IN THE SUPREME COURT OF GUAM

ADRIAN L. CRISTOBAL, CONCEPCION F. CRISTOBAL, JORGE E.U. CRISTOBAL, BEATRIZ CRISTOBAL, E.C. LEON GUERRERO, JUAN B. LEON GUERRERO, ALBERTO C. LAMORENA, III, TRUSTEE and FE C. LAMORENA,
Plaintiffs-Appellants,

v.

JEFFREY SIEGEL, FRANCIS L. GILL, and CORAL PIT, INC.,
Defendants-Appellees.

OPINION

Cite as: 2016 Guam 27

Supreme Court Case No.: CVA15-020
Superior Court Case No.: CV0442-88

Appeal from the Superior Court of Guam
Argued and submitted on February 9, 2016
Hagåtña, Guam

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

TORRES, C.J.:

[1] Plaintiffs-Appellants Adrian L. Cristobal, Concepcion F. Cristobal, Jorge E.U. Cristobal, Beatriz Cristobal, E.C. Leon Guerrero, Juan B. Leon Guerrero, Alberto C. Lamorena, III, Trustee, and Fe C. Lamorena (collectively, "Cristobals") appeal from the Superior Court's July 2015 Decision and Order that instructed the parties to comply with the conveyance mandates of Section Seven of their 1996 Settlement Agreement ("Settlement Agreement"). The Decision and Order stemmed from a motion for an order to show cause filed by Bottomless Pit, LLC.[1] Although the Cristobals were not found to be in contempt, the court ordered each party to undertake specific obligations in accordance with the Settlement Agreement.

[2] For the foregoing reasons, we affirm in part, reverse in part and remand for proceedings not inconsistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Many of the facts of this case were before this court in 2012, when we decided *Cristobal v. Siegel*, 2012 Guam 16 ("*Cristobal I*"), and again in 2014, when we decided *Cristobal v. Siegel*, 2014 Guam 16 ("*Cristobal II*"). In 1986, the Cristobals and Coral Pit entered into a lease agreement and option to purchase regarding a piece of land owned by the Cristobals. A dispute arose between the parties, which resulted in the Cristobals filing CV0442-88 on June 1, 1988.

[4] Extensive litigation ensued. In 1996, the parties entered into a Settlement Agreement and filed a Stipulation and Order for the Settlement and Compromise of Claims ("Stipulation and Order"). The Stipulation and Order incorporated the Settlement Agreement and attached it by

[1] Appellee Bottomless Pit, LLC is the successor in interest to Coral Pit, Inc. *See Cristobal v. Siegel*, 2012 Guam 16 ¶ 1 n.2.

reference; ordered the parties to perform under the Settlement Agreement; dismissed CV0442-88 with prejudice; and retained jurisdiction to enforce the Settlement Agreement. The trial court subsequently entered a final judgment that reflected the parties' agreement to the Stipulation and Order, dismissed the case with prejudice, and asserted that "[t]his Court shall retain jurisdiction over the Settlement Agreement to enforce the terms and conditions thereof." Record on Appeal ("RA"), tab 172 at 1 (Final Judgment, Mar. 14, 1996) ("1996 Final Judgment").

[5] For the following ten years, the parties' negotiations to perform their obligations under the Settlement Agreement largely failed. The parties continue to dispute these obligations to date. In 2010, Bottomless Pit filed a motion pursuant to the Guam Rules of Civil Procedure ("GRCP") Rule 70, requesting the court to require the Cristobals to convey property to it in accordance with the Settlement Agreement, or enter a judgment divesting the Cristobals' title to the property. The trial court granted the motion, finding that the Stipulation and Order directed the Cristobals to convey land under GRCP 70. On appeal, this court reversed the trial court's decision, holding that the Stipulation and Order was not a "judgment" within the meaning of GRCP 70. *Cristobal I*, 2012 Guam 16 ¶ 3.

