# IN THE SUPREME COURT OF GUAM

**BENJAMIN R. CASTRO, JR. dba Pacific Hydronics & Systems,**
Plaintiff-Appellee,

**v.**

**G.C. CORPORATION,**
Defendant-Appellee,

**v.**

**GUAM RESORTS, INC.,**
Real Party in Interest-Appellant.

Supreme Court Case No. CVA11-011
Superior Court Case No. CV0236-08

## OPINION

**Cite as: 2012 Guam 6**

Appeal from the Superior Court of Guam
Argued and submitted October 26, 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] Real Party in Interest-Appellant Guam Resorts, Inc. ("GRI") appeals two orders from the trial court enforcing a writ of execution for garnishment in favor of Plaintiff-Appellee Benjamin Castro. Castro is a judgment creditor who has yet to receive satisfaction on that judgment from G.C. Corporation ("G.C. Corp."). Castro moved to garnish monies from GRI that GRI allegedly owes to G.C. Corp. through a breach of contract judgment. As a result of improper notice, GRI was not present at the motion hearing regarding the garnishment and freezing of its assets. After the trial court judge signed the order forbidding the transfer of GRI funds owed to G.C. Corp. as well as the order requiring GRI to pay money over to Castro toward satisfaction of the judgment, GRI filed this appeal. As a threshold jurisdictional matter, we conclude that the trial court's orders are properly appealable. We find that the trial court's issuance of the two orders deprived GRI of due process, and we hereby reverse and remand.

## I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In 2006, GRI engaged G.C. Corp. to act as prime contractor for renovation of the Okura Hotel, now known as the Aurora Resort. Subsequently, G.C. Corp. subcontracted work with Castro for pool installation and other mechanical work. After September 2007, G.C. Corp. officially suspended construction on the Okura project. Afterwards, several lawsuits were filed and subsequently consolidated. Castro obtained a $238,679.79 default judgment against G.C. Corp. in a separate lawsuit, before the cases were consolidated. After the multiple lawsuits were consolidated, a ten-day long trial ensued between GRI and G.C. Corp. in 2009. The Findings of

Fact and an Amended Findings of Fact and Conclusions of Law ("Amended Findings") were filed on February 11, 2010 and March 17, 2011, respectively. The Amended Findings awarded G.C. Corp. $72,477.32 damages in quantum meruit and $405,331.01 as an equitable amount for compensatory damages, while GRI was awarded $303,349.20 as consequential damages. G.C. Corp. then filed a motion to clarify or reconsider the Amended Findings. Upon hearing this motion, the trial court declined to reconsider the Amended Findings and declined to revise the damages awarded therein.

**[3]** The trial court later issued a Writ of Execution for GRI, as a debtor to G.C. Corp., to pay the $238,679.79 judgment amount to Castro. The trial court then issued the Notice of Garnishment to GRI regarding the same. Although G.C. Corp. is Castro's judgment debtor, G.C. Corp. did not make an appearance in CV0236-08[1]. Subsequently Castro learned that GRI sold the hotel and, concerned that the sales proceeds could be diverted, Castro moved for orders against GRI to satisfy G.C. Corp.'s judgment debt to Castro. In the motion, Castro requested that the trial court issue either an order directing payment from GRI towards satisfaction of his judgment, or if the debt is denied in good faith by GRI, an order forbidding GRI's transfer of any such funds until an action can be commenced and prosecuted to judgment. Castro then filed an Agreement of Hearing Date with the trial court, stating that he contacted opposing counsel to determine a date for oral argument concerning Castro's motions. In it, Castro's attorney said he

[1] At the hearing on April 25, 2011, the following exchange occurred between the trial judge and Attorney Travis:

> MS. TRAVIS: I'm sorry, Civille and Tang represents G.C. in a number of matters in the consolidated cases . . .
>
> THE COURT: But not this one.
>
> MS. TRAVIS: . . . involving the Okura. We never entered an appearance in this case, Your Honor.

