IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE GUARDIANSHIP OF YUK LAN MOYLAN,
Ward.

RICHARD E. MOYLAN,
Appellant,

v.

KURT MOYLAN, LEIALOHA MOYLAN ALSTON, and FRANCIS LESTER MOYLAN, JR.,
Appellees.

Supreme Court Case No.: CVA15-030
Superior Court Case No.: SP0106-07
(consolidated with SP0104-07, SP0105-07, SP0107-07, SP0110-07, & SP0111-07)

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on August 3, 2017
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Presiding Justice[1]; ROBERT J. TORRES, Associate Justice; JOHN A. MANGLONA, Justice *Pro Tempore*.

TORRES, J.:

[1] Appellant Richard E. Moylan ("Richard") appeals from a Decision and Order that resolved several questions regarding ownership of the purported assets of Mrs. Yuk Lan Moylan ("Mrs. Moylan") and Mr. Francis Lester Moylan ("Mr. Moylan")[2] (collectively, the "Wards"). For the reasons set forth below, we affirm the trial court's finding regarding the futility of determining the amount of shareholder loans between the F.L. Moylan Company ("FLMCO") and the Wards, but we reverse the trial court's finding regarding title to the disputed real estate.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case arises out of the same highly-contested guardianship case we previously addressed in *In re Guardianships of Francis Lester Moylan and Yuk Lan Moylan*, 2011 Guam 16 (hereinafter "*In re Moylan*"). The Wards were successful businesspeople who amassed a large set of assets. In 2007, each was diagnosed with varying stages of Alzheimer's disease, which limited their ability to care for themselves and their assets. Mr. and Mrs. Moylan had four children, including Richard and Appellees Kurt Moylan ("Kurt"), Leialoha Moylan Alston ("Princess"), and Francis Lester Moylan, Jr. ("JR") (Kurt, Princess, and JR collectively, the "Majority Siblings").

[3] In separate petitions, the children sought to be appointed guardian of the person, or of the estate, of each of the Wards. The trial court consolidated the guardianship cases and held an eleven-day evidentiary hearing. Following this hearing, the court issued Findings of Fact and

[1] Associate Justice F. Philip Carbullido, as the senior member of the panel, was designated Presiding Justice.

[2] Mr. Moylan has passed away. *See In re Moylan*, 2011 Guam 16 ¶ 10 n.1.

Conclusions of Law (the "Findings of Fact") that appointed Princess "general guardian" over the person of Mr. Moylan and "limited guardian" over the person of Mrs. Moylan. *Id.* ¶ 8. Kurt was appointed "general guardian" of the estate of Mr. Moylan and "limited guardian" of the estate of Mrs. Moylan. *Id.* ¶ 1; *see also* RA, tab 285C (Finds. Fact & Concl. L., Nov. 10, 2008). We affirmed these appointments on appeal.

[4] In the Findings of Fact, the court also resolved several questions regarding the Wards' assets. Among other things, the trial court found: (i) "[FLMCO], a Guam corporation substantially owned by the Wards, owed the Wards the amount of $1,983,772.75 in shareholder loans"; and (ii) "the lot and house Princess lived in, although in the Wards' name, was an enforceable transfer to Princess in fee simple without condition." *In re Moylan*, 2011 Guam 15 ¶ 9. The parties appealed both of these findings, as well as numerous other issues not relevant to this current appeal.

[5] On the issue of whether "the statute of frauds precludes the residential property transfer to Princess," *id.* ¶ 34, we found that "this jurisdiction's statute of frauds was not satisfied in this case because there was never any instrument in writing subscribed by the Wards transferring the property to Princess." *Id.* ¶ 39. Nevertheless, "under the doctrine of estoppel, an oral promise to convey real property is removed from the statute of frauds and is enforceable under extreme circumstances in order to prevent an injustice to the donee." *Id.* The trial court, however, "did not adequately set forth its findings as to why any oral conveyance to Princess should be removed from the statute of frauds under the doctrine of estoppel." *Id.* ¶ 40. We "reverse[d] the [trial] court's holding that the transfer is an enforceable conveyance in fee simple" and "remand[ed] the issue involving the transfer of residential property from the Wards to Princess back to the trial court to determine whether there was an oral gift by the Wards which can be

enforced by Princess under the doctrine of estoppel." *Id.*; *see also In re Moylan*, CVA08-16, Mandate (Oct. 18, 2011).

