IN THE SUPREME COURT OF GUAM

RONG CHANG COMPANY, LTD., INC.,
Plaintiff-Appellant,

v.

M2P, INC., CHANG SHIK KIM, and LANDMARK DEVELOPMENT, LLC,
Defendants-Appellees.

Supreme Court Case No. CVA10-011
Superior Court Case No. CV1450-08

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted July 15, 2011
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A MARAMAN, Associate Justice.

CARBULLIDO, C.J.:

[1] Rong Chang Company, Ltd., Inc. ("Rong Chang") appeals (1) the Decision and Order of the trial court filed on June 18, 2010 (the "June Decision"); (2) the Judgment filed pursuant to that Decision and Order, also filed on June 18, 2010; and (3) a Decision and Order of the trial court filed on January 12, 2011 denying two motions brought by Rong Chang subsequent to the entry of judgment (the "January Decision"). *See* Am. Not. Appeal at 1-2 (Feb. 11, 2011). Defendant-Appellee M2P, Inc. ("M2P") opposes the appeal.[1]

[2] For the following reasons we affirm the Judgment of the trial court.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The underlying dispute between the parties involves compensation allegedly owed to Rong Chang for construction services performed in connection with the Talo Verde Estates housing development project in Tumon. Rong Chang initiated litigation in 2008 alleging breach of contract, conversion, and other claims against M2P while simultaneously seeking to foreclose on several mechanics' liens connected to the project. The trial court referred the contract claims to arbitration. The balance of the case was stayed pending arbitration. A motion pertaining to

[1] What exact role the other named parties have in this litigation is unclear. Mr. Chang Shik Kim was named in Rong Chang's initial complaint as the owner of a single plot within the housing development at the center of this litigation. The name Landmark Development, LLC appears in the caption of Rong Chang's complaint, but its role in the litigation is not discussed in the section of the complaint discussing the parties. The trial court's June Decision identifies M2P's counsel as representing "the Defendants." Record on Appeal ("RA"), tab 38 at 1 (Dec. & Order, June 18, 2010). From this, we presume that these other named parties are either (1) represented by M2P's counsel in this appeal, or (2) that these entities are not a party to *this* portion of the litigation as this appeal only concerns a subset of all the issues raised in the original complaint. It does not appear that the issue of the propriety of the several mechanics' liens levied by Rong Chang against the properties at the center of this case is before us here. *See* RA, tab 3 at 10-11 (Compl., Dec. 5, 2008).

the propriety of the lien claims was filed by M2P prior to the case being referred to arbitration; an opposition and a reply were also filed.

[4] The parties retained a single local attorney ("the Arbiter") to conduct the arbitration. It is undisputed that M2P's counsel and the Arbiter served as co-counsel in a separate civil construction case.[2] At the time the Arbiter was selected to conduct the arbitration in this case, the other case was still pending in the Superior Court of Guam. M2P's counsel has averred that the last "meaningful" involvement he had in the other case took place in January 2008. Both the Arbiter and M2P's counsel attended a March 5, 2009 status hearing for the other case.

[5] The arbitration took place in October 2009. The Arbiter considered both the claims previously filed by Rong Chang against M2P and counterclaims filed by M2P against Rong Chang. After considering the case, the Arbiter returned an award in favor of M2P in November 2009. On November 30, 2009, the Arbiter filed a "Joint Request for Status Conference" in the other case, signed by the Arbiter and containing a signature block for M2P's counsel. RA, tab 31 at 5-6 (Decl. Joyce Tang, Feb. 25, 2010).

[6] On December 15, 2009, M2P filed a motion to confirm the arbitration award or, alternatively, to renew its previous motion concerning the propriety of the mechanics' liens. An *ex parte* motion to shorten time was simultaneously filed. Rong Chang filed an opposition to the motion to shorten time the next day. A hearing on the motion to shorten time was held on January 8, 2010. Another court hearing was held on January 22, 2010.

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[2] This separate case is *Asia Pacific Hotel Guam, Inc. v. Dongbu Insurance Co.*, which was captioned CV0194-06 at the trial court, and was before this court as CVA10-021. *See Asia Pac. Hotel Guam, Inc. v. Dongbu Ins. Co.*, 2011 Guam 18. Justice Maraman presided over that case at the trial court level. However, Justice Maraman saw no reason why previous participation in that case would implicate her ability to consider this matter, as nothing concerning the underlying merits of that case is referenced here. The parties did not object to her participation. Digital Recording at 09:36 A.M. (Status Hr'g, June 20, 2011).

[7] At some point, Rong Chang's counsel became aware that the Arbiter and M2P's counsel had been designated co-counsels in the other case pending in the Superior Court of Guam. Rong Chang states that this relationship was only discovered on or about February 17, 2010. M2P argues that other evidence indicates that Rong Chang might have been aware of this relationship at an earlier date. On February 25, 2010, Rong Chang filed a motion to vacate the arbitration award, alleging evident partiality of the Arbiter. Simultaneously, Rong Chang filed an Agreement of Hearing Date form.

[8] Subsequently, the trial court issued the June Decision confirming the arbitration award, and simultaneously a judgment pursuant to that decision. Rong Chang then filed both a motion for reconsideration of the June Decision and a motion to set aside the Judgment. Rong Chang also filed an original Notice of Appeal in this matter in July 2010, referring to the June Decision.

[9] Thereafter, the trial court issued the January Decision, denying Rong Chang's post-judgment motions. Rong Chang filed an amended Notice of Appeal referring to the January Decision.

II. JURISDICTION

[10] This court has jurisdiction over appeals taken from final judgments pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through P.L. 112-89 (2012)) and 7 GCA §§ 3107(b) and 3108(a) (2005). The trial court entered the January Decision on January 12, 2011, and the amended notice of appeal was timely filed. Not. Appeal (July 19, 2010).

III. STANDARD OF REVIEW

[11] The court reviews denials of motions for reconsideration and denials of motions to set aside a judgment for abuse of discretion. *Brown v. Eastman Kodak Co.*, 2000 Guam 30 ¶ 11; *Ward v. Reyes*, 1998 Guam 1 ¶ 10.

[12] Rong Chang argues that the issue of evident partiality is to be reviewed *de novo*. *See* Appellant's Br. at 37-38 (Apr. 25, 2011) (citing *Pirsig v. Pleasant Mound Mut. Fire Ins. Co.*, 512 N.W.2d 342, 343-44 (Minn. Ct. App. 1994)). This is partially correct. However, as the authorities cited by Rong Chang establish, assertions of evident partiality frequently require extensive factual inquiries. *See Univ. Commons-Urbana, Ltd. v. Universal Constructors Inc.*, 304 F.3d 1331, 1345 (11th Cir. 2002) (quoting *Lifecare Int'l, Inc. v. CD Med., Inc.*, 68 F.3d 429, 435 (11th Cir. 1995)). Therefore, the true standard of review when reviewing evident partiality cases is "a mixed standard: [an appellate court reviews a lower court's] factual findings for clear error and its legal conclusions *de novo*." *Id.* at 1337; *see also Gov't of Guam v. PacifiCare Health Ins. Co. of Micronesia*, 2004 Guam 17 ¶ 16 (finding that legal rulings of a trial court reviewing an arbitration award are reviewed *de novo*, while factual findings are reviewed under the clearly erroneous standard).

[13] Application of this mixed standard is somewhat complicated here by the fact that the trial court prefaced its analysis of these issues by stating that it would "reserve decision" and take all the facts "regarding the applicability of the [Federal Arbitration Act] and its ignorance of the co-counsel relationship until after the arbitration" presented by Rong Chang as true. RA, tab 72 at 30 (Dec. & Order, Jan. 12, 2011). Later in the January Decision, the trial court made several factual findings in reference to evidence presented by M2P regarding the nature of the

relationship between M2P's counsel and the Arbiter. *See id.* at 37-38. This later factual section reads in full:

> The uncontradicted evidence provided by [M2P's] counsel states that the "last meaningful assistance" provided by [M2P's] counsel as co-counsel in the other case occurred on January 30, 2008, and that the occurrence of his name in any filings since that date is a mere formality. Accordingly, the active co-counsel relationship between the arbitrator and [M2P's] counsel ended prior to the arbitrator's appointment to the case, and did not occur simultaneously with the arbitration conducted in this case.

Id. at 38 (internal citations omitted). These later findings of fact will be assumed as set down in the January Decision, rather than as argued by Rong Chang, and are reviewed under the clear error standard applicable to factual findings. A factual finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that an error has been made. *See Melwani v. Arnold*, 2010 Guam 7 ¶ 11 (citing *Macris v. Swavely*, 2008 Guam 18 ¶ 9).

[14] This standard of review does not permit appellate courts to disregard the general policies applicable to trial court review of arbitration awards, which lean toward favoring arbitration for public policy reasons. *See id.* (citing *PacifiCare*, 2004 Guam 17 ¶ 16).

IV. ANALYSIS

[15] Rong Chang asserts three primary errors on appeal: (1) that the trial court erred in applying the wrong standards while reviewing Rong Chang's post-judgment motions for reconsideration and to set aside the judgment; (2) that the trial court erred by ruling that Rong Chang's post-judgment motions were procedurally improper; and (3) that the trial court erred in its analysis of the issue of evident partiality. Appellant's Br. at 2-3. We address each argument in turn.

A. Rong Chang's Motion for Reconsideration and Motion to Set Aside the Judgment

[16] Rong Chang's first argument concerns the trial court's decision to review both of the post-judgment motions filed by Rong Chang under the standards of Rule 60(b) of the Guam Rules of Civil Procedure ("GRCP"). *Id.* at 21-23. Rong Chang argues that its Motion for Reconsideration should have been considered under the standards of GRCP 59(e). *Id.* GRCP 59(e) reads as follows: "Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Guam R. Civ. P. 59(e). GRCP 60(b) reads as follows:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

GRCP 60(b). We have adopted the following three-pronged standard in considering GRCP 59(e) motions: "[m]otions for reconsideration are appropriate where the trial court: (1) is presented with new evidence; (2) committed clear error or the decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Ward*, 1998 Guam 1 ¶ 10 (quoting *Sch. Dist. No.1J, Multanomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)) (internal quotation marks omitted).

[17] In the January Decision, the trial court ruled that both post-judgment motions would be reviewed under the standards of Rule 60(b) because: (1) Rong Chang's Motion for Reconsideration referred to the June Decision and not the judgment accompanying it; and (2)

because Rong Chang's Motion to Set Aside the Judgment specifically referred to GRCP 60(b) rather than GRCP 59(e). RA, tab 72 at 4-5 (Dec. & Order, Jan. 12, 2011). Rong Chang argues that the Motion for Reconsideration should have been reviewed under the standards of GRCP 59(e) and that the Motion to Set Aside the Judgment likewise should have been reviewed under the standards of GRCP 59(e). *See* Appellant's Br. at 14-15, 22. This argument is primarily premised on the contention that the trial court improperly observed "form over substance" in deciding to apply only the standards of GRCP 60(b). *See id.* at 22.

[18] Prior to this case, this court has construed GRCP 59(e) motions and GRCP 60(b) motions as essentially equivalent. *See, e.g., Merch. v. Nanyo Realty, Inc.*, 1998 Guam 26 ¶¶ 7-8. Although use of GRCP 59(e) rather than GRCP 60(b) might affect the time period during which an appellant may properly file a notice of appeal concerning a judgment, that distinction is not implicated here—both post-judgment motions were filed within ten days of the trial court's issuance of judgment. *See, e.g., Sananap v. Cyfred, Ltd.*, 2009 Guam 13 ¶¶ 15-19 (discussing how timing rules might be affected by use of a GRCP 59 motion rather than a GRCP 60 motion). It is well established that under either rule, the standard of review is identical. *See Sch. Dist. No.1J, Multanomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993) (citing *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1441 (9th Cir. 1991)).

[19] Rong Chang does not elaborate on what effect this distinction had on the disposition of the post-judgment motions at issue here. Although Rong Chang asserts error on the part of the trial court, no argument is presented on the issue of how application of GRCP 59(e) would have, in any way, affected the outcome of *this* case. *See* Appellant's Br. at 21-23. The authorities Rong Chang cites for the proposition that courts *may* consider pleadings as being brought under

either Rule 59(e) *or* Rule 60(b) do not illustrate that the trial court abused its discretion in choosing to consider the post-judgment motions under the GRCP 60(b) standards. *See id.* at 22; *CTC Imps. & Exps. v. Nigerian Petroleum Corp.*, 951 F.2d 573, 577 (3d Cir. 1991)). Perhaps most importantly, Rong Chang does not address the section of the January Decision stating that the trial court would have reached an identical conclusion had it analyzed the motions under a GRCP 59(e) standard. *See* RA, tab 72 at 53-54 (Dec. & Order, Jan. 12, 2011).

[20] Nothing establishes that the trial court erred in considering both of the post-judgment standards under the rubric of GRCP 60(b). As the trial court noted (and which Rong Chang did not dispute), the Motion for Reconsideration only referred to the January Decision and not the Judgment that it supported, rendering the use of GRCP 59(e), which by its text involves "motion[s] to alter or amend *a judgment*," facially inappropriate.[3] GRCP 59(e) (emphasis added); RA, tab 72 at 4-5 (Dec. & Order, Jan. 12, 2011). Similarly, the Motion to Set Aside the Judgment *specifically* referred to GRCP 60(b); the trial court's choice to apply that rule rather than GRCP 59(e) was at least partially due to the language of Rong Chang's previous submissions. *See* RA, tab 72 at 5 (Dec. & Order, Jan. 12, 2011).

[21] The trial court did not err in proceeding as it did; our language in *Sananap*, which concerned timing for the filing of a notice of appeal, does not compel a different result. *Sananap*, 2009 Guam 13 ¶ 16. This section of Rong Chang's appeal is without merit.

[3] We do not here rule that a trial court acts erroneously if it chooses to entertain a Rule 59(e) motion, which concerns a decision rather than a judgment; our analysis here is confined to the question of whether or not the actions taken by the trial court concerning Rong Chang's post-judgment motions were an abuse of the trial court's discretion. *See Brown v. Eastman Kodak Co.*, 2000 Guam 30 ¶ 11; *Ward v. Reyes*, 1998 Guam 1 ¶ 10.

B. Rong Chang's Post-Judgment Motion to Vacate the Arbitration Award

[22] Rong Chang takes issue with the trial court's decision not to address its Motion to Vacate the Arbitration Award before issuing the June Decision and the judgment, which supported it. The January Decision lays out the trial court's reasoning justifying its actions. In brief, the trial court found that the motion was procedurally defective on three separate grounds: (1) errors under the Local Rules of the Superior Court of Guam Civil Rules ("CVR"); (2) failure to comply with a section of the Guam International Arbitration Chapter ("GIAC"), which the trial court found to be applicable in the case; and (3) alternatively, as barred by the doctrine of issue preclusion. RA, tab 72 at 6-21 (Dec. & Order, Jan. 12, 2011) (discussing 7 GCA § 42702 (2005)); *id.* at 21-29 (discussing issue preclusion); *id.* at 41-45 (discussing defects under CVR). On the basis of these deficiencies, the court ruled that it was not required to consider the motion. *See id.* at 44-45. The court then ruled that the facts of the case did not warrant reconsideration under the standards of GRCP 60(b), thus denying the post-judgment motions. *See id.* at 45-53. Rong Chang argues that the trial court erred in finding that the Motion to Vacate was procedurally defective under all three bases employed by the trial court, arguing that the motion was not defective under the CVR, 7 GCA § 42702 was inapplicable to the case, and that issue preclusion was inapplicable. *See* Appellant's Br. at 23-30, 31-34, 34-37. Each of the three procedural defects found by the court and contested by Rong Chang will be analyzed separately.

1. Compliance with Rule 7.1(e) of the CVR

[23] The CVR, which came into effect in 2007, were promulgated pursuant to the Supreme Court's power to "make and promulgate rules governing the practice and procedure in the courts." 7 GCA § 3107(b) (2005). The Supreme Court is "empowered to interpret the local

procedural rules of this jurisdiction, even those which are identical or closely coincident with the language of the Federal Rules." *Midsea Indus., Inc. v. HK Eng'g, Ltd.*, 1998 Guam 14 ¶ 15 (citing *Lynn v. Chin Heung Int'l, Inc.*, 852 F.2d 1221, 1223 (9th Cir. 1988)). It has been our previous practice to, when appropriate, look to federal interpretations of analogous federal procedural rules for guidance. *See, e.g., Quitigua v. Flores*, 2004 Guam 19 ¶ 21 (discussing federal precedent where Guam and federal rules are identical); *Brown*, 2000 Guam 30 ¶ 14 (same).

[24] Although "local rules" within the federal system are prescribed by each individual District Court, in a process distinguishable from our centralized promulgation of procedural rules, it is nevertheless important to establish what role "local rules" play in courts, both in Guam and elsewhere. *See, e.g., Smith v. Oelenschlager*, 845 F.2d 1182, 1183 (3d Cir. 1988) (describing federal process for promulgation of local rules). In general:

> "[L]ocal rules play a vital role in the [trial] courts' efforts to manage themselves and their dockets. Local rules facilitate the implementation of court policy, both by setting norms and putting the local bar on notice of their existence. Local rules obviously serve to impose uniformity on practice within a [jurisdiction]."

Id. at 1184 (internal citations and quotation marks omitted). In recognition of this fact, appellate courts generally have held that a trial court "possesses great leeway in the application and enforcement of its local rules." *United States v. Roberts*, 978 F.2d 17, 20 (1st Cir. 1992). As a result, typically "[o]nly in rare cases will [an appellate court] question the exercise of discretion in connection with the application of local rules." *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). These general policy dictates are also applicable in Guam, where the various trial court judges retain considerable discretionary powers necessary to manage their respective dockets. *See* 7 GCA § 7107 (2005) (listing incidental powers of the courts of Guam).

[25] The trial court held that Rong Chang failed to meet the requirements of CVR 7.1(e)(2)[4] and that Rong Chang had forfeited its opportunity to present oral arguments on its motion to vacate. RA, tab 72 at 41-45 (Dec. & Order, Jan. 12, 2011). The text of CVR 7.1(e) reads, in relevant part, as follows:

> (e) Oral Argument
>
> (1) Oral Argument Not Automatic. Oral argument may be denied in the discretion of the judge, except where oral argument is required by statute or the Guam Rules of Civil Procedure.
>
> (2) Request For Oral Argument; Agreement of Oral Argument Date. Counsel for the parties must file an "Agreement of Hearing Date," in a form shown below in Attachment "CVR 7.1A." It shall be the responsibility of the moving party or his attorney to contact the attorney for each party who has entered an appearance . . . and propose a date for oral argument. Once the parties have agreed on a date for oral argument, the moving party shall clear the date with the chambers clerk. When the date has been cleared with the clerk, that date shall be inserted in the "Agreement of Hearing Date." If the parties do not agree on a date for oral argument or if a party has not entered an appearance, the moving party may submit the "Agreement of Hearing Date" to the Court with a notation that the non-moving party does not agree or is not available, in which event the Court shall either determine the hearing *date or determine that no oral argument shall be scheduled and the motion shall proceed to briefing and disposition* under CVR 7.1(e)(4), *in the Court's discretion.*

CVR 7.1(e) (emphasis added). However, Rong Chang submitted an "Agreement of Hearing Date" form with no date designated, and a notation that counsel for Rong Chang "sent an email to [counsel for M2P] . . . asking which dates would not be convenient for him for the next three months" and was awaiting a response from M2P's counsel at the time of filing. RA, tab 35 at 1-2 (Agreement re: Hr'g Date, Feb. 25, 2010); RA, tab 72 at 42 (Dec. & Order, Jan. 12, 2011). Under the language of CVR 7.1(e) emphasized above, this decision gave the trial court the

[4] Rong Chang is correct in arguing that "violating" CVR 7.1(e) is a poor choice of words to describe what occurred here, as CVR 7.1(e) contemplates the submission of Agreement of Hearing Date forms both with and without an agreed-upon date included on the form. *See* Appellant's Br. at 25.

option to determine that no oral argument should be scheduled, in the court's discretion. RA, tab 72 at 42 (Dec. & Order, Jan. 12, 2011). As a result, the trial court did not schedule any oral argument for the Motion to Vacate. *See id.* at 43.

[26] Rong Chang argues that under the rule, "if there is no date stated in the agreement of hearing date, the court must set a date or tell the parties that there will be no argument and issue a briefing schedule, the court does not have the discretion to 'do what it chooses' and simply ignore the motion." Appellant's Br. at 25 (internal citation omitted). Rong Chang concludes that "[a]t most, a technical violation of Local Rule CVR 7.1(e) would result in a waiver of the argument, and not the invalidation of the motion." *Id.* at 26. Although these arguments are at least partially correct, they do not compel the result Rong Chang suggests.

[27] By its text, CVR 7.1(e) concerns oral argument on motions. Rong Chang is thus correct in arguing that "[a]t most, a technical violation of Local Rule CVR 7.1(e) would result in a waiver of oral argument, and not the invalidation of the motion." *Id.* at 26. The trial court erred to the extent it ruled that the submission of an Agreement of Hearing Date without a fixed date would constitute, by itself, a basis for invalidation of the Motion to Vacate.[5] It is clear from the language of the January Decision, however, that the CVR 7.1(e) issue was not the *only* procedural defect identified by the trial court, and was similarly not the *only* basis for the court's decision to invalidate the motion by operation of CVR 7.1(k) and General Rule ("GR") 2.1 of

[5] Although this is what Rong Chang suggests, it is not clear that this was the trial court's holding; although the trial court co-mingled the issues of its refusal to hear oral argument on the motion and its further refusal to consider the motion, no section of the January Decision, including the language emphasized by Rong Chang, establishes that the trial court used the asserted "violation" of CVR 7.1(e) as the *sole* basis for refusing to consider the motion. *See* Appellant's Br. at 25 ("[I]n holding that it was permitted to ignore the motion merely because no date was included in Rong Chang's Agreement of Hearing Date, the lower court failed to exercise any discretion and consequently abused its discretion."); *id.* at 26 ("It was unreasonable to summarily deny Rong Chang's Motion to Vacate the Award . . . based on alleged technical violation of Local Rule 7.1 (e) . . . .").

Local Rules of the Superior Court of Guam.[6] The trial court also asserted a second procedural defect with Rong Chang's motion—failure to comply with the requirements of 7 GCA § 42702(c). RA, tab 72 at 41 (Dec. & Order, Jan. 12, 2011).

2. Applicability of the GIAC and Rong Chang's Observance of 7 GCA § 42702 and CVR 7.1(b), (c), and (d)

[28] The trial court held that the GIAC controlled the proceedings in the case. *See id.* at 7-21 (citing 7 GCA § 42101 *et seq.*). As a result, the trial court held that the Motion to Vacate was procedurally defective under 7 GCA § 42702. *See id.* at 21. Rong Chang argues that the trial court erred in determining that 7 GCA § 42702 was applicable in this case and determining that the Federal Arbitration Act ("FAA") did not apply to the case. *See* Appellant's Br. at 31-34. Thus, this court must determine both (1) the correct controlling law in this case; and (2) if the GIAC controls, whether the trial court properly determined that Rong Chang's Motion to Vacate was defective under 7 GCA § 42702(c).

a. The GIAC Controlled the Post-Arbitration Proceedings in This Case

[29] The trial court ruled that the FAA did not apply to post-arbitration proceedings in this case. RA, tab 72 at 7-19 (Dec. & Order, Jan. 12, 2011). Whether the FAA could potentially "apply" is a critical issue; a separate subsection of 7 GCA § 42702 states that "[t]his Section [of the GIAC] only applies where the place of the arbitration is Guam and neither the Federal Arbitration Act nor the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards apply." 7 GCA § 42702(a) (2005).

[6] The larger issue of whether the trial court was correct in its application of these two rules, as opposed to its application of CVR 7.1(e), is discussed in greater detail below. *See* discussion *infra* Part IV.B.4.

[30] The GIAC was promulgated on May 6, 2004 under Guam Public Laws 27-81:3-4, and became effective immediately. Guam Pub. L. 27-81:3-4 (May 6, 2004). The GIAC, which describes itself as being modeled after the United Nations Commission on International Trade Law Model Law ("Model Law"), provides a comprehensive territorial system of laws governing commercial arbitration in Guam. *See* P.L. 27-81:3. The provisions of 7 GCA § 42101 that are relevant to this case are as follows:

> (d) The provisions of this Chapter 42-A apply to international commercial arbitration and domestic arbitration, subject to any agreement in force between Guam and any other State or States.
>
> . . . .
>
> (f) An arbitration is international if:
>
> (1) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
>
> (2) one of the following places is situated outside the State in which the parties have their places of business:
>
> (A) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
>
> (B) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
>
> (C) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.
>
> (g) An arbitration is domestic if:
>
> (1) The arbitration is not an international commercial arbitration as defined in paragraph (f) above; and
>
> (2) the place of the arbitration is Guam.

7 GCA § 42101 (2005). The trial court found that the arbitration at issue was "domestic" under the standard of 7 GCA § 42101 based on indications that: (1) both Rong Chang and M2P have

their principal places of business in Guam; (2) the place of the arbitration was in Guam; (3) all of the work performed under the contract that was the basis for the arbitration was performed in Guam; and (4) the arbitration agreement contained no express provisions stating that the arbitration related to more than one state. RA, tab 72 at 8 (Dec. & Order, Jan. 12, 2011). Rong Chang does not appear to dispute these factual characterizations of the nature of the underlying contract in this case.

[31] Later, the trial court found that neither the FAA nor the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("NY Convention") applied and, therefore, the procedural requirements of 7 GCA § 42702 were applicable.[7] *See id.* at 19-21. By its terms, the NY Convention applies to:

> [T]he recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards *not considered as domestic* awards in the State where their recognition and enforcement are sought.

See NY Convention art. I, *opened for signature* June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 (emphasis added). Interpreting this provision, federal courts have stated that "awards 'not considered as domestic' denotes awards which are subject to the Convention not because made abroad, but because made within the legal framework of another country, e.g., pronounced in accordance with foreign law or involving parties domiciled or having their principal place of business outside the enforcing jurisdiction." *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 932 (2d Cir. 1983). Rong Chang does not argue that the NY Convention is applicable in this

[7] The NY Convention was opened for signature in 1958 and acceded to by the United States in 1970. *See Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1440 (11th Cir. 1998). Chapter 2 of title 9 of the United States Code, which codified the NY Convention in federal law, was passed later the same year. *Id.*

case. Instead, Rong Chang argues that the FAA applies and that the court erred in applying the procedural requirements of 7 GCA § 42702. *See* Appellant's Br. at 31-34. The trial court held that for the FAA to apply in this case, "interstate commerce" would be a prerequisite. RA, tab 72 at 12-19 (Dec. & Order, Jan. 12, 2011). Rong Chang argues that this requirement does apply in Guam; this position is based on the language of 9 U.S.C.A. § 1, which defines "commerce" under the FAA, as well as several previous Guam precedents where courts held that the FAA was applicable to Guam arbitrations. 9 U.S.C.A. § 1 (West 2012); *see* Appellant's Br. at 31-34 (citing *PacifiCare*, 2004 Guam 17 ¶ 11; *Kanazawa Ltd. v. Sound, Unlimited*, 440 F.2d 1239, 1240 (9th Cir. 1971)).

[32] The FAA applies to arbitration proceedings brought about by "written provision[s] in any maritime transaction or a contract evidencing a transaction involving *commerce*." 9 U.S.C.A. § 2 (West 2012) (emphasis added). Another provision of the FAA defines "commerce" in this usage as:

> [C]ommerce among the several States or with foreign nations, or *in any Territory of the United States* or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

9 U.S.C.A. § 1 (emphasis added). In applying this code section to contracts concerning parties within the several states of the United States, federal courts have generally interpreted this language to limit the FAA's coverage to transactions involving "interstate commerce," with the *Erie* doctrine applying in cases not involving interstate commerce. *See, e.g.*, *Howard Fields & Assocs. v. Grand Wailea Co.*, 848 F. Supp. 890, 893 (D. Haw. 1993). In this case, however, Rong Chang argues that the language of the FAA indicates that the FAA is applicable to *any* commerce within Guam, and not simply "interstate" commerce involving one Guam party and an

outside party (i.e., a scenario that would establish FAA applicability were Guam to be treated as a state for FAA purposes). *See* Appellant's Br. at 32-33.

[33] We held in *PacifiCare* that the FAA may apply to arbitrations in Guam. *See PacifiCare*, 2004 Guam 17 ¶ 11. In that case, however, the "interstate" nature of the underlying contract was clear. *See id.* (discussing inherently "interstate" nature of insurance industry). We have not previously addressed the issue of whether the FAA applies to what can be termed an "intraterritory" Guam arbitration, between two Guam entities, under the language of 7 GCA § 42702(a).

[34] It is true that federal power to regulate the territories is not constrained by the usual "interstate" limitations applicable in the several states; this is because "[territories are] wholly a creature of the treaty-making power of the President and the legislative autonomy of Congress under Article IV, unrestrained by the Commerce Clause." *See, e.g.*, *United States v. Liburd*, 291 F. Supp. 2d 383, 385-86 (D.V.I. 2003) (discussing applicability of federal criminal statutes in United States Virgin Islands); *Sakamoto v. Duty Free Shoppers, Ltd.*, 764 F.2d 1285 (9th Cir. 1985) (discussing applicability of Commerce Clause in Guam). This same principle has previously been held, in a case interpreting the FAA, to support the result that Rong Chang suggests. *See Sewer v. Paragon Homes, Inc.*, 351 F. Supp. 596, 599 (D.V.I. 1972) ("Congress has the authority to regulate *all* transactions within the territories. It has evidently chosen to do so here, and to extend the coverage of the [FAA] to all areas within its legislative competence.").

[35] Nevertheless, other federal courts have found that for FAA purposes, territories should essentially be treated as states. *See Mitsubishi Motors Corp. v. Soler Chrysler Plymouth, Inc.*, 473 U.S. 614 (1985); *Ideal Unlimited Servs. Corp. v. Swift-Eckrich, Inc.*, 727 F. Supp. 75, 77 n.3

(D.P.R. 1989). Most comparable to the case considered here is a Third Circuit case, *Virgin Islands v. United Industrial Workers, N.A.*, where the court found that:

> Although the FAA applies by its terms to cases in federal courts, in *Southland Corp. v. Keating,* 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984), and *Allied-Bruce Terminix Companies v. Dobson,* 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995), the Court reaffirmed that the FAA also applies in state courts to the extent that an arbitration provision affects interstate commerce. *See also Virgin Islands Hous. Auth. v. Coastal Gen. Constr. Services Corp.,* 27 F.3d 911, 915 (3d Cir.1994). Thus, in order for the FAA to apply in the Territorial Court, the arbitration at issue must affect interstate commerce as defined by *Allied-Bruce.*

Gov't of V.I. v. United Indus. Workers, N.A., 169 F.3d 172, 176 (3d Cir. 1999) (internal citation omitted). Also of significance is a Puerto Rico case, which held that the FAA did not apply or preempt Puerto Rico law in a case involving a residential real estate transaction. *See Garrison v. Palmas Del Mar Homeowners Ass'n*, 538 F. Supp. 2d 468, 474-75 (D.P.R. 2008). In that case, the United States District Court for the District of Puerto Rico analyzed previous federal authority concerning the applicability of the FAA to cases involving intrastate commerce within the several states and concluded that the facts of the case did not concern "interstate commerce" and, therefore, that Puerto Rico law controlled the case. *Id.* at 475. Although the *Garrison* court did not analyze the language of 9 U.S.C. § 1 emphasized by Rong Chang in this case, relying on *Garrison*'s rule that the FAA does not apply to purely "intrastate" cases, it follows that the FAA analogously does not apply to "intraterritorial" cases. Taken together, *Garrison* along with *United Industrial Workers, N.A.* seem to establish that the FAA should not be found to apply in this case simply by virtue of the language of 9 U.S.C. § 1.

[36] The cases that best support Rong Chang's proffered construction of the language of the FAA, *Kanazawa* and *Sewer*, were decided at times when Guam and the Virgin Islands, respectively, had yet to adopt local laws governing the enforcement of arbitration agreements.

See Kanazawa, 440 F.2d at 1240 ("The motions were denied upon the ground that there is no statute, applicable in Guam, providing for enforcement of agreements to arbitrate."); *Sewer*, 351 F. Supp. at 597 ("Arbitration clauses are not specifically enforceable in the Virgin Islands."). However, where there exists an alternative local regime for the enforcement of such agreements, it is sensible that the local regime be treated much like a state regime for arbitration would be treated—as one that is not preempted unless there is a major conflict between state law and the FAA. *See Garrison*, 538 F. Supp. 2d at 475 (applying Puerto Rico Commercial Arbitration Act to case after holding that FAA was not applicable).

[37] In sum, it does not appear that the trial court erred by refusing to apply the FAA *per se* to the case by virtue of the language defining "commerce" found in 9 U.S.C. § 1. Although the FAA might still be applicable if the transaction contemplated was of an "interstate" character, there is nothing in the record that suggests such a finding, and Rong Chang does not argue this alternative basis for FAA applicability. *See* RA, tab 72 at 15 (Dec. & Order, Jan. 12, 2011). Thus, the trial court did not err in ruling that the GIAC controlled the arbitration confirmation proceedings in this case.

b. Compliance with the Provisions of 7 GCA § 42702(c)

[38] The text of 7 GCA § 42702(c) reads as follows:

> The party moving for an order confirming, or setting aside an award or part of an award shall, at the time such order is filed with the clerk for the entry of judgment thereof, also file the following papers with the clerk: (1) The agreement referred to in Section 42201 as a duly certified copy thereof; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award. (2) The duly authenticated original award or duly certified copy thereof. (3) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

7 GCA § 42702(c) (2005). The trial court found that Rong Chang violated these procedural requirements by failing to file any copy of the award simultaneously with its motion to vacate. RA, tab 72 at 21 (Dec. & Order, Jan. 12, 2011). Rong Chang also apparently neglected to file any documentation concerning the appointment of a new arbitrator (to replace the arbitrator whose neutrality Rong Chang was challenging). *Id.* Rong Chang does not deny that it failed to comply with these requirements, but submits instead that M2P already filed a copy of the award in concert with its motion to confirm the award. *See* Appellant's Br. at 34 n.7. Nonetheless, it is clear that Rong Chang did not satisfy the procedural requirements of 7 GCA § 42702.

c. Application of CVR Rules 7.1(b), 7.1(c), and 7.1(d)

[39] Later in the January Decision, the trial court concluded that "the motion was unaccompanied by the original award or a certified copy of the award and other papers as required under 7 GCA § 42702, thus, the motion was defective under CVR 7.1 (b), (c), and (d)." RA, tab 72 at 41 (Dec. & Order, Jan. 12, 2011). The text of these rules reads in full:

> (b) Service of Motion and Accompanying Papers. Every motion shall be presented in writing. The moving party must present a motion, which will contain the date on which the motion will be heard, as provided for in CVR Rule 7.1(e)(2). The motion papers shall be served on each of the parties in accordance with Guam Rule of Civil Procedure 5(b) and filed with the clerk not later than twenty-one (21) days prior to the day on which oral argument is scheduled, unless the Court orders a shorter time.
>
> (c) Moving Papers. There shall be served and filed with the motion:
>
> (1) a memorandum in support thereof containing the points and authorities upon which the moving party relies, including citations; and
>
> (2) any affidavits or declarations under penalty of perjury sufficient to support any material factual contentions permitted by the Guam Rules of Civil Procedure.
>
> (d) Opposition and Reply.

> (1) The opposing party shall, not less than fourteen (14) days preceding the noticed date of oral argument, serve upon all parties and file with the clerk:
>
> (A) a memorandum in support thereof containing the points and authorities upon which the opposing party relies;
>
> (B) if desired, the evidence upon which the opposing party relies;
>
> (C) any affidavits or declarations permitted by the Guam Rules of Civil Procedure.
>
> (2) The moving party may, not more than seven (7) calendar days preceding the noticed date of oral argument, serve and file a reply to the opposing party's opposition.

CVR 7.1 (b)-(d). It is not clear from the January Decision precisely how Rong Chang allegedly failed to conform to *these* rules; perhaps most applicable to a failure to meet the requirements of 7 GCA § 42702 is CVR 7.1(c)(2), concerning documents that are to be filed in concert with motions under the rules. *See* RA, tab 72 at 43-44 (Dec. & Order, Jan. 12, 2011). However, what was required (and not provided) under 7 GCA § 42702 was not "affidavits or declarations," thus rendering these provisions of the CVR rule inapplicable. CVR 7.1(c)(2). The trial court's reference to these rules in connection with the 7 GCA § 42702 violation is obscure.

3. Timeliness of Rong Chang's Post-Judgment Motion to Vacate Under the Doctrine of Collateral Estoppel

[40] The third procedural defect in Rong Chang's motion discussed by the trial court was that the motion to vacate was untimely under the doctrine of collateral estoppel as previously applied by federal courts in arbitration confirmation cases interpreting the FAA. RA, tab 72 at 21-29 (Dec. & Order, Jan. 12, 2011). Rong Chang argues two main points: (1) that the court mischaracterized the nature of the hearings that took place in the case, rendering the doctrine factually inapplicable; and (2) that the doctrine would not legally be appropriate to apply here.

Appellant's Br. at 35-37. Although both the trial court and Rong Chang relied primarily on federal authorities in their respective analyses of this issue, the section of the FAA that governs the timing of motions to vacate or confirm awards is virtually identical to an analogous provision of the GIAC. *Compare* 9 U.S.C.A. § 12 (West 2012), *with* 7 GCA § 42701(d). This issue, therefore, still bears analysis even though the GIAC, rather than the FAA, controlled the proceedings in this case.

a. Factual Issues Regarding Characterization of the Hearings of January 2010

[41] As previously noted, on December 15, 2009, M2P filed a motion to confirm the arbitration award or, alternatively, to renew its previous motion concerning the propriety of the mechanics' liens. RA, tab 20 (Mot. Confirm, Dec. 15, 2009); Appellant's Br. at 8-9. M2P then simultaneously filed an *ex parte* motion to shorten time. RA, tab 19 (*Ex parte* Mot. Shorten Time re Mot. Confirm, Dec. 15, 2009). Rong Chang filed an opposition to the motion to shorten time the next day. RA, tab 24 (Opp'n *Ex parte* Mot. Shorten Time, Dec. 16, 2009). A hearing on the motion to shorten time was held on January 8, 2010. *See* Appellant's Br. at 9; Excerpts of Record ("ER"), tab 22 at 4-5 (Docket Sheet). A second court hearing was held on January 22, 2010. *See* Transcript "Tr." (Hr'g Mots. Argument, Jan. 22, 2010).

[42] In the January Decision, the trial court stated that "the factual issue of whether the arbitrator's award was valid was the critical and determinative issue presented by the Defendant's Motion for Order Confirming Arbitration Award at the hearing held on January 22, 2010." RA, tab 72 at 28 (Dec. & Order, Jan. 12, 2011). This factual determination was later used as the predicate for the trial court's holding that Rong Chang's motion to vacate was untimely under the collateral estoppel doctrine. *See id.* at 29 ("Because the Court had already

held a hearing on the merits of the issue of the validity of the award on January 22, 2010 and allowed the Plaintiff an opportunity to dispute the issue prior to the hearing, the Plaintiff's Motion to Vacate Arbitration Award, filed one month after the hearing, was untimely."). Rong Chang disputes this characterization of the nature of the January 22 hearing at some length, arguing that at the January 8 hearing, the trial court essentially ruled that argument would only be taken on the alternative motion previously requested by M2P, for the renewal of previous motions to dismiss lien foreclosure actions or for allocation of liens. *See* Appellant's Br. at 8-12, 34-35.

[43] A review of the transcripts supports Rong Chang's version of events. If in truth "the factual issue of whether the arbitrator's award was valid was the critical and determinative issue . . . at the hearing held on January 22, 2010," such a conclusion is not readily apparent; the vast majority of the hearing concerned the lien issues involved in the case, while only a few sentences concern the validity of the award itself. Appellee's Br. at 30; Transcripts ("Tr.") at 10 (Hr'g Mots. Argument, Jan. 22, 2010). Likewise, the January 8 hearing transcripts reveal that this hearing was primarily focused on the lien issues in the case. *See* Appellant's Br. at 9-11 (citing Tr. at 4, 6 (Hr'g *Ex parte* Mot. Shorten Time, Jan. 8, 2010)). While the trial court's statement that "the Court informed the parties that it would hear the motion filed by M2P on January 22, 2010, and that the Court would allow the parties two weeks to file supplemental briefing on the motion" is technically correct, the trial court's statements at the hearing did not indicate that a full hearing on the issue of confirmation or vacation was contemplated. RA, tab 72 at 2 (Dec. & Order, Jan. 12, 2011); Appellant's Br. at 9-11 (citing Tr. at 4, 6 (Hr'g *Ex parte* Mot. Shorten Time)).

b. Resulting Legal Error

[44] The characterization of the January 22 hearing is an essential issue because, as noted above, the factual question of whether or not the hearing constituted an opportunity for Rong Chang to present its arguments concerning the award is determinative of whether the doctrine of collateral estoppel is applicable to the case. *See* RA, tab 72 at 29 (Dec. & Order, Jan. 12, 2011). Even if the court were to adopt the standards suggested by the trial court—that motions to vacate or confirm an award should be considered as two sides of the same issue and, therefore, that the opportunity to oppose a motion to confirm can effectively replace the opportunity to present a motion to vacate—none of the authority cited by the trial court supports the proposition that collateral estoppel is appropriate without, at minimum, some noticed proceeding at which to present an argument.[8] *See id.* at 23-29 (citing *The Hartbridge*, 57 F.2d 672 (2d Cir. 1932)) (further citations omitted).

[45] Rong Chang highlights a second legal error in its Reply. *See* Appellant's Reply Br. at 11-12 (June 1, 2011). Therein, Rong Chang argues that even if the January 22 hearing could be considered an effective hearing on M2P's motion to confirm the arbitration award, Rong Chang did not learn about the existence of the specific grounds for vacation of the award it now presents until February 17, 2010, after the hearing but before Rong Chang filed its motion to vacate. *See* Reply Br. at 11-12. Although a survey of federal case law on the subject does not reveal a factually identical scenario (i.e., where a party seeking to vacate an arbitration award learned of a new potential basis for vacation after a hearing on confirmation but before the deadline for filing a motion to vacate), there is persuasive precedent that would seem to indicate that imposing a

[8] The appellant in *The Hartbridge* had this opportunity, although he (or they) was apparently unable to effectively take advantage of it due to "the loss of certain exhibits." *The Hartbridge*, 57 F.2d at 673.

collateral estoppel bar in such a scenario would be inappropriate. *See, e.g.*, *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673 (7th Cir. 1983) (agreeing with trial court that bias evidence discovered after award was confirmed could potentially be grounds for reconsideration under Federal Rule of Civil Procedure ("FRCP") 60(b), but finding that FRCP 60(b) relief was not warranted in that particular case).

[46] In sum, the trial court's analysis on the collateral estoppel issue was unsound. The trial court erred in ruling that Rong Chang's motion was either barred or rendered untimely by application of the doctrine. Nevertheless, the trial court's characterization of Rong Chang's conduct as being motivated by tactical advantage rather than by ignorance of the facts underlying the motion to vacate is not without some basis. Rong Chang affirmatively stated at both the January 8 and January 22 hearings that it intended to file a motion to vacate the arbitration award. *See* Tr. at 3 (Hr'g *Ex parte* Mot. Shorten Time) ("Under the statute, we had 90 days to file the motion to vacate, which would be – the deadline would be late February. So – and that motion will be very – it's going to be a substantial motion, You[r] Honor."); Tr. at 10 (Hr'g Mots. Argument) ("Your Honor, I represent to you now, and we have done this in earlier hearings, that we will be filing a motion to vacate the – the award, the arbitrator's award. Realizing that there is a very narrow, you know, the legal basis is a very narrow basis, but we believe that there are – there is basis for vacating that award. We strongly feel that way, and we will file it within the time, and prescribed by the statute."). These hearings took place before the point at which Rong Chang's counsel became aware of the facts underlying Rong Chang's arguments concerning evident partiality of the arbitrator involved in the case. RA, tab 68 at 3 (Decl. Joyce Tang, Sept. 22, 2010) ("In fact I only became aware of [the Arbiter] and [M2P's

counsel]'s co-counsel relationship in the Superior Court Case from [third party] on February 17, 2010."). A review of the motion to vacate reveals that the evident partiality argument was the *only* basis for vacation of the award submitted to the trial court. *See* RA, tab 34 (Mem. P. & A. Supp. Rong Chang Co., Ltd.'s Mot. Vacate Arbitration Award, Feb. 25, 2010).

[47] From these filings, several possible factual scenarios can be posited, the most obvious being that Rong Chang's counsel in fact knew about the evident partiality information all along, sought to delay the case from moving forward, and then presented a contrary statement to the court in the later declaration regarding when Rong Chang learned about the existence of the co-counsel relationship, which later became the basis of the motion to vacate. This appears to be the conclusion of the trial court. Another possible scenario is that Rong Chang's counsel had other separate grounds to vacate in mind when she represented to the trial court in January that she intended to file a motion to vacate, and that she later decided not to pursue these other unknown grounds for vacation in the submitted motion to vacate. This court will not speculate on what occurred in this case, but for Rong Chang to imply that the conduct of its counsel had *absolutely no part* in creating what is at least an irregular set of circumstances is questionable. *See* Appellant's Br. at 29-30.

4. Summary

[48] To recap the analysis above, it appears that (1) Rong Chang's motion to vacate was not untimely under the collateral estoppel doctrine as applied to the FAA by federal precedents; (2) Rong Chang did not truly fail to meet the requirements of CVR Rule 7.1(e) by filing an Agreement of Hearing Date form without an attached date; and finally, (3) none of CVR Rules 7.1(b), (c), nor (d) appear to be implicated in this proceeding. However, as the GIAC rather than

the FAA controlled the post-arbitrations proceedings, Rong Chang's motion was procedurally defective under 7 GCA § 42702(c).

[49] Under CVR 7.1(f) "[p]apers not timely filed by a party including any memoranda or other papers required to be filed under this Rule shall not be considered without leave of court." CVR 7.1(f). In this case, Rong Chang did not file the "papers" required under 7 GCA § 42702(c) contemporaneously with its motion to vacate and, as a result, failed to conform to the requirements of CVR 7.1(f). *See* RA, tab 72 at 44 (Dec. & Order, Jan. 12, 2011). Under CVR 7.1(k):

> The Court *need not consider motions*, oppositions to motions or briefs or memoranda *that do not comply with this Rule*. The presentation to the Court of frivolous motions or oppositions to motions or the failure to comply fully with this Rule subjects the offender at the discretion of the Court to the sanctions of General Rule 2.1.

CVR 7.1(k) (emphases added). Applying this rule, the trial court stated that it could freely disregard Rong Chang's motion to vacate. RA, tab 72 at 44 (Dec. & Order, Jan. 12, 2011).[9] The trial court's actions were permissible under the relevant local rules. Although this does not conclusively answer the larger question now on appeal (i.e., whether the trial court abused its discretion by denying Rong Chang's later motions for reconsideration and to set aside the

[9] In support of this decision, the trial court also cited Rule GR 2.1 of the Local Rules of the Superior Court of Guam, which read as follows: "The violation of or failure to conform to any of these General Rules, the Guam Rules of Civil Procedure, or the Local Rules of the Superior Court of Guam – Civil Rules shall subject the offending party or counsel to such penalties, including monetary sanctions and/or the imposition of costs and attorney's fees to opposing counsel, as the Court may deem appropriate under the circumstances." Local R. Sup. Ct. Guam GR 2.1; RA, tab 72 at 44 (Dec. & Order, Jan. 12, 2011). The trial court also cited generally to 7 GCA § 7107 in support of the general proposition that it could disregard the motion as part of the general power to control the cases before it. RA, tab 72 at 44-45 (Dec. & Order, Jan. 12, 2011). This aspect of the trial court's analysis, that *if* the motion to vacate was procedurally defective, *then* the trial was empowered to disregard it, does not appear to be contested on appeal.

judgment), the trial court did not perform any analysis that was *per se* improper under the local rules in coming to the decision not to hear the motion to vacate.

C. Did the Trial Court Abuse Its Discretion in Denying the Post-Judgment Motions?

[50] The trial court correctly described that, when a court has already determined an issue,[10] Rule 60(b) relief requires "a showing of exceptional circumstances." RA, tab 72 at 40 (Dec. & Order, Jan. 12, 2011) (citing *Parkland Dev., Inc. v. Anderson*, 2000 Guam 8 ¶ 7). The trial court explained, at length, that the refusal of a trial court to hear an untimely or otherwise procedurally defective motion under the operation of the procedural rules does not warrant post-judgment relief. *See id.* at 45-53. Although it does not appear that all of the predicate rulings by the trial court were correct, the following analysis remains viable in support of the trial court's decision not to consider the motion to vacate prior to rendering its judgment: (1) the GIAC governed the arbitration confirmation and/or vacation procedures in this case; (2) Rong Chang did not comply with the filing requirements of 7 GCA § 42702(c) when it filed its motion to vacate; (3) such noncompliance violated CVR 7.1(f); and, (4) as such, a violation of CVR 7.1(f) allowed the trial court to disregard the motion under CVR 7.1(k).

[51] Although Rong Chang asserts that this was an unfair result, we must determine whether this result rises to the level of an abuse of discretion. Given the broad discretion conferred upon trial courts to impose and interpret the procedural rules, which control their dockets, parties disobey such rules at their peril. *See Roberts*, 978 F.2d at 20 (noting trial courts' considerable

[10] A different standard is applied when Rule 60(b) relief is requested upon entry of a default judgment. *See* RA, tab 72 at 40 (Dec. & Order, Jan. 12, 2011) (citing *Midsea Indus., Inc. v. HK Eng'g, Ltd.*, 1998 Guam 14 ¶ 3); *Parkland*, 2000 Guam 8 ¶¶ 6, 11 n.4. Rong Chang repeatedly seeks to characterize what occurred in this case as "essentially" a default. *See* Appellant's Br. at 26, 30 n.6. This argument is not well taken; a situation where a party had the opportunity to file a motion but where that motion was not considered because it was procedurally defective, is *not* equivalent to a situation where a party had no opportunity to file the same motion (e.g., if the party had no notice of the proceeding) and default was granted.

leeway in applying and enforcing local rules); *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1302-03 (11th Cir. 2009); *Caban Hernandez v. Phillip Morris USA, Inc.*, 486 F.3d 1, 7 (1st Cir. 2007); *Warren*, 601 F.2d at 474. In this case, the trial court was free to disregard the motion to vacate. Thus, while Rong Chang remains convinced that the trial court's procedural rulings were unfair, the procedural rules authorized the actions of the trial court and, on the facts, we cannot conclude that the trial court abused its discretion.

[52] This could, conceivably, have been the end of our inquiry in this case. Nevertheless, the trial court went beyond this point in its January Decision and, in addition, decided to analyze the arguments presented in the motion to vacate, as well as the additional filings submitted by the parties subsequent to the June Decision and Judgment. RA, tab 72 at 37-39 (Dec. & Order, Jan. 12, 2011). Although the trial court prefaced this analysis with a statement that the court would reserve decision on the issue of when Rong Chang's counsel first learned of the information underlying the motion to vacate,[11] at oral argument, both parties represented that they believed that the ultimate issue of the "evident partiality" of the Arbiter was properly before this court. *See id.* at 30. We agree that the decision to analyze the issue of evident partiality in this manner was within the discretion of the trial court, which appears to have treated the arguments presented in the motion to vacate as essentially a counterpart to the previous motion to confirm filed by M2P.

[11] Under the case law of several jurisdictions, Rong Chang may have waived its right to challenge the qualifications of the Arbiter in this case (even in the absence of any concrete finding of fact on these issues) as a result of Rong Chang's counsel's prior knowledge of the Arbiter and M2P's counsel's status as participants in the civil case as early as 2006 (although not necessarily of their status as co-counsels). *See* Appellee's Br. at 4. Some courts have found that "[i]f a party goes forward with arbitration, having actual knowledge of the arbitrator's bias, *or of facts that reasonably should have prompted further, limited inquiry*, it may not later claim bias based upon the failure to disclose such facts." *Power Servs. Assocs. v. UNC Metcalf Servicing, Inc.*, 338 F. Supp. 2d 1375, 1381 (N.D. Ga. 2004) (emphasis added). However, as this issue was not raised by the parties or discussed by the trial court, we will not analyze the potential applicability of these precedents to this case.

D. Evident Partiality of the Arbitrator

[53] Although the GIAC, rather than the FAA, controlled the post-arbitration proceedings in this case, the language of the two regimes concerning statutory bases for vacation of arbitration awards is identical. The relevant section of the GIAC reads as follows: "In any of the following cases the court may make an order vacating the award upon the application of any party to the arbitration: . . . (2) where there was *evident partiality* or corruption in the arbitrators, or either of them." 7 GCA § 42701(b)(2) (2005) (emphasis added); *see also* 9 U.S.C.A. § 10(a)(2) (West 2012). We will review the analysis and application of this section conducted by the trial court. *See* RA, tab 72 at 29-39 (Dec. & Order, Jan. 12, 2011).

1. The Proper Standard for Evident Partiality in the Context of a Statutory Standard for Vacating an Arbitration Agreement

a. The Trial Court Did Not Use "Actual Bias" as the Standard for Evident Partiality in This Case

[54] Rong Chang's central argument on appeal is that the trial court applied the wrong standard for analyzing a claim of evident partiality. Rong Chang offers the following in relation to this aspect of the trial court's January Decision: "The lower court held that the concurrent relationship must be coupled with an allegation of 'actual bias' or 'facts to show some partiality.' This is not the test. As explained above, a showing of actual bias is not required." Appellant's Br. at 51 (internal citation omitted).

[55] The statement that Rong Chang apparently refers to reads in full:

> In the absence of any allegations of actual bias, or facts to show some partiality on the part of the arbitrator in this case, the Court cannot find that attorney arbitrators in Guam are required to disclose all past relationships they have with attorneys who represent parties to arbitration conducted before them.

RA, tab 72 at 38-39 (Dec. & Order, Jan. 12, 2011). The plain meaning of this paragraph appears to be a legal holding that because Rong Chang (1) had not proven "facts to show some partiality on the part of the arbitrator"; and (2) had not argued that there was any "actual bias"; and, therefore, (3) the trial court could not find evident partiality in this case. *Id.* The sentence does not signify, as Rong Chang seems to indicate, that the trial court held that "actual bias" was to be viewed as a factual prerequisite in every case where evident partiality is asserted. Rather, the sentence indicates that "actual bias" was *not* asserted here and that the trial court, therefore, did not conduct any analysis on the issue of "actual bias." *Id.*

[56] The Ninth Circuit precedents upon which Rong Chang relies have classified cases where "actual bias" of an arbitrator is alleged as being a special subcategory of evident partiality cases, illustrated by such factual scenarios as follows: (1) a pecuniary interest in the outcome of an arbitration; (2) an ownership interest in property which is the subject matter of the arbitration; or (3) a family relationship to some other party involved in the arbitration. *See Schmitz v. Zilveti*, 20 F.3d 1043, 1044 (9th Cir. 1994) (enumerating certain factors that an arbitrator must disclose that might prevent the arbitrator from rendering impartial outcomes). The trial court was accurate in saying that "actual bias" was not alleged here; Rong Chang bases its claim of evident partiality on an allegation that both M2P and the Arbiter failed to disclose their co-counsel relationship in the separate civil case in a timely manner. *See* Appellant's Br. at 37-52. This scenario is more similar to the second class of evident partiality cases laid out in *Schmitz*, i.e., the "failure to disclose" type of cases. *See Schmitz*, 20 F.3d at 1045. The trial court's determination that the facts of this case did not involve "actual bias" was not error. *Id.* at 1047 ("In an actual

bias case, a court must find actual bias. Finding a 'reasonable impression' of partiality is not equivalent to, nor does it imply, a finding of actual bias.").

[57] The holding Rong Chang cites does indicate that the trial court concluded that Rong Chang had not, under the separate standards for evident partiality set down previously in the January Decision, proven facts indicating evident partiality. *See* RA, tab 72 at 38-39 (Dec. & Order, Jan. 12, 2011) ("In the absence of . . . facts to show some partiality on the part of the arbitrator in this case, the Court cannot find [in Rong Chang's favor]."). Whether the standards for evident partiality laid down in the January Decision were proper given the allegations in this case is a separate issue from "actual bias." We now turn to this issue.

b. The Proper Standard for Evident Partiality

[58] The seminal case on the issue of evident partiality under the FAA is *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968). *See Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145 (1968). There has been considerable difficulty in interpreting this case, owing primarily to the irregular structure of the case and the resulting questions that arise concerning which opinion in *Commonwealth Coatings* qualify as controlling authority. As the Second Circuit Court of Appeals explained:

> Justice Black, writing for a plurality of four justices, appeared to impose upon arbitrators the same lofty ethical standards required of Article III judges. The Justice suggested, in fact, that "we should, if anything, be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts and are not subject to appellate review." Using language that has since been seized upon by unsuccessful parties to arbitration, Justice Black concluded by writing that arbitrators, like judges, must avoid even the "appearance of bias." Four justices, however, do not constitute a majority of the Supreme Court. Justice White, writing for himself and Justice Marshall, concurred in the result, but made clear the Court was not holding that arbitrators' and judges' ethical standards are coextensive. . . . Accordingly, much of Justice Black's opinion must be read as

> dicta, and we are left in the dark as to whether an "appearance of bias" will suffice to meet the seemingly more stringent "evident partiality" standard of 9 U.S.C. § 10.

Morelite Constr. Corp. v. N.Y.C. Dist. Council Carpenters Benefit Funds, 748 F.2d 79, 82-83 (2d Cir. 1984) (footnote omitted).[12] From this conundrum, the Second Circuit eventually reasoned that the standard of "appearance of bias" was too low and, similarly, that the alternate standard of "proof of actual bias" was too high, opting instead to hold that evident partiality would be found "where a reasonable person, considering all of the circumstances, would *have* to conclude that an arbitrator was partial to one side." *Applied Indus. Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S.*, 492 F.3d 132, 137 (2d Cir. 2007) (citing *Morelite*, 748 F.2d at 84) (internal quotation marks omitted). Other circuits have likewise adopted a similar (if not explicitly identical) formula that has been termed the "reasonable impression of partiality" standard, which hews somewhere between the "appearance of bias" and "proof of actual bias" poles. *Schmitz*, 20 F.3d at 1047 (citing *Toyota of Berkeley v. Auto. Salesman's Union, Local 1095*, 834 F.2d 751, 756-57 (9th Cir. 1987) (citing *Morelite*, 748 F.2d at 83-84)); *cf. Williams v. Nat'l Football League*, 582 F.3d 863, 885 (8th Cir. 2009) (noting that the evident partiality standard objectively demonstrates partiality, but is "not made out by the mere appearance of bias").

[59] Both Rong Chang and the trial court endorse this intermediate standard of a reasonable impression of partiality, though each does so by emphasizing different aspects of the standard. *See* Appellant's Br. at 51 ("[A] showing of actual bias is not required."); RA, tab 72 at 31 (Dec. & Order, Jan. 12, 2011) ("The mere appearance of bias is insufficient to demonstrate evident

[12] In the January Decision, the trial court emphasized Justice White's opinion, RA, tab 72 at 31 (Dec. & Order, Jan. 12, 2011), while Rong Chang has emphasized Justice Black's separate opinion. *See* Appellant's Br. at 40.

partiality . . . ."). We choose to adopt this intermediate "reasonable impression of partiality" standard for evident partiality cases, as it has been laid out in the federal authorities discussed herein. Next, we must proceed to the further step of applying that standard to this case.

2. Application of the "Reasonable Appearance of Partiality" Standard

[60] Rong Chang advocates that the court should adopt a seemingly *per se* rule that as a matter of law an arbitrator should be disqualified if he or she fails to disclose a concurrent co-counsel relationship—essentially that a failure to disclose any concurrent relationship automatically creates a reasonable impression of partiality. *See* Appellant's Br. at 38. The January Decision argued for a more nuanced formula under which "the party asserting evident partiality has the burden of proof, and if requesting vacatur by alleging that a business relationship was not disclosed, must prove that the relationship is substantial, rather than casual or perfunctory." RA, tab 72 at 31-32 (Dec. & Order, Jan. 12, 2011). Under this formulation, the alleged interest or bias must be "direct, definite, and capable of determination rather than remote, uncertain, or speculative." *Id.* at 32 (citing *Health Servs. Mgmt. Corp. v. Hughes*, 975 F.2d 1253, 1264 (7th Cir. 1992) (quoting *Tamari v. Bache Halsey Stuart Inc.*, 619 F.2d 1196, 1200 (7th Cir. 1980)) (internal quotation marks omitted); *Univ. Commons-Urbana*, 304 F.3d at 1339 (citing direct, definite, and capable of demonstration formula). In contrast to what Rong Chang proposes, this second approach requires a court to go beyond the simple fact of the existence of a business relationship between an arbitrator and one of the parties, instead further examining the extent and character of that relationship.

[61] The "direct, definite, and capable of determination" formula is the better interpretation of the "reasonable impression of partiality" standard. There are several reasons for this. First,

courts have found that public policy requires that in order for a business relationship to disqualify an arbitrator under the "reasonable appearance of partiality" standard, that relationship must be non-trivial; this policy has been aligned with the language of Justice White's concurrence in *Commonwealth Coatings*, where he noted:

> It is often because [arbitrators] are men of affairs, not apart from but of the marketplace, that they are effective in their adjudicatory function. This does not mean the judiciary must overlook outright chicanery in giving effect to their awards; that would be an abdication of our responsibility. But it does mean that arbitrators are not automatically disqualified by a business relationship with the parties before them if both parties are informed of the relationship in advance, or if they are unaware of the facts but the relationship is trivial. I see no reason automatically to disqualify the best informed and most capable potential arbitrators.

Commonwealth Coatings, 393 U.S. at 150 (internal citation omitted); *see also Tamari*, 619 F.2d at 1200 (relating concurrence to "direct, definite, and capable of determination" standard). This standard acknowledges that arbitrators are often chosen specifically *because* of their knowledge of a local industry and its practices, and that they should not be disqualified by their connections to others within that industry unless there is a "non-trivial" relationship. This standard has also been applied in cases specifically involving legal professionals. *See, e.g.*, *Univ. Commons-Urbana*, 304 F.3d at 1339.

[62] Second, in evident partiality cases, as in any other cases where a party seeks to vacate a previous arbitration, there is "a mood . . . of reluctance to set aside arbitration awards for failure of the arbitrator to disclose a relationship with a party." *Merit Ins. Co.*, 714 F.2d at 682. This is because, even in cases dealing with evident partiality, arbitration confirmation procedures are informed with a strong public policy supporting confirmation of awards. *See, e.g.*, *Moseley, Hallgarten, Estabrook & Weeden, Inc. v. Ellis*, 849 F.2d 264, 267 (7th Cir. 1988) (discussing

policy generally); *Melwani v. Arnold*, 2010 Guam 7 ¶ 11. Although this general policy certainly does not prevent vacation of awards when appropriate, it does argue against a *per se* rule for disqualification.

[63] Third, and perhaps most importantly, it is not clear that the cases Rong Chang presents argue for a *per se* rule for disqualification, especially where, as here, the trial court has made a factual finding that the relationship between the Arbiter and M2P was essentially over prior to the arbitration that Rong Chang now challenges. *See* RA, tab 72 at 38 (Dec. & Order, Jan. 12, 2011). In *University Commons-Urbana*, the court stated: "[A] reasonable person *might* envision a *potential* conflict if an arbitrator, concurrently with the arbitration, *partakes* in a proceedings in which counsel for one of the parties to the arbitration is also *participating* . . . ." *Univ. Commons-Urbana*, 304 F.3d at 1340 (emphases added). The key inquiry was whether the relationship between the arbitrator and one of the parties did, *factually*, create a conflict:

> In the case at hand, Universal and Reliance have presented prima facie proof of each of these elements. . . .
>
> . . . .
>
> At this point, the district court should have plunged headlong into evidentiary fact-finding. *See Legion Ins. Co. v. Ins. Gen. Agency, Inc.*, 822 F.2d 541, 542-43 (5th Cir.1987) ("[S]ome motions challenging arbitration awards may require evidentiary hearings outside the scope of the pleadings and arbitration record.... Such matters as misconduct or bias of the arbitrators cannot be gauged on the face of the arbitral record alone."); *In re Sanko S.S. Co., Ltd. v. Cook Indus., Inc.*, 495 F.2d 1260, 1262-63 (2d Cir.1973) (finding discrepancies regarding an arbitrator's possible conflicts and his disclosures about those conflicts, and deciding that "[t]hese discrepancies require that [the] case be remanded so that an evidentiary hearing may be held and the full extent and nature of the relationships at issue may be ascertained.").

Id. at 1341-42.[13] Rong Chang seems to ignore a critical distinction between *University Commons-Urbana* and this case; here, the trial court *did* make factual findings regarding the relationship between the Arbiter and M2P, and it was satisfied that the relationship did not disqualify the Arbiter. *See* RA, tab 72 at 38 (Dec. & Order, Jan. 12, 2011). Rong Chang has not presented any convincing argument that these factual conclusions, made by the trial court upon review of the same facts now presented to us on appeal, were "clearly erroneous," which is the applicable standard in this case. *Melwani*, 2010 Guam 7 ¶ 11; *see Univ. Commons-Urbana*, 304 F.3d at 1337.

[64] The trial court was apparently not convinced that (1) the "signature block" listing both the Arbiter and M2P's counsel presented in the other case, and (2) the joint appearance at the March 2009 status hearing were indicative of a substantial and on-going co-counsel relationship; this conclusion was stated in no uncertain terms. RA, tab 72 at 37-38 (Dec. & Order, Jan. 12, 2011). Other cases cited by Rong Chang similarly support the proposition that evident partiality is in many cases a factual issue, which cannot be decided *per se* solely on the allegation of a conflict. *See Applied Indus. Materials*, 492 F.3d at 137-38 (noting that fact-finding would have been helpful to determine issue of whether an arbitrator had knowledge of a material relationship with a party); *Schmitz*, 20 F.3d at 1048 (emphases added) (stating that "a reasonable impression of partiality *can* form when an *actual* conflict exists and the lawyer has constructive knowledge of it").

[13] On this issue, Rong Chang's citation to *University Commons-Urbana* stating that the court in that case held that "failure to disclose the relationship was . . . evidence of 'evident partiality' *warranting vacatur*" is not supported by the language of the case. Appellant's Br. at 45 (emphasis added). Indeed, Rong Chang's argument is directly contradicted; in summarizing its opinion, the *University Commons-Urbana* court stated that "*we cannot say whether vacatur is indeed warranted*. . . . What is needed now, therefore, is, an evidentiary hearing on these two allegations (in which we have found merit)." *Univ. Commons-Urbana*, 304 F.3d at 1345 (emphasis added).

[65] In summary, we find that the factual findings of the trial court were not clearly erroneous. The legal analysis of evident partiality conducted by the trial court, which we review *de novo*, was also correct. Although there may have been a *de jure* co-counsel relationship between the Arbiter and M2P's counsel during the arbitration conducted in this case, that relationship was not "direct, definite, and capable of determination" and, consequently, the relationship was not grounds for implying a "reasonable impression of partiality" to the Arbiter. RA, tab 72 at 32 (Dec. & Order, Jan. 12, 2011) (citing *Health Servs. Mgmt. Corp. v. Hughes*, 975 F.2d 1253, 1264 (7th Cir. 1992) (quoting *Tamari v. Bache Halsey Stuart Inc.*, 619 F.2d 1196, 1200 (7th Cir. 1980)) (internal quotation marks omitted). Thus, there was no showing of evident partiality sufficient to compel vacation of the underlying arbitration award.

3. The Arbiter's Duty of Disclosure and Vacation of an Award

[66] The trial court correctly framed the standard for vacating an arbitration award on an evident partiality basis, both as a general policy and as applied in this case. The cases Rong Chang presents do not support an alternate result. Although this seems to be the main issue here, some limited additional analysis is appropriate.

[67] Although the relevant authorities are unanimous in asserting that maximum possible disclosure is the best policy in any potential arbitration case, there does not seem to be any freestanding duty for an arbitrator to disclose all business connections. *See Commonwealth Coatings*, 393 U.S. at 151-52; *Applied Indus. Materials*, 492 F.3d at 139 (citing *Lucent Techs., Inc. v. Tatung Co.*, 379 F.3d 24, 29 (2d Cir. 2004)) ("Disclosure serves the twin goals of encourag[ing] conflicts over arbitrators to be dealt with early in the arbitration process and help[ing] limit the availability of collateral attacks on arbitration awards by a disgruntled party."

(internal quotation marks omitted). As discussed in some previously cited authorities, whether the failure to disclose any certain business relationship requires vacation of an arbitration award in any particular case is an inquiry, which is largely fact-specific and dependent on (1) the nature of the relationship and (2) when the arbitrator became aware of the potential conflict. *See id.* at 137 ("An arbitrator who knows of a *material* relationship with a party and fails to disclose it meets *Morelite*'s 'evident partiality' standard: A reasonable person would have to conclude that an arbitrator who failed to disclose under such circumstances was partial to one side.") (emphasis added). Here, in concluding that the relationship between M2P's counsel and the Arbiter was essentially trivial (or non-material), the trial court also seemingly suggested the Arbiter's nondisclosure of the conflict was not so egregious as to warrant vacation of the award.

[68] This is not an extraordinary conclusion. In this case, as in several other cases discussed above, the Arbiter had a duty under the Construction Industry AAA rules to disclose conflicts. *See* Appellant's Br. at 39. Even if the trial court concluded (and it is not clear that it did) that the Arbiter violated his obligations to disclose "any past or present relationship with the parties or their representatives," such a finding does not automatically require vacation. *Id.* While courts have found that violation of these rules may be probative evidence of partiality, such violations do not *per se* invalidate the arbitration. *See Univ. Commons-Urbana*, 304 F.3d at 1341 (finding that although arbitrator failed to disclose conflict in arbitration governed by AAA and thereby created a *prima facie* case for vacature, further fact-finding was needed to determine whether alleged conflicts required vacation of award); *Merit Ins. Co.*, 714 F.2d at 680-81 ("[E]ven if the failure to disclose was a material violation of the ethical standards applicable to arbitration proceedings, it does not follow that the arbitration award may be nullified judicially.").

V. CONCLUSION

[69] The trial court did not err in analyzing the two post-judgment motions under the standards of GRCP 60(b). The trial court was free to deny oral argument on the motion to vacate pursuant to CVR 7.1(e). Further, the trial court correctly ruled that the GIAC applied to the arbitration confirmation proceedings in this case. Although the trial court erred in its analysis of the collateral estoppel issue, the error was inconsequential. The trial court was free to disregard the motion to vacate as procedurally improper under the requirements of 7 GCA § 42702(c) and by operation of CVR 7.1(f) and CVR 7.1(k). The findings of fact by the trial court regarding the evident partiality of the Arbiter were not clearly erroneous. The legal analysis conducted by the trial court in determining that there was no evident partiality in this case was also proper. Accordingly, the June Decision and the Judgment rendered in this case are **AFFIRMED**. The January Decision is **AFFIRMED**. The matter is **REMANDED** for further proceedings consistent with this opinion.

Original Signed By: **Robert J. Torres**

ROBERT J. TORRES
Associate Justice

Original Signed By: **Katherine A. Maraman**

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **F. Philip Carbullido**

F. PHILIP CARBULLIDO
Chief Justice