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SUPREME COURT  
OF GUAM

**IN THE SUPREME COURT OF GUAM**

**JOSEPH T. DUENAS as administrator**  
**for the ESTATE OF ROSARIO T. QUICHOCHO,**  
Plaintiff-Appellee,

v.

**GEORGE AND MATILDA KALLINGAL, P.C., GJADE, INC.,**  
**FORTUNE JOINT VENTURE dba FORTUNE VENTURES,**  
Defendants-Appellants,

**DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES,**  
**GOVERNMENT OF GUAM,**  
Intervenor-Appellee.

Supreme Court Case No.: CVA14-026  
Superior Court Case No.: CV1440-07

**OPINION**

**Cite as: 2015 Guam 19**

Appeal from the Superior Court of Guam  
Argued and submitted on February 20, 2015  
Hagåtña, Guam

Appearing for Defendant-Appellant:

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

**CARBULLIDO, J.:**

[1] This case comes before this court for the third time. In *Duenas v. George & Matilda Kallingal, P.C.*, 2012 Guam 4 (hereinafter “*KPC I*”), this court held, *inter alia*, that Defendant-Appellant George and Matilda Kallingal, P.C. (“KPC”) was entitled to a new lease. On remand, Plaintiff-Appellee Joseph T. Duenas, who represents Rosario T. Quichocho as administrator of her estate, presented KPC with a new lease. When KPC refused to sign the lease, the trial court issued an order removing all of KPC’s rights under the lease. KPC and Fortune Joint Venture (“FJV”) appealed.

[2] In *Duenas v. George & Matilda Kallingal, P.C.*, 2013 Guam 28 (hereinafter “*KPC II*”), this court dismissed the appeal, holding that the trial court had not entered final judgment because the issue of the amount of post-termination damages remained. On remand, the trial court found, *inter alia*, that KPC was not entitled to any post-termination damages in light of KPC’s refusal to execute the new lease. KPC appeals the trial court’s rulings regarding damages, arguing that the trial court failed to determine damages properly.

[3] For the reasons set forth below, we affirm in part, reverse in part, and remand for the purpose of determining KPC’s post-termination damages, if any, as a result of the delay on the part of Quichocho in tendering a new lease.

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## I. FACTUAL AND PROCEDURAL BACKGROUND

[4] This case is on its third appeal after remand to the trial court pursuant to our opinions in *KPC II*, 2012 Guam 4, and *KPC II*, 2013 Guam 28. It has an extensive factual background that will be summarized here.

[5] GJADE, Inc. (“GJADE”) and KPC entered into a joint venture agreement to form FJV for the purpose of financing and constructing a commercial building complex for lease. Before FJV was created, GJADE and KPC agreed in writing that GJADE would provide two parcels of property and that KPC would acquire a construction loan from Bank of Guam.

[6] Rosario T. Quichocho, who is represented in this case by Joseph T. Duenas, the administrator of her estate, leased property to GJADE via a ground lease for the joint venture project for a term of 75 years. Legacy Square was erected on the property in 1996.

[7] In 1999, Quichocho stopped receiving rent. In September 2007, Quichocho sent notices of default and demand to cure to GJADE, KPC, and FJV. Thereafter, Quichocho notified tenants of Legacy Square that the ground lease had been cancelled. One week later, KPC sent Quichocho a letter stating that the cancellation was not effective, and that KPC intended to exercise the right to demand a new lease pursuant to the terms of the ground lease. On November 21, 2007, KPC sent another letter to Quichocho, electing to obtain a new lease.

[8] In 2007, Quichocho filed a complaint against GJADE, FJV, and KPC, seeking in part a declaration of termination of the lease and all past due rent and real property taxes. KPC filed a counterclaim, seeking the execution of a new lease.

[9] In *KPC I*, we ruled that “KPC is entitled to a new lease, and the rental obligations under the new lease shall reflect the same terms that existed under the original lease.” *KPC I*, 2012

Guam 4 ¶ 51. Moreover, we held:

Because we have concluded that FJV and KPC are to pay rent under the terms of the original lease, the issue of how to measure damages for possession of the property post-termination of the lease is moot. We remand the matter back to the trial court to calculate the damages in accordance with this opinion.

*Id.* ¶ 39. Accordingly, we remanded the case to the trial court so that it could have Quichocho provide a new lease with the same terms for KPC to sign.

[10] On remand, the trial court issued an order giving KPC 90 days to decide whether it would accept a new lease provided by Duenas. The trial court stated that “it is this Court’s interpretation that at the time the new lease [is] executed, damages can be calculated in accordance with the Supreme Court’s opinion . . . . Likewise, the issue of post-termination damages cannot be addressed at this time.” *KPC II*, 2013 Guam 28 ¶ 6 (quoting Record on Appeal (“RA”), tab 270 at 4 (Dec. & Order, Oct. 9, 2012)). KPC allowed the 90 days to lapse. As a result, the trial court issued a judgment stating that KPC’s “refusal to execute the new lease agreement confirmed the termination of all its rights to the property subsequent to November 7, 2007.” *Id.* at 7 (quoting RA, tab 273 at 3 (J. Re George & Matilda Kallingal, P.C. and Fortune Joint Venture, Jan. 18, 2013)).

[11] On appeal for the second time, in *KPC II*, we held that the trial court had not entered a final judgment capable of appeal under 7 GCA §§ 3108(a) or 25102 because the trial court still had to determine the amount of post-termination damages, if any, each party was owed. We found that “[b]ecause KPC refused to execute the new lease, the issue of the amount of post-termination damages remain[ed].” *Id.* ¶ 16. Therefore, we remanded the case to the trial court to determine the amount of post-termination damages, if any, each party was owed.

[12] The trial court ruled that KPC's refusal to execute a new lease for the leased property confirmed the termination of all of its rights to the leased property subsequent to November 7, 2007. Moreover, the court ruled that FJV and KPC were jointly and severally liable to Duenas for post-termination damages. Specifically, the court ruled that FJV and KPC were liable "for all rents collected or received by either of them from subtenants of [the leased property] subsequent to November 7, 2007." RA, tab 289 at 4 (J. Re George & Matilda Kallingal, P.C. and Fortune Joint Venture, July 11, 2014). Additionally, the court ruled that FJV and KPC are jointly and severally liable to Duenas for pre-termination rent in the amount of \$294,780.65 and "for all real property taxes owned [*sic*] on [the leased property] up to November 2007." *Id.* at 3-4. Finally, the court ruled that "KPC and FJV, having refused to execute a new lease, suffered no post-termination damages." RA, tab 288 at 4 (Additional Finds. Fact & Concl. L. on Remand, July 11, 2014).

[13] KPC disagreed and timely filed a notice of appeal.

## II. JURISDICTION

[14] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-9 (2015)) and 7 GCA §§ 3107 and 3108(a) (2005).

## III. STANDARD OF REVIEW

[15] The appellate court's interpretation of its own mandate is properly considered a question of law, reviewable *de novo*. *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 17. Moreover, an appellate court reviews the trial court's actions on remand for an abuse of discretion. *Id.*

[16] This court reviews the trial court's equitable orders for an abuse of discretion. *Abalos v. Cyfred Ltd.*, 2006 Guam 7 ¶ 14 (citation omitted). "The [trial] court abuses its discretion when its equitable decision is based on an error of law or a clearly erroneous factual finding." *Id.* (alteration in original) (quoting *United States v. State of Washington*, 157 F.3d 630, 64 (9th Cir. 1998)).

#### IV. ANALYSIS

##### A. Whether the Trial Court Erred in Declaring a Forfeiture of KPC's Rights Under the Lease Agreement

[17] In its Judgment, the trial court ruled that KPC's refusal to execute a new lease for the leased property confirmed the termination of all of its rights to the leased property subsequent to November 7, 2007. RA, tab 289 at 3 (J. Re George & Matilda Kallingal, P.C. and Fortune Joint Venture, July 11, 2014). KPC contends that this ruling was an abuse of the trial court's discretion. Appellant's Br. at 14 (Dec. 9, 2014).

[18] A trial court enjoys broad equitable powers. *Abalos*, 2006 Guam 7 ¶ 40. "[T]he powers of a court of equity are so broad as to adequately meet the exigencies of the case and render a decree which will justly determine the rights of the respective parties." *Id.* ¶ 42 (quoting *Lobdell v. Miller*, 250 P.2d 357, 367 (Cal. Dist. Ct. App. 1952)). As such, this court reviews a trial court's equitable orders for an abuse of discretion. *Id.* ¶ 14. "The [trial] court abuses its discretion when its equitable decision is based on an error of law or a clearly erroneous factual finding." *Id.* (alteration in original) (citation and internal quotation marks omitted).

[19] KPC requested in Count II of its counterclaim that Quichocho's estate be ordered to enter into a new lease with KPC with the terms and conditions of the new lease being the same terms and conditions as the original lease. RA, tab 23 at 6 (Answer to Am. Compl. & Countercl., Feb.

4, 2008). In *KPC I*, we agreed and decided that KPC was entitled to a new lease under the same terms and conditions as the original lease. The trial court granted KPC the remedy it requested when it gave KPC 90 days to execute a new lease prepared by Duenas with the same terms and conditions as the original lease. RA, tab 270 at 4 (Dec. & Order); RA, tab 273 at 2 (J. Re George & Matilda Kallingal, P.C. and Fortune Joint Venture, Jan. 18, 2013). KPC refused to execute the new lease. RA, tab 288 at 3 (Additional Finds Fact & Concl. L. on Remand). In light of KPC's refusal to execute the new lease, the trial court declared that the ground lease terminated on November 7, 2007, and that any rights KPC may have had with respect to the property terminated as of November 7, 2007. *Id.* at 4; RA, tab 289 at 3 (J. Re George & Matilda Kallingal, P.C. and Fortune Joint Venture, July 11, 2014). This action by the trial court does not amount to an abuse of discretion because it cannot be said to be based on an error of law or a clearly erroneous factual finding. *See Abalos*, 2006 Guam 7 ¶ 14. Rather, the trial court's judgment is consistent with the parties' original lease agreement, which provides that the Lessee shall, "at the expiration or sooner termination of this Lease, peaceably and quietly quit and surrender to Lessor the Premises in good order and condition subject to the other provisions of this Lease," and that "[o]n termination of this Lease for any cause, Lessor shall become the owner of any building or improvements on the Premises." RA, tab 259, Ex A. at 19, 22 (Pl.'s Submission of New Lease in Conformance with Sup. Ct. Mandate, July 16, 2012).

[20] Moreover, KPC's argument that the trial court abused its discretion by failing to balance the equities of the parties before requiring KPC to sign the new lease is without merit. *See Appellant's Br.* at 11. It was reasonable for the trial court to require KPC to first sign the lease before determining damages because the amount of damages suffered by each party could



change depending on whether the lease was signed. In fact, the trial court indicated that it would calculate damages once the new lease was executed. RA, tab 270 at 4 (Dec. & Order) (“[I]t is the Court’s interpretation that at the time the new lease is executed, damages can be calculated in accordance with the Supreme Court’s opinion.”).

[21] Thus, the trial court did not abuse its discretion by terminating KPC’s rights to the property.

**B. Whether the Trial Court’s Findings of Damages were in Error in Light of this Court’s Mandates in *KPC I* and *KPC II***

[22] Duenas argues that the trial court “fully complied with the express provisions of the mandate [in *KPC I*],” and thus, the trial court committed no error “and certainly no abuse of its discretion.” Appellee’s Br. at 7 (Jan. 8, 2015). In reply, KPC argues that the trial court failed to comply with this court’s mandate “to calculate damages due to *each* party as required.” Appellant’s Reply Br. at 4 (Jan. 22, 2015). Specifically, KPC argues that the trial court calculated post-termination damages only as to Quichocho and failed to calculate any damages as to KPC. *Id.* at 5-6.

[23] On remand, a trial court must comply with the mandate of the appellate court. *In re Dep’t of Agric. v. Guam Civil Serv. Comm’n*, 2013 Guam 31 ¶ 8; *Town House Dep’t Stores*, 2003 Guam 6 ¶ 16. “Furthermore, a mandate cannot be applied in a vacuum, and must be interpreted in light of the appellate court’s opinion.” *Town House Dep’t Stores*, 2003 Guam 6 ¶ 16. Thus, in determining how to proceed on remand, the trial court must examine both the mandate and the opinion and proceed in accordance with the views expressed therein. *Id.* The interpretation by an appellate court of its own mandate is a question of law, reviewed *de novo*. *Id.* ¶ 17.

[24] “[A]n appellate court reviews the trial court’s actions on remand for an abuse of discretion.” *Id.* A trial court abuses its discretion only when the court’s judgment is not justified by the evidence or is clearly against the logic and effect of the facts. *Pangelinan v. Camacho*, 2011 Guam 9 ¶ 14. “Furthermore, an appellate court will not substitute its judgment for that of the trial court unless it has, ‘a definite and firm conviction [that] the trial court, after weighing relevant factors, committed clear error of judgment in its conclusion.’” *Id.* (alteration in original) (quoting *People v. Tuncap*, 1998 Guam 13 ¶ 12).

[25] The mandate issued by this court in *KPC I* provided, *inter alia*:

We REVERSE the trial court’s dismissal of KPC’s counterclaim for an [*sic*] new lease because Rosario had actual notice of KPC’s demand for a new lease. KPC is entitled to a new lease, and the rental obligations under the new lease shall reflect the same terms that existed under the original lease. As such, the issue of how to measure the damages for possession of the property post-termination of the lease is moot. . . . The case is REMANDED to the trial court for further proceedings consistent with the opinion.<sup>1</sup>

RA, Judgment (CVA11-001) at 1-2 (May 17, 2012).

[26] In reviewing this court’s opinion in *KPC I*, it is clear that the trial court was “to permit KPC to execute a new lease.” *KPC I*, 2012 Guam 4 ¶ 38. In addition, the trial court was “to calculate the damages in accordance with this opinion.” *Id.* ¶ 39. Specifically, this court held that “rent under the new lease shall continue under the terms set out in the original lease” and “that the new lease is to commence where the original lease terminated.” *Id.*

[27] Complying with this court’s mandate in *KPC I*, Duenas submitted a new lease in conformance with the mandate, and the trial court gave KPC 90 days to execute the lease. RA, tab 259 (Pl.’s Submission of New Lease in Conformance with Sup. Ct. Mandate); RA, tab 270 at

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<sup>1</sup> The other issues discussed in the mandate are not on appeal.

4 (Dec. & Order). However, KPC refused to execute the new lease. RA, tab 273 at 2 (J. Re George & Matilda Kallingal, P.C. and Fortune Joint Venture, Jan. 18, 2013). Thus, the trial court held that KPC and FJV were jointly and severally liable for pre-termination damages for rent and property taxes owed on the property, and that KPC's refusal to execute the new lease confirmed the termination of all its rights to the property subsequent to November 7, 2007. *Id.* at 3. However, the trial court did not rule on the issue of post-termination damages.

[28] Thus, on this case's second appeal, this court issued another mandate which provided:

ON CONSIDERATION THEREOF, it is now hereby ordered and adjudged by this court that the trial court has not entered a final judgment capable of appeal under 7 GCA §§ 3108(a) or 25102 because it must still determine the amount of post-termination damages, if any, each party is owed. . . . Accordingly, we DISMISS KPC and FJV's appeal and REMAND the case to the trial court for further proceedings not inconsistent with this opinion.

RA, Judgment (CVA13-003) at 1 (Dec. 2, 2013). In *KPC I*, this court had held that the issue of post-termination damages was moot since it determined that KPC was entitled to a new lease. *KPC I*, 2012 Guam 4 ¶ 39. However, "[b]ecause KPC refused to execute the new lease, the issue of the amount of post-termination damages remain[ed]." *KPC II*, 2013 Guam 28 ¶ 16. Thus, this court ordered the trial court to determine the amount of post-termination damages, if any, each party is owed. *Id.* ¶ 25.

[29] On remand, the trial court confirmed that FJV and KPC are jointly and severally liable to Duenas for pre-termination rent and for all property taxes owed on the property up to November 2007, and that "[KPC's] refusal to execute a new lease for the leased property confirmed the termination of all of its rights to the leased property subsequent to November 7, 2007." RA, tab 289 at 3-4 (J. Re George & Matilda Kallingal, P.C. and Fortune Joint Venture, July 11, 2014).

These findings were in compliance with this court's mandates, and we find that the trial court did not abuse its discretion in making such findings.

[30] In addition, the court ruled that FJV and KPC are jointly and severally liable to Duenas for post-termination damages. *See id.* at 4. Specifically, the court ruled that FJV and KPC were liable "for all rents collected or received by either of them from subtenants of [the leased property] subsequent to November 7, 2007." *Id.* at 4. This finding was also in compliance with this court's mandates, and we find that the trial court did not abuse its discretion in making such finding.

[31] Finally, the trial court ruled that "KPC and FJV, having refused to execute a new lease, suffered no post-termination damages." RA, tab 288 at 4 (Additional Finds. Fact & Concl. L. on Remand). We find that the trial court abused its discretion in making such finding. *KPC II* mandated the trial court to "determine the amount of post-termination damages, if any, *each party* is owed." *KPC II*, 2013 Guam 28 ¶ 25 (emphasis added). The trial court failed to make a determination of post-termination damages as to KPC and merely concluded that KPC suffered no post-termination damages as a result of refusing to execute a new lease. However, it is possible that KPC may have suffered post-termination damages, even if no new lease were executed, as a result of the delay on the part of Quichocho in offering a new lease. The trial court must therefore determine whether KPC is entitled to damages as a result of the delay, and if it decides in the affirmative, it must calculate the amount.

## V. CONCLUSION

[32] We hold that the trial court did not abuse its discretion in declaring a forfeiture of KPC's rights under the lease agreement. Further, we hold that the trial court did not abuse its discretion

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in determining pre-termination damages. However, the trial court abused its discretion in failing to determine post-termination damages as to *both* parties. Therefore, the trial court's ruling is **AFFIRMED** in part, **REVERSED** in part, and the case is **REMANDED** to the trial court to calculate KPC's post-termination damages, if any, as a result of the delay on the part of Quichocho in tendering a new lease.

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

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F. PHILIP CARBULLIDO  
Associate Justice

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

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KATHERINE A. MARAMAN  
Associate Justice

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

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ROBERT J. TORRES  
Chief Justice

I do hereby certify that the foregoing  
is a full true and correct copy of the  
original on file in the office of the  
clerk of the Supreme Court of Guam.

JUN 26 2015

By: Charlene T. Santos  
Deputy Clerk  
Supreme Court of Guam