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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

VIRGINIA JENKINS,
Plaintiff-Appellee,

vs.

RUBY B. MONTALLANA and
TEDDY P. MONTALLANA,
Defendants-Appellants.

Supreme Court Case No.: CVA06-005
Superior Court Case No.: CV1929-03

OPINION

Cite as: 2007 Guam 12

Appeal from the Superior Court of Guam
Argued and submitted on February 15, 2007
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, JR., Presiding Justice¹; RICHARD H. BENSON, Justice *Pro Tempore*; J. BRADLEY KLEMM, Justice *Pro Tempore*.

TORRES, J.:

[1] Plaintiff-Appellee Virginia Jenkins brought suit in November 2003 in the Superior Court of Guam against Defendants-Appellants Ruby B. and Teddy P. Montallana (Montallanas) to collect the outstanding amounts due on separate loans Jenkins made to the Montallanas in 1996 and 1998. After a bench trial, the trial court found that Jenkins, who did not have a business license in 1996 but held valid licenses between September 1998 and June 2003, was barred by 11 GCA § 70130(d) from bringing an action based on the 1996 loan; however, she fulfilled the procedural requirements to sue on the 1998 loan. The court then entered judgment for Jenkins for principal and interest on the 1998 loan in the amount of \$29,733.39 and awarded attorney's fees. The Montallanas appeal, claiming Jenkins' failure to have a business license in November 2003 prevents her from filing suit in the Guam courts under the Business License Law found in Division 3, Title 11 of the Guam Code Annotated. We hold that Jenkins was not actively engaged in or carrying on a business on Guam which required her to obtain a business license in November 2003, since Jenkins had already moved to Oregon by that time, was no longer making new loans in Guam, and was simply winding up her business affairs by collecting on outstanding loans. Accordingly, Jenkins' filing of the suit to collect on the 1998 loan was not prohibited by the Business License Law and we affirm.

¹ Associate Justice Robert J. Torres, Jr., as the senior member of the panel, was designated Presiding Justice.

I.

[2] Between 1996 and 2000, Jenkins, a dietician at Guam Memorial Hospital, made loans to acquaintances who also worked at the hospital, including two loans to the Montallanas in 1996 and 1998. The 1998 loan to the Montallanas was evidenced by a promissory note in the original amount of fifteen thousand dollars (\$15,000.00), later modified to nineteen thousand dollars (\$19,000.00).

[3] From 1998 to June 2003, Jenkins held a business license from the Department of Revenue and Taxation for the business of money lending. She made her last loan in 2000 and moved from Guam to Oregon in 2001. While she resided in Oregon, Jenkins continued to collect on the outstanding loans from her customers on Guam by calling them and receiving payments by mail.

[4] In November 2003, after her business license had expired, Jenkins filed suit against the Montallanas to collect on the 1996 and 1998 loans. The Montallanas raised as an affirmative defense that Jenkins' claims were barred by 11 GCA § 70130(d). The matter proceeded to a bench trial and the trial court in its Findings of Fact and Conclusions of Law found that Jenkins did not have a business license when the 1996 loan was made, and that she "failed to demonstrate that she substantially complied with the requirements of the Business License Law"; therefore "[a]ny and all claims by [Jenkins] regarding the 1996 loan must therefore be dismissed." Appellant's Excerpts of Record ("ER"), pp. 22, 23 (Findings of Fact and Conclusions of Law).

[5] The trial court also ruled that Jenkins met the procedural requirements for suit under 11 GCA § 70130(d) in order to collect on the 1998 loan. The court explained that it was undisputed

that Jenkins had a business license to make small loans at the time she made the 1998 loan to the Montallanas, and:

[A]n action by a commercial activity in Guam Courts is governed by two separate requirements under 11 [GCA] § 70130(d). First, it can be ascertained from the face of the law itself that a business license is a prerequisite to suit for all commercial activity currently *doing* business on Guam without a business license. . . . The second part of [] § 70130(d) states that a person engaged in commercial activity may not use the Courts to enforce an obligation incurred while that person did not have a license.

ER, p. 20 (Findings of Fact and Conclusions of Law). The court reasoned that if Jenkins “was not engaged in a commercial activity as of the filing of this suit, she need not have a business license in order to bring a claim against [the Montallanas] so long as she complied with the other requirement of [11 GCA § 70130(d)].” ER, p. 20 (Findings of Fact and Conclusions of Law). The trial court then concluded that the amount due under the 1998 loan including interest was \$29,733.29. Judgment was entered for that amount, plus \$4,459.99 in attorney fees.

II.

[6] This court has jurisdiction over this appeal from a final judgment pursuant to 7 GCA §§ 3107(b) and 3108(a) (2005).

III.

[7] The Montallanas argue on appeal that the trial court erred in awarding judgment to Jenkins because she did not have a business license at the time she filed her complaint in November 2003 or during the pendency of the action. They assert the record is clear that Jenkins was doing business on Guam at the time she filed her complaint and the trial court failed to make any factual findings that Jenkins was not engaged in a commercial activity at that time. Alternatively they maintain that if the trial court did make such a finding that Jenkins was not

engaged in a commercial activity in November 2003, the judge misapplied the undisputed facts to the law in so concluding.

[8] Jenkins defends the trial court’s decision by arguing that “the trial court found that as to the 1998 loans . . . Jenkins was in possession of a valid business license. . . . [and] [as] of the time that Jenkins filed suit in Guam she was no longer engaged in lending money on Guam.” Appellee’s Brief, p. 5 (Nov. 22, 2006). Moreover, she argues that the Business License Law, after its amendment in December 2003 by section 3 of Guam Public Law 27-57, made clear that:

a person shall not be considered to be engaging in, transacting, conducting, continuing, doing or carrying on a business within the meaning of [the Law] solely by reason of carrying on in Guam any one (1) or more of the following activities:

(1) *maintaining* or defending *any action or suit*, or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

. . .

(7) *creating or acquiring evidences of debt* or mortgages, liens or security interests in real or personal property;

(8) *securing or collecting one’s own debts*, or enforcing mortgages and security interests in property securing one’s own debts;

Guam Pub. L. 27-53:3 (Dec. 18, 2003) (emphasis added). The trial court did not expressly reach a finding of fact or conclusion of law as to whether or not Jenkins’ activities to collect the amounts due under the loans she made constituted a “commercial activity doing business on Guam” under section 70130. Appellee’s Brief, p. 6 (Nov. 26, 2006). We must therefore examine the record and review the law to determine whether in November 2003 Jenkins was engaged in a “commercial activity doing business on Guam” which required her to have a business license in order to file suit in the Guam courts to collect on the 1998 note. Appellee’s Brief, p. 6 (Nov. 26, 2006).

[9] Whether Jenkins' collection activities on previously made loans constitutes "a commercial activity doing business on Guam" for purposes of Guam's Business Licensing Law is an issue of legal interpretation. Appellee's Brief, p. 6 (Nov. 26, 2006). Matters of legal interpretation are reviewed *de novo*. *Abalos v. Cyfred, Ltd.*, 2006 Guam 7 ¶ 15. The trial court's findings of fact after a bench trial are reviewed under a clear error standard. *Fargo Pac. Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 21. Deference is afforded the trial court to judge the credibility of the witnesses. *Id.*

IV.

A. Applicable Law

[10] An initial issue that must be addressed is which version of the Business License Law applies in this case. Public Law 27-57 amended the Business License Law in December 2003, after the lawsuit was filed in November 2003. The December 2003 amendments changed the definition of "engaging in business" found in the Business License Law.²

² At the time the lawsuit was filed by Jenkins in November 2003, 11 GCA § 70103(e), provided:

Engaging in or carrying on a business means a regular employment which occupies the time, labor, or attention of the person on a continuing basis although one act may be sufficient if circumstances show a purpose to continue, and it need not be the sole or full-time employment of the person, but may be on a part-time or periodic basis.

11 GCA § 70103(e) (1994).

After the December 2003 amendments, 11 GCA § 70103(e) now reads:

Engaging in, transacting, conducting, continuing, doing or carrying on a business means a regular employment which occupies the time, labor, or attention of the person on a continuing basis although one (1) act may be sufficient if circumstances show a purpose to continue, and it need not be the sole or full-time employment of the person, but may be on a part-time or periodic basis.

Without excluding other activities which may not be considered to be specifically engaging in, transacting, conducting, continuing, doing or carrying on a business, a person shall not be considered to be engaging in, transacting, conducting, continuing, doing or carrying on a business within the meaning of this Division solely by reason of carrying on in Guam any one (1) or more of the following activities:

[11] Another amendment to the Business License Law concerned the restriction of activities on persons without business licenses, and the consequences of doing business without a business license. The pre-December 2003 provisions were found in section 70130³ while the December

- (1) maintaining or defending any action or suit, or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) holding meetings of the board of directors or shareholders, or carrying on other activities concerning internal corporate affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities, or appointing and maintaining trustees or depositaries with respect to those securities;
- (5) effecting sales through independent contractors;
- (6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance outside Guam before they become binding contracts;
- (7) creating or acquiring evidences of debt or mortgages, liens or security interests in real or personal property;
- (8) securing or collecting one's own debts, or enforcing mortgages and security interests in property securing one's own debts;
- (9) owning, without more, real or personal property;
- (10) conducting an isolated transaction that is completed within ninety (90) days, and that is not one in the course of a number of repeated transactions of a like nature; and
- (11) transacting business in interstate commerce.

The list of activities in this Subsection (e) is not exhaustive.

Guam Pub. L. 27-57:6 (Dec. 18, 2003) (emphases added).

³ Title 11 GCA §70130: Restriction of Activities on Persons Without Licenses, states:

It is the policy of the government of Guam that all businesses have business licenses. Therefore:

...

(c) It shall be contrary to public policy for the courts to enforce leases for Guam land for which there is no business license held by the lessor of a lease or his or her successor in interest. Therefore, rental payments for Guam land accrued after the effective date of this Section during periods for which the person seeking to collect said rents had no business license for such lease or rental activity may not be collected through the courts, and no person may be evicted from any leased real property for which rent is to be paid for any breach occurring or for any non-payment of rent during any period after the effective

2003 amendments set forth the varying consequences in section 70131.⁴ Jenkins argues that her activities of winding up her business affairs and collecting on the outstanding debts did not

date of this Section when the person seeking to enforce the terms of the lease did not have a valid business license to rent said premises;

(d) 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;

...

(f) 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 days of the due date) gross receipts tax returns fully reporting all accountable revenues from the activity concerned for the periods in question;

(g) In any civil action, the failure of one party to have a business license shall be an affirmative defense by any other party. Once the person raising the defense establishes that there is or was no business license at the relevant time, the burden of proof shall be upon the person without a license to establish that the provisions of this Section do not act as a bar to his or her claim or cause of action.

11 GCA § 70130 (1994).

⁴ Title 11 GCA § 70131, “Consequences of Engaging in, Transacting, Conducting, Continuing, Doing, or Carrying on a Business Without Business License or Certificate of Authority,” provides:

(a) Any person engaging in, transacting, conducting, continuing, doing, or carrying on a business within Guam which is otherwise required by law to have a current business license and, as may be required by all applicable laws of Guam, a certificate of authority from the Director of the Department of Revenue and Taxation, or other applicable regulating agency or board, but does not have one, shall be closed promptly by the Department of Revenue and Taxation, after a hearing pursuant to the Administrative Adjudication Law, until all required returns are filed and all taxes paid or arrangements are made to pay them. All assets of the person or corporation shall be frozen after such hearing until all required tax returns are submitted to the Department of Revenue and Taxation, all taxes are paid, or payment arrangements are made, and a valid business license is obtained.

(b) Any person engaging in, transacting, conducting, continuing, doing, or carrying on a business on Guam without a business license and, as may be required by all applicable laws of Guam, a certificate of authority from the Director of the Department of Revenue and Taxation, or other applicable regulating agency or board, may not maintain a proceeding in any Court on Guam until it obtains a business license and, as may be required by all applicable laws of Guam, a certificate of authority to transact business on Guam.

The successor to any person who transacted, engaged in, conducted, continued, carried on, or done business on Guam without a business license and, as may be required by all applicable

constitute doing business and 11 GCA §§ 70103(e)(1), (7) and (8) specifically exempt her from the requirements of a business license. These sections which were enacted by the amendments adopted in December 2003 are, however, not effective retroactively.

[12] There is a presumption against the retroactive application of statutes. *Immigration & Naturalization Serv. v. St. Cyr*, 533 U.S. 289 (2001). The “presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.” *Id.* at 316.

[13] We have embraced this principle, stating that generally, there is a “presumption against retroactive application of new laws to pending cases.” *Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 16 n.2. “As a rule, a statute is presumed to have only prospective effect unless it is made

laws of Guam, a certificate of authority from the Director of the Department of Revenue and Taxation, or other applicable regulating agency or board, and the assignee of a cause of action arising out of that business may not maintain a proceeding based upon that cause of action in any Court on Guam until the person or that person’s successor obtains a business license and, as may be required by all applicable laws of Guam, a certificate of authority from the Director of the Department of Revenue and Taxation, or other applicable regulating agency or board.

(d) A Court may stay a proceeding commenced by a person, its successor, or assignee until it determines whether the person, or that person’s successor, or assignee requires a business license, and, as may be required by all applicable laws of Guam, a certificate of authority from the Director of the Department of Revenue and Taxation, or other applicable regulating agency or board. If it so determines, the Court may further stay the proceeding until the person, or that person’s successor, or assignee obtains the business license, and, as may be required by all applicable laws of Guam, or other applicable regulating agency or board, a certificate of authority from the Director of the Department of Revenue and Taxation, or other applicable regulating agency or board.

(e) Notwithstanding the provisions of this Section, the failure of a person to obtain a business license, and, as may be required by all applicable laws of Guam, a certificate of authority from the Director of the Department of Revenue and Taxation, or other applicable regulating agency or board, does not impair the validity of its corporate acts or prevent it from defending any proceeding in Guam.

expressly retroactive or is retroactive by ‘necessary implication.’” *In re Request of Twenty-Fourth Guam Legislature for Declaratory Judgment*, 1997 Guam 15 ¶ 15 (citation omitted). A statute affecting changes in the law is not to be given a retrospective effect where the purpose of the statute is clear.⁵ *Id.* at ¶ 20. As stated recently by the United States Supreme Court,

This Court has worked out a sequence of analysis when an objection is made to applying a particular statute said to affect a vested right or to impose some burden on the basis of an act or event preceding the statute’s enactment. We first look to “whether Congress has expressly prescribed the statute’s proper reach,” *Landgraf, supra*, at 280, 114 S. Ct. 1483, and in the absence of language as helpful as that we try to draw a comparably firm conclusion about the temporal reach specifically intended by applying “our normal rules of construction,” *Lindh v. Murphy*, 521 U.S. 320, 326, 117 S. Ct. 2059, 138 L. Ed. 2d 481 (1997). If that effort fails, we ask whether applying the statute to the person objecting would have a retroactive consequence in the disfavored sense of “affecting substantive rights, liabilities, or duties [on the basis of] conduct arising before [its] enactment,” *Landgraf, supra*, at 278, 114 S. Ct. 1483; see also *Lindh, supra*, at 326, 117 S. Ct. 2059. If the answer is yes, we then apply the presumption against retroactivity by construing the statute as inapplicable to the event or act in question owing to the “absen[ce of] a clear indication from Congress that it intended such a result.” *INS v. St. Cyr*, 533 U.S. 289, 316, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001); see *Martin v. Hadix*, 527 U.S. 343, 352, 119 S. Ct. 1998, 144 L. Ed. 2d 347 (1999) (quoting *Landgraf, supra*, at 280, 114 S. Ct. 1483).

Fernandez-Vargas v. Gonzales, 548 U.S. ____ (2006), 126 S. Ct. 2422, 2428 (June 22, 2006).

[14] There is no evidence in Public Law 27-57 that the definition of “engaging in business” was meant to have a retroactive application. The preamble to the legislation does not express an

⁵ Some jurisdictions follow the principle that if the amendment to the statute is procedural in effect, it can be retroactive but if it affects substantive rights, it cannot be retroactive. See *Stroback v. Camaioni*, 674 A.2d 257, 260 (Pa. Super. 1996); *Davis v. Forman School*, 738 A.2d 697, 707-708 (Conn. App. 1999). California does not make this distinction: “In deciding whether a statute may be given retroactive application, it is not significant whether the statute is labeled substantive or procedural in nature.’ Rather, what is determinative is the effect that application of the statute would have on substantive rights and liabilities.” *Moore v. State Bd. of Control*, 5 Cal. Rptr. 3d 116, 121 (Cal. App. 2003) (quoting *Borden v. Div. of Med. Quality*, 35 Cal. Rptr. 2d 905 (1980)). Because whether collecting on a loan constitutes doing business is a substantive issue in this case, we do not evaluate the distinction between procedural and substantive amendments.

intent that the legislation be retroactive.⁶ The preamble states that the business and license requirements have been “inconsistent” and “enacted in a patchwork manner.” Guam Pub. L. 27-57:1 (Dec. 18, 2003). The stated purpose of the Public Law is to make licensing “laws consistent with the practice of other investment jurisdictions.” *Id.* There is no stated intent that the enactment is meant to address existing rather than future situations.

[15] Moreover, the changes in the Business License Law appear to be addressed to attracting foreign and domestic investment. “It is the intent of *I Liheslaturan Guåhan* to . . . place Guam in

⁶ The preamble to Public Law 27-57 states:

Section 1. Legislative Statement. *I Liheslaturan Guåhan* finds that the government of Guam has sought to attract, as an integral part of its blueprint to effect continual economic growth and development, foreign and domestic investments on Guam. The mainstay of this plan has been lucrative tax breaks for new business prospects, in exchange for the creation of new jobs for our local residents. While a certain degree of success has been achieved, we have *not* reached our full potential.

Recent events have brought to question the clarity and certainty of Guam’s business laws, which could truncate our future viability as an attractive investment destination. To remedy this potential economic deterrent, we must clear up any uncertainty in the business climate caused by the imposition of inconsistent statutes governing the conduct of business and license requirements for doing business on Guam.

Over the last several decades, public laws governing business license requirements were enacted in a patchwork manner, which today results in a disconcerting environment for many conducting or seeking to conduct business on our Island. Such laws have caused avoidable disruptions in existing contractual relationships, and the effect has been the dampening in the growth of interstate and foreign commerce on Guam. Past court proceedings have further exposed the need for certainty of the laws governing business and banking activities conducted on Guam. Concurrently, many prominent members of our Guam community, including attorneys-at-law, businessmen and scholars, have for years attested to the pressing need for a well-defined and structured set of laws.

In essence, the existing laws governing business licenses on Guam are discordant with other commerce laws, hindering the economic growth and development of our island. Under precarious business environment, Guam, with resources that naturally limit manufacturing and export potential, would *not* be able to entice off-island investors to infuse much-sought capital and create attractive jobs for our residents.

It is the intent of *I Liheslaturan Guåhan* to enact a body of business laws consistent with the practice of other investment jurisdictions. Such action will place Guam in the most favorable position to attract an inflow of foreign and domestic capital and new business prospects. Passage of this Act will elevate Guam’s competitiveness as the new hub of international business activities in the Pacific Rim, and lay the groundwork for future long-term prosperity.

the most favorable position to attract an inflow of foreign and domestic capital and new business prospects.” P.L. 27-57:1; *see* n.5. Jenkins was neither a foreign investor nor a new investor. She was a money lender who made small loans to acquaintances. The changes in the Business License Law thus do not appear to be intended by the Legislature to retroactively apply to Jenkins’ situation.

[16] Although the Business License Law was amended to state that maintaining a suit, creating evidences of debt, or collecting one’s own debts, does not constitute “engaging in business,” the provisions which set forth these changes do not expressly apply here, since the amendments were enacted after Jenkins filed suit. The new definition of “engaging in business” found in section 6 of Public Law 27-57 may still, however, provide some aid in our interpretation of the Business License Law which was in effect in November 2003.

[17] Public Law 27-57 added examples of the activities a person could engage in or transact without being considered to be doing business within the meaning of the Business License Law solely by reason of carrying on such activities in Guam. The amendments did not delete any of the language of the pre-existing section 70103(e). The general rule of statutory construction is that when a legislature “amends an existing statute, or enacts a new statute that applies to preexisting statutes, [the court] presumes the legislature intended some change in existing law.” *Lavidas v. Smith*, 987 P.2d 212, 216 (Ariz. App. 1999). However, other principles of statutory construction guide our interpretation of the older version of section 70103(e). “[T]here is a presumption that an amendatory act does not change the existing law further than is expressly declared or necessarily implied.” *Doe v. Bridgeport Police Dep’t*, 198 F.R.D. 325, 341 (D. Conn. 2001). Some statutory amendments serve to clarify, not amend, existing law. The

additional language added to section 70103(e) by Public Law 27-57 does just that; clarify the existing law.

[18] A statutory amendment is presumably to change the law, but this is not always the case. “We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. Our consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute’s true meaning.” *Hudson v. Bd. of Admin. of Pub. Employees’ Ret. Sys.*, 69 Cal. Rptr. 2d 737, 743-44 (Ct. App. 1997) (citations omitted). “The presumption of change is not conclusive and may be overcome by more persuasive considerations.” Sutherland Statutory Construction § 22.30 (October 2006). An example of a more persuasive consideration is where the amendment serves to clarify the law. *W. Sec. Bank v. Super. Ct.*, 933 P.2d 507, 514 (Cal. 1997). “An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after [a] controversy arose concerning the proper interpretation of the statute.” *Id.* (quoting Sutherland Statutory Construction § 22.31 (5th ed. 1993)).

[19] Similarly, the court in *Grant Center Hospital v. Health Group of Jackson, Miss.*, 528 So. 2d 804, 809 (Miss. 1988) held that “in construing a statute, a court may look to later acts of the legislature to ascertain the correct meaning of a prior statute.” In proper cases, an amendment may be viewed as a clarification of the former statute. “As such it aids court in assigning meaning to the prior law.” *Id.* The court in that case best expressed the clarification principle we rely on herein:

There are no principles of construction which prevent the utilization by the courts of subsequent enactments or amendments as an aid in arriving at the correct meaning of a prior statute, and it is very common for a court, in construing a

statute, to refer to subsequent legislation as impliedly confirming the view which the court has decided to adopt. Indeed, it has been held that if it can be gathered from a subsequent statute in *pari materia* what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute.

Id. at 809-810. This same rule of statutory construction has been used in other jurisdictions in *Territory of Hawaii v. Yamamoto*, 39 Haw. 956 (Haw. Terr. 1952), and *Lichty v. Lichty Construction Co.*, 243 P.2d 151, 159 (Wyo. 1952).

[20] This is the very process we use in reconciling the November 2003 section 70103(e) with the December 2003 section 70103(e) – we refer to the subsequent legislation as an aid in arriving at the true and correct meaning of the former § 70103(e). While the amendments contained in Public Law 27-57 do not expressly control, they support the proposition that the Legislature never meant to include simply collecting one’s own debts or maintaining a suit as “doing or engaging in a business” in Guam.

[21] The trial judge’s Conclusions of Law must therefore be examined based on Jenkins’ collection activities in 2003 and within the context of the definition of “engaging in or carrying on a business” in Guam. It was undisputed that Jenkins did not have a business license at the time she filed the lawsuit in November 2003, therefore, if her activities in collecting on the outstanding loans after she left Guam constituted a commercial activity doing business on Guam, then 11 GCA § 70130(d) would prevent her from filing suit in Guam courts until such time that a business license is obtained.⁷ If however, she was not engaged in or carrying on a business, the

⁷ Even if Jenkins did not have a business license at the time she was trying to collect from the Montallanas, the loan instruments themselves would not be void; see *Guam Tai-Pan Dev. and Constr. Inc. v. Yigo Alta Estates*, 2002 Guam 20, where this court held that the lack of a business license does not void the underlying obligation altogether. *Id.* ¶ 11. Therefore, under authority of *Guam Tai-Pan* and *Arashi v. Nakashima*, 2005 Guam 21 ¶ 30, Jenkins may have pursued the amounts due under the contract once she obtained a valid business license. Of course, she cannot collect for breaches of the loan agreements that occurred during the period of time within which she did not have a valid business license. *Arashi*, 2005 Guam 21 ¶ 26.

Business License Law would not require her to have a license in order to file suit.

B. Doing Business or Winding Down

[22] The judge made a finding of fact that Jenkins' activity was licensed for "Small Lending" from 1998 to June 2003. Jenkins herself testified that she made several loans to co-workers between 1996 until 2001 when she left Guam. After the bench trial, but before the issuance of the Findings of Fact and Conclusions of Law, the court requested briefing on whether Jenkins needed a business license in 2003. Specifically, the trial judge requested that the parties address the following: "[W]hether there is a differentiation between the loan agreement, which is issued prior to the business license, the promissory note, which is issued after the business license, or whether it doesn't make any difference because she doesn't possess a business license today while we sit in court." Tr., Vol. III p. 127 (Bench Trial, May 2, 2005). The parties each filed briefs on this issue.

[23] The Montallanas argue here that "[t]he trial court failed to make any factual findings that [Jenkins] either met or failed to meet the predicates contained in the statutory language of § 70130(d)." Appellant's Brief, p. 6 (Oct. 24, 2006). They point out that in the Findings of Fact and Conclusions of Law, the trial court apparently did not make an express finding of fact addressing the 2003 activities, that is, whether Jenkins was doing business on Guam at the time she filed her complaint in 2003. The court correctly stated that:

An action by a commercial activity in Guam Courts is governed by two separate requirements under 11 [GCA] § 70130(d). First, it can be ascertained from the face of the law itself that a business license is a prerequisite to suit for all commercial activity currently *doing* business on Guam without a business license. Therefore, if Plaintiff was not engaged in commercial activity as of the filing of this suit, she need not have had a business license in order to bring a claim against Defendant, so long as she complied with the other requirement of the rule.

ER, pp. 19, 20 (Findings of Fact and Conclusions of Law). The trial court then made the following conclusion: “Th[e] Plaintiff had a business license to make small loans during her 1998 loan to Defendants. Thus, Plaintiff has fulfilled the procedural requirements for suit under 11 [GCA] § 70130(d).” ER, p. 20 (Findings of Fact and Conclusions of Law).

[24] While the trial court did not specifically address whether Jenkins’ failure to have a business license when she filed suit in 2003 constituted an impediment to bringing suit on the loan, there is an implicit finding that the lack of a license in 2003 was not fatal to her claims since the court determined that Jenkins “fulfilled the procedural requirements for suit under 11 [GCA] § 70130(d).” ER, p. 20 (Findings of Fact and Conclusions of Law). The trial court’s entry of judgment by necessity further supports a finding that Jenkins was not required to have a business license to collect her debts in 2003, because if the Business License Law barred her from using the courts of Guam to enforce her loan agreements, then she would not have received a judgment from the trial court.

[25] The Montallanas alternatively assert that the record is clear that Jenkins was doing business on Guam in November 2003. If the trial judge concluded that Jenkins was not engaged in a commercial activity at this time, the conclusion was in error and a “misappli[cation of] the undisputed facts to the law.” Appellant’s Brief, p. 8 (Oct. 24, 2006).

[26] The oral testimony at trial concerning Jenkins’ activities collecting on the outstanding loans in 2003 and whether those activities constituted doing business in Guam within the definition of 11 GCA § 70103(e) included the following:

THE COURT:	Okay. After you moved off-island in 2001, these payments that were all made after, were they mailed to you?
THE WITNESS (Ms. Jenkins):	Yes.

-
- Q: (by Mr. Berman): And after June 30, 2003, you've never renewed or obtained another license?
- A: (by Ms. Jenkins): No.
- Q: Now of these ten to fifteen loans you've testified to, are about half still unpaid?
- A: No. Not – Maybe three or four.
- Q: So you're in the process of collecting the three to four now?
- A: Mm-Hm.
- Q: I'm sorry?
- A: Yes.
- Q: And other than this lawsuit, are you collecting the other three or four with lawsuits?
- A: No. This is the only lawsuit I've had.
- Q: In order for you to collect those other three or four loans now, do you do it alone or do you hire someone in Guam to help you?
- A: No, they send them to me in Oregon.
-
- Q: Do you ever have to call them to remind them to pay you?
- A: Yes.
- Q: Do you ever have to write them letters to remind them to pay you?
- A: I call them.
- Q: But you write . . . them letters as well?
- A: No.
- Q: During the month of May 2004, you were still living in Oregon, is that right?
- A: Yes.
- Q: Okay. There was an order for mediation in this case but did you not come to Guam for the mediation because you lived in Oregon?

A: Yes.

.....

Q: (by Mr. Berman): In the period of time between January 30 – December 30, 1998 and February 2001, did you ever send any letters to Ms. Montallana to collect?

A: (by Ms. Jenkins): I called her.

THE COURT: Did you send any letters is the question.

THE WITNESS: No.

THE COURT: All right.

Q: (by Mr. Berman): But you indicate that you did call her; is that right?

A: Yes.

Tr., p. 46 (Bench Trial, May 2, 2005).

[27] This testimony at trial, discussing her activity collecting on her loans on Guam from her new home in Oregon, is the extent of the evidence on this matter. Based on this testimony, the trial judge allowed Jenkins to proceed with her lawsuit to collect on the outstanding loans that she had made while licensed and living on Guam. He did not rule that Jenkins was doing business in Guam and needed a business license in order to file suit. Instead, the judge allowed her to maintain the suit against the Montallanas to collect on the 1998 loan.

[28] Since there was no dispute about the extent of Jenkins’ collection activities (consisting of phone calls and filing suit), we will examine how the trial court applied the law to the facts. The conclusion of law that Jenkins did not need a business license, as ascertained from the undisputed facts, is reviewed *de novo* as a conclusion of law. *Abalos v. Cyfred, Ltd.*, 2006 Guam 7 ¶ 15.

[29] The parties each rely on our cases which have discussed the Guam Business License laws, particularly *Taijeron v. Kim*, 1999 Guam 16, which held that the “[landlord’s] procurement of a business license well after the lease obligations have [sic] incurred cannot be said to be a

mere technical deficiency that should be ignored by the court below.” *Id.* ¶ 22. The Montallanas discuss *Arashi v. Nakashima*, 2005 Guam 21, where we held that it was not possible for the landlord to maintain a counterclaim for rent during the period within which he did not have a business license. *Id.* ¶ 26. Further, the license law precludes enforcement of a contract but does not deny the party from defending their claims. “The license law removes an unlicensed [party’s] power to *sue* not the power to *defend*.” *Id.* ¶ 30. The Guam cases argued by the parties are, however, of little guidance. They do not answer the question of whether Jenkins’ activities in collecting the outstanding loans is “doing business in Guam” such as to require a business license.

[30] The issue of what activities constitute “doing business” most often arises in the context of registration of foreign corporations, so this area of the law provides some guidance. It has been recognized that with respect to foreign corporations, the “mere . . . collection of . . . debts or claims by a foreign corporation is not the doing of business within the state. And the rule is likewise applicable to the doing of things incidental to such adjustment or collection.” *Continental Assur. Co. v. Ihler*, 26 P.2d 792, 793 (Ind. 1933) (quoting 17 William Meade Fletcher, *Fletcher Cyclopaedia of the Law of Corporations*, § 8492 at 542 (1933)). In contrast, a collection agency collecting loans within a state without proper state registration was not considered an isolated transaction and was subject to regulation. *Sec. Credit Acceptance Corp. v. State*, 247 N.E.2d 825, 834 (Ind. Ct. App. 1969). Generally where there are a limited number of transactions within a jurisdiction, those activities are held not to be “doing business.” *See, e.g., Equitable Disc. Corp. v. Jefferson Television Sales & Serv.*, 169 So. 2d 567, 569 (La. Ct. App. 1964), stating that where “three plaintiff representatives attempted to effect collection of the trade acceptances . . . [t]his by itself does not constitute doing business in Louisiana.”

[31] The court in *William L. Bonnell Co. v. Katz*, 196 N.Y.S.2d 763 (N.Y. Sup. 1960) stated that there is “no precise measure of the nature or extent of activities which are determinative of whether a foreign corporation is ‘doing business’ within this State.” *Id.* at 767. Some states have statutes that address exactly what is required to meet the “doing business” standard; in Texas, for instance, “securing or collecting debts” is not considered “doing business” in the state for purposes of foreign corporation registration. Tex. Bus. Corp. Act Ann. Art. 8.01(B)(8); *see Goss v. Bobby D. Assoc.*, 94 S.W.3d 65, 70 (Tex. App. 2002).

[32] In contrast, Guam’s Business License Law in November 2003 was not so specific. The only activities Jenkins engaged in on Guam after she left in 2001 were to call her debtors to remind them to pay and to collect on the outstanding loans. The amendments contained in Public Law 27-57 suggest the proposition that the Legislature did not intend for such activities to constitute being engaged in a trade or business on Guam. This conclusion is further supported by the preamble to the Public Law 27-57, which reveals the Legislature’s intent to make a more business-friendly climate for doing business on Guam. *See infra* n.6. We find that it would be contrary to the stated policy if we were to determine that the act of collecting debts after winding up, when no new business is being conducted, requires a business license. We therefore decline to adopt this interpretation.

[33] We hold that collecting on a debt under the undisputed fact pattern that emerged in this trial does not constitute “doing business” under the Guam Business License Law in effect in November 2003. Jenkins was therefore not required to have a business license in 2003 to sue in order to collect on the 1998 loan. A transaction that is isolated, or merely casual and occasional, such as attempting to collect on one’s pre-existing debt, or simply winding up one’s business affairs, is not “doing business” in Guam such as to invoke Guam’s licensing requirements. If,

however, the transactions conducted require a continuity of activity for a considerable period of time, then this activity will likely be deemed to rise to a level of “engaging in business” for purposes of Guam’s Business License Law. There is, however, no hard-and-fast rule or measuring stick by which the nature or extent of one’s activities will be deemed to be “doing business.”

[34] In this case, Jenkins was no longer making loans, and therefore arguably “winding up her business.” Jenkins’ “three of four” loans required only a modicum of collection activity. The evidence was undisputed that Jenkins was not making any new loans. Her only activities consisted of making phone calls and receiving payments in the mail. Her collection activity is consistent with the fact patterns which emerge when a business is winding up, or taking care of its accounts receivable without engaging in any further business transactions. *See McPherson v. Curts*, 209 N.W. 811, 812 (Mich. 1926) (where the Michigan court said, “[t]he law provides for no affirmative act on the part of a corporation to show its discontinuance of a finance business, and we are not persuaded that any is necessary”). Another case where the winding up of a closing business’s affairs was held not to require a business license is *Vaughn Realty of Front Royal, Inc. v. Town of Front Royal*, No. 92-133, 1992 WL 884922, at *4 (Va. Cir. Ct. Sept. 21, 1992) (unreported), where it was held that business done incident to winding up a realty business should not require a business license. *See also Kelly Adjustment Co. v. Burton*, 278 A.2d 460 (D.C. 1971). In that case the landlord-tenant relationship terminated prior to the lawsuit. The court held that even though rent was being collected, it was in reality the collection of a debt, to which the business licensing laws were not meant to apply. *Id.*

[35] On the basis of the evidence presented at trial, the testimony supports Jenkins’ argument that she was merely winding up her affairs, and was no longer making any loans during the

period in which she did not have a business license. She was no longer engaged in the business of making loans in the way that the trial court found her to have been actively engaged in business in 1998. The winding up of business affairs incident to closing a business, as shown in the case law, traditionally does not require a business license.

V.

[36] The trial judge impliedly concluded that even though Jenkins had been doing business on Guam when she made the loans, she was no longer engaged in business in Guam in 2003. Therefore, no business license was required in order for Jenkins to maintain her suit to collect on the loans. This implied conclusion of law is supported by a legal analysis of the statute and the cases, and there is no reason to disturb it. The judgment is **AFFIRMED**.

J. BRADLEY KLEMM

J. BRADLEY KLEMM
Justice Pro Tempore

RICHARD H. BENSON

RICHARD H. BENSON
Justice Pro Tempore

ROBERT J. TORRES, JR.

ROBERT J. TORRES, JR.
Presiding Justice