IN THE SUPREME COURT OF GUAM

DARLEEN S. CAMACHO, JENNIFER P. SGAMBELLURI, and PAMELA S. QUINATA (aka PAMELA S. SGAMBELLURI),
Plaintiffs-Appellants,

v.

THE ESTATE OF PACIANO G. GUMATAOTAO,
Defendant-Appellee.

Supreme Court Case No.: CVA09-015
Superior Court Case No.: CV0957-07

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on October 20, 2009
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Presiding Justice[1]; KATHERINE A. MARAMAN, Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*[2]

CARBULLIDO, J.:

[1] Plaintiffs-Appellants Darleen S. Camacho, Jennifer P. Sgambelluri, and Pamela S. Quinata (aka Pamela S. Sgambelluri) (collectively the "Sgambelluris") appeal from a grant of summary judgment in favor of Defendant-Appellee The Estate of Paciano G. Gumataotao ("Gumataotao") in relation to a dispute as to who owns seven parcels of real property in Piti. The Sgambelluris argue that the Superior Court erred in granting summary judgment in favor of Gumataotao because a genuine issue of material fact exists as to: (1) the validity and enforceability of a deed of conveyance dated September 17, 1980, in which the Sgambelluris conveyed the disputed parcels to Gumataotao after defaulting on a promissory note and mortgage in favor of the latter; and (2) the validity of certificates of title issued by the Department of Land Management on July 18, 2008, which identify Gumataotao as the fee simple owner of said parcels.

[2] We find that the recording of a deed is not essential to an effective conveyance of title as between a grantor and a grantee. We also find that certificates of title are evidence of ownership, but are not determinative of ownership to real property. A grantor cannot employ, as against a grantee, various provisions of Guam's Land Title Registration Law, 21 GCA § 29101 *et seq.*, to invalidate an otherwise properly-executed deed of conveyance solely because said grantee did not record the instrument. Accordingly, we affirm the Superior Court's grant of summary judgment in favor of Gumataotao.

[1] Associate Justice F. Philip Carbullido, as the senior member of the panel, was designated Presiding Justice.

[2] The Honorable Richard H. Benson did not participate in the consideration or preparation of Part I of this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] This is a real property dispute involving statutory interpretation of Guam's Land Title Registration Law, 21 GCA § 29101 *et seq.* On April 22, 1971, Paciano G. Gumataotao and his wife entered into an option agreement with Joseph T. Gumataotao, giving the latter, in exchange for $25,000.00, an option to purchase for $800,000.00 a single parcel of property in Piti, Guam, containing an area of 400,000 square meters. The option's purchase terms required a down payment of $100,000.00 (less the $25,000.00 paid for the option) together with a promissory note for the remaining balance. The balance was to be payable in ten annual installments of $70,000.00 each, beginning one year after closing, with 6% interest per year on the unpaid balance.

[4] On December 28, 1973, Joseph T. Gumataotao notified Paciano Gumataotao and his wife that he had, on that same day, assigned the option agreement to the Sgambelluris. That same day, the Sgambelluris executed a promissory note in favor of Paciano Gumataotao with a payment schedule reflecting the terms set forth in the option agreement. As security for the note, the Sgambelluris gave Paciano Gumataotao a mortgage on the land set forth in the option. In exchange, that same day, Paciano Gumataotao and his wife executed a warranty deed for the same, in favor of the Sgambelluris. The notice of assignment, the mortgage, and the warranty deed were recorded with the Department of Land Management ("DLM") on January 9, 1974. The record reflects that on March 15, 1974, a check in the amount of $299,345.14 was made out to Joseph T. Gumataotao, for his sale of the option to the Sgambelluris.

[5] At some point, the parcel was subdivided into sixteen separate lots, including the seven at issue in this case. On February 6, 1975, certificates of title for Lots 1-7 ("1975 certificates of title") were issued by the DLM, naming the Sgambelluris as the fee simple owners thereof. On February 18, 1976, the Sgambelluris executed a second, junior mortgage on the land in favor of Citibank, N.A. ("Citibank"). This second mortgage was recorded that same day.

[6] Because the Sgambelluris failed to make any payments on the 1973 promissory note and first mortgage in favor of Paciano Gumataotao, the Sgambelluris, in a settlement agreement, agreed to convey Lots 1, 2, 3, 4, 5, 6, and 7 ("Lots 1-7") back to Paciano Gumataotao in exchange for a credit of $142,460.00 against the amount still owed to the latter under the fore-mentioned instruments (i.e., $700,000.00 plus an interest of 6% per annum on the unpaid balance). As part of this settlement agreement, Citibank agreed to release, as to Paciano Gumataotao, its mortgage on Lots 1-7 in exchange for the latter's agreeing to release, as to Citibank, its mortgage on Lots 8-16. This settlement agreement was memorialized in a writing dated September 19, 1980. On September 23, 1980, Citibank executed a Partial Release of Mortgages and Judgment, formally relinquishing its claims to Lots 1-7 to Paciano Gumataotao. This release was recorded on December 13, 2000. On September 17, 1980, the Sgambelluris executed a deed of conveyance ("1980 deed"), conveying Lots 1-7 to Paciano Gumataotao in fee simple. This 1980 deed was never recorded.

[7] Paciano Gumataotao died intestate on July 12, 1981. Petitions for letters of administration were filed in the probate case, Superior Court of Guam Probate Case No. PR0156-82, on December 14, 1982, March 18, 1985, and August 27, 1997. Each succeeding petition pre-dating the Sgambelluris' complaint in the instant case included an ever-increasing listing of decedent's real property assets, but did not include a description of the lots at issue here. On November 14, 2005, the estate of Paciano G. Gumataotao filed with the DLM a Notice of Unfiled Deed Conveying Property, indicating that, by way of the unrecorded 1980 deed, the Sgambelluris had conveyed to Paciano G. Gumataotao all of their right and interest to the seven lots at issue in this case.

[8] On August 20, 2007, the Sgambelluris filed a complaint to quiet title to the seven lots, alleging that Gumataotao's 2005 filing of the Notice of Unfiled Deed Conveying Property operated as a lien against Lots 1-7, which in turn constituted a "cloud against Plaintiffs' title to

said lots." Appellants' Excerpts of Record ("ER"), tab 1 at 3 (Compl., Aug. 20, 2007). Gumataotao then filed an unverified answer on September 14, 2007. The Sgambelluris moved for summary judgment on October 2, 2007. On October 10, 2007, Gumataotao filed an Updated Preliminary Inventory, Estimate and Cost of Claim/Debts in the above-mentioned probate case (Case No. PR0156-82), listing the seven lots. Gumataotao filed an opposition to the Sgambelluris' summary judgment motion, and a cross-motion for summary judgment. In support of its opposition and cross-motion, Gumataotao filed Declarations of Alvin C. Gumataotao, Helena G. Kubo (aka Helena Gumataotao), and defense counsel Louie J. Yanza. The Sgambelluris did not file a written response. On July 28, 2008, the DLM issued new certificates of title for Lots 1-7 ("2008 certificates of title") identifying Paciano G. Gumataotao as the fee simple owner thereof.

[9] On April 1, 2009, the Superior Court issued its Decision and Order granting summary judgment in favor of Gumataotao. The judgment was entered on the docket on June 18, 2009. The Sgambelluris timely appealed.

[10] While the instant appeal was pending, the Sgambelluris filed with this court an "Objection to the Appointment of the Honorable Richard H. Benson as Justice *pro tempore*" ("Motion"). Because the Motion failed to comply with Guam's disqualification statute, we issued an order on September 17, 2009, treating it instead as a motion challenging the authority of the Chief Justice of the Supreme Court of Guam to appoint *pro tempore* Justices. Pursuant to Guam Rules of Appellate Procedure ("GRAP") Rule 6, Gumataotao filed a response to the Sgambelluris' Motion, to which the Sgambelluris then replied. On October 16, 2009, we issued an order addressing the merits of the Motion, denying it.

II. JURISDICTION

[11] This court has jurisdiction over an appeal from a final judgment pursuant to 48 USC § 1424-1(a)(2) (Westlaw through Pub.L. 111-1 (2009)); 7 GCA §§ 3107(b), 3108(a) (2005).

III. STANDARD OF REVIEW

[12] We review the grant of a motion for summary judgment *de novo*. *Iizuka Corp. v. Kawasho Int'l (Guam), Inc.*, 1997 Guam 10 ¶ 7 (citing *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996)); *Wasson v. Berg*, 2007 Guam 16 ¶ 9 (citing *Nat'l Union Fire Ins. Co. v. Guam Hous. & Urban Renewal Auth.*, 2003 Guam 19 ¶ 12).

IV. DISCUSSION

Part I

[13] Before reaching the merits of the instant case, we first consider the issue implicated by the Sgambelluris' "Objection to the Appointment of the Honorable Richard H. Benson as Justice *pro tempore*"; that is, whether the Guam statute granting the Chief Justice of the Supreme Court of Guam the authority to appoint *pro tempore* Justices is either inorganic or unconstitutional, or both.