[6] Bottomless Pit subsequently filed a motion for the trial court to issue an Order to Show Cause and to make additional findings that would render GRCP 70 applicable. After a hearing on the matter, the court denied Bottomless Pit's motion for an order to show cause relating to the Cristobals' failure to comply with the Settlement Agreement. The court cited *Cristobal I*, stating, "Absent the order containing these terms [of the Settlement Agreement] the Court is unable to initiate contempt proceedings." RA, tab 391 at 4 (Dec. & Order, July 30, 2013). The trial court also dismissed Bottomless Pit's GRCP 70 motion without prejudice pursuant to *Cristobal I*. The trial court did issue, *sua sponte*, an Amended Final Judgment, which simply

"copied the entirety of the Settlement Agreement verbatim into the amended judgment," and that amendment became the subject of the appeal in *Cristobal II*. *Cristobal II*, 2014 Guam 16 ¶ 6. This court decided in *Cristobal II* that the trial court did not provide a justification for the amendment nor was there any procedural rule that would allow the court to amend the Final Judgment issued in 1996, *sua sponte*, and therefore, vacated the Amended Final Judgment.

[7] Shortly after this decision was entered, Bottomless Pit filed a motion for an order to show cause why the Cristobals should not be held in contempt for failure to perform their obligations under Section Seven of the Settlement Agreement. Bottomless Pit also sought two factual findings that it believed would assist and support an order of enforcement. The factual findings requested were "1) the sale contemplated in section two of the Settlement Agreement did not take place; and 2) the Plaintiffs were paid the amounts due them under section four." RA, tab 417 at 4 (Dec. & Order, Nov. 19, 2014) ("November 2014 Decision and Order").

[8] In its November 2014 Decision and Order, the trial court did not address the requested factual findings. Instead, the trial court, citing *Cristobal II*, acknowledged that this court "explained that rule 60(a) allows for the correction of errors in execution as opposed to instances where the court, after re-consideration, has changed its mind." *Id.* at 10 (citing *Cristobal II*, 2014 Guam 16 ¶ 21). Consequently, the trial court decided that "the [c]ourt's continued enforcement of the [Settlement Agreement] was a material consideration upon which the parties relied" and "the omission of the terms of the Settlement Agreement and a specific order requiring the parties to comply was clerical." *Id.* at 10-11. Further, it held that disallowing an amendment to the 1996 Final Judgment that would incorporate the terms of the Settlement Agreement "would be inequitable" and would "significantly prejudice the Defendant and diminish the authority of the Court." *Id.*

[9] When addressing the motion requesting an order to show cause, the trial court analyzed that the Supreme Court in *Cristobal I* found the 1996 Final Judgment to be outside the GRCP 70 purview, but did not find that the judgment was invalid or that any reference to the terms of the Settlement Agreement in the judgment was improper. Accordingly, the trial court determined it could consider a contempt motion with respect to the enforcement of the Settlement Agreement. *Id.* at 12. Relying on precedent from the U.S. Federal Circuit courts that the party seeking civil contempt bears the initial burden to prove, "by clear and convincing evidence, that the alleged contemnors violated a court order[,]" the trial court found that Bottomless Pit had failed to meet its burden. *Id.* at 12-13 (quoting *Chi. Truck Drivers v. Bhd. Labor League Leasing*, 207 F.3d 500, 505 (8th Cir. 2000)).

[10] Bottomless Pit filed a motion for reconsideration of the trial court's November 2014 Decision and Order maintaining that its previous motions did not request an amended judgment and doing so was a clear violation of the Supreme Court's ruling in *Cristobal II*. Bottomless Pit asserted that an amended judgment was not necessary and that "all that is needed now is for the Court to make the prerequisite findings that will justify entering a GRCP Rule 70 judgment, or order, for the conveyance of land pursuant to that alternative in the Stipulation and Order, or Settlement Agreement." RA, tab, 419 at 7 (Mot. Recons., Dec. 1, 2014). Bottomless Pit also agreed with the ruling that it had not met its burden for a contempt showing. However, Bottomless Pit clarified, in the motion for reconsideration, that such contempt was requested in the alternative to a GRCP 70 motion after the court had made the required factual findings. Bottomless Pit acknowledged that it would have the burden of proving contempt had the court first refused to grant a GRCP 70 motion, and Bottomless Pit had planned to do so in subsequent proceedings if that was the court's chosen course of action.

