION

Filed: November 16, 2005

Cite as: 2005 Guam 22

Appeal from the Superior Court of Guam
Argued and submitted on October 26, 2004
Hagåtña, Guam

Appearing for the Plaintiff-Appellee:
Terence E. Timblin, *Esq.*
Vernier & Maher, LLP
Gov. Joseph Flores Bldg., Ground Flr.
115 Hesler Place
Hagåtña, Guam 96910

Appearing for the Defendants-Appellants:
David J. Lujan, *Esq.*
Lujan Aguigui & Perez, LLP
Suite 301 Pacific News Bldg.
238 Archbishop Flores St.
Hagåtña, Guam 96910

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; ROBERT J. TORRES, JR., Associate Justice.

CARBULLIDO, C.J.:

[1] Defendants-Appellants Thomas C. Torres, Anthony C. Torres, Michael C. Torres, Joseph C. Torres, Robert C. Torres (collectively "Sons") appeal from a Superior Court Judgment granting summary judgment in favor of Plaintiff-Appellee Thomas Pangelinan Torres ("Father"), which canceled a Deed of Gift of certain property to the Sons, and quieted title of the property in Father. The Sons argue that a General Power of Attorney granted by Father to his daughter, Julie Ann Torres Mendiola as attorney-in-fact, allowed Mendiola to execute the Deed of Gift and transfer the property to them without consideration. Father argues that summary judgment was proper because the trial court correctly determined that the power of attorney did not allow such a transaction. We hold that the term "convey" in sections 1.01 and 3.04 of the General Power of Attorney in this case are ambiguous. Interpreting section 1.01 in the context of the instrument, however, reveals that section 1.02 qualified the power to "convey" in section 1.01 to transfers for value, and thus, the term "convey" in section 1.01 cannot reasonably be interpreted as including the power to make a gift. In contrast, because there is no language limiting the term "convey" in section 3.04, the authority to "convey" pursuant to this section is susceptible to two reasonable interpretations, and therefore, can reasonably be interpreted as including the power to make a gift. We next hold that Guam's parol evidence rule requires the consideration of circumstances surrounding the execution of an instrument; therefore, the trial court erred in failing to consider extrinsic evidence regarding the making of the power of attorney, and specifically, whether the authority to "convey" in section 3.04 may be interpreted as including the power to make a gift. We hold that summary judgment was improperly granted, and thus, the trial court is reversed and the case is remanded.

I.

[2] On May 5, 1978, Father executed a General Power of Attorney ("POA") appointing Mendiola, as attorney-in-fact. The POA states in relevant part:

I. REAL PROPERTY

Sale or lease of real property

§1.01. To grant, bargain, sell, convey, or lease, or contract for the sale, conveyance, or lease of the following described property owned by me:

. . . .

(ii) Lot No. 4D, Tract 249, Agat, Guam, Estate No. 19717, as shown on Drawing No. US70-L17-01;

(iii) Lot No. 4, Tract 249, Agat, Guam, Estate No. 19718, as shown on Drawing No. US70-L17-01.

Deed and leases

§1.02. To effect any of the transactions described in §1.01, *supra*, to any person for such price or prices, and on such terms as she may deem proper, and in my name to make, execute, acknowledge, and deliver a good and sufficient deed or deeds or lease or leases for the same.

Appellants' Excerpts of Record ("ER"), p. 9 (POA). The POA also granted general powers, as follow:

III. GENERAL POWERS

All acts

§3.01. To exercise, do, or perform any act, right, power, duty, or obligation whatsoever that I now have or may acquire the legal right, power, or capacity to exercise, do, or perform in connection with, arising out of, or relating to any person, item, thing, transaction, business property, real or personal, tangible or intangible, or matter whatsoever.

. . . .

Improve, rent, mortgage, etc.

§3.04. To improve, repair, maintain, manage, insure, rent, lease, sell, release, convey, subject to liens, mortgage, and hypothecate, and in any way or manner deal with all or any part of any real or personal property, intangible and tangible, whatsoever, or any interest therein, which I now own or may hereafter acquire, for me and in my name, and under such terms and conditions, and under such covenants as such attorney shall deem proper.

IV. GENERAL

Full powers

§4.01. I grant to my attorney in fact full power and authority to do and perform all and every act and thing whatsoever requisite, necessary, and proper to be done in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my attorney in fact, or her substitute or substitutes, shall lawfully do or cause to be done by virtue of this power of attorney and the rights and powers herein granted. The powers and authority hereby conferred upon my attorney shall be applicable in all real and

> personal property or interests therein now owned or hereafter acquired by me and wherever situate[d].
>
> *Discretion of Attorney*
>
> §4.02. My attorney is empowered herein to determine in her sole discretion the time when, purpose for and manner in which any power herein conferred upon her shall be exercised, and the conditions, provision and covenants of any instrument or document which may be executed by her pursuant hereto; and in the acquisition or disposition of real or personal property, my attorney shall have exclusive power to fix the terms thereof for cash, credit or property, and if on credit with or without security.

ER, pp. 14-15 (POA). The POA was recorded with the Department of Land Management the same day it was executed.

[3] The instant proceeding arose from a Deed of Gift Reserving a Life Estate executed on January 4, 1993, by Mendiola on behalf of Father, conveying the described properties to Sons. The Deed states in relevant part:

> **DEED OF GIFT RESERVING A LIFE ESTATE**
>
> *Parties, consideration and grant*
>
> KNOW YE, that I, THOMAS PANGELINAN TORRES, of age and a resident of Guam, of Post Office Box 3465, Agaña, Guam 96910 (the "Grantor"), for and in consideration of the natural love and affection which I have for my beloved sons, THOMAS C. TORRES, ANTHONY C. TORRES, MICHAEL C. TORRES, JOSEPH C. TORRES and ROBERT C. TORRES, all of age and residents of Guam, whose mailing addresses are Post Office Box 3465, Agaña, Guam 96910 (the "Grantees"), do hereby GIVE, GRANT, BARGAIN, SELL and CONVEY unto Grantees, as tenants in common, the following described parcels of property situated in the Municipality of Agat, Guam, (the "Property"):
>
> *Description of Property*
>
> Parcel No. 1: Lot No. 4, Tract 249, Agat, Guam, Estate No. 19718, as shown on Drawing No. US70-L17-01.
> Parcel No. 2: Lot No. 4D, Tract 249, Agat, Guam, Estate No. 19717, as shown on Drawing No. US70-L17-01.

ER, p. 17 (Compl., Ex. B, (Deed of Gift)). This document was signed by Mendiola on behalf of Father as principal and herself as attorney-in-fact.

[4] Father filed a complaint against Sons and the Department of Land Management, Government of Guam, in the Superior Court in 1996, seeking to void the Deed of Gift to Sons and quiet title against them, arguing that the POA did not give Mendiola the power to gratuitously transfer

property. Sons filed an Answer denying the allegations. Sons also raised affirmative defenses, including argument that there was "no failure of consideration"; that the deed of gift was "executed with the prior instruction, knowledge and consent" of Father; and that Father ratified the transaction because "by his subsequent actions, instructions and acquiesences, [he] has modified the [General] Power of Attorney." ER, p. 22 (Answer). The Office of the Attorney General, on behalf of the Department of Land Management, filed an Answer denying the allegations, seeking dismissal and requesting a written court order if any agency action should be required.[1]

[5] Both Sons and Father filed for summary judgment. After a hearing, the trial court issued a Decision and Order voiding the deed of gift to Sons and quieting title in Father. Although the Decision and Order set a scheduling conference in anticipation of trial, Father subsequently filed a memorandum, stating that there were no further issues for trial and requesting entry of judgment.

[6] Sons filed a Motion to Reconsider and after a hearing, the trial court denied the motion. Judgment in this case was entered and the Sons filed a timely Notice of Appeal.

II.

[7] This is an appeal from a final judgment. The Supreme Court has jurisdiction over appeals from final judgments of the Superior Court. 48 U.S.C. § 1424-1(a)(2) (Westlaw through Pub. L. 109-20 (2005)); Title 7 GCA §§ 3107 and 3108(a) (Westlaw through Guam Pub. L. 28-063 (2005)).

III.

[8] The trial court's grant or denial of a motion for summary judgment is reviewed *de novo*. *Nat'l Union Fire Ins. Co. v. Guam Hous. & Urban Renewal Auth.*, 2003 Guam 19 ¶ 12. "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.'" *Hemlani v. Flaherty*, 2003 Guam 17 ¶ 7 (quoting Guam R. Civ. P. 56(c)). "There is a genuine issue, if there is 'sufficient evidence'

[1] The Government's active involvement in this case ended with the filing of the Answer in the proceedings below. No other documents were filed at the trial court, and no joinder or non-opposition was filed in the instant proceeding.

which establishes a factual dispute requiring resolution by a fact-finder." *Iizuka Corp. v. Kawasho Int'l (Guam), Inc.*, 1997 Guam 10 ¶ 7 (quoting *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987)). Also, the "dispute must be as to a 'material fact'" which is a fact that "is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit." *Id.* (quoting *T.W. Elec. Serv.*, 809 F.2d at 630).

IV.

[9] The sole issue on appeal is whether the trial court erred in granting summary judgment after concluding that the POA did not give Mendiola, the attorney-in-fact, the power to gratuitously transfer Father's property.

[10] A power of attorney is simply "a formalized agency agreement." *Estate of Swanson v. United States*, 46 Fed. Cl. 388, 391 (2000). Thus, the POA in the instant case is governed generally by Guam's agency statutes. *See* 18 GCA § 20101 *et seq.* (Westlaw through Guam Pub. L. 28-063 (2005)). These statutes, however, offer little guidance in interpreting the POA in this case, as they only codify basic agency principles.[2]

[11] The Sons raise a number of issues on appeal, but primarily argue that the trial court erred in focusing only on the issue of whether the POA gave the attorney-in-fact the authority to convey property without consideration. In addition, Sons argue that summary judgment was improper, as there were affirmative defenses which created issues of material fact, including Father's knowledge of the gift, his subsequent ratification of the gift, and his competency. Father, however, maintains that the grant of summary judgment was proper, as there was no issue of material fact because the POA did not grant the attorney-in-fact the power to make a gift of property.

---

[2] The statutes which are most relevant to this case speak to the authority of the agent. Title 18 GCA § 20212 (Westlaw through Guam Pub. L. 28-063 (2005)) provides: "An agent has such authority as the principal, actually or ostensibly, confers upon him." Further, Title 18 GCA § 20304 (Westlaw through Guam Pub. L. 28-063 (2005)) states: "When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized." If the word "convey" is interpreted as giving Mendiola authority to gratuitously transfer Father's property, Father is bound only if any authorized act "can be plainly separated" from the unauthorized conveyance. This case involves the single act of Mendiola gratuitously transferring Father's property to Sons. Therefore, if Mendiola did not have the authority to do so, then the gratuitous transfer is void.

[12] The issue at the heart of this appeal is interpretation of the POA. Specifically, we must determine whether the word "convey," which is found in two sections of the POA, may be interpreted as giving Mendiola the authority to gratuitously transfer Father's Property to Sons.

[13] Although no prior decision from this jurisdiction has ever defined the term "convey," we have recognized that an ambiguity exists when a document "on its face, it is capable of two different reasonable interpretations." *Bank of Guam v. Flores*, 2004 Guam 15 ¶ 14 (quoting *E.M. Chen & Assocs., v. Lu Island Dev., Inc.*, Civ. No. 93-00017A, 1993 WL 469348, at *3 (D. Guam App. Div. Oct. 21, 1993)).

[14] Other jurisdictions that have struggled with the definition of "convey" in relation to a general power of attorney. Two courts interpreted powers of attorney containing similar language to the POA herein. In *Estate of Smith*, 979 F. Supp. 279, 284 (D. Vt. 1997), the court examined a power of attorney that granted, *inter alia*, the power "to sell, purchase, lease, mortgage and *convey any real property* owned by [the principal] or to be acquired by [the principal]." (Emphasis added.) The *Estate of Smith* court held that "convey" in this instrument was ambiguous; it "could reasonably be interpreted either as authorizing gifts of real property or as a general term that did not expand the attorney-in-fact's powers beyond transfers for consideration." *Id.* at 284.

[15] The Fourth Circuit in *Estate of Casey v. Commissioner*, 948 F.2d 895 (4th Cir. 1991), also examined a general power of attorney that granted the power to "to lease, sell, grant, *convey*, assign, transfer, mortgage and set over to any person, firm or corporation and for such consideration as he may deem advantageous, any and all of my property" and "to accept and receive any and all consideration payable to me on account of any such lease, sale, conveyance, transfer or assignment and to invest and reinvest the proceeds derived therefrom." *Id.* at 897 (emphasis added). In contrast to *Smith*, the Fourth Circuit held that the power of attorney did not include the power to make a gift.

[16] These cases reflect how the word "convey" may be subject to different interpretations. Therefore, we examine the POA here to determine if the word "convey" as used in sections 1.01 and 3.04 may be susceptible to more than one interpretation.

A. Section 1.01

[17] Section 1.01 of the POA creates the power "[t]o grant, bargain, sell, *convey*, or lease, or contract for the sale, conveyance, or lease." ER, p. 9 (POA)(emphasis added). Sons asserted during oral argument that the word "convey" in section 1.01 expressly grants Mendiola the authority to make a gift of Father's property. We are not persuaded by this argument. We recognize that an "accepted rule of construction is to discount or disregard, as meaningless verbiage, all-embracing expressions found in powers of attorney." *King v. Bankerd*, 492 A.2d 608, 612 (Md. Ct. App. 1985). Moreover, "general words used in an instrument are restricted by the context in which they are used, and are construed accordingly." *Id.* We have stated that when interpreting different provisions of an instrument, we must "consider[]the contract as a whole" not simply "a particular part of the contract in isolation." *Bank of Guam*, 2004 Guam 15 ¶ 10. "A particular term cannot be considered 'ambiguous' in some detached or abstract sense, but rather must be considered in the context of both the instrument containing it as well as the circumstances of the entire case." *Id.*

[18] Here, section 1.01 is preceded by the subheading entitled "Sale or lease of real property." ER, p. 9 (POA). In addition, section 1.02 of the POA states that Mendiola had the authority "[t]o effect any of the transactions described in §1.01, *supra*, to any person for such *price or prices*." ER, p. 9 (POA) (emphasis added). The reference to "price or prices" in section 1.02 reveals that the POA explicitly contemplated the "transactions described in § 1.01" would mean an exchange of money for property.[3] ER, p. 17 (Compl., Ex. B, (Deed of Gift)).

[19] Furthermore, we find guidance in the analysis conducted in *Estate of Casey*, 948 F.2d 895, where the Fourth Circuit examined the four powers given to the attorney-in-fact when transferring assets, and found it significant that the power to make a gift was not included. "[T]he omission of gift strongly suggests a positive intent rather than oversight or any opposing intent with respect to

[3] We acknowledge that "natural love and affection" has been held to be adequate consideration. *See Town House v. Hi Sup Ahn*, 2000 Guam 32 ¶ 28 ("[A]ssuming an expressed consideration 'for love and affection' typical in deeds of gift, while good, it is not valuable consideration.). *Town House* is distinguishable from the case herein, because interpreting section 1.01 within the context of the POA reveals that section 1.02 anticipated consideration of money.

that power." *Id.* at 900. Moreover, the asset transfer powers were qualified by language relating to consideration, specifically, by the phrase "for such consideration as [the attorney-in-fact] may deem advantageous" and by the authorization to "accept and receive any and all considerations." *Id.* at 901. The powers to transfer assets, including the power to convey, "suggest[ed] most strongly . . . transfers for value." *Id.* at 901. The Fourth Circuit held that for these reasons, the power of attorney did not include the power to make a gift.

[20] Therefore, although reading the term "convey" in section 1.01 in isolation may give rise to two different interpretations, we consider this term "in the context of both the instrument containing it as well as the circumstances of the entire case." *Bank of Guam*, 2004 Guam 15 ¶ 10. In this case, the term "convey" in section 1.01 is qualified by the language of section 1.02. Moreover, section 1.01 is preceded by the heading "*Sale or lease of real property.*" ER, p. 9 (POA). The context of the POA reveals that "convey" as found in section 1.01 suggests "transfers for value." *See Estate of Casey*, 948 F.2d at 901. Therefore, it is not reasonable to interpret the term "convey" in section 1.01 as vesting Mendiola with the authority to make a gift of Father's property.

[21] Our interpretation of section 1.01 is further buttressed by the general rule that power of attorney instruments are strictly construed, "especially so where the authorized agent is given broad authority over all or much of the principal's property." *Schock v. Nash*, 732 A.2d 217, 226 (Del. 1999) (footnote and internal quotation marks omitted); *see also King*, 492 A.2d at 611(stating that "powers of attorney are strictly construed as a general rule and are held to grant only those powers which are clearly delineated.") (brackets and internal quotation marks omitted); *Kunewa v. Joshua*, 924 P.2d 559, 565 (Haw. Ct. App. 1996) (stating that it is "well-established that powers of attorney 'are subjected to a strict construction and are never interpreted to authorize acts not obviously within the scope of the particular matter to which they refer.'") (quoting *Lopez v. Soy Young,* 9 Haw. 113, 115 (1892)); Wendy M. Goode, *Gifts and POAS: Authorizing an Agent to Give Your Money Away*, 88 Ill. B.J. 100, 102 (Feb. 2000) (stating that courts interpreting powers of attorney "take a strict-construction approach"). "The rule for strict construction is particularly applicable to powers of

attorney relating to real property." *Bryant v. Bryant*, 992 P.2d 169, 172 (Wash. 1994).

[22] Moreover, unless the instrument contains language that expressly grants the power to make a gift, this power is not to be construed in the instrument. One court has noted that "[n]early every jurisdiction that has considered this issue has concluded that:

> [A] general power of attorney authorizing an agent to sell and convey property, even though it authorizes him to sell for such price and on such terms as to him shall seem proper, implies a sale for the benefit of the principal, and does not authorize the agent to make a gift of the property, or to convey or transfer it without a present consideration inuring to the principal.

Whitford v. Gaskill, 480 S.E.2d 690, 691-92 (N.C. 1997) (quoting Annotation, *Power of Attorney as Authorizing Gift or Conveyance or Transfer Without a Present Consideration*, 73 A.L.R. 884 (1931)). *See, e.g., Kunewa*, 924 P.2d at 565 (stating that "an agent lacks authority to make a gift of the principal's property unless that authority is expressly given by the language of the power of attorney."); *Swanson*, 46 Fed. Cl. at 391 ("A general power of attorney does not give an attorney-in-fact the authority to make gifts of the principal's property."); *Mischke v. Mischke*, 530 N.W.2d 235 (Neb. 1995) (holding that an attorney in fact may not make a gift unless the power to make such gift is expressly granted in the instrument itself and there is shown a clear intent on the part of the principal to make such a gift); *Shields v. Shields*, 19 Cal. Rptr. 129, 130-31 (Ct. App. 1962) ("A power of attorney conferring authority to sell, exchange, transfer or convey real property for the benefit of the principal does not authorize a conveyance as a gift or without a substantial consideration and a conveyance without the scope of the power conferred is void.") (citations omitted); *see also* Goode, *Gifts and POAS*, 88 Ill. B.J. 100, n.4, and cases cited therein.

[23] By construing the term "convey" as the term is used in section 1.01, and within the context of the POA, we conclude that section 1.01 does not expressly authorize Mendiola to make a gift of Father's property.

B. Section 3.04

[24] Our analysis of the POA, however, does not end with section 1.01. The word "convey" also appears in section 3.04 of the POA, under the subheading, "*Improve, rent, mortgage, etc.*" ER, p.

13 (POA). Specifically, section 3.04 creates the power "[t]o improve, repair, maintain, manage, insure, rent, lease, sell, release, *convey*, subject to liens, mortgage and hypothecate, and in any way or manner deal with all or any part of any *real* or personal *property*." ER, p. 13 (POA) (emphases added).

[25] We treat section 3.04 differently from section 1.01 even though both sections contain the word "convey" because section 1.02 qualifies the attorney-in-fact's authority to "convey" to transfers "for such price or prices, and on such terms as she may deem proper." ER, p. 9 (POA). In contrast, section 3.04 is neither preceded by subheadings with limiting language, nor followed by subsequent provisions containing similar verbiage referring to "price or prices." In the context of the surrounding sections, the term "convey" in section 3.04 may be interpreted as an unqualified power to grant or convey. It is reasonable to conclude that the term "convey" in section 3.04 may be interpreted as including the power to make a gift.

The analysis conducted by the court in *Estate of Smith* assists us here:

> Given the *absence of any explicit expression of intention* in the document, *the broad powers conveyed therein*, the *broad use of the term "convey" in Vermont law*, and the *internal inconsistencies of the clauses in the document*, the Court finds as a matter of law that the term "convey" as used in the power of attorney is ambiguous. "Convey" could reasonably be interpreted either as authorizing gifts of real property or as a general term that did not expand the attorney-in-fact's powers beyond transfers for consideration.

Estate of Smith, 979 F. Supp. at 284. The *Smith* court noted that "convey" had been used by the Vermont Supreme Court "to refer to any transfer of an interest in land" and has referred to conveyances with consideration and as gifts. *Id.* at 283. In the power of attorney, "convey" was in the context of words that suggested transactions involving consideration. *Id.* at 283. In addition, the power to "convey any real property" was followed by the power to "make, execute, sign, seal, acknowledge and deliver unto the Seller or Purchaser thereof, a proper and sufficient deed of conveyance of all [the principal's] right, title and interest and estate in said real estate." *Id.* at 282. The court ultimately concluded that "convey" as used in the power of attorney did "not clearly and unambiguously preclude the power to make a gift." *Id.* at 284. The Vermont court reversed the

grant of summary judgment, and determined that extrinsic evidence would be admitted to interpret the power of attorney. *Id.* at 285.

[26] Applying the four factors articulated in *Estate of Smith* to the case at bar, the first factor does not compel a specific interpretation because there is a lack of "explicit expression of intention" by the principal to include or exclude the authority to make a gift. *See id.* at 284. The other three factors, in contrast, suggest that "convey" in section 3.04 is ambiguous and do not preclude the power to make a gift. Although this court has not interpreted the term "convey," Guam statutes that include this term do not limit conveyances to only exchanges for money, or to only gifts.[4] Guam law is broad enough to encompass the term "convey" as including either exchanges of money or gifts. The POA contains broad grants of power to Mendiola. Finally, the most compelling factor is the "internal inconsistencies of the clauses in the document." *Id.* at 284. The authority to convey in section 1.01 was qualified by section 1.02; there is no corresponding language limiting the authority to "convey" pursuant to section 3.04. Based on these four factors, the term "convey" in section 3.04 "could reasonably be interpreted either as authorizing gifts of real property or as a general term that did not expand the attorney-in-fact's powers beyond transfers for consideration." *Id.* at 284. Because the trial court held differently, we must reverse and remand the case.

[27] On remand, the trial court must address the merits of the parties' arguments regarding the power of attorney; specifically, whether the power of attorney authorized Mendiola to gratuitously transfer Father's property to Sons. Like *Estate of Smith*, a power of attorney may be interpreted as allowing the power to make a gift, even when there is no explicit language of the principal's intent. As discussed above, section 3.04 does not preclude the power to make a gift. In such circumstances, courts adopting the strict construction rule have generally applied this rule and categorically refused to admit extrinsic evidence to determine the principal's intent such as in, *Kunewa*, 924 P.2d at 565,

[4] *See, e.g.*, Title 15 G.C.A. § 2223 (Westlaw through Guam Pub. L. 28-063 (2005)) (statute governing probate allows personal representative to "with or without consideration, dedicate or convey any real property of the estate . . . to any agency . . . for street or highway purposes . . . ."); Title 18 GCA § 20221 (Westlaw through Guam Pub. L. 28-063 (2005)) (statute granting "authority to sell and convey real property" does not limit power to "convey" to only exchanges involving money).

or to determine the extent of the authority granted to the attorney-in-fact, as was the case in *Nash v. Schock*, No. 14721, 1997 WL 770706 at *1 (Del. Ch. Dec. 3, 1997) (unreported). Such is not the case in Guam, because our parol evidence rule permits the court to consider extrinsic evidence of the circumstances surrounding the creation of an instrument. *See* 6 GCA § 2511 (Westlaw through Guam Pub. L. 28-063 (2005)).

C. Parol evidence rule

[28] Guam's parol evidence rule states as follows:

> **§2511. An Agreement Reduced to Writing Deemed the Whole.** 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 [Circumstances to be Considered], or to explain an extrinsic ambiguity, or to establish illegality or fraud.* The term agreement includes deeds and wills, as well as contracts between parties.

6 GCA § 2511 (emphasis added); *see also Bank of Guam*, 2004 Guam 25 ¶ 16 (discussing parol evidence rule). Guam's parol evidence rule contains certain statutory exceptions, and allows extrinsic evidence "to explain an extrinsic ambiguity, or to establish illegality or fraud" or relevant to this case, the rule does not prohibit "evidence of the circumstances under which the agreement was made or to which it relates, as defined in § 2515 [Circumstances to be Considered]." In turn, "Circumstances to be Considered" states as follows:

> 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.

Title 6 GCA § 2515 (Westlaw through Guam Pub. L. 28-063 (2005)).

[29] Sons urge this court to adopt the federal Tax Court's interpretation of Oregon law in *Estate of Pruitt v. Commissioner*, 80 T.C.M. (CCH) 348 (2000), where, as in the instant case, an attorney-in-fact had made gifts of the principal's property. The power of attorney in *Estate of Pruitt* granted

the authority to "[c]onvey, sell, mortgage, pledge, consign, lease and in any other manner deal in and with my property, both real and personal." *Id.* It was undisputed that power of attorney did not expressly grant the power to make a gift. *Id.*

[30] Oregon's parol evidence rule, like Guam's, "does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, as defined in section ORS 42.220, or to explain an ambiguity, intrinsic or extrinsic, or to establish illegality or fraud." Or. Rev. Stat. § 41.740 (Westlaw through end of 2003 Reg. Sess.). Further, ORS 42.220, similar to Guam's 6 GCA § 2515, states that: "In construing an instrument, the circumstances under which it was made, including the situation of the subject and of the parties, may be shown so that the judge is placed in the position of those whose language the judge is interpreting." Or. Rev. Stat. § 42.220 (Westlaw through end of 2003 Reg. Sess.).

[31] The Tax Court recognized that under Oregon's parol evidence rule, it could consider testimony of witnesses "as evidence of the circumstances under which the powers [of attorney] were executed" but could "not use the testimony to enlarge the powers granted to [the attorney-in-fact]." *Estate of Pruitt*, 80 T.C.M. (CCH) 348. The Tax Court determined that the language of the powers of attorney, which included the word "convey" as well as general grants of full power, was broad enough to include the power to make a gift.[5] *Id.*

[32] Sons maintain that because Guam's parol evidence rule is virtually identical to Oregon, then we should follow the holding in *Estate of Pruitt.* We are not persuaded by this argument. The facts in *Estate of Pruitt* include the principal's history of gift-giving and thus, are distinguishable from the facts herein. In addition, the interpretation in *Estate of Pruitt* was conducted by the federal Tax Court, not an Oregon state court.

---

[5] The Tax Court in *Estate of Pruitt,* 80 T.C.M. (CCH) 348, determined that the facts and circumstances revealed the intent to include a gift-giving power, where the decedent had instituted an annual "gift-giving program" and had executed the powers of attorney in connection with an estate plan designed to minimize the principal's estate and gift tax liability, and had written a letter to her children stating her intent to give an *inter vivos* gift "instead of from a will." The decedent's will revealed that gifts were made to the same people who would have inherited the property under her will. *Id.* Finally, testimony of the decedent's daughter and attorney-in-fact, and the decedent's attorney, specifically referred to the decedent's intent to use the power of attorney to make gifts. *Id.*

[33] Rather, we recognize that because California is the source of Title 6 GCA §§ 2511 and 2515,[6] then "we look to the substantial precedent developed within that state to assist in interpreting parallel Guam provisions." *People v. Superior Court (Laxamana)*, 2001 Guam 26 ¶ 8; *see also Sumitomo Constr. Co., Ltd. v. Zhong Ye, Inc.*, 1997 Guam 8 ¶ 7 ("In particular, the Guam provisions addressing vacation of arbitration awards mirror exactly the corresponding federal statutes. Thus, when needed, this Court will appropriately consider federal authorities as persuasive sources of interpretation."); *O'Mara v. Hechanova*, 2001 Guam 13 ¶ 8 n.1 ("Guam's Imputed Negligence Statute was adopted from California. California case law on this issue is persuasive when there is no compelling reason to deviate from California's interpretation.") (citation omitted).

[34] California's parol evidence rule is the source of Guam's rule.[7] California's rule is codified at Civil Procedure Code § 1856 (Westlaw through Ch. 729 (end) of 2005 Reg. Sess.), and states in relevant part:

> (a) Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.
>
> . . .

---

[6] The source of 6 GCA § 2511 is California Civil Procedure Code § 1856, and the source of 6 GCA § 2515 is California Civil Procedure Code § 1860. Sections 1856 and 1860 were enacted in 1953, and the California codes were acknowledged as the source of Guam's statutes. *See* Foreword (1953) *in* Code of Civil Procedure (1970).

[7] As originally enacted in 1872, California Civil Procedure Code § 1856 stated:

> AN AGREEMENT REDUCED TO WRITING DEEMED THE WHOLE. 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;
> 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 Section 1860, or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

Cal. Civ. Proc. Code § 1856 (originally enacted in 1872). Notably, this is the same language first adopted by Guam in 1953. *See* note 6, *supra*.

> (e) Where a mistake or imperfection of the writing is put in issue by the pleadings, this section does not exclude evidence relevant to that issue.
>
> (f) Where the validity of the agreement is the fact in dispute, this section does not exclude evidence relevant to that issue.
>
> (g) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in Section 1860, or to explain an extrinsic ambiguity or otherwise interpret the terms of the agreement, or to establish illegality or fraud.

Calif. Civ. P. Code § 1856. California Civil Procedure Code § 1860 (Westlaw through Ch. 729 (end) of 2005 Reg. Sess.) further states:

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

The language of section 1860 is virtually unchanged from the original version, which Guam adopted in 1953. *See* Calif. Civ. Code § 1647 (Westlaw through Ch. 729 (end) of 2005 Reg. Sess.) ("A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates."); *cf.* Title 18 GCA § 87113 (Westlaw through Guam Pub. L. 28-063 (2005)) ("A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.").

[35] The California Law Revision Commission noted that "Section 1856 does not make inadmissible extrinsic evidence, *other than that made inadmissible by subdivisions (a) and (b)*, offered to interpret or explain the meaning of the terms of a written agreement, regardless whether the writing is intended by the parties as a final, complete, and exclusive statement of those terms." Cal. Civ. Proc. Code § 1856 (Law Revision Cmts. to 1978 Amendment) (emphasis added.). Therefore, the proffered extrinsic evidence cannot contradict the written document. Furthermore, the Commission stated with regard to section 1856, that: "Evidence offered to interpret or explain the meaning of the terms of a written agreement is subject to the normal rules of admissibility and construction of instruments." *Id.* The Commission contemplated that evidence of surrounding circumstances, even if allowed by section 1860, may not be considered if such evidence is prohibited by the parol evidence rule. Further, the Commission recognized certain guiding principles when

interpreting these provisions, notwithstanding the admissibility of extrinsic evidence. *See id.* Decisions by the California courts reflect these principles.

[36] First, the extrinsic evidence must comply with the parol evidence rule, and thus, evidence that contradicts the written document cannot be considered by the court. In *Jegen v. Berger*, 174 P.2d 489 (Cal. Dist. Ct. App. 1946), the court quoted both sections 1856 and 1860, and stated that "[p]arol evidence should not be admitted to vary, to add to, or to subtract from the terms of a written agreement, but it should be, and is admissible, to explain what the parties meant by what they said." *Id.* at 494. The *Jegen* court relied on *Universal Sales Corp. v. Calif. Press Manufacturing Co.*, 128 P.2d 665 (Cal. 1942), which articulated the rationale for considering both the parol evidence rule and surrounding circumstances: "[I]t is the duty of the court to give effect to the intention of the parties *where it is not wholly at variance with the correct legal interpretation of the terms* of the contract, and a practical construction placed by the parties upon the instrument is the best evidence of their intention." *Id.* at 672 (emphasis added). These decisions prohibit extrinsic evidence that would contradict the written agreement.

[37] Second, extrinsic evidence may be considered when language in a document is ambiguous.[8]

---

[8] Because we hold, *infra*, that the word "convey" in section 3.04 is susceptible to two reasonable interpretations, under Guam law it is proper to consider extrinsic evidence of surrounding circumstances. Therefore, we do not rule on the issue of whether there *must* be an ambiguity before extrinsic evidence may be considered. There is no clear majority on this issue, and jurisdictions are split regarding whether an ambiguity is a prerequisite to admitting extrinsic evidence.

Some courts require an ambiguity in the document before considering surrounding circumstances. *See United Iron Works v. Outer Harbor Dock & Wharf Co.*, 141 P. 917, 920 (Cal. 1914) (stating that the rule that surrounding circumstances be considered pursuant to section 1860 "is invoked and employed *only in cases where upon the face of the contract itself there is doubt* and the evidence is used to dispel that doubt") (emphasis added); *Payne v. Buechler*, 628 P.2d 646, 650 (Mont. 1981) (stating that Montana statute regarding consideration of surrounding circumstances to be "irrelevant" when "[t]he language of the contract is plain and unambiguous . . . [because it] only applies where an ambiguity exists in the language of the contract."); *Jarrett v. United States Nat'l Bank*, 725 P.2d 384, 387 (Or. Ct. App. 1986) (majority opinion interpreting similar Oregon statute as "permit[ting] a court to consider circumstances surrounding the execution of an agreement *only* when the agreement is ambiguous on its face or is not fully integrated."); *Sunstream Jet Exp., Inc. v. Int'l Air Serv. Co., Ltd.*, 734 F.2d 1258, 1267 (7th Cir. 1984) (relying on the state's "decisional law" to conclude that "the trial court must find a contract ambiguous, as a matter of law, before extrinsic and parol evidence is introduced at trial for consideration by the trier of fact."). *Cf. DuFrene v. Kaiser Steel Corp.*, 41 Cal. Rptr 834, 834 (Dist. Ct. App. 1965) (stating that "circumstances which surrounded and led to . . . execution [of document] may be considered to ascertain its true meaning . . . [and] is valid to resolve uncertainty in the language of a contract . . . .") (citation omitted); *Cunningham v. Southland Constr. Co.*, 60 Cal. Rptr. 849, 851 (Ct. App. 1967) (stating that document "itself was unclear as to its meaning. The validity of the so-called written agreement itself was

As one court explained:

> If the language employed in the writing is fairly susceptible of either one of two interpretations contended for, without doing violence to its usual and ordinary import or some established rule of construction, a latent ambiguity exists that must be resolved. *To do so, resort must be made to extrinsic evidence as provided by section 1860, supra, in order to ascertain the intention of the parties*.

Flynn v. Flynn, 229 P.2d 5, 8 (Cal. Dist. Ct. App. 1951) (emphasis added); *see also Rabinowitch v. Cal. W. Gas Co.*, 65 Cal. Rptr. 1, 5 (Dist. Ct. App. 1968) (stating that "when the language used in a written instrument is ambiguous, parol evidence may be received to aid the trial judge in ascertaining the true intent of the parties, that is, to determine what the parties meant by what they said.").

[38] Here, interpreting the term "convey" in section 3.04 as impliedly including the authority to make a gift does not contradict the written POA. *See Jegen*, 174 P.2d 489l; *Universal Sales Corp.*, 128 P.2d 664. Unlike section 1.01 (where "convey" was limited by a subheading and section 1.02), there is no other language limiting the term "convey" in section 3.04 to transfers for value. *Estate of Casey*, 948 F.2d at 901. As such, "convey" in section 3.04 is ambiguous and thus, is "fairly susceptible of either one of two interpretations." *Flynn*, 229 P.2d at 8. Furthermore, the trial court should have considered extrinsic evidence of surrounding circumstances in interpreting section 3.04 pursuant to 6 GCA §§ 2511 and 2515. Because the trial court did not do so, there exists a dispute of material fact as to whether section 3.04 vests Mendiola with the power to make a gift of property. Accordingly, we hold that the summary judgment was improperly granted; thus, we do not reach Sons' arguments regarding the affirmative defenses which created issues of material fact, including Father's knowledge of the gift, his subsequent ratification of the gift, and his competency.

---

in dispute and it was proper to receive evidence of the true agreement other than the contents of the writing.").

Other courts, on the other hand, do not require that the document be ambiguous at the outset, but allow extrinsic evidence in order to determine whether there is an ambiguity. *See In re Estate of Russell*, 444 P.2d 353 (Cal. Dist. Ct. App. 1968) (stating that in order to determine whether a written instrument is ambiguous or not, the court must examine the instrument in light of the circumstances surrounding its execution so as to ascertain what the parties meant by the words they used); *Tennant v. Wilde*, 277 P. 137, 139 (Cal. Dist. Ct. App. 1929) (allowing evidence of surrounding circumstances where "[t]here is no question as to the ambiguity of the instrument itself.").

[39] Our opinion is not intended as a rejection of the rule of strict construction of powers of attorney, which is intended to ameliorate the inherent danger in interpreting these instruments as including the power to gift. Although this case contains no allegation of self-dealing by the attorney-in-fact, courts have recognized that the power to make a gift creates "dangerous implications of a power to make unrestricted gifts of the principal's assets" and presents "manifold opportunities and temptations for self-dealing." *Estate of Casey*, 948 F.2d at 899. Therefore, the better practice, when executing powers of attorney, is to expressly and explicitly articulate whether the instrument includes – or omits – the power to make a gift.

VI.

[40] We hold, first, that the term "convey" in sections 1.01 and 3.04 of the General Power of Attorney in this case are ambiguous. However, interpreting section 1.01 in the context of the instrument reveals that the power to "convey" in section 1.01 is qualified to transfers for value. Therefore, the authority to "convey" in section 1.01 cannot reasonably be interpreted as including the power to make a gift. We hold, next, that because the term "convey" in section 3.04 has no such limiting language, it is susceptible to two reasonable interpretations, and therefore, may include the power to make a gift. Moreover, because Guam's parol evidence rule requires the consideration of circumstances surrounding the execution of an instrument, the trial court erred in failing to consider extrinsic evidence regarding the making of the power of attorney in this case. Therefore, summary judgment was improperly granted, and the case is **REVERSED** and **REMANDED**.