[6] The Majority Siblings cross-appealed the trial court's finding that FLMCO owed the Wards $1,983,772.75 in shareholder loans. *See In re Moylan*, 2011 Guam 16 ¶ 56. We reversed. *Id.* ¶ 71. In reaching our decision, we recognized that the trial court "seemed to rely entirely" upon "a 'Look Back Report' prepared by Robert Steffy, CPA, which summarized the major assets and obligations of the Wards' estates." *Id.* ¶¶ 57-59 (internal references omitted). The Look Back Report, however, was acknowledged to be "only generally accurate and subject to revision after a more detailed review," it "did not appear to separately account for the rental income deposited into FLMCO based on the Wards' and Majority Siblings' respective ownership interests in the rental properties," and there was "no credible evidence submitted that the amounts transferred to FLMCO were actually intended to be shareholder loans instead of additional contributions to capital." *Id.* ¶ 59. We therefore "remand[ed] the matter back to the trial court to determine the amount of the Wards' shareholder loan account with FLMCO." *Id.*

[7] Upon remand, the trial court issued an order "rescind[ing] its decision that [FLMCO] owes the Ward $1,983,772.74" and set a briefing schedule on the issue of whether the purported oral gift of real property to Princess could be enforced under the doctrine of estoppel. *See* RA, tab 387C at 1 (Dec. & Order, Nov. 10, 2011). The trial court indicated in that order that it intended to "make a determination based upon the briefs." *Id.* Richard did not object.

[8] The Majority Siblings filed a joint brief regarding the transfer of real property to Princess, and Richard filed an opposing brief.

[9] The Majority Siblings filed a separate brief regarding shareholder loans between FLMCO and the Wards. This briefing was supported by a declaration signed by Robert J. Steffy

("Steffy"), the Moylan family's long-time accountant. *See* RA, tab 404C (Decl. Robert J. Steffy, Jan. 18, 2012). Steffy declared that he believed that it was not possible "to determine with a reasonable degree of certainty the amount of money FLMCO may owe to Mr. & Mrs. Moylan by way of shareholder loans." *Id.* ¶ 6. This was based on knowledge and belief that, among other things: (i) "Mr. Moylan would routinely take money from FLMCO for personal use," *id.* ¶ 6(a); (ii) documentation regarding how much Mr. Moylan took out of FLMCO does not exist, *id.* ¶ 6(b); (iii) Mr. Moylan initially "did not follow any [accounting] formalities," *id.* ¶ 6(d); and (iv) there is no documentation suggesting that the transfers were intended to be loans, *id.* ¶ 6(e). Richard filed a one-page memorandum in which he requested that the trial court "order that Mr. Steffy provide adequate evidentiary support for the Court to ascertain the actual amount of shareholder loans due back toward [Mrs. Moylan]." RA, tab 402.01C at 2 (Mem. Supp. of Loan Repayment to Ward, Jan. 18, 2012).

[10] While these issues were still pending, this case was reassigned to a Superior Court judge different from the judge that presided over the evidentiary hearing. *See* RA, tab 438C (Notice of Judge Assignment, Apr. 4, 2013). This newly-appointed judge held a hearing on the issues remanded pursuant to our mandate. *See* RA, tab 470.01C (Min. Entry, Nov. 3, 2015).