Transcript ("Tr.") at 3 (Mot. Hr'g, Apr. 25, 2011).

called the Chamber Clerk to request a hearing date of March 10, 2011 at 9:00 A.M. At that time, the case was on the trial court's master calendar, over which Magistrate Judge Alberto E. Tolentino presides. GRI subsequently filed with the trial court its opposition to the motion, which consisted of just one paragraph and no legal authority for support.[2] On March 3, 2011, the Clerk of Court for the Superior Court issued an Amended Notice to all parties' counsels that the case was assigned to Judge Steven S. Unpingco. Judge Unpingco issued a memorandum recusing himself from the case, followed by a Notice of Recusal. ER at 8. The case was then assigned to Presiding Judge Alberto C. Lamorena III. With all the administrative adjustments that transpired leading up to the motion hearing, it appears the initial Chamber Clerk (i.e., presumably that of Magistrate Judge Tolentino's chambers) had never relayed to Presiding Judge Lamorena's chambers Castro's request for a March 10, 2011 hearing date. The March 10, 2011 hearing date request was never addressed.

[4] On April 25, 2011, Castro's motions came on for hearing without notice to either GRI or Castro. Somehow, Castro's attorney managed to make an appearance, despite the trial court's lack of notice for the hearing date. At the motion hearing, Castro's attorney explained to the court that Castro had served a Writ of Execution on GRI because Castro alleges GRI holds monies belonging to G.C. Corp. in the form of retainage and other sums owed. At the end of that hearing, Presiding Judge Lamorena granted both of Castro's motions—the motions for an order to freeze assets of GRI and for an order requiring GRI to pay money to Castro as judgment creditor from G.C. Corp.—even though Castro had sought the motions in the alternative. The

[2] During appellate oral argument, Castro emphasized the fact that GRI did not serve the opposition on Castro until May 16, 2011, well after the originally requested March 10 date and the later unnoticed hearing date of April 25, 2011. Digital Recording at 10:29:12 A.M. (Oral Argument, Oct. 26, 2011).

following day, Presiding Judge Lamorena signed these two orders, which the court promptly filed. GRI timely appealed from both signed orders.

## II. JURISDICTION

**[5]** The parties disagree about whether this court has jurisdiction. Before proceeding to the merits of the case, this court must first determine whether there is jurisdiction over this appeal. G.C. Corp. filed a motion to dismiss the appeal arguing that the arguments GRI raises on appeal were not raised in the trial court and that the Order Forbidding Transfer of Property is not an appealable order. *See* Mot. Dismiss, Aug. 25, 2011. GRI also raised these arguments in its opening brief. *See* Appellant's Br. at 2 (Aug. 19, 2011). Castro opposed the motion to dismiss and raised additional arguments regarding jurisdiction in his opposition brief on appeal. *See* Appellee's Br. at 1 (Sept. 19, 2011). At the scheduled status conference before oral argument, this court indicated it would address the motion to dismiss as part of the underlying appeal.

**[6]** In its opening brief, GRI states that this court has jurisdiction over "all appeals arising from judgments, final decrees, or final orders of the Superior Court in criminal cases and in civil cases and proceedings." *See* Appellant's Br. at 1 (citing 7 GCA § 3107 (2005)). GRI also argues that the orders are appealable pursuant to 7 GCA § 25102(b), giving jurisdiction over post-judgment civil appeals.[3] *See* Statement of Jurisdiction, May 27, 2011; Appellant's Br. at 1.

### A. GRI's Arguments Raised for the First Time on Appeal

**[7]** Castro's first argument is that GRI is not entitled to raise issues for the first time on appeal if they were not already argued in its Opposition to the motion filed with the trial court.

[3] Title 7 GCA § 25102 provides: "An appeal in a civil action or proceeding may be taken from the Superior Court in the following cases: (a) From a judgment . . . . (b) From an order made after a judgment made appealable by subdivision (a) . . . ." 7 GCA § 25102 (2005).

*See* Appellee's Br. at 4 (citing *Dumaliang v. Silan*, 2000 Guam 24 ¶ 12). Castro argues that once GRI chose to file an opposition to the orders Castro sought against it, GRI should have raised the issues that are now on appeal. *See* RA, tab 82 (Opp'n Mot. Order Applying Property Toward Satisfaction of Judgment, Feb. 28, 2011); Appellee's Br. at 4. Castro submits that because GRI did not present these arguments on appeal to the trial court, GRI waived them. *See* Appellee's Br. at 4 (citing *Taitano v. Lujan*, 2005 Guam 26 ¶ 15). Castro further believes that GRI was not denied due process because it had full opportunity to file a proper opposition to his motion for the orders, but failed to do so. *See* Appellee's Br. at 5.[4]

**[8]** GRI counters by stating that GRI had no opportunity to make the argument to the trial court and that one of the few recognized exceptions to the general rule precluding appellate review of arguments raised for the first time on appeal applies herein.[5] The applicable exception that GRI asserts is that it suffers a deprivation of due process, discussed below in Part IV.B, which "constitutes both a miscarriage of justice and impugns the integrity of the judicial process." Reply Br. at 2 (Oct. 3, 2011) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)); *see also* discussion *infra* Part IV.B. Courts generally recognize that there are "protections afforded every litigant by . . . usual guarantees of due process—notice and an opportunity to be heard," *In re FairWageLaw*, 97 Cal. Rptr. 3d 652, 659 (Ct. App. 2009), and that due process requires that a litigant receive "a reasonable opportunity to be heard."

[4] Raising an issue for the first time on appeal is not a jurisdictional issue, but it is within the discretion of this court to address as set out in *Dumaliang*, 2000 Guam 24, discussed in the following footnote.

[5] In *Dumaliang*, we clarified that the general rule precluding review of issues raised for the first time on appeal is discretionary, and an appellate court may recognize such exceptions as: (1) when review is necessary to prevent a miscarriage of justice or to preserve the integrity of the judicial process; (2) when a change in law raises a new issue while an appeal is pending; and (3) when the issue is purely one of law. *Dumaliang*, 2000 Guam 24 ¶ 12 n.1. In *Tanaguchi-Ruth + Associates. v. MDI Guam Corp.*, we stated that "if one of the exceptions is applicable, we have discretion to address the issue." 2005 Guam 7 ¶ 80 (internal quotation marks omitted); *see also* Reply Br. at 2 (Oct. 3, 2011).

*Rodriguez v. Dep't of Real Estate*, 59 Cal. Rptr. 2d 652, 656 (Ct. App. 1996) (internal citations and quotation marks omitted). We find that GRI's arguments raised for the first time on appeal implicate due process, and it is necessary that we review the issues to ensure that a miscarriage of justice does not occur or that the integrity of the judicial system is not impugned. Accordingly, we will exercise our discretion to review the issues raised by GRI for the first time on appeal. Before doing so, however, we still must address Castro's other argument for dismissal, which is that the order forbidding the transfer of GRI's property is not an appealable order.

**B. Castro's Statutory Argument Against Appellate Jurisdiction**

**[9]** Castro argues that the order freezing GRI's assets is not appealable and that this court lacks jurisdiction. *See* Appellee's Br. at 5. Castro relies on the language of 7 GCA § 23205, specifically emphasizing the portion stating, "the judge or referee may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment." Appellee's Br. at 5 (citing 7 GCA § 23205 (2005)). Accordingly, because the order freezing assets occurred before Castro's separate action against GRI to prosecute the debt, Castro argues the order is not appealable. *See id.* Castro provides no case law interpretation of section 23205 to support this point. As clarified below, we disagree with Castro's argument that these orders are not appealable under section 23205.

**C. Determining Appellate Jurisdiction of Post-Judgment Orders Under *Zurich***

**[10]** The proper inquiry regarding this court's jurisdiction over the appealed orders depends on the application of the facts to the two-pronged test established by this court in *Zurich Insurance (Guam), Inc. v. Santos*, 2007 Guam 23. Arguing against this court's appellate jurisdiction,

Castro cites *Zurich* for the proposition that post-judgment orders are not appealable if they are "'preliminary to a later judgment, at which time they will become ripe for appeal.'" *See* Appellee's Br. at 5 (quoting *Zurich*, 2007 Guam 23 ¶ 10). Although Castro cites *Zurich* to argue the orders are not appealable, Castro mistakenly relies on a partial holding revolving around the term "preliminary" instead of focusing on the two-prong test set forth in *Zurich*. *See Zurich*, 2007 Guam 23 ¶ 10.

**[11]** *Zurich* cites the California case of *Lakin v. Watkins Associated Industries*, 863 P.2d 179 (Cal. 1993), setting forth two requirements for a post-judgment order to be separately appealable. *See Zurich*, 2007 Guam 23 ¶ 8. The *Zurich* court adopted *Lakin*'s two-pronged test: (1) "[T]he issue raised by the appeal from the order must be different from those arising from an appeal from the judgment"; and (2) "the order must either affect the judgment or relate to it by enforcing it or staying its execution." *See id.* ¶¶ 8-9 (citing *Lakin*, 863 P.2d at 183). If both prongs are determined in the affirmative, then the post-judgment order issues are deemed appealable.

**1. *Zurich*'s First Prong**

**[12]** *Zurich*'s first prong requires issues on appeal from the order to be distinct from the issues arising from an appeal from the prior judgment. *See id.* ¶ 8. GRI argues that the orders and motions on appeal here are distinct from those arising in earlier judgments—the issues are "sui generis, designed to satisfy a judgment against G. C[.] Corporation, and unrelated to any appealable issue in CV 236-08," the case below between Castro and G.C. Corp. Reply Br. at 4. We agree. That is, the issues appealed in this case seek to satisfy Castro's judgment against G.C. Corp. by garnishing debt from G.C. Corp.'s alleged debtor, GRI. Similar to the scenario in

*Zurich*, judgment-creditor Castro's attempt to garnish third-party debtor GRI's monies is unrelated to any issues concerning how judgment-debtor G.C. Corp. ever became liable to Castro in the construction lawsuit below. Thus, because the orders that GRI appeals are separate from the issues in the underlying case between Castro and G.C. Corp., *Zurich*'s first prong is satisfied here.

**2. *Zurich*'s Second Prong**

**[13]** Next, *Zurich*'s second prong requires the appealed orders to affect or relate to the prior judgment by either "enforcing [the prior judgment] or staying its execution." *See Zurich*, 2007 Guam 23 ¶ 9. In *Zurich*, the second prong was satisfied because the appealed order was "by its terms an order to create assets to pay the final judgment." *Id.* ¶ 12. Because the order served to enforce the execution of the judgment amount, that particular appealed order affected and related to the earlier judgment. *See id.*

**[14]** GRI addresses *Zurich*'s second prong when it properly characterizes the orders as those affecting or relating to a judgment below "by enforcing it or staying its execution." *See* Reply Br. at 4-5 (internal citations and quotation marks omitted). Its argument is essentially that if the trial court's orders affect or relate to the judgment below (i.e., judgment establishing G.C. Corp.'s debt to Castro), then under *Zurich*, GRI's appealed orders are indeed properly appealable. We agree. The appealed orders in the instant case both affect and relate to the prior judgment between Castro and G.C. Corp. There is no doubt that the trial court's issuance of the order forbidding the transfer of GRI's assets, based on 7 GCA § 23205, affects the prior judgment between Castro and G.C. Corp. because it serves to enforce the breach of contract damages judgment that G.C. Corp. owes Castro. Moreover, the trial court's issuance of the order

applying funds to satisfy judgment, pursuant to 7 GCA § 23204 (though not discussed on appeal due to the parties' failure to brief the issue), is clearly related to the prior judgment between Castro and G.C. Corp. because that order also functions to enforce the judgment that G.C. Corp. owes Castro by garnishing GRI's monies. These facts satisfy the second *Zurich* prong and, thus, the orders are properly appealable under 7 GCA §§ 25102(b) and 3108(b). *See HongKong & Shanghai Banking Corp. v. Kallingal*, 2005 Guam 13 ¶ 16 (citing that 7 GCA § 3108(b) allows for orders other than final judgments to be available for immediate appellate review).

## III. STANDARD OF REVIEW

**[15]** This court reviews issues of statutory interpretation *de novo*. *See Castino v. G.C. Corp.*, 2010 Guam 3 ¶ 14. Interpretation of Guam's post-judgment execution statutes under title 7 of the Guam Code Annotated involves interpretation of law and, thus, is reviewed *de novo*. *See Zurich*, 2007 Guam 23 ¶ 13 (citing *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 16).

## IV. ANALYSIS

**[16]** The first of Castro's motions for orders was made pursuant to 7 GCA § 23204, which involves the order applying property to the satisfaction of judgment.[6] *See* RA, tab 81 (Mot. Order Applying Property Toward Satisfaction of Judgment, Feb. 18, 2011). However, neither GRI nor Castro made any argument regarding this particular provision. Rather, GRI promptly proceeds to its next argument, citing 7 GCA § 23205. The order based on section 23205 sought

[6] Section 23204 provides:

> The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment; but no such order can be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if such person claims an interest in the property adverse to the judgment or denies the debt.

7 GCA § 23204 (2005).

to prevent GRI, the third-party debtor, from transferring its funds until Castro, as the judgment creditor, could commence and prosecute a debt action against GRI. *See id.* As a preliminary matter, we will analyze the statutory interpretation of 7 GCA § 23205, but decline to analyze 7 GCA § 23204 because the parties did not brief their arguments regarding the latter on appeal. *See, e.g., Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 3 n.2; *Hemlani v. Flaherty*, 2003 Guam 17 ¶ 18. Accordingly, the parties have abandoned the issue involving section 23204 on appeal, and section 23205 is the only statutory provision before us.

**A. Clarifying the Statutory Interpretation of 7 GCA § 23205**

**1. The Text of 7 GCA § 23205**

**[17]** In relevant part, the text of 7 GCA § 23205 states:

> If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt, and the judge or referee may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge or referee granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

7 GCA § 23205 (2005). Relying on this language, GRI argues that when a third party denies debt owed, the judgment creditor may maintain an action against the third party, and the judge may freeze the assets until arriving at a judgment. *See* Appellant's Br. at 8 (citing *Guam Econ. Dev. Auth. v. Island Equip. Co.*, 1998 Guam 7). Because the trial court did not first require Castro to maintain an independent debt action against GRI, GRI argues it has not yet had an opportunity to contest the debt. *See id.* at 9.

**[18]** In *Guam Economic Development Authority*, cited by GRI for support, this court had to resolve a dispute in which garnishees had denied alleged debt. *See Guam Econ. Dev. Auth. v. Island Equip. Co.*, 1998 Guam 7 ¶ 10. The case involved this court's brief discussion of 7 GCA § 23205. *See id.* (citing 7 GCA § 23205 (1994)). The court found the following argument by the appellee persuasive: that a garnishee's denial of indebtedness does not preclude a court order seeking to apply monies to satisfy a judgment "where other admissions and averments of the garnishee confess the debt." *Id.* (citing 19 Cal. Jur. 2d *Executions* § 221 (1969)). This court's reasoning was based on the California Court of Appeal case, *Finch v. Finch*, 107 P. 594, 598 (Cal. Dist. Ct. App. 1909), which found that:

> [T]he trial court was not bound by the garnishee's denial of the debt if the facts show that the debt existed at the time of service of the writ, and that it was not sufficient to divest the court of jurisdiction to order the garnishee to pay the debt where the denial of indebtedness by the garnishee was shown by other averments and admissions to be an erroneous conclusion.

*Guam Econ. Dev. Auth.*, 1998 Guam 7 ¶ 10 (citing *Finch*, 107 P. at 596). The appellee in *Finch* had furnished adequate evidence via deposition testimony, correspondence, plus the fact that the appellants had admitted to a contractual relationship with an alleged alter ego. *See id.* Similarly here, Castro is relying on evidence in the form of the trial court's Amended Findings, finding damages that GRI owes G.C. Corp., and finding a valid contractual relationship between GRI and G.C. Corp. *See* Appellee's Br. at 7.

**[19]** As an additional preliminary matter, we must also address Castro's contention that a judge may freeze assets under 7 GCA § 23205 regardless of whether the debt has been determined for certain. *See* Appellee's Br. at 6. Castro preemptively refutes the anticipated argument by GRI denying the existence of debt simply because the March 17, 2011 Amended

Findings do not qualify as a valid judgment establishing a certain amount of debt in the case below between GRI and G.C. Corp. *See id.* at 7. Castro maintains that although there has yet to be an entry of judgment establishing a certain debt amount, Castro may nonetheless seek to freeze GRI's assets. *See id.* Castro's argument is essentially that the Amended Findings prove GRI indeed owes G.C. Corp. at least, if not more than, what Castro seeks to garnish in this case.[7] *See id.* Thus, Castro relies on the Amended Findings to serve in lieu of a valid final judgment in *Guam Resorts, Inc. v. G.C. Corp.*, CV1491-07/CV0137-08. *See id.*[8] For purposes of analyzing 7 GCA § 23205, we will assume that a debt owed to G.C. Corp. by GRI does exist, but we do not make an actual finding at this time.

**2. Plain Language Interpretation**

**[20]** The plain language of a statute is the starting point for statutory interpretation. *See Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6 (citing *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23; *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982)). Furthermore, "[a]bsent clear legislative intent to the contrary, the plain meaning prevails." *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17. Thus, absent finding any such clear legislative history regarding 7 GCA §

[7] Castro asserts that the Amended Findings indicates "GRI is withholding $1,658,696 in retention owed to GCC for work performed and accepted by GRI, not to mention the $72,477 awarded in quantum meruit and the $405,331 in 'equitable restitution.'" Appellee's Br. at 7 (internal citations omitted).

[8] Nevertheless, this concern regarding the validity of the Amended Findings is now moot. According to Guam Rules of Appellate Procedure Rule 13(i), appellate counsel is responsible for timely informing the court of all developments affecting the appeal. Guam R. App. P. 13(i). We are aware that following the parties' briefing and argument of this case on appeal, the trial court has since issued a decision and order on the motion to reconsider the Amended Findings. *See* Guam Resorts Inc. v. G.C. Corp., CV1491-07/CV0137-08 (Dec. & Order at 8 (Dec. 29, 2011)). The trial court ultimately confirmed the Amended Findings, including the findings and damages awarded therein, which serves as a valid final judgment in that case. *See id.* Because this new development in the related suit renders any dispute regarding the validity of the Amended Findings moot, we decline to analyze this argument of Castro's in further detail.

23205, we first look to the plain language of that section. The relevant statutory language of 7 GCA § 23205 in dispute here is as follows:

> If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, . . . denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt, and *the judge or referee may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment.*

7 GCA § 23205 (emphasis added).

**[21]** Citing *Aguon* for its proposition of plain language construction, GRI emphasizes the portion of section 23205 providing that "the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt, **and** the judge or referee may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment." Reply Br. at 6 n.2. (citing 7 GCA § 23205). The plain reading of this portion, GRI argues, suggests that any freezing of assets must occur in conjunction with the prosecution of debt, not independent from or prior to such a prosecution of debt. *See id.* at 7. However, GRI does not cite any case law authority to support such an interpretation. Indeed, there is no on-point case law that mandates this interpretation, and we disagree with GRI's plain language interpretation of the statutory provision.

**[22]** Rather, the plain language reading of the disputed portion of 7 GCA § 23205 suggests the contrary interpretation—that it is indeed permissible for a judge to freeze a third-party debtor's assets *before* an action prosecuting the debt has commenced and come to judgment. The placement of the phrase "the judge or referee *may*, by order, forbid a transfer or other disposition of such interest or debt," immediately preceding the clause "*until* an action can be commenced and prosecuted to judgment" suggests that the clause preceding the word "until" qualifies as

permissible action by a judge through the issuance of an order. 7 GCA § 23205 (emphases added). Nowhere in the provision does the plain language indicate a debt action must be commenced and prosecuted to judgment before the judge is allowed to freeze the third-party debtor's assets. Contrary to GRI's contention, the plain language reading of this statutory provision does *not* affirmatively prohibit the judge from freezing a third-party debtor's assets prior to commencement and prosecution to judgment of an action. Nor does the plain language reading affirmatively mandate the commencement or prosecution of an action to occur before a judge may freeze the assets belonging to a third-party debtor who denies the debt. Therefore, we hold that 7 GCA § 23205 does not require a debt action to be commenced and prosecuted to judgment prior to issuing an order to freeze a third-party debtor's assets.

**B. Due Process Claim**

**[23]** GRI also argues its right to contest the debt at a hearing is a matter of due process. *See* Appellant's Br. at 10; *see also* discussion *supra* Part II.A (discussing GRI's argument that this court has jurisdiction to review issues raised for the first time on appeal). GRI cites a Florida case, *Ryan's Furniture Exchange, Inc. v. McNair*, 162 So. 483 (Fla. 1935), which stands for the proposition that statutes relating to proceedings supplemental to execution should be enforced so as to afford due process. *See id.* at 486-87. An interested party is afforded due process when given "[f]air notice and a reasonable opportunity to be heard." *Id.* at 487. Indeed, according to well-settled United States Supreme Court precedent, procedural due process requires deprivation of life, liberty, or property to be preceded by notice and the opportunity to be heard. *See Mullane*, 339 U.S. at 313.

**1. Notice**

**[24]** Following this principle, GRI contends that because the motion came on for hearing without notice to GRI, GRI was denied "notice," which in turn resulted in a violation of GRI's due process rights. GRI argues the only notification it received that even remotely resembled "notice" was the Friday, April 22, 2011 Superior Court calendar publication reporting that Castro's motions were scheduled for a hearing on the following Monday, April 25, 2011 at 2:00 P.M. *See* Appellant's Br. at 11. It is crucial to note that the court calendar listed Castro's attorney and G.C. Corp.'s attorneys, but somehow did not list the attorney for GRI. *See* ER at 42 (Superior Court of Guam Calendar, Apr. 22, 2011). A review of the record and the trial court docket shows that GRI did not receive any other form of written notice regarding the motion hearing, and it appears the trial court did not issue a notice of hearing to the parties when it decided to set the matter for hearing on April 25, 2011.

**[25]** The *Mullane* Court held that notice afforded in a proceeding must reasonably inform the absentee of its opportunity to be heard. *See Mullane*, 339 U.S. at 315. In determining what constitutes proper "notice," the Court asserted:

> It would be idle to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts. It is not an accident that the greater number of cases reaching this Court on the question of adequacy of notice have been concerned with actions founded on process constructively served through local newspapers. Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention.

*Id.* The April 22, 2011 calendar publication of the April 25, 2011 hearing date regarding Castro's motions is arguably similar to the insufficient constructive notice discussed in *Mullane*. That is, the deficient April 22, 2011 calendar notice is analogous to the specific circumstances mentioned above in *Mullane*, in which "notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention." *Id.* The April 22, 2011 calendar failed to list GRI's attorney and failed to give GRI sufficient notice of the anticipated motion hearing, where GRI could have had its fair opportunity to be heard. *See* ER at 42 (Superior Court of Guam Calendar, Apr. 22, 2011).

**2. Opportunity to Be Heard**

**[26]** GRI contends that the trial court likely would not have issued both orders against GRI if GRI had notice of the hearings as well as the opportunity to oppose the motion before the trial judge, thus avoiding the appeal herein. *See* Appellant's Br. at 11. When alleged debtors deny responsibility for debt, "due process requires that the merits of liability [of debt] issues be tried." *Meller & Snyder v. R & T Props., Inc.*, 73 Cal. Rptr. 2d 740, 750 (Ct. App. 1998).

**[27]** This authority suggests that a third-party debtor who allegedly owes money to the judgment debtor should not only receive proper notice, but also an adequate opportunity to deny the debt at a hearing. The transcript of the April 25, 2011 motion hearing regarding the freezing of GRI's assets verifies that GRI's attorney did not appear at the hearing before the trial judge. *See* Tr. at 1 (Mot. Hr'g) (documenting, on transcript cover page, no appearance entered for GRI's attorney); *id.* at 2 (documenting no colloquy between the trial judge and counsels present inquiring into the absence of GRI's attorney). As the trial judge agreed to sign the two orders, GRI's attorney was not present to oppose. *See id.* at 5. Because GRI was denied both notice and

the opportunity to be heard at the trial court concerning these motions, granting these motions denied GRI due process—GRI should have been able to contest the debt at the motion hearing.

**3. Failure to File a Proper Opposition Motion**

**[28]** Regardless of GRI's absence at the motion hearing, Castro nonetheless maintains the assertion that GRI failed to avail itself of the opportunity to be heard when GRI failed to file a "proper opposition" to Castro's motions based on 7 GCA §§ 23204 and 23205. *See* Appellee's Br. at 5. The record shows that on February 28, 2011, GRI filed with the trial court a single-paragraph opposition to Castro's motions. RA, tab 82 (Opp'n Mot. Order Applying Property Toward Satisfaction of Judgment). GRI only managed to serve that same opposition on Castro on May 16, 2011, several weeks after the April 25, 2011 motion hearing at which GRI was not present. Castro's argument is that GRI squandered its opportunity to be heard by filing a short, bare-bones opposition, unsupported by a memorandum of points and authorities. *See* Appellee's Br. at 5.

**[29]** A nonmoving party may have the opportunity to be heard when the party files responses to motions before they are ruled upon, subject to statutory rules. *See, e.g.*, *Tate v. Am. Gen. Life & Accident Ins. Co.*, 655 N.E.2d 18, 21 (Ill. App. Ct. 1995) (regarding a party's complaint of lack of due process, "the [Illinois Human Rights] Act and the rules provide that, in response to the motion, the non-moving party may file counter-affidavits at any time prior to the time of the ruling on the motion."). Thus, a nonmoving party's own failure to avail himself of the opportunities to be heard does not necessarily deprive him of procedural due process. *Cf. id.* at 22. Nevertheless, courts have held that "[d]ue process does not require an oral hearing on a motion . . . , but notice of hearing or submission of the motion is required." *Long v. Yurrick*, 319

S.W.3d 944, 948 (Tex. App. 2010) (citing *Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998) (per curiam)). "The reason that notice of hearing or submission of the motion is mandatory is because the hearing date determines the time for response to the motion." *Id.*

**[30]** In Guam, a Superior Court motion practice rule offers a timeframe by which a party must file an opposition motion. In relevant part, Local Rules of the Superior Court of Guam Civil Rule ("CVR") 7.1(d)(1)(A) provides: "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." CVR 7.1(d)(1). In this case, Castro argues that GRI failed to file a "proper" opposition because GRI's one-page opposition was unaccompanied by a memorandum in support thereof, requiring points and authorities. *See* Appellee's Br. at 5.

**[31]** Technically, as provided by CVR 7.1(d)(1), GRI's deadline for filing such a motion and memorandum of points and authorities would have been fourteen days before the noticed hearing date, had one existed. *See* CVR 7.1(d)(1). However, because GRI did not actually receive proper notice of the April 25, 2011 hearing date, the appropriate opposition deadline of "fourteen (14) days preceding the noticed date of oral argument" does not apply here. *Id.* After all, such a deadline is determined in relation to an existing "noticed date," *id.*, which was not served on GRI or any other party in this case. As a result, any "proper opposition" by GRI was *not* due fourteen days before April 25, 2011, because there was no notice of this hearing date, which is required for an opposing party to determine its opposition filing deadline. Appellee's Br. at 5. Thus, we

disagree with Castro's assertion that GRI failed to avail itself of the opportunity to be heard required by due process.

## V. CONCLUSION

**[32]** As a threshold jurisdictional matter, we hold that under *Zurich*, the trial court's orders are properly appealable. We further hold that when a third-party debtor denies the existence of a debt, the plain language interpretation of 7 GCA § 23205 permits a judge to freeze a third-party debtor's assets before the commencement and prosecution to judgment of a debt action. We further hold that under the facts in this case, publication of a trial court calendar does not serve as sufficient notice in the absence of a notice of a motion hearing date served on any party to a matter. Insufficient notice deprives litigants of the opportunity to be heard, resulting in a violation of due process.

**[33]** Therefore, we **REVERSE** the trial court's issuance of the two orders and **REMAND** 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