A. The authority of the Chief Justice of the Supreme Court of Guam to appoint *pro tempore* Justices

[14] The Sgambelluris essentially argue that 7 GCA § 6108 inorganically and unconstitutionally authorizes the Chief Justice of the Supreme Court of Guam to appoint *pro tempore* justices. Specifically, they argue that *pro tempore* justices must be appointed by the Governor and confirmed by the Legislature.

[15] The plain language of the Organic Act of Guam undermines the Sgambelluris' contention that 7 GCA § 6108 is inorganic. In their Objection, the Sgambelluris argue that nothing in the Organic Act, specifically 48 U.S.C.A. § 1424-1, gives the Guam Supreme Court or the sitting Chief Justice the power to appoint *pro tempore* justices. The Organic Act states in pertinent part: "The qualifications and duties of the justices and judges of the Supreme Court of Guam, the Superior Court of Guam, and all other local courts established by the laws of Guam *shall be governed by the laws of Guam and the rules of such courts.*" 48 U.S.C.A. § 1424-1(e) (Westlaw current through Pub.L. 111-62 (2009)) (emphasis added). This language unambiguously

indicates that Congress delegated authority to Guam to determine the qualifications and duties of the justices and judges of Guam courts.

[16] In the absence of any clear congressional directive to the contrary, it cannot be maintained that *pro tempore* justices *must* be appointed by the Governor and confirmed by the Legislature. *See Binns v. United States*, 194 U.S. 486, 490-94 (1904) (articulating that Congress has plenary power to fashion the governments of its territories however it chooses, and in doing so is not limited to the *quasi* state form with three respective coordinate branches); *accord People v. Okada*, 694 F.2d 565, 568 (9th Cir. 1982) ("Congress has the power to legislate directly for Guam, or to establish a government for Guam subject to congressional control"). In *Binns*, the U.S. Supreme Court considered the constitutionality of a congressionally-enacted license tax for the territory of Alaska. The statute, which required certain types of businesses to obtain licenses in order to operate within the territory, provided that the money generated from the fees was to be paid into the U.S. Treasury. *Binns*, 194 U.S. 486, 487. The U.S. Supreme Court upheld the statute, deeming the license fees as local taxes imposed under the plenary power of Congress over the territories for the purpose of defraying the expense of territorial government. *Id.* at 491. The Court unequivocally declared: "It must be remembered that Congress, in the government of the territories . . . has plenary power, save as controlled by the provisions of the Constitution; that the form of government it shall establish is not prescribed, and may not necessarily be the same in all the territories." *Id.*

[17] Exercising congressionally-conferred authority under 48 U.S.C. 1424-1(e) to set out the qualifications and duties of the justices and judges of the courts of Guam, the Guam Legislature enacted 7 GCA § 6108.

[18] The plain language of 7 GCA § 6108 likewise belies the Sgambelluris' assertion that *pro tempore* justices must be appointed by the Governor and confirmed by the Legislature. The statute explicitly states that "Judges or Justices *pro tempore* shall not be confirmed by the

Legislature." 7 GCA § 6108(b) (2005). Also, the statute indicates that a *pro tempore* justice "shall meet the same qualifications as a regularly appointed Justice of the Supreme Court or be appointed in accordance with Guam law." 7 GCA § 6108(a) (2005). This disjunctive "or" indicates that meeting the qualifications of a regularly appointed Supreme Court Justice, and being appointed in accordance with Guam law, are two different things. Moreover, the statute clearly confers the power of appointment to the Chief Justice: "the Chief Justice shall appoint a Justice *pro tempore* to participate in the matter." *Id.* The statute goes on to say: "[i]n order to provide for the orderly use of Judges or Justices *pro tempore* such Judge or Justice shall be appointed from among a list maintained by the Chief Justice of qualified and available persons." 7 GCA § 6108(b).

[19] The well-settled principle of statutory construction that a narrower, more specific provision of a statute takes precedence over a more general provision of the same statute with respect to the same subject matter informs this court's finding that *pro tempore* justices need not be appointed by the Governor and confirmed by the Legislature. *See, e.g., Rose v. State*, 123 P.2d 505, 512 (Cal. 1942) ("A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."); *People v. Moroney*, 150 P.2d 888, 891 (Cal. 1944) ("[S]pecific provisions of a statute control over general provisions where there is a conflict."). As the Sgambelluris point out, 7 GCA § 3109 provides:

> *I Maga'lahen Guåhan* [The Governor of Guam], with the advice and consent of *I Liheslaturan Guåhan* [the Legislature], shall appoint a qualified person to each of the positions of Justice created by this Title; and subject to the advice and consent of *I Liheslaturan Guåhan*, appoint a qualified person to any vacancy occurring in either the Supreme Court or the Superior Court of Guam, and to any newly created position of Justice or Judge authorized by statute.

7 GCA § 3109(a) (2005). The Sgambelluris contend that this section of the statute irreconcilably conflicts with 7 GCA § 6108, which, as explained above, confers upon the Chief

Justice of the Supreme Court of Guam the power to appoint *pro tempore* justices. Unlike section 3109, which deals with the appointment of justices and judges in general, section 6108 addresses the appointment of *pro tempore* justices in particular. The latter disposes of the narrower, more specific matter of when, how, and by whom *pro tempore* justices are to be appointed. Accordingly, section 6108 governs, and the authority to appoint *pro tempore* justices resides in the Chief Justice of the Supreme Court of Guam. *See, e.g., State ex rel. Robb v. Caperton*, 446 S.E.2d 714, 717 (W. Va. 1994) (finding that the specific constitutional provision governing filling of vacancies in the office of the justice of the Supreme Court or a judge of the circuit court governed more general provisions in other sections of the Constitution relating to the filling of vacancies for state and county officers).

[20] Moreover, even a plain language reading of 7 GCA § 3109 would not upset this court's conclusion that *pro tempore* justices need not be appointed by the Governor and confirmed by the Legislature. To be sure, the section provides: "*I Maga'lahen Guåhan* [The Governor of Guam] . . . shall . . . subject to the advice and consent of *I Liheslaturan Guåhan*, appoint a qualified person to *any vacancy* occurring in either the Supreme Court or the Superior Court of Guam." 7 GCA § 3109(a) (emphasis added). It seems so plain that it is unnecessary to dwell on the matter that the appointment of *pro tempore* justices "[w]hen there is no Justice qualified or available to hear a cause, action, or hearing in the Supreme Court," 7 GCA § 6108(a), is not the filling of a "vacancy" in the court. In short, 7 GCA § 3109(a) does not apply because the appointment of *pro tempore* justices, who by their very nature sit only temporarily, is not the same as the filling of a vacancy in the court.

[21] The Sgambelluris also tacitly assert in their Motion that the power to appoint *pro tempore* justices resides in the coordinate branches of government as a more or less inherent power. We note that there are numerous ways of selecting state justices and judges, which can be categorized, among others, as election, and restricted and unrestricted gubernatorial appointment.

Regarding the appointment of *pro tempore* justices, the U.S. system does not show inherent power in the executive branch, with advice and consent by the legislative branch, as the Sgambelluris suggest. Moreover, the Sgambelluris' assertion is untenable in light of state practice allowing the Chief Justice particularly, or the Supreme Court generally, to appoint *pro tempore* justices. *See, e.g., Mosk v. Super. Ct. of L.A. County*, 601 P.2d 1030, 1034-39 (Cal. 1979) (finding that the Chief Justice of the California Supreme Court has the constitutional authority to assign judges from lower courts to the Supreme Court to replace disqualified justices, and that even a panel composed entirely of *pro tempore* judges has authority to decide the merits of proceedings before it), *superseded on other grounds as stated in Adams v. Comm'n on Judicial Performance*, 882 P.2d 358, 370-73 (Cal. 1994); *City of Bessemer v. McClain*, 957 So. 2d 1061, 1091-95 (Ala. 2006) (finding state statute that provided that the governor was to appoint a member of the bar of the Supreme Court to sit as a judge for a designated case, was unconstitutional to the extent that it restricted the Alabama Supreme Court Chief Justice's power under the Alabama Constitution to assign special justices to serve temporarily on the Supreme Court); *State Bd. of Law Exam'rs v. Spriggs*, 155 P.2d 285, 287 (Wyo. 1945) (ruling that the constitutionally-conferred authority of the Chief Justice of the Wyoming Supreme Court to assign temporary judges allowed, in substance, the Chief Justice to assign as many district court judges to the Supreme Court as necessary to replace justices who were disqualified or unable to act); *Yelle v. Kramer*, 520 P.2d 927, 928 (Wash. 1974) (recognizing the constitutionally-conferred authority of a majority of the justices of the Washington Supreme Court to assign judges or retired judges of courts of record of that state to temporarily perform judicial duties in the Supreme Court); *Crumlish v. Davis*, 449 A.2d 1379, 1380-81 (Pa. 1982) (denying mandamus directing the Secretary of Pennsylvania to fill vacancies on the court in the upcoming election because the constitution already provided the Pennsylvania Supreme Court the authority to order the temporary assignment of judges).

[22] Although these cases proffer no perfect parallel to the challenged appointment power in the instant case[3], they nevertheless stand to defeat the proposition advanced by the Sgambelluris in their Motion that the power to appoint *pro tempore* justices is a more or less inherent power of the coordinate branches of government. In fact, the California Supreme Court in *Mosk* characterized the Chief Justice's appointment of temporary justices as "inherent", *Mosk*, 601 P.2d 1030, 1036, reasoning that implicit in the authority of the Chief Justice to expedite the work of the courts is the correlative power to assign judges to assist the Supreme Court when its justices have been disqualified. *Id.* at 1034-36; *see also Anton v. S.C. Coastal Council*, 469 S.E.2d 604, 605 (S.C. 1996) ("The Chief Justice has *inherent* power to assign judges within the unified judicial system") (emphasis added).

[23] Finally, this court deems it unnecessary to implicate the constitutionality of 7 GCA § 6108 in light of the cardinal principle of statutory interpretation that statutes, where fairly possible, ought to be construed so as to avoid constitutional questions. *See, e.g., Office of Senator Mark Dayton v. Hanson,* 550 U.S. 511, 514 (2007) (discussing "established practice" of interpreting statutes to avoid constitutional difficulties); *United States v. Clark*, 445 U.S. 23, 27 (1980) (finding it "well settled" that the United States Supreme Court will not pass on the constitutionality of an act of Congress if a construction of the statute is fairly possible by which the question may be avoided); *United States v. Congress of Indus. Orgs.*, 335 U.S. 106, 120-21 (1948) (finding that the United States Supreme Court has a duty, in construing congressional enactments, to take care to interpret them so as to avoid a danger of unconstitutionality); *United States v. Standard Brewery*, 251 U.S. 210, 220 (1920) (stating that when considering an act of

[3] These cases all involve the assignment of *judges* to temporarily perform judicial duties in the Supreme Court as temporary justices. In contrast, the Guam statute empowers the Chief Justice of the Supreme Court of Guam to appoint *pro tempore* justices from among a list of "qualified and available persons." 7 GCA § 6108(b). Taken together, the two pertinent subsections of 7 GCA § 6108 only provide that such persons shall meet the same qualifications as a regularly appointed Justice of the Supreme Court, or be appointed in accordance with Guam law. *See* 7 GCA § 6108(a), (b) (2005). For purposes here, however, it suffices that the above-cited cases undermine the Sgambelluris' assertion that the power to appoint *pro tempore* justices is a more or less inherent power of the coordinate branches of government.

Congress, a construction which might render it unconstitutional is to be avoided). Here, because another reasonable construction of the pertinent provisions of the Guam Code and the Organic Act is readily discernable (i.e., that the U.S. Congress left it up to Guam to set out the qualifications and duties of the Justices and Judges of Guam courts), this court construes the relevant statutes so as to avoid unnecessary constitutional difficulties.

[24] For the foregoing reasons, we hold that 7 GCA § 6108, which authorizes the Chief Justice of the Supreme Court of Guam to appoint *pro tempore* justices without gubernatorial appointment or legislative confirmation, is neither inorganic nor unconstitutional.

Part II

[25] We now turn to the merits of the case.

[26] In their appeal, the Sgambelluris advance two interrelated arguments in support of their contention that the Superior Court erred in granting Gumataotao's motion for summary judgment: 1) that a genuine issue of material fact exists as to the validity and enforceability of a deed of conveyance dated September 17, 1980 ("1980 deed"), in which the Sgambelluris conveyed Lots 1-7 to Gumataotao after defaulting on a promissory note and mortgage in favor of the latter; and 2) that a genuine issue of material fact exists as to the validity of certificates of title issued by the Department of Land Management on July 18, 2008 ("2008 certificates of title"), which identify Gumataotao as the fee simple owner of Lots 1-7.[4] Specifically, the

[4] Although not enumerated as an issue on appeal, the Sgambelluris revive as a sub-issue their argument that pursuant to 7 GCA § 15601, the Superior Court should have deemed admitted the genuineness and due execution of the 1975 certificates of title, which they attached to their original Complaint to Quiet Title. Appellants' Br. at 9 (Aug. 18, 2009). The statute provides:

> **§ 15601. Written Instrument: When Copy of Complaint Deemed Genuine.**
>
> When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the answer denying the same be verified. (If the plaintiff relies upon a written instrument, in whole or in part, that fact shall be pleaded.)

7 GCA § 15601 (2005). The Sgambelluris construe this provision to mean that because Defendant-Appellee the Estate of Paciano G. Gumataotao filed an unverified answer, the latter is deemed to have admitted the genuineness and due execution of the 1975 certificates of title. Appellants' Br. at 10. Even assuming this construction is correct, it does not follow that the Sgambelluris own the seven lots at issue in this case. As explained further in this opinion,

Sgambelluris argue that both the 1980 deed and the 2008 certificates of title are invalid inasmuch as each fails to comply with at least one provision of Guam's Land Title Registration Law, 21 GCA § 29101 *et seq.*

[27] We address each of these arguments in turn.

A. The 1980 Deed

[28] To support their contention that the 1980 deed is invalid, the Sgambelluris rely solely on 21 GCA § 29154, which provides:

> **§ 29154. Name, Residence, and Address of Grantee on Instrument Presented for Registration: Service of Notices and Process on Person Interested.**
>
> Every deed or other voluntary instrument which is presented for registration including the endorsement of a certificate of title, shall contain or have endorsed upon it, the full name, residence and post office address of the grantee or other person who acquires or claims an interest under such instrument.
>
> Any change in the residence or post office address of such person shall be endorsed by the registrar upon the original instrument, upon receiving a written statement of such change, duly acknowledged.

Appellants' Br. at 16-17 (Aug. 18, 2009) (citing 21 GCA § 29154 (2005)). The Sgambelluris argue that because the 1980 deed did not contain Paciano Gumataotao's residence and mailing address, the deed is "legally invalid and should not have been accepted for recording by the Guam Department of Land Management." Appellants' Br. at 17. The Sgambelluris correctly assert that the lack of Paciano Gumataotao's residence and mailing address on the 1980 deed renders that deed technically defective under 21 GCA § 29154. However, the Sgambelluris incorrectly assert that a technical deficiency in a deed necessarily defeats the transfer of title under it; i.e., that a defective deed cannot be cured. Indeed, the appropriate mechanism for curing such minor technical deficiencies in a deed would be an action to quiet title. *See* 21 GCA

certificates of title are not themselves title-transferring instruments, but rather, are acquired after title to real property has already been conveyed by another instrument. *See Sananap v. Cyfred, Ltd.*, 2009 Guam 13 ¶ 60. Here, the operative instrument is the 1980 deed of conveyance wherein the Sgambelluris conveyed the disputed seven lots back to Gumataotao after defaulting on a promissory note and mortgage in favor of the latter. Therefore, the Sgambelluris' 1975 certificates of title, which are no doubt genuine, are immaterial.

§ 25101 (2005) ("An action may be brought by any person against another who claims an estate or interest in real or personal property, adverse to him, for the purpose of determining such adverse claim . . . ."). This is the case now before us, and, for the reasons set out below, we agree with the Superior Court's quieting title to the disputed property in Gumataotao.

[29] As to the relevance of recordation between a grantor and a grantee, the Superior Court was correct to look to our decision in *Zahnen v. Limtiaco*, 2008 Guam 5. The *Zahnen* case, like this case, involved a dispute over title to a parcel of real property. There, Mr. and Mrs. Zahnen ("the Zahnens") purchased a registered parcel of land in 1966, and recorded the deed three years later. *Zahnen*, 2008 Guam 5 ¶ 2. In 1974, in exchange for consideration, the Zahnens granted a small portion of this property, via a warranty deed ("1974 deed"), to Mr. and Mrs. Limtiaco ("the Limtiacos"). *Id.* ¶ 3. Subsequently, in 1982, the Zahnens signed a deed of conveyance ("1982 deed") transferring the same to the Limtiacos. *Id.* This deed was not recorded. *Id.* At some point, the Limtiacos built an extension on their portion of the lot. *Id.* After the Zahnens died, one in 1996 and the other in 1997, the entire lot was included in the inventory assets in both estates. *Id.* ¶ 4. The Limtiacos submitted opposition throughout the probate proceedings, but the probate court distributed the entire lot in 2002 to the Zahnen's son and daughter. *Id.* The son then filed an action to quiet title to the lot in the Superior Court. *Id.* The case proceeded to a bench trial on the issues of the authenticity of the deeds as well as the application of the doctrine of laches. *Id.* ¶ 5. As to the relevant issue, the trial court ruled that title to the disputed property had been properly conveyed to the Limtiacos by the 1974 and 1982 deeds. *Id.*

[30] On appeal, the appellant son argued that the doctrine of laches precluded the Limtiacos from asserting a claim because of their failure to record the deed after conveyance. We roundly rejected that argument:

> Although an unregistered deed is not afforded the same protections as a registered one, for example, protection from adverse possession . . . it does not follow that an unregistered deed is somehow an imperfect vestment of title. Rather, as the

> law clearly states, "[a]n unrecorded instrument is valid as between the parties thereto and those who have notice thereof."

Id. ¶ 25 (quoting 21 GCA § 37105 (2005)) (internal citation omitted). "Once title was conveyed through the deeds, nothing more was required to vest title in Limtiaco under the laws of Guam." *Id.* ¶ 26. Here, like in *Zahnen*, the 1980 deed of conveyance from the Sgambelluris to Gumataotao was not recorded. Like the Zahnens in the *Zahnen* case, the Sgambelluris here, as grantors, conveyed to Gumataotao the seven lots at issue in this case, and as such they had notice, which places them outside the class of persons intended to be protected by Guam's recording statute. *See Pelowski v. Taitano*, 2000 Guam 34 ¶ 34 (stating that in order to avail oneself of the protections of Guam's recording statute, one must either be an initial registrant or a bona fide purchaser).[5]

[31] Finally, 21 GCA § 37105 straightforwardly provides that, "[a]n unrecorded instrument is valid as between the parties thereto and those who have notice thereof." 21 GCA § 37105 (2005). Section 37105, taken near verbatim from section 1217 of California's Civil Code, wholly accords with our considered position that, as between grantor and grantee, the recording of a deed is not essential to an effective conveyance of title. In *Merrit v. Rey*, it was argued that the grantee was estopped from asserting title to the disputed property because she had failed to record her deed and she had permitted the grantor to continue to enjoy the use and benefits derived from the property and the mortgaging thereof. 286 P. 510, 512 (Cal. Ct. App. 1930). The California district court of appeal rejected this argument, finding that the facts did not conclusively establish either a failure to transfer title on the part of the grantor, or estoppel on the part of the grantee. *Id.* at 513. Citing section 1217 of California's Civil Code, the court held that the grantee's failure to record the deed "had no particular significance" because "[a]n unrecorded

[5] In a relevant footnote, we stated: "We reserve whether there are other classes protected by the Registration Law. We only conclude today that the Taitanos are not within the recognized classes protected by the Registration Law." *Pelowski v. Taitano*, 2000 Guam 34 ¶ 34 n.4. The opinion as a whole, however, reveals this court's averment to any attempt by persons with notice of adverse claims to disputed property to claim bona fide purchaser status. In the instant case it is beyond doubt that the Sgambelluris, as grantor, had notice of Gumataotao's interest in the seven lots here at issue. Accordingly, the Sgambelluris cannot avail themselves of the protection of Guam's recording statute.

deed is valid as between the parties and with all those who have notice thereof." *Id.* Because 21 GCA § 37105 was taken near verbatim from section 1217 of California's Civil Code, *Merritt* is particularly instructive in the instant case, and therefore, we find it of no particular significance that the 1980 deed is unrecorded.

B. The 2008 Certificates of Title

[32] The Superior Court rightly rejected as irrelevant the Sgambelluris' contention that the DLM lacked authority to issue the 2008 certificates of title identifying Paciano G. Gumataotao as the fee simple owner of the disputed lots. To support their contention that the 2008 certificates of title are invalid, the Sgambelluris cite the following provision of our recording statute:

> A registered owner of land desiring to transfer his whole estate or interest therein . . . may execute an instrument of conveyance in any form authorized by law for that purpose. **Upon filing such instrument of the registrar's office, and surrendering to the registrar the duplicate certificate of title, the transfer shall be complete and the title so transferred shall vest in the transferee;** thereupon, the registrar . . . shall stamp across the original and duplicate the word *cancelled,* in whole or in part, as the case may be.

Appellants' Br. at 11 (citing 21 GCA § 29149 (2005)) (emphasis added in brief). The Sgambelluris further rely on the following provision:

> On the filing in the registrar's office of an instrument intended to create a charge on registered land and upon the production of the duplicate certificate of title, whenever it appears from the original certificate of title that the person intending to create the charge has the title and right to create such charge and the person in whose favor the same is sought to be created is entitled by the terms of this law to have the same registered . . . **No new certificate of title shall be entered and no memorandum shall be made upon any certificate of title by the registrar in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate of title is presented with such instrument . . . The production of the owner's duplicate certificate, whenever a voluntary instrument is presented for registration, shall constitute authority from the registered owner to the registrar to issue a new certificate or to make a memorial in accordance with such instrument and the new certificate or the memorial shall be binding upon the registered owner** and upon all persons claiming under him in favor of every purchaser for value in good faith.

Appellants' Br. at 12 (quoting 21 GCA § 29160 (2005)) (emphasis added in brief).

[33] Certificates of title are only evidence that a titleholder's interest has been recorded under Guam's Land Title Registration Law; they are not required to effectuate a legal transfer of title to real property in Guam. *See Sananap v. Cyfred, Ltd.*, 2009 Guam 13 ¶ 60. In *Sananap*, we addressed as a sub-issue the argument that one's title might be defective for want of certificates of title. There, we simply assumed that certain parties were never issued certificates of title. *Id.* ¶ 59. In *Sananap*, we analyzed 21 GCA § 29149, the same statutory provision cited in the instant case by the Sgambelluris in their attempt to invalidate the 2008 certificates of title. We found that the "title so transferred" referenced in 21 GCA § 29149 "should be read to mean 'registered title' and does not imply that only registered deeds are capable of legally transferring title." *Id.* ¶ 60. Instead, we stated that in Guam, ownership of real property does not require a certificate of title:

> [a]n estate in real property . . . can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized in writing.

Id. (quoting 21 GCA § 4101 (2005)) (internal quotation marks omitted). We then stated that examples of title-transferring instruments include a simple warranty deed or quitclaim deed. *Id.*

[34] In *Sananap*, we found that the homeowners "would not have defective title even if it were alleged that they are unable to obtain a certificate of title from the Department of Land Management." *Id.* ¶ 60. This is so because "a certificate of title is acquired later, after title has already been conveyed by another instrument . . . ." *Id.* Hence, because the Sgambelluris conveyed their right and interest in the disputed lots to Gumataotao via the 1980 deed—and because the deed itself is the title-transferring instrument—we find the Sgambelluris' assertion that the 2008 certificates of title are invalid ultimately irrelevant as to the issue of ownership of said lots.

[35] Finally, the Sgambelluris argue that the 2008 certificates of title should never have been issued by the DLM to Gumataotao without the former's 1975 duplicate certificates of title, and

that, consequently, the 2008 certificates were "issued without authority and are not binding" on the Sgambelluris. Appellants' Br. at 13. We find this argument unpersuasive in light of our construction of Guam's Land Title Registration Law.

[36] We have stated that in order to avail oneself of the protections of Guam's Land Title Registration Law, 21 GCA § 29101 *et seq.*, one must be either an initial registrant or a bona fide purchaser. *See Pelowski v. Taitano*, 2000 Guam 34 ¶ 34. Although in *Pelowski* we expressly left it open as to whether there are other classes protected by the recording statute, *see Pelowski*, 2000 Guam 34 ¶ 34 n.4, we did not leave it so widely open so as to afford protection under the recording statute to a grantor who first conveys her right and interest in real property to a grantee via a deed of conveyance and then later asserts that, for want of recording the deed, title never passed to the latter under it. We are confident that our finding today does not upset our reasoning in *Pelowski*. *Id.* ¶ 34 (finding that the Taitanos were not bona fide purchasers because they were put on constructive notice of others' right and interest in the disputed property); *accord Morioka v. I & F Corp. Guam*, Civ. No. 91-00027A, 1991 WL 255842, at *3 (D. Guam App. Div. Nov. 18, 1991) ("To become a bona fide purchaser of property one must acquire title through payment of value, in good faith, and without actual or constructive notice of another's rights."). In this case, it is beyond doubt that the Sgambelluris had notice of Gumataotao's interest in the seven lots at issue; it was they who deeded the lots to Gumataotao in 1980. Accordingly, our conclusion that the Sgambelluris are not within the class of persons protected under Guam's recording statute is not disharmonious with our reasoning in *Pelowski*.

V. CONCLUSION

[37] Based on the foregoing, we find that the recording of a deed is not essential to an effective conveyance of title as between a grantor and a grantee, and that certificates of title are evidence of ownership, but are not determinative of ownership to real property. A grantor cannot employ, as against a grantee, various provisions of Guam's Land Title Registration Law,

21 GCA § 29101 *et seq.*, to invalidate an otherwise properly-executed deed of conveyance solely because said grantee did not record the instrument. Accordingly, the Superior Court's grant of summary judgment in favor of Gumataotao is **AFFIRMED**.

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Richard H. Benson
RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Presiding Justice