[11] Shortly thereafter, the trial court issued a Decision and Order that resolved both of these remaining issues. *See* RA, tab 471C (Dec. & Order, Dec. 1, 2015). After setting forth some introductory factual determinations, the court held as follows concerning ownership of title in Princess's residence:

> It is clear from a review of the facts as they apply to the applicable legal standard, that the residence in which Princess has resided for the last 21 years was given to her by her parents, the Wards, and universally accepted and held out as her home, by her, the Wards, and her known associates. Inherent to the facts found by this Court and logically arising out of a person's exclusive use of and treatment of a residence as one's own, is the extreme affront that would arise from

> the removal of this accepted expectation. As set forth in the record herein and in the facts above, Princess'[s] home was constructed with the understanding that it belonged to her. The acceptance of this gift and her reliance upon it, is evidenced by her long-term residence therein and her holding out of the home as her own to all the world. Importantly the Court also notes Princess's meager salary, her years of long service and the accepted intermingling of monies and accounts among the Wards, the Guardians, and FLMCO. Given this it is probable that some of Princess's additional but unaccounted compensation lies in the construction and maintenance of the same. Accordingly, under the appropriate standards the Court recognizes the complete equitable transfer of Princess's current residence from the Wards to Princess.

Id. at 6-7 (internal citations omitted). As to the shareholder loans, the court found:

> As set forth in the record and the findings herein the Court has not been provided sufficient facts upon which it can make a finding of an enforceable loan agreement between the Wards and FLMCO. Given the mingling of funds between the Wards and FLMCO the Court has not been presented with any verifiable accounting of the previously identified amount of $1,983,772.75. Absent this the Court is unable to support a finding of the existence of a loan. Further given the undisputed assertions of the impossibility of ascertaining an accurate accounting, the Court finds that additional investigation would be futile.

Id. at 7 (internal citations omitted). Richard filed a timely appeal of this final order.

II. JURISDICTION

[12] This court has jurisdiction over appeals from final orders in guardianship proceedings entered by the Superior Court of Guam. *See In re Moylan*, 2011 Guam 16 ¶ 11; *see also* 15 GCA § 4801 (2005); 7 GCA § 3107(b) (2005); 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-90 (2017)).

III. STANDARD OF REVIEW

[13] A trial court's findings of fact are reviewed for clear error. *See In re Moylan*, 2011 Guam 16 ¶ 12 (citation omitted). Under this standard, we "only look at whether the trial court's finding of fact is supported by substantial evidence." *Id.* (citation omitted). We reverse only if, after reviewing the complete record, we have a "definite and firm conviction that a mistake has been committed" by the trial court. *Id.* (citation omitted); *see also Andreotti v. Andreotti*, 36 Cal.

Rptr. 709, 713 (Ct. App. 1964). A trial court's conclusions of law, including its interpretation of this court's mandate from a prior appeal, are reviewed *de novo*. *Babauta v. Babauta*, 2013 Guam 17 ¶¶ 17-18 (citations omitted); *see also Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 17. We further review "the trial court's actions on remand for an abuse of discretion." *Town House*, 2003 Guam 6 ¶ 17 (collecting cases).

IV. ANALYSIS

A. The Majority Siblings Have Failed to Establish an Estoppel and the Statute of Frauds Therefore Bars Any Purported Oral Gift of Real Property to Princess

[14] In our earlier opinion, we directly addressed "Richard's claim that the statute of frauds precludes the residential property transfer to Princess." *In re Moylan*, 2011 Guam 16 ¶ 34. Because the main question on appeal was whether or not Guam's statutes prohibit oral transfers of real property, we reviewed that question *de novo*. *Id.* Finding that there was no writing memorializing the purported real property transfer, we held that "this jurisdiction's statute of frauds was not satisfied in this case." *Id.* ¶ 39. We further held, however, that "under the doctrine of estoppel, an oral promise to convey real property is removed from the statute of frauds and is enforceable under extreme circumstances in order to prevent an injustice to the donee." *Id.* (citation omitted). To establish an enforceable oral gift in derogation of the statute of frauds, "possession of the property [must be] both given and accepted under the terms of the gift, and the donee [must] perform[] acts to carry out the purpose of the gift." *Id.* (citation omitted). This requires "the donee [to] perform acts in reliance on the parol gift that change the donee's position to his substantial detriment, which must be of a sufficient degree to make it unjust not to effect the attempted transfer to him." *Id.* (citations omitted). This might include, for example, "expenditure[s] made in reliance on the gift" such as "improvements to [the] land

tending to enhance its value over and above value of [the] property to the promisee." *Id.* (citation omitted).

[15] "Courts are generally suspicious of gift claims that are made for the first time" after the alleged donor's death or incapacity because of the potential for fraudulent claims of ownership. *Lujan v. Quinata*, 2014 Guam 20 ¶ 21 (citations omitted). This is especially true where the purported gift is between family members who reside with one another. *Cf. id.* ¶ 22 (rejecting reliance on "ambiguous affidavits of interested parties and relatives"); *see also Fuisz v. Fuisz*, 591 A.2d 1047, 1049 (Pa. 1991) ("[W]here . . . the alleged parol gift of land is between parent and child, evidence of an even more clear and weighty nature is required than is necessary where the alleged gift was between unrelated persons." (emphasis omitted)). We permit oral gifts in derogation of the statute of frauds based upon equitable estoppel where the events indicate a belief on the part of the purported donee that they own title to the disputed property and failing to enforce the gift would result in an injustice. On the facts presented here, the Majority Siblings have failed to establish that Princess detrimentally relied upon her claimed title to the real property at issue. We find that the trial court's findings to the contrary were clear error.

[16] To establish an estoppel, the Majority Siblings argue that the homecare provided by Princess and her help overseeing the Wards' business support a finding of detrimental reliance because she gave up potentially more lucrative employment and moved back to Guam to carry out these functions. *See, e.g.*, Appellees' Br. at 11 (June 5, 2017). To the extent that this can be considered an "injury" or "detriment," it is not of the type necessary to remove a transfer of property from the statute of frauds. In *Whiteco Industries, Inc. v. Kopani*, for example, the court found that employees that gave up their existing employment to move to and accept a job in

another state "do not possess the quality of those [detriments] which courts have found sufficient to constitute an independent consideration" necessary to establish estoppel and be removed from the statute of frauds. 514 N.E.2d 840, 843 (Ind. Ct. App. 1987). "[N]either the actions involved in moving one's household to a new location[,] nor the mere relinquishment of an existing employment[,] are sufficient to constitute independent consideration" for purposes of establishing an estoppel. *Id.* at 843-44; *see also Erb v. Kohnke*, 824 P.2d 903, 909 (Idaho Ct. App. 1992) (rejecting claim of estoppel where purported donee of real property claimed to have "quit her job, gave up her apartment, moved into the house, and made improvements to the real property, all in reliance on [donor's] promise to give her the property").

[17] This reasoning holds even more weight in the family context, where care for an elderly relative is often viewed as a duty amongst the younger generation. *Cf. Fuisz*, 591 A.2d at 1049. "If what the party gave up in reliance on an oral promise was no greater than what the party would have given up in any event, then the consideration is deemed insufficient to remove the oral promise from the operation of the Statute of Frauds." *Brown v. Branch*, 758 N.E.2d 48, 53 (Ind. 2001). In *Brown*, this rule was applied to the purported conveyance of real property. *Id.* There, the court found that "in order to accept [the] oral promise" of title to the disputed house, appellant "quit her modest job, dropped out of college at the end of the semester, and moved back to Indiana from Missouri where she had been living with her parents." *Id.* While appellant "was inconvenienced as well as denied the benefit that . . . [the] promise was intended to confer," this was insufficient to establish "the 'infliction of an unjust and unconscionable injury and loss' that would remove the promise from the operation of the Statute of Frauds." *Id.*

[18] The facts of this case present a clear example as to why this purported type of detriment is insufficient to remove an alleged oral transfer of real property from the ambit of the statute of

frauds. The relevant timeline of events indicates that Princess's desire to help the Wards and her taking up residence in the disputed property were largely unrelated to one another. As testified to by Princess, she left Guam to attend college at Brigham Young University sometime in the 1980s, returned one year later, again left Guam for a short period, and then returned to Guam permanently in 1988. *See* RA, tab 391C, Ex. 1 at 2-4 (Decl. Joyce C. H. Tang, Dec. 16, 2011). Princess lived with the Wards upon her return, then moved out of the Wards' property for a time but still lived there intermittently. *Id.* The home in dispute was not built until 1993. *See* RA, tab 390C ¶ 5 (Decl. Leialoha Moylan Alston, Dec. 16, 2011). By Princess's own admission, she began working with the family business upon her initial return to Guam after one year away at college, *see* RA, tab 391C, Ex. 1 at 2-3 (Decl. Joyce C. H. Tang), which was years before the house was built and more than a decade before the Wards were diagnosed with Alzheimer's and became unable to care for themselves. This record cannot support a finding that Princess's care of the Wards or her help running the business constitutes unjust and unconscionable detriment because the relevant timeline establishes that these events were unrelated.

[19] In determining whether an estoppel has been established, courts focus heavily on improvements to the property, the payment of taxes on the property, and other similar detriments. *See, e.g.*, *Erb*, 824 P.2d at 909. The reason for this is because these expenditures often indicate a person's belief that he or she owns the property. On facts like those presented here, however, it would be nearly impossible for a court or jury to discern whether the care provided by Princess years after the purported transfer of property is complete is based upon the love and affection she has for her parents or the obligation imposed by a claimed oral promise made at the time of the real property transfer.

[20] For this reason, many courts have found that "a claim of estoppel . . . will not operate to remove a case from a Statute of Frauds where the promise relied upon is the very promise that the Statute declares unenforceable if not in writing." *Ohio Valley Plastics, Inc. v. Nat'l City Bank*, 687 N.E.2d 260, 264 (Ind. Ct. App. 1997) (citing *Whiteco Indus.*, 514 N.E.2d at 844).

> Were this not the rule the statute would be rendered virtually meaningless because the frustrated claimant would always assert an oral promise/agreement to defeat by means of estoppel the statute's requirement for a written one. The contest would then concern the credibility of the evidence of an oral promise of agreement. That of course, is precisely what the statute seeks to avoid.

Whiteco Indus., 514 N.E.2d at 844. In attempting to draw a relationship between transfer of title in Princess's residence and her caregiving responsibilities, the Majority Siblings are essentially arguing that promissory estoppel applies—not equitable estoppel, which is what our prior opinion discussed. While some (but not all) jurisdictions apply promissory estoppel as an exception to the statute of frauds,[3] in jurisdictions where this exception is permitted, it "lies only where circumstances are so egregious as to render it inequitable for a court of justice to apply the Statute of Frauds." 73 Am. Jur. 2d *Statute of Frauds* § 450. "There must be either a misrepresentation that the Statute of Fraud's requirements have been complied with or a promise to make a memorandum of the agreement in order for promissory estoppel to apply." *Id.* These situations are clearly not presented here.

[21] On the record before the court, we can perceive no injustice to Princess from finding that title to the property belongs to the Wards. To support its position, the Majority Siblings rely

[3] While the Majority Siblings' arguments in this appeal sound a similar tune to promissory estoppel, they have never expressly advanced this theory (in either this appeal or the previous appeal), and we do not consider this question currently before us. Rather, the Majority Siblings have maintained throughout this litigation that the transfer of property to Princess was an *inter vivos* gift, not a contractual *quid pro quo* whereby property was exchanged for a mutual agreement to oversee the family business and to take care of the Wards. The Majority Siblings have not attempted to establish proof of an existing contract, and there has been no finding in this case that such a contract exists. It follows that there could be no partial performance of this non-existent contract. Therefore, we need not, and do not, decide for purposes of resolving this case whether promissory estoppel may serve as a valid exception to Guam's statute of frauds.

heavily on the fact that Princess has lived in the residence for more than 20 years. *See* Appellees' Br. at 14-15. The trial court also relied upon this fact in finding that not granting Princess the property would cause an "extreme affront." RA, tab 471C at 6-7 (Dec. & Order, Dec. 1, 2015). We can see no such affront. There is no reason to believe—nor has any party suggested—that if title still lies with Mrs. Moylan, Princess will no longer be able to live in her current residence, where she continues to reside rent-free. In fact, the record strongly suggests just the opposite—that regardless of who owns title to Princess's residence (her or Mrs. Moylan), it would be in Mrs. Moylan's best interest for Princess to continue residing on those premises to facilitate the care she continues to provide. *See generally* RA, tab 408C (Submission of Evaluation Report by Claire K. Ashe, M.D., Feb. 2, 2012) (describing care Princess provides to Mrs. Moylan); *see also* Transcript ("Tr.") at 18-19, 57 (Competency Hr'g, Mar. 20, 2008) (Mrs. Moylan describing help received by Princess).

[22] The trial court further found that given "Princess's meager salary, her years of long service and the accepted intermingling of monies and accounts among the Wards, the Guardians, and FLMCO[,] . . . it is probable that some of Princess's additional but unaccounted compensation lies in the construction and maintenance of the same." RA, tab 471C (Dec. & Order, Dec. 1, 2015). But, "[w]here the monetary detriment suffered by the donee does not exceed the benefit to him [or her] of the use of the land without charge or rental, and no other circumstances of hardship are shown, the basis for an estoppel does not exist." *Andreotti*, 36 Cal. Rptr. at 712-13 (citations omitted); *see also Erb*, 824 P.2d at 909 (finding that paying taxes and insurance, as well as making improvements and other expenses, were not a sufficient determent where proposed donee failed to show that "the value of the expenditures exceeded the benefit to [the proposed donee] of the use of the real property during th[e] [relevant] time

period"). The Majority Siblings have made no attempt to show that Princess's purported unaccounted compensation exceeds the value of the rent-free use of the house, and there is no such evidence in the record.

[23] For all of these reasons, we hold that the trial court erred in finding that an enforceable transfer of property occurred between the Wards and Princess. Accordingly, we reverse the trial court's determination that Princess be transferred "whatever fee interest the Wards' [sic] held in Princess's current residential property." RA, tab 471C at (Dec. & Order, Dec. 1, 2015).

B. The Trial Court Properly Found that Determining the Amount of Shareholder Loans Between the Wards and FLMCO Would Be "Futile"

[24] The next issue raised on appeal by Richard is whether the trial court undertook the appropriate procedure—consistent with both this court's prior mandate and due process—in determining that calculating the amount of loans between the Wards and FLMCO would be futile. Appellant's Br. at 20-28. The Majority Siblings argue in opposing Richard's appeal that the trial court employed a proper procedure and that Richard has waived these arguments by not asserting them below. Appellees' Br. at 15-20.

[25] Generally, "this court will not address an argument raised for the first time on appeal." *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 78 (collecting cases). "Our exercise of discretion to review an issue raised for the first time on appeal is reserved for extraordinary circumstances where review is necessary to address a miscarriage of justice or clarify significant issues of law." *Id.* ¶ 82. While Richard failed to raise these issues below, both his constitutional due process claim and his challenge to the trial court's interpretation of the prior mandate raise significant issues regarding the integrity of the judicial system. *See Castro v. G.C. Corp.*, 2012 Guam 6 ¶ 8 (finding that "arguments [in that case] 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"); *see Litman v. Mass. Mutual Life Ins. Co.*, 825 F.2d 1506, 1515-16 (11th Cir. 1987) (successful party on appeal may not waive the court's mandate on remand). We therefore choose to utilize our discretion to hear these issues presented on appeal.

1. The Trial Court Complied with this Court's Mandate to Determine the Amount of Loans Between FLMCO and the Wards

[26] This court reviews a lower court's interpretation of our prior mandates *de novo*. *Babauta*, 2013 Guam 17 ¶¶ 17-18 (citations omitted); *Town House*, 2003 Guam 6 ¶ 17 (citation omitted). "On remand, a trial court must comply with the mandate of the appellate court." *Town House*, 2003 Guam 6 ¶ 16 (collecting cases). But, "a mandate cannot be applied in a vacuum, and must be interpreted in light of the appellate court's opinion." *Id.* (collecting cases). This requires that the trial court "examine both the mandate and the opinion and proceed in accordance with the views expressed therein." *Id.*

[27] There are two types of mandates: general and specific. "[W]hen an appellate court's mandate reverses for further proceedings without more specific instructions, the mandate is a general mandate which requires the trial court to conduct an entirely new trial on all the issues of fact." *Id.* ¶ 19 (citation omitted). A specific mandate requires "the lower court . . . to follow the appellate court's specific instructions to decide a particular issue" and the lower court may "only conduct further proceedings which were not inconsistent with the appellate court's opinion." *Id.* (citation omitted). When this court issues a specific mandate, "the trial court [i]s not required . . . to conduct a trial *de novo*." *Id.*

[28] In *Town House*, this court found that the trial court did not abuse its discretion on remand "in failing to conduct a hearing or accept additional evidence" where "the only relevant issue on remand was the reasonableness of the sale price." 2003 Guam 6 ¶¶ 20-21. The court noted that

"if the mandate . . . or[] opinion specifically directs the trial court to take additional evidence or conduct a hearing, such directions must be followed by the trial court," but "absent specific directions as to how to decide the issues on remand, it is within the lower court's discretion to determine what further proceedings are appropriate on remand." *Id.* ¶ 21 (collecting cases). "[I]f an appellate court does not give a trial court specific directions, a trial court's refusal to conduct an evidentiary hearing on remand is reviewed for an abuse of discretion." *Id.* This is "examined on a case-by-case basis." *Id.* (citation omitted). "In determining whether the lower court should have taken evidence or conducted a hearing on remand, we must review the issue that was remanded and determine whether the trial court's proceedings were appropriate considering the resolution of that issue." *Id.* ¶ 22.

[29] We have further cautioned that "trial courts are . . . not to construe remand orders 'so narrowly as to prohibit the court from considering matters relevant to the issues upon which further proceedings are ordered.'" *Lamb v. Hoffman*, 2011 Guam 13 ¶ 22 (citations omitted). Thus, "there are cases wherein a seemingly specific mandate such as an order for a new trial may wind up with a different result on remand." *Litman*, 825 F.2d at 1512. Where an order may appear to go beyond or ignore a prior court's mandate, it may still be affirmed if, "when viewed in its totality, [the mandate] supports the alternative disposition." *Id.* at 1512.

[30] In *United States v. Young*, for example, the court had previously issued a specific mandate "to conduct an *in camera* hearing to assess [an] informant's testimony." 267 F. App'x 876, 878 (11th Cir. 2008). "[O]n remand, the district court was presented with a factual scenario not contemplated" by the appellate court's prior mandate, "namely, the government's inability to produce the informant for the hearing." *Id.* The appellant argued that the court failed to comply with the court's previous mandate, but the court found "that by assuming the informant's identity

should have been revealed and then vacating the conviction when the government could not produce the informant, the district court embraced the spirit of our mandate and provided the necessary protection of Young's right to prepare his defense even though it could not comply with the letter of the mandate." *Id.* (citation omitted).

[31] In our prior opinion in this case, we reversed that portion of the Findings of Fact that found FLMCO owed the Wards $1,983,772.75. *See In re Moylan*, 2011 Guam 16 ¶¶ 56-59; *see also* RA, tab 285C (Finds. Fact & Concl. L., Nