



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

**UNITED PACIFIC ISLANDERS' CORPORATION, A Guam Corporation;
KINASIRO K. ALBERT; AMY LIPPWE; IASINDA R. ALPET; SINO
ANIS; GABRIEL BAFFEL; ANGELINA GURUNGIN; THANKYOU
ERAM; ROSENTA IFRAIM; SMITHER D. EZRA; SILIHNER G. FRED;
MARGARET L. FANOWAY; INDONESIA FINE; MERIKO R. FINE;
PETRUS C. HARPER; KIMIENA HARPER; VITUS F. ESECHU; MERCY
ESECHU; JUSTINA HARTMAN; FLORENZO H. ATAN; PAUL
KARGON; MARTINA RUEMAU; TONGAN KOSAM; DARIA KOSAM;
JOHN LIGMAW; MARIA T. LIGMAW; MICHAEL MARTIN; MARSALA
D. MARTIN; SONTAG H. MARTIN; KONETA MARTIN; T'NEL MORI;
CHRISTOPHER NEREO; BENITA NEREO; LYNN OTWII AKA "LYNN
OTIWIP"; TAKASHI C. UNTUN; JOSHUA F. PETER; DAISY W.
NARRUHN; RAINIS RANGI; MARTINA FINE JOSEPH; MARTIN
RAYMOND; INOCENTA RAYMOND; ALEX H. RUBEN; FELISA B.
RUBEN; KINI B. SANANAP; IOWANA SANANAP; KEROPIM SHAREP;
TOMININA TAKEIOSHY; SINFIANO SONI; TIROW TITHMED;
REYNALDO ALEJANDRO; JENNIFER D. TOPACIO; GERRY L.
TOPACIO; DIVINA VAIAU; USITAI VAIAU; DAVID WAATHDAD;
SANTIAGO T. WIA; DOLOROES O. WIA; STANLEY YANFAG;
ROSEMARY YANFAG; JUNIOR YOW; MARGARET YAGATINAG; and
JOE YUGUFFEL,
Plaintiff-Appellants,**

v.

**CYFRED, LTD. and NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA,
Defendant-Appellees.**

E-Received

7/13/2017 9:58:12 AM

Supreme Court Case No.: CVA16-003
Superior Court Case No.: CV1511-06

OPINION

Cite as: 2017 Guam 6

Appeal from the Superior Court of Guam
Argued and submitted on October 21, 2016
Hagåtña, Guam

Appearing for Plaintiff-Appellants:

Wayson W.S. Wong, *Esq.*
Law Offices of Wayson Wong
P.O. Box 4996
Hagåtña, GU 96932

Appearing for Defendant-Appellees:

Terence E. Timblin, *Esq.*
Yanza, Flynn, Timblin, LLP
One Agana Bay
446 E. Marine Corps Dr., Ste. 201
Hagåtña, GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; KATHERINE A. MARAMAN, Associate Justice; F. PHILIP CARBULLIDO, Associate Justice.¹

TORRES, C.J.:

[1] Plaintiff-Appellants United Pacific Islanders' Corporation (hereinafter "UPIC"), and individual plaintiffs Kinasiro Albert, *et al.* ("Individual Plaintiffs")² (UPIC and the Individual Plaintiffs collectively, the "Appellants"), appeal the Superior Court's decision and order *sua sponte* dismissing their case against Defendant-Appellees Cyfred, Ltd. ("Cyfred") and National Union Fire Insurance Company of Pittsburg, PA ("National Union") for failure to prosecute under Guam Rule of Civil Procedure 41(b). Appellants also appeal the trial court's decision and order denying the motion for reconsideration of this dismissal.

[2] For the reasons stated herein, we hold that UPIC has no standing in this matter. We also reverse the trial court's order of dismissal and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The underlying dispute in this case has already been before this court multiple times on appeal, and the details are fully described in the prior opinions. *See Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Cyfred, Ltd.*, 2015 Guam 7; *Sananap v. Cyfred, Ltd.*, 2011 Guam 22 (*Sananap IV*); *Sananap v. Cyfred, Ltd.*, 2011 Guam 21 (*Sananap III*); *Yanfag v. Cyfred, Ltd.*, 2009 Guam

¹ The signatures in this opinion reflect the titles of the Justices at the time this matter was considered and determined.

² The Individual Plaintiffs in this appeal are Kinasiro K. Albert; Amy Lippwe; Iasinda R. Alpet; Sino Anis; Gabriel Baffel; Angelina Gurungin; Thankyou Eram; Rosenta Ifraim; Smither D. Ezra; Silihner G. Fred; Margaret L. Fanoway; Indonesio Fine; Meriko R. Fine; Petrus C. Harper; Kimiena Harper; Vitus F. Esechu; Mercy Esechu; Justina Hartman; Florenzo H. Atan; Paul Kargon; Martina Ruemau; Tongan Kosam; Daria Kosam; John Ligmaw; Maria T. Ligmaw; Michael Martin; Marsala D. Martin; Sontag H. Martin; Koneta Martin; T'Nel Mori; Christopher Nereo; Benita Nereo; Lynn Otwwi AKA "Lynn Otiwii"; Takashi C. Untun; Joshua F. Peter; Daisy W. Narruhn; Rainis Rangi; Martina Fine Joseph; Martin Raymond; Inocenta Raymond; Alex H. Ruben; Felisa B. Ruben; Kini B. Sananap; Iowana Sananap; Keropim Sharep; Tominina Takeioshy; Sinfiano Soni; Tirow Tithmed; Reynaldo Alejandro; Jennifer D. Topacio; Gerry L. Topacio; Divina Vaiau; Usitai Vaiau; David Waathdad; Santiago T. Wia; Dolores O. Wia; Stanley Yanfag; Rosemary Yanfag; Junior Yow; Margaret Yagatinag; and Joe Yuguffel.

16; *Abalos v. Cyfred, Ltd. (Abalos II)*, 2009 Guam 14; *Sananap v. Cyfred, Ltd. (Sananap II)*, 2009 Guam 13; *Sananap v. Cyfred, Ltd. (Sananap I)*, 2008 Guam 10; *Abalos v. Cyfred, Ltd. (Abalos I)*, 2006 Guam 7. By way of a brief summary, Cyfred sold lots in the Gill-Baza Subdivision (hereinafter, the “Subdivision”) but failed to install sewer lines. The Individual Plaintiffs purchased lots in the Subdivision and were awarded a judgment against Cyfred in their respective cases. National Union insured Cyfred under two general liability policies.

[4] The Individual Plaintiffs filed a First Amended Complaint against Cyfred in CV1448-02. “Cyfred tendered the defense of and requested indemnity for the allegations contained in Count Two of the Complaint.” *See Nat’l Union*, 2015 Guam 7 ¶ 8. “National Union agreed to accept the tender subject to a reservation of rights, including the right to withdraw from the defense upon a judicial determination of non-coverage and recover from Cyfred any cost or expense incurred in defending claims not covered under the policies.” *Id.* National Union subsequently sought declaratory relief against Cyfred, the Sananaps, and the other individual plaintiffs who had bought lots in the Subdivision, arguing “that it had no duty to indemnify or defend Cyfred against Count Two of the CV1448-02 complaint because the allegations were not covered under the policy.” *Id.* ¶ 9.

[5] The Appellants filed a complaint in CV1511-06 against four other individual defendants alleging the same claims made against Cyfred in CV1448-02. This complaint was later amended to include Cyfred as a defendant. The parties eventually reached a settlement agreement that the trial court approved. The parties agreed to the following: (i) all claims against the original individual defendants are dismissed; (ii) all claims against Cyfred other than for bodily injury and property damages are dismissed; (iii) a \$100,000.00 judgment against Cyfred in favor of the Sananaps; (iv) a judgment against Cyfred in the amount of \$5,000.00 each in favor of the

remaining plaintiffs; (v) all plaintiffs agree not to execute judgments against Cyfred and the case would go forward against National Union only; and (vi) a stipulation to file a Second Amended Complaint. See Record on Appeal (“RA”), tab 115 at 1-6 (Stipulation for J. in Favor of the Individual Pls. & Against Cyfred, May 31, 2013).

[6] Pursuant to the settlement order in CV1511-06, the Appellants filed a Second Amended Complaint naming Cyfred and National Union as Defendants. About three weeks later, National Union filed a Motion for Summary Judgment in response to the Second Amended Complaint.

[7] Appellants timely filed their opposition to the motion for summary judgment, and National Union filed its Reply. A little over two years later, Appellants submitted discovery requests to National Union, and National Union replied to those requests. Nearly 32 months after the briefing on the summary judgment motion was complete, the trial court served the parties notice of a hearing set for December 29, 2015.³ Four days later, the trial court issued an order *sua sponte* dismissing the matter for failure to prosecute under Rule 41(b). The trial court supported its decision by asserting that Appellants had failed to file their Second Amended Complaint.

[8] Appellants thereafter filed a motion for reconsideration of the trial court’s order of dismissal. In their motion for reconsideration, Appellants asserted the trial court was incorrect in asserting that they had failed to file the Second Amended Complaint. The trial court acknowledged that it was incorrect in finding that the Second Amended Complaint was not timely filed, but still denied the motion for reconsideration.

³ Individual Plaintiffs assert that the date of notice was December 7, 2015, whereas the trial court asserted it was on December 12, 2015. Appellant’s Br. at 7-8 (June 23, 2016); RA, tab 120 (Dec. & Order, Dec. 11, 2015). The trial court may be mistaken because it dismissed the matter on December 11, 2015, but its Decision and Order states that it had provided notice to the parties for a hearing a day after the dismissal on December 12, 2015. Nevertheless, the point stands that the trial court dismissed the matter shortly after placing the parties on notice of a hearing that was supposed to take place about a week and a half later.

[9] Appellants timely appealed both the order of dismissal and the order denying the motion for reconsideration.

II. JURISDICTION

[10] This court has jurisdiction over appeals arising from final orders of the Superior Court in civil cases and proceedings. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-40 (2017)); 7 GCA §§ 3107, 3108(a) (2005).

III. STANDARD OF REVIEW

[11] Dismissal for failure to prosecute under Rule 41(b) of the Guam Rules of Civil Procedure is reviewed for an abuse of discretion. *Lujan v. McCreadie*, 2014 Guam 19 ¶ 5. “A trial court abuses its discretion when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision.” *Town House Dep’t Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 27 (quoting *Brown v. Eastman Kodak Co.*, 2000 Guam 30 ¶ 11). “A trial court’s decision will not be reversed unless we have a ‘definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached’” *Park v. Kawashima*, 2010 Guam 10 ¶ 8 (quoting *Midsea Indus., Inc. v. HK Eng’g Ltd.*, 1998 Guam 14 ¶ 4). “If the trial court does not make specific findings as to each factor” required under a Rule 41(b) analysis, “the appellate court reviews ‘the record independently to determine whether the court abused its discretion.’” *Santos v. Carney*, 1997 Guam 4 ¶ 5 (quoting *In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994)).

[12] This court reviews whether a party has standing under a *de novo* standard. *Taitano v. Lujan*, 2005 Guam 26 ¶ 15 (citing *Rivas v. Rail Delivery Serv. Inc.*, 423 F.3d 1079, 1082 (9th Cir. 2005)).

IV. ANALYSIS

[13] Before determining whether the trial court abused its discretion in dismissing Appellants' claims for failure to prosecute under Rule 41(b), we must first address whether UPIC has standing in this matter.

A. UPIC's Standing

[14] National Union raised the issue of UPIC's standing on two occasions: (1) in its Motion for Summary Judgment before the trial court and (2) in its Opening Brief in this appeal. Appellee's Br. at 11 (June 23, 2016); RA, tab 117 at 12-13 (Nat'l Union's Mot. Summ. J., June 6, 2013). In its Motion for Summary Judgment, National Union argued that UPIC's claim should be dismissed because UPIC had "no protectable interest at stake." RA, tab 117 at 12 (Nat'l Union's Mot. Summ. J.). National Union went on to assert that UPIC made no allegations that it either purchased a lot from the subdivision in dispute, nor did UPIC allege any injury suffered. *Id.* In its Opposition to National Union's Motion for Summary Judgment, UPIC itself acknowledged that it has no valid claim within its Second Amended Complaint against National Union and even offered to stipulate to dismiss "any and all such claims with each party to bear its own attorney's fees and costs." RA, tab 113 at 10 (Appellants' Opp'n Mot. Summ. J., May 23, 2013) ("National Union correctly pointed out that there is no valid claim by [UPIC] . . .").

[15] Standing is a component of subject matter jurisdiction. *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 17 ("Standing is a threshold jurisdictional matter." (citation omitted)); *see also Taitano*, 2005 Guam 26 ¶ 15 (citation omitted). "If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim." *Taitano*, 2005 Guam 26 ¶ 15 (citation omitted). "The question of standing to sue goes to the existence of a cause of action against the defendant." *Id.* (citations omitted). "In essence, the

relevant inquiry is ‘whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.’” *Benavente v. Taitano*, 2006 Guam 15 ¶ 14 (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

[16] Similar to state courts, this court is not bound by the standing requirements applicable to federal courts of limited jurisdiction under Article III of the United States Constitution. *Id.* ¶ 16 (citing *Gutierrez v. Pangelinan*, 276 F.3d 539, 544 (9th Cir. 2002)). This court has nonetheless adopted many of the principles underlying traditional standing requirements. *Id.* ¶ 17 (“[W]hile we recognize that Guam courts are not bound by Article III standing requirements, we do not reject such principles.”). By deriving guidance from state court counterparts, this court has held that standing may be based upon common law standing as governed by Article III or upon statutory standing as governed by Guam statutory law. *See id.* ¶¶ 16-18.

[17] “Common-law constitutional standing requires proof of three elements.” *Guam Mem’l Hosp. Auth. v. Superior Court (Comm. on Health & Human Servs.)*, 2012 Guam 17 ¶ 10. A party must show it has suffered an injury in fact; that the injury can be fairly traced to the challenged action taken by the defendant; and that the injury is redressable, meaning it is likely and beyond mere speculation that a favorable decision will remedy the injury. *Id.* The party invoking jurisdiction bears the burden of establishing the three elements. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (citations omitted).

[18] In the Second Amended Complaint, UPIC asserted that it “has and will assist the individual plaintiffs with certain aspects of the case.” RA, tab 108 (Second Am. Compl., Mar. 19, 2013). Although the Fifth Count of the Second Amended Complaint contains claims by UPIC against National Union, UPIC admits that this was an oversight and that it has no valid claim as one of the parties against National Union. RA, tab 113 at 10 (Appellants’ Opp’n Mot.

Summ. J.). UPIC only remains a party to this appeal, despite its express acknowledgment of its lack of standing, because the trial court never separately dismissed UPIC as a plaintiff for lack of standing. *See* Appellee's Br. at 1 n.1; *see also* RA, tab 120 at 1-2 (Dec. & Order, Dec. 11, 2015) (dismissing matter for failure to prosecute rather than lack of standing).

[19] Therefore, because UPIC has suffered no injury in fact, it lacks standing to assert a claim in this matter and should have been by dismissed by the trial court in its order dated December 11, 2015. Accordingly, we proceed with our discussion with the Individual Plaintiffs as the only remaining appellants in this appeal.

B. Guam Rule of Civil Procedure 41(b) and the Santos Factors

[20] We now turn to whether the Superior Court abused its discretion in *sua sponte* dismissing the case for failure to prosecute under Rule 41(b). Rule 41(b) of the Guam Rules of Civil Procedure ("GRCP") reads:

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Guam R. Civ. P. 41(b). In *Santos*, we adopted five factors from the Ninth Circuit to consider when deciding whether dismissal is an appropriate sanction under GRCP 41(b): "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." 1997 Guam 4 ¶ 5 (quoting *In re Eisen*, 31 F.3d at 1451).

[21] When balancing these factors, "[d]ismissal is appropriate if at least four factors favor dismissal or three factors 'strongly' support dismissal." *Park*, 2010 Guam 10 ¶ 10 (citing

Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). “If the trial court does not make specific findings as to each factor, the appellate court reviews ‘the record independently to determine whether the court abused its discretion.’” *Santos*, 1997 Guam 4 ¶ 5 (quoting *In re Eisen*, 31 F.3d at 1451).

[22] In its Decision and Order, the trial court dismissed the matter “in light of the three years of recent inactivity” because the Individual Plaintiffs had failed to “prosecute the case within the period allowed by Rule 41(b) of the Guam Rules of Civil Procedure.” RA, tab 120 at 2 (Dec. & Order). The trial court did not apply the five-factor *Santos* test, as it should have, to determine whether dismissal was appropriate under Rule 41(b). Because of the trial court’s failure to make specific findings as to each factor, we review the record independently to determine whether the trial court abused its discretion. *See Santos*, 1997 Guam 4 ¶ 5. Before reviewing the record independently to determine whether the court abused its discretion, it will be helpful to briefly discuss Rule 41(b).

1. GRCP 41(b)

[23] “GRCP Rule 41(b) was derived from its federal analog, housed in the Federal Rules of Civil Procedure (‘FRCP’)” *Guam Econ. Dev. Auth. v. Affordable Home Builders, Inc.*, 2013 Guam 12 ¶ 12 (citations omitted).

[24] “The Ninth Circuit does not review delay in a vacuum and refrains from dismissing a case under FRCP Rule 41(b) for failure to prosecute when the delay is reasonable.” *Id.* ¶ 13 (citations omitted); *see also McKeever v. Block*, 932 F.2d 795, 797 (9th Cir. 1991) (holding district court may *sua sponte* dismiss action for failure to prosecute but case should be dismissed only for unreasonable failure to prosecute). “A delay is unreasonable if there is a significant period of total inactivity by the plaintiff, the plaintiff fails to adhere to repeated warnings that a

dismissal will result from continued failure to proceed, or the plaintiff fails to obey court rules and court orders.” *Edwards v. Harris Cnty. Sheriff's Dep't*, 864 F. Supp. 633, 637 (S.D. Tex. 1994), as quoted in *Guam Econ. Dev. Auth.*, 2013 Guam 12 ¶ 14 (citations omitted). “In order to warrant dismissal for failure to prosecute, the record of delay should be clear.” *Id.* ¶ 15 (citation omitted). In assessing the delay, courts “should consider a party’s conduct over the course of the entire case.” *Id.* (citation omitted).

[25] We give deference to the trial court in determining the reasonableness of a delay “because it is in the best position to determine what period of delay can be endured before its docket becomes unmanageable.” *Santos*, 1997 Guam 4 ¶ 5 (quoting *In re Eisen*, 31 F.3d at 1451).

[26] We have always recognized that it is primarily a plaintiff’s responsibility to push a matter towards adjudication. See, e.g., *Ward v. Reyes*, 1998 Guam 1 ¶ 23; *Guam Econ. Dev. Auth.*, 2013 Guam 12 ¶ 18 (citations omitted); *In re Quitugua v. Flores*, 2004 Guam 19 ¶ 19. But in *In re Quitugua*, we expressed concerns about a calendaring system that ultimately allowed cases to languish in the courts for several years to the detriment of civil litigants. 2004 Guam 19 ¶ 29 n.10. Here, we again recognize the detrimental effects that lengthy delays attributable to the trial court, or “judicial delays,” have on civil litigants. Consideration of judicial delay is an appropriate part of a Rule 41(b) analysis, particularly when considering the public’s interest in expeditious litigation, the court’s need to manage its docket, and the availability of lesser sanctions. We now turn to our independent review of the record and application of the *Santos* factors.

2. Independent Review of the Record under *Santos*

a. The public's interest in expeditious resolution of litigation and the court's need to manage its docket

[27] Consideration of the public's interest in expeditious resolution of litigation and the court's need to manage its docket are often analyzed together. See *McCreadie*, 2014 Guam 19 ¶ 8 (citation omitted); *Park*, 2010 Guam 10 ¶ 13 (citing *Santos*, 1997 Guam 4 ¶ 7). In assessing these first two factors, the court must determine if the plaintiff "failed in [its] obligation to reasonably move the case forward, taking into consideration the length and reasons for the delay." *McCreadie*, 2014 Guam 19 ¶ 8 (citation omitted). "However, there is no bright-line rule or specified time period that automatically constitutes a failure to prosecute." *Id.* (citation omitted). "[O]nly unreasonable delay will support dismissal for lack of prosecution, and unreasonableness is not inherent in every lapse of time." *Nealy v. Transportacion Maritima Mexicana, S.A.*, 662 F.2d 1275, 1280 (9th Cir. 1980), as quoted in *Guam Econ. Dev. Auth.*, 2013 Guam 12 ¶ 13. In assessing unreasonable delay, the relevant time period "is from the inception of the case until the filing of the motion to dismiss." *McCreadie*, 2014 Guam 19 ¶ 12.

[28] As stated earlier, this court will surely consider delays attributable to the trial court in evaluating these two particular factors, and we will be inclined to favor non-dismissal if we find the presence of such delay. Here, the trial's initial stages proceeded normally, and up until the filing of National Union's motion for summary judgment there was clear activity in the case. Thus, an argument for dismissal for failure to prosecute would not have been justified before the filing of National Union's motion for summary judgment.⁴ See generally *id.* Accordingly, the

⁴ Cyfred filed a motion to dismiss for failure to prosecute against UPIC before, but that matter was stayed due to Cyfred's bankruptcy. RA, tab 99 (Notice of Bankr. Stay & the Fact that Bankr. Trustee has Control Over this Case, July 28, 2011); RA, tab 100 (Order Stay Pending Bankr. Action, Aug. 4, 2011). The dismissal at issue here was *sua sponte* and was not a disposition of Cyfred's previously filed motion.

relevant period of delay would be from the completion of the briefing on National Union's motion for summary judgment up to the trial court's *sua sponte* dismissal of the matter on December 2015—a period of nearly 32 months.

[29] In *McCreadie*, we recognized that the delay in prosecution could not be solely attributed to the plaintiff because, among other reasons, the trial court greatly contributed to the delay by violating the “promulgated time standards for the expeditious resolution of litigation and the efficient administration of justice.” *Id.* ¶ 16. Similarly, the record reveals that more than 24 months had passed before the trial court took any action in the case, even though a dispositive motion was pending before it in the form of a fully-briefed motion for summary judgment. Thus, not only did the trial court fail to adjudicate a dispositive motion, its delay is in clear violation of Supreme Court of Guam Administrative Rule 06-001, which requires that all civil matters be completed and closed within 18 months of filing. *See Park*, 2010 Guam 10 ¶ 14; *see also* Sup. Ct. of Guam Admin. R. 06-001 (2006). In light of the record before us, we find the trial court to have greatly contributed to the delay in the instant case. Accordingly, we find that these first two factors favor non-dismissal.

b. The risk of prejudice to National Union

[30] “If the plaintiff offers a reasonable excuse for the inaction, the burden then shifts to the defendant who must demonstrate prejudice.” *Guam Econ. Dev. Auth.*, 2013 Guam 12 ¶ 34 (citing *Park*, 2010 Guam 10 ¶ 11). However, if “delay is determined to be unreasonable, prejudice . . . is presumed.” *Park*, 2010 Guam 10 ¶ 21 (alteration in original) (quoting *Santos*, 1997 Guam 4 ¶ 8) (internal quotation marks omitted). This presumption is then rebuttable. *See, e.g., Guam Econ. Dev. Auth.*, 2013 Guam 12 ¶¶ 39-41; *Kawashima*, 2010 Guam 10 ¶ 21.

[31] National Union argues that a 32-month delay “exacerbates the ability to recall” support for its case. Appellee’s Br. at 17. Based on the record before us, we cannot disagree. We consider such a substantial amount of time to be unreasonable, and prejudice is presumed. There is nothing in the record to suggest that the Individual Plaintiffs rebutted this presumption. Accordingly, this factor favors dismissal.

c. The public policy favoring the disposition of cases on their merits

[32] The next consideration under *Santos* is the public policy favoring the disposition of cases on their merits. “[P]ublic policy favors the disposition of cases on their merits and disfavors the dismissal of cases prematurely.” *McCreadie*, 2014 Guam 19 ¶ 21 (citing *Santos*, 1997 Guam 4 ¶ 9). “Although courts provide necessary procedural rules that bar certain actions from proceeding to final judgment, ideally all cases should find a resolution based on the merits.” *Id.* ¶ 22 (collecting cases). Usually, this factor “weighs against dismissal.” *Park*, 2010 Guam 10 ¶ 22 (citation omitted). In examining this factor, we do so generally, and refrain from “assess[ing] the likelihood of success on the merits.” *Santos*, 1997 Guam 4 ¶ 9. However, this factor “should not be used defensively as a shield by a passive plaintiff who has failed in his obligation to prosecute the defendants with the vigor expected of a plaintiff.” *Id.* “The question is whether the policy of determining cases on their merits justifies the delay and prejudice caused by [the party’s] actions.” *Park*, 2010 Guam 10 ¶ 22.

[33] Here, both parties argued the merits of summary judgment in their respective filings, but the trial court did not decide the case on its merits. *See* RA, tab 120 at 1-2 (Dec. & Order). In its order dismissing the case for failure to prosecute, the trial court found that in “light of the three years of recent inactivity” the Individual Plaintiffs had “failed to prosecute the case within the period allowed under the Guam Rules of Civil Procedure.” *Id.* at 2. We find the trial court’s

denial of the Individual Plaintiffs' opportunity to resolve this case on the merits because of a 32-month delay, which in large part consisted of the trial court's failure to act on a dispositive motion for summary judgment, to be unfair. Therefore, we find this factor to weigh in favor of non-dismissal.

d. The availability of less drastic sanctions

[34] The Superior Court also failed to consider the effectiveness of other possible sanctions. "The trial court is not required to impose lesser sanctions, when the rules do not so provide, and when to do so would encourage neglect and noncompliance with the Guam Rules of Civil Procedure." *Santos*, 1997 Guam 4 ¶ 10. The trial court is not required to give a warning of possible dismissal. *Id.* "A trial court is not required to examine every single alternate remedy in deciding if [the] sanction of dismissal is appropriate." *Park*, 2010 Guam 10 ¶ 24 (citation omitted). But courts must consider alternative sanctions before dismissal. *See Hamilton v. Neptune Orient Lines, Ltd.*, 811 F.2d 498, 500 (9th Cir. 1987) ("While there is no requirement that every conceivable sanction be examined, meaningful alternatives must be explored." (citation omitted)); *see also Anderson v. Air West, Inc.*, 542 F.2d 522, 525 (9th Cir. 1976). *McCreadie* suggests conceivable lesser sanctions than dismissal such as a warning, not allowing oral arguments on the summary judgment, or a monetary sanction. *See McCreadie*, 2014 Guam 19 ¶ 25.

[35] Here, before issuing a *sua sponte* dismissal, the trial court could have conceivably allowed the hearing it had itself scheduled to occur, it could have decided on the merits of the moving papers, or even sanctioned the parties for the delay on record, rather than simply dismissing the matter shortly after placing the parties on notice for a hearing. *See id.* In

balancing the obvious availability of lesser sanctions, and considering the trial court's inefficient management of its docket, we find this factor favors non-dismissal.

[36] In conclusion, after an independent review of the record under *Santos*, and considering the presence of judicial delay, we find that at least four factors do not favor dismissal. Therefore, we find the trial court abused its discretion in dismissing the matter under Rule 41(b).

3. Motion for Reconsideration

[37] Having determined that the trial court abused its discretion in dismissing the case, we need not consider whether the trial court abused its discretion in denying the motion for reconsideration.

V. CONCLUSION

[38] We hereby **REVERSE** the trial court's order dated December 11, 2015, and **REMAND** the case for an entry of an order dismissing UPIC as a plaintiff for lack of standing and for further proceedings not inconsistent with this opinion.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

KATHERINE A. MARAMAN
Associate Justice

/s/

ROBERT J. TORRES
Chief Justice