[11] In response, the Cristobals maintained that the trial court correctly found that Bottomless Pit failed to meet its burden for a contempt showing and that it would never meet this burden. They claimed that the Settlement Agreement was no longer valid because the option to purchase had expired, and Bottomless Pit had failed to show how it had met its Settlement Agreement obligations. The Cristobals asserted that their duty to convey any land also expired.

[12] In a March 2015 Decision and Order the trial court granted, in part, Bottomless Pit's motion to reconsider. The court reversed its previous decision to amend the 1996 Final Judgment and to deny Bottomless Pit's request for an order to show cause. The trial court denied Bottomless Pit's requests for certain factual findings and declined to enter judgment against one of the Cristobals who did not oppose Bottomless Pit's motion. The court, however, granted the motion for an order to show cause. The trial court determined that in 2011 it found that the required sale specified in Section Two of the Settlement Agreement had not occurred and this finding activated the provisions of Section Seven of the Settlement Agreement.[2] The trial court

[2] Section Seven provides:

> The parties agree that if, for any reason, the Sale is not completed as defined in Section Two, at paragraph 2 of this Agreement on the Closing Date, then the parties agree to the following:
>
> 1. Either party to this Agreement may proceed with the sale of two (2) hectares of the southern portion of Lot RNEW-3 for a sum not less than all amounts owed to the Plaintiffs plus accrued interest on all outstanding amounts owed by Coral Pit to Plaintiffs as of the date of this Agreement. In that event, Coral Pit shall pay Plaintiffs interest on all amounts owed to the Plaintiffs at the rate of ten percent (10%) per annum.
>
> 2. If an Agreement for the sale of Lot RNEW-R3 is not entered into between Coral Pit and a prospective buyer within twelve (12) months of the execution of this Agreement, then Coral Pit agrees that in addition to releasing all its claims to the Ceded Parcel, to release and quitclaim to Plaintiffs all of Coral Pit's interests in and to Lot RNEW-4 plus an area of six thousand three hundred and eighty one square meters (6,318M^2) within Lot RNEW-3, so that the Plaintiffs shall have a free and clear interest of ten thousand square meters more or less (10,000± M^2) in addition to the Ceded Parcel.
>
> 3. Furthermore, in the event Coral Pit is unable to sell the remainder of Lot RNEW-3 within ninety (90) days of the conveyance of the one (1) hectare parcel described in this Section at Paragraph 2 above, Coral Pit shall quitclaim all its right, title and interest to the Plaintiffs for an additional one (1) hectare portion of Lot RNEW-3. In that event, the balance due from Coral Pit

further found that the efforts of Bottomless Pit under Section Seven were sufficient to require that the Cristobals comply with Section Seven's mandate to transfer land. Subsequently, the trial court issued an order to show cause why the Cristobals "should not be held in contempt of court for [their] failure to comply with the mandate under [S]ection [S]even of the Settlement Agreement . . . to transfer land, as agreed upon and [o]rdered in the 1996 Stipulation and Order and Final Judgment." RA, tab 430 (Order Show Cause, Mar. 14, 2014).

[13] Both parties submitted hearing briefs, and the trial court heard oral argument on the order to show cause. In a July 2015 Decision and Order, the court found that the Stipulation and Order incorporating the Settlement Agreement was a valid order enforceable through contempt proceedings. The court also found that the Cristobals had knowledge of the order but did not fail to comply with that order because their obligations under the Settlement Agreement were contingent upon Bottomless Pit first fulfilling their conveyance obligations. Absent a showing of Defendant's conveyances, the court was unable to find the Cristobals in contempt. The court then ordered the two parties to comply with the conveyances mandate of Section Seven of the Settlement Agreement, the Stipulation and Order and Final Judgment.[3] The Cristobals timely appealed the July 2015 Decision and Order.

> to Plaintiffs shall be extinguished except for amounts owed to Plaintiffs by Coral Pit as a result of the Commonwealth Action as defined in Section Four of this Agreement which shall still remain due and owing provided that all net amounts recovered in the Commonwealth Action shall in that event, regardless of any other provision herein, be divided with sixty percent (60%) of said net proceeds payable to the Cristobals and forty percent (40%) of said net proceeds retained by Coral Pit. Plaintiffs shall then convey the remainder portion of the Basic Lot to Coral Pit by Warranty Deed.

RA, tab 171, Ex. 1 at 16-18 (Stip. and Order for the Settlement and Compromise of Claims, Mar. 14, 1996).

[3] Specifically, the court ordered:

> Defendants' [sic] shall file copies of the written and executed:
>
> 1. Release of all claims to the Ceded Parcel;
>
> 2. Quitclaim to Plaintiffs of all interest in Lot RNEW-4 plus an area of 6,381 square meters within Lot RNEW-3; and

II. JURISDICTION

[14] This court has jurisdiction over appeals from an order made after a final judgment made appealable by 7 GCA § 25102(a). 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-197 (2016)); 7 GCA §§ 3107(b), 3108(a), 25102(b) (2005).[4] Because this appeal from an order raises issues that would not have been available from the judgment and affects the judgment because it seeks to enforce it, this final order is properly appealable. *See Sananap v. Cyfred, Ltd.*, 2011 Guam 21 ¶ 7.

III. STANDARD OF REVIEW

[15] "This court applies contract principles to the interpretation of settlement agreements. Principles of contract interpretation are legal questions reviewed *de novo*." *Blas v. Cruz*, 2009 Guam 12 ¶ 11 (emphasis added) (citations omitted).

[16] This court reviews the trial court's conclusions of law following a bench trial *de novo*. *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 8 (citation omitted).

[17] The Cristobals assert that this court "reviews the Superior Court's findings concerning contempt for an abuse of discretion," and Bottomless agrees. Appellants' Br. at 14 (Oct. 28, 2015); Appellees' Br. at 12-13 (Nov. 17, 2015). However, the finding of a lack of contempt is not an issue on appeal, and the issues raised by the Cristobals on appeal relate to the

> 3. Conveyance of all its interest to the Plaintiffs for an additional one hectare of Lot RNEW-3.
>
> After these filings Plaintiffs are ordered to convey the remainder portion of the basic lot to Defendant. The delineation of these interests shall be in near approximate accordance with the map and the survey sketch identified in the Settlement Agreement's Recitals and Section Three.

RA, tab 459 at 15-16 (Dec. & Order, July 20, 2015).

[4] This court does not have jurisdiction over a judgment of contempt under 7 GCA § 21502(a). *Paguio v. Paguio*, 2014 Guam 36 ¶ 16. The July 2015 Decision and Order in this case did not find either party in contempt. RA, tab 459 at 15 (Dec. & Order). Further, the issues on appeal do not relate to the court's finding of a lack of contempt. *See* Appellants' Br. at 5.

interpretation of the Settlement Agreement and application of *res judicata*. Therefore, our review is *de novo*. *See Blas*, 2009 Guam 12 ¶ 11.

IV. ANALYSIS

[18] The Cristobals argue that (1) the Settlement Agreement is unenforceable, (2) the conditions precedent to triggering Section Seven of the Settlement Agreement did not occur, (3) the Settlement Agreement is not a judgment or order that can be enforced by contempt proceedings, and (4) the doctrine of *res judicata* barred the contempt proceedings. We review each of these arguments in turn.

A. Enforceability of the Settlement Agreement

[19] The Cristobals first contend that the Settlement Agreement is no longer enforceable because Coral Pit, Bottomless Pit's predecessor, failed to exercise its option to purchase the land before the option expired. Appellants' Br. at 14-15. They argue that the Settlement Agreement cited the Supplemental Lease Agreement which granted Coral Pit the option to purchase the land, and Section Three of the Settlement Agreement required Coral Pit to exercise the option within the time set forth in the Supplemental Lease, which it failed to do.[5] *Id.* at 16-18. We must therefore determine whether the Settlement Agreement is no longer enforceable because the option to purchase the land was not timely exercised.

[20] This court must first look to the language of the contract "to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." 18 GCA § 87104 (2005); *see also Wasson v. Berg*, 2007 Guam 16 ¶ 10. Additionally, "[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible." 18

[5] The Supplemental Agreement to Lease, which preceded the Settlement Agreement, provided that the option to purchase expires ten years after the execution of the Supplemental Agreement. The Supplemental Agreement was executed on May 1, 1987. RA, tab 447 at Ex. 2 (Estate of Fe C. Lamorena & Jorge E.U. Cristobal Trust's Hr'g Br. for Order to Show Cause Hr'g, May 14, 2015).

GCA § 87105 (2005); *see also Ronquillo v. Korea Auto., Fire, & Marine Ins. Co.*, 2001 Guam 25 ¶ 10. "The execution of a contract in writing . . . supercedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." 18 GCA § 86107 (2005); *see also Bank of Guam v. Flores*, 2004 Guam 25 ¶ 11.

[21] The Cristobals' argument that the Settlement Agreement is no longer enforceable depends on an interpretation that (1) the option found in the Settlement Agreement is the same option expressed in the Supplemental Agreement to Lease; and (2) the option in the Supplemental Agreement to Lease expired on May 1, 1997, without being exercised. They assert since the option was not exercised by the expiration date, the Settlement Agreement is not enforceable. Appellants' Br. at 14-15. We reject this argument.

[22] The Settlement Agreement does not contain an expiration date or a date by which the option to purchase the land lapses. The only specific option exercise dates are found in the Supplemental Agreement to Lease, an agreement that preceded the Settlement Agreement. Because of disputes between the parties regarding their respective rights in the leasehold and the option to purchase, the parties entered into the Settlement Agreement. If the parties intended to have a date by which the option to exercise expired, they could have easily included the option's expiration date in the Settlement Agreement. They did not do so, and the Settlement Agreement supersedes the preceding Supplemental Agreement to Lease. *See* 18 GCA § 86107; *see also Flores*, 2004 Guam 25 ¶ 11. We interpret the option to purchase in the Settlement Agreement to be a separate and distinct option from that described in the Supplemental Agreement to Lease. Section Three (1)(a) of the Settlement Agreement states that Coral Pit shall exercise its option simultaneously with the closing of the sale of the property. RA, tab 171, Ex. 1 at 7 (Stip. & Order for Settlement & Compromise of Claims, Mar. 14, 1996). The option found in the

Supplemental Agreement requires that the option be exercised within five years or ten years after the execution of the Supplemental Agreement to Lease. RA, tab 447 at Ex. 2 (Estate of Fe C. Lamorena & Jorge E.U. Cristobal Trust's Hr'g Br. for Order to Show Cause Hr'g). These options are not synonymous.

[23] Additionally, there is evidence that the parties themselves understood that the option in the Settlement Agreement did not expire on May 1, 1997, which is ten years after the date of the execution of the Supplemental Lease Agreement. *See* Transcripts ("Tr.") at 44 (Order to Show Cause, May 22, 2015). Testimony from the order to show cause hearing refers to a facsimile communication sent to the attorney for Coral Pit by the attorney for the Cristobals, dated July 25, 1997. This facsimile confirms there is no longer a buyer for the property, therefore, the survey map or the declaration of easement should not be submitted for approval or recordation at the Department of Land Management. *Id.* This communication suggests that the exercise of the option, which was to occur simultaneously with closing of the sale of the property, had not yet expired as of July 1997, and the closing date was to be extended.

[24] The trial court held that "on its face nothing in the [Settlement Agreement] identifies a time deadline after which all obligations cease." RA, tab 459 at 12 (Dec. & Order, July 20, 2015). We agree that the Settlement Agreement is not expired and is still enforceable.

B. Triggering of Section Seven of the Settlement Agreement

[25] The Cristobals next assert that the conditions precedent to the triggering of their obligations under Section Seven of the Settlement Agreement did not occur. Appellants' Br. at 19-20. They maintain that Bottomless Pit had to perform its obligations under Sections Two and Three of the Settlement Agreement and that only after this performance and after the sale not closing on the closing date, would the provisions of Section Seven apply. *Id.* They argue that

the conditions precedent required Bottomless Pit to exercise its option to purchase and then to sell the land in accordance with the terms in Section Three. *Id.* If the option was never exercised, Section Seven could not be triggered. *Id.*

[26] Section Seven provides "that if, for any reason, the Sale is not completed as defined in Section Two, at paragraph 2 of this Agreement on the Closing Date, then the parties agree to the following [terms.]" RA, tab 171, Ex. 1 at 16-17 (Stip. & Order for Settlement & Compromise of Claims). Section Two requires Bottomless Pit to enter into a contract to accomplish the Sale within 90 days of the execution of the Settlement Agreement, and Section Three, paragraph 1 requires the "closing of the Sale . . . [to] be not more than ninety (90) days from the date of recordation of the map severing the Ceded Parcel from the Basic Lot and all or a portion of RNEW-3 from the Basic Lot." *Id.* at 6-7. The parties contemplated that the survey map be recorded prior to the defined "Closing Date," and recording of the map starts the 90-day period within which the closing must occur. *See id.* The plain language of the Settlement Agreement makes clear that Section Seven is triggered in the event the sale is not completed on the Closing Date, and the Closing Date has not yet occurred since there is no evidence that the subdivision map described in the Settlement Agreement has been recorded. Absent a finding that the sale has not been completed on the Closing Date or that the parties waived this condition precedent, the conveyance obligations in Section Seven have not been triggered. We reverse the trial court's finding that the sale of the land in accordance with the Settlement Agreement was not completed, thus triggering the application of Section Seven.

C. Enforcement of the Settlement Agreement through Contempt Proceedings

[27] The Cristobals next argue that contempt proceedings were inappropriate because the 1996 Stipulation and Order is not a judgment or an order enforceable through contempt

proceedings. Appellants' Br. at 21. The Cristobals point to *Rodriguez v. Rodriguez*, 2003 Guam 8, for the elements required for a contempt finding[6] and assert that the Stipulation and Order does not contain the terms and conditions to be enforced. Appellants' Br. at 21. Moreover, they claim the Stipulation and Order issued prior to the Final Judgment that dismissed the case with prejudice. *Id.* Therefore, the Cristobals assert, the Settlement Agreement is all that remains and by itself, the Settlement Agreement is not a judgment or order which the court may find the Cristobals in contempt for their alleged failure to follow it. *Id.* The decision of the trial court to hold a contempt proceeding is a conclusion of law that is reviewed *de novo*. *See People v. Castro*, 2002 Guam 23 ¶ 9.

[28] In their reply, the Cristobals rely on *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994), for the proposition that enforcement of a settlement agreement is more than just a continuation or renewal of a dismissed action and requires its own basis for jurisdiction. Appellants' Reply Br. at 13 (Nov. 30, 2015). Their reliance on *Kokkonen* is misplaced. In *Kokkonen*, the United States Supreme Court held that the district court did not have the inherent power through ancillary jurisdiction to enforce a settlement agreement. 511 U.S. at 380. However, the Supreme Court went on to clarify that "[t]he situation would be quite different if the parties' obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal—either by separate provision (such as a provision 'retaining jurisdiction' over the settlement agreement) or by incorporating terms of the settlement agreement in the order." *Id.* at 381. In that event, a breach of the agreement would be a

[6] In *Paguio*, this court overruled *Rodriguez*. 2014 Guam 36 ¶ 15. Specifically, we found that this court does not have jurisdiction under 7 GCA § 25102 to review findings of contempt by the trial court. *Id.* ¶ 16. The issue here is not a review of the trial court's contempt finding but whether the overall decision to hold a contempt proceeding was erroneous. Therefore, *Rodriguez* is not helpful in this analysis.

violation of the order. This holding is also specific to the limited jurisdiction of federal courts authorized by the Constitution and statute. *See id.* at 377.

[29] The Ninth Circuit has recognized this ancillary jurisdiction of federal courts to enforce the terms of a settlement agreement where the terms have been incorporated or the court explicitly retained jurisdiction over the agreement. *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 967 (9th Cir. 2014) (citing *Kokkonen*, 511 U.S. at 381). "In the event the settlement agreement is breached, the court would have ancillary jurisdiction that arises from breach of the court's dismissal order." *Id.* (citations omitted).

[30] The 1996 Stipulation and Order did explicitly order the parties "to perform their respective obligations pursuant to and under the terms and conditions of the Settlement Agreement." RA, tab 171 at 1 (Stip. & Order for Settlement & Compromise of Claims). The court further expressly retained jurisdiction over the Settlement Agreement to enforce the terms and conditions thereof. *Id.* These provisions in the Stipulation and Order distinguish *Kokkonen* and satisfy the requirements outlined by the Supreme Court and recognized by the Ninth Circuit for the trial court to exercise ancillary jurisdiction to enforce the Settlement Agreement. *See* 511 U.S. at 381.

[31] The trial court did not include any of the terms of the Settlement Agreement in the Stipulation and Order, but instead "*order[ed]* the parties to perform" under the Settlement Agreement and retained jurisdiction to enforce the Settlement Agreement. RA, tab 171 at 1 (Stip. & Order for Settlement & Compromise of Claims) (emphasis added). Therefore, the trial court does have jurisdiction to enforce the Settlement Agreement through contempt proceedings. Further, because the trial court, in its March 2015 Decision and Order, referenced its finding in its 2011 Decision and Order that a sale did not occur thus triggering Section Seven, the court had

the authority to clarify the duties that each party was obligated to perform to avoid being found in contempt. *See* RA, tab 428 at 11 (Dec. & Order, Mar. 13, 2015); RA, tab 459 at 14-16 (Dec. & Order).

[32] Therefore, we find that the trial court acted properly when it conducted contempt proceedings to enforce the Settlement Agreement.

B. Res Judicata

[33] The Cristobals' final argument is that the July 2013 Decision and Order, denying Bottomless Pit's motion to show cause, bars Bottomless Pit's later motions for an order to show cause and for reconsideration because of the doctrine of *res judicata*. Appellants' Br. at 22. Bottomless Pit counters that this issue of whether *res judicata* bars the contempt proceedings was not preserved for appeal. Appellees' Br. at 21. Bottomless Pit claims the July 2015 Decision and Order on appeal here did not address the issue of *res judicata*, and in order to raise this issue on appeal, the Cristobals should have moved for a reconsideration of the July 2015 Decision and Order for a specific finding on this issue. *Id.* The issue was not addressed in the July 2015 Decision and Order, but, it was addressed by the November 2014 Decision and Order.[7] Before addressing the merits of the *res judicata* claim, this court must determine whether the issue has been properly preserved for appeal.

[34] The issue of *res judicata* was initially raised by the Cristobals in their opposition to Bottomless Pit's July 2014 motion for an order to show cause. RA, tab 417 at 5 (Dec. & Order). The trial court's November 2014 Decision and Order relating to this motion did address *res judicata*. *See id.* at 11-12. The trial court held that while the doctrine of *res judicata* applied, a

[7] Bottomless Pit moved for reconsideration of the November 2014 Decision and Order, which led to the March 2015 Order to Show Cause and then the July 2015 Decision and Order, from which this appeal stems. RA, tab 417 at 5 (Dec. & Order); RA, tab 459 at 2 (Dec. & Order).

claim to show cause was not barred. *Id.* The trial court reasoned that its July 2013 Decision and Order decided that contempt proceedings were inappropriate based on *Cristobal I*, but that *Cristobal II* allowed them to consider the motion for an order to show cause. *Id.* The trial court specifically found that *Cristobal II* clarified that while the Stipulation and Order from 1996 was not a judgment with respect to a GRCP 70 proceeding, it was still a final judgment and contempt proceedings could be considered. *Id.* It went on to hold that Bottomless Pit had not met its burden to require an order to show cause. *Id.* at 13.

[35] In its December 2014 motion for reconsideration, Bottomless Pit clarified that its motion for an order to show cause was requested in the alternative to a GRCP 70 proceeding, and took that opportunity to properly argue for contempt proceedings. RA, tab, 419 at 10-11 (Mot. Recons.). The trial court granted the motion and ordered the Cristobals to show cause. RA, tab 428 at 12 (Dec. & Order). The issue of *res judicata* was not raised again by the Cristobals until this appeal.

[36] This court has held that in order to preserve an issue for appeal, "the challenging party must have clearly stated to the trial court the matter to which the party objects and the grounds for that objection." *Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12 ¶ 34 (quoting *Fenwick v. Watabe Guam, Inc.*, 2009 Guam 1 ¶ 10) (internal quotation marks omitted). The Cristobals did assert that *res judicata* barred the contempt proceedings, and the argument was addressed by the trial court, though not in the July 2015 Decision and Order that is cause for this appeal. *See* RA, tab 417 at 12 (Dec. & Order). The July 2015 Decision and Order did stem , however, from a reconsideration of the November 2014 Decision and Order that addressed *res judicata*, so we find that the Cristobals did adequately preserve this issue for appeal. We now turn to the merits of the Cristobals' *res judicata* argument.

[37] Whether *res judicata* bars the contempt proceedings is a conclusion of law reviewed *de novo*. *See Castro*, 2002 Guam 23 ¶ 9. The doctrine of *res judicata* is codified in 6 GCA § 4209. *Res judicata* applies where there is: "(1) a final judgment on the merits; (2) the party against whom claim preclusion is asserted was a party or is in privity with a party in the prior suit; and (3) the issue decided in the prior suit is identical with the issue presented in the later suit." *Presto v. Lizama*, 2012 Guam 24 ¶ 22 (citing *Trans Pac. Exp. Co. v. Oka Towers Corp.*, 2000 Guam 3 ¶ 16).

[38] Guam law requires there be a final judgment or at least a final order. *See* 6 GCA § 4209 (2005); *Presto*, 2012 Guam 24 ¶ 23. *Presto* further explained that a judgment is not actually final "until it has been finally determined on appeal." 2012 Guam 24 ¶ 24 (citation omitted). In *Presto*, the issue in question had been finally determined by this court through an appeal; therefore, there was a final judgment on the issue and *res judicata* applied. *Id.* ¶¶ 25-27.

[39] Here, the issue in question was decided in the November 2014 Decision and Order, which was accompanied by an Amended Final Judgment that did not address the issue of the appropriateness of contempt proceedings. *See* RA, tab 393 (Am. Final Judgment, July 30, 2013). In fact, the trial court amended the judgment, *sua sponte*, to contain the terms of the Settlement Agreement seemingly because it found in its 2013 Decision and Order that contempt proceedings were inappropriate as long as the judgment did not contain the exact terms to be enforced. RA, tab 391 at 4 (Dec. & Order). The July 2013 Decision and Order finding that contempt proceedings were inappropriate was a final order that was appealable when the amended judgment was appealed. *See People v. Angoco*, 2006 Guam 18 ¶¶ 11-12 (finding that where a separate judgment was entered in relation to an issued order, a party should raise all claims of error in the single appeal of the judgment). The contempt issue was not addressed on appeal in

Cristobal II, but when the Amended Final Judgment was reversed and vacated, this allowed the trial court to reconsider its previous July 2013 Decision and Order. Because the Amended Final Judgment was reversed and vacated, the July 2013 Decision and Order, which formed the basis for the Amended Final Judgment, was capable of further consideration by the parties and the trial court.

[40] Because this court in *Cristobal II* clarified that the 1996 Stipulation and Order and Judgment was not an order and judgment for purposes of GRCP 70 summary procedure but was a final order and judgment in other respects, this presented the trial court with the opportunity to fashion an appropriate remedy to implement the decision of *Cristobal II*. It did so when it considered the first motion for an order to show cause and addressed the contempt question. *See* RA, tab 417 at 12 (Dec. & Order). Since the Supreme Court in Cristobal II did not decide the contempt issue, the trial court acted within its authority to reconsider its earlier ruling on this issue. In other words, there was no "final judgment on the merits" in relation to the contempt issue when the Amended Final Judgement was reversed and vacated in *Cristobal II*. Therefore, the doctrine of *res judicata* does not bar the contempt proceedings.

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V. CONCLUSION

[41] We **AFFIRM** the trial court's findings that the Settlement Agreement is enforceable, and that contempt proceedings are appropriate in this case. Further, we agree that the proceeding is not barred by the doctrine of *res judicata*. However, we **REVERSE** and **VACATE** the finding that Section Seven has been triggered, as we hold that the condition precedent that the sale not occur on the Closing Date has not yet occurred, and **REMAND** to the Superior Court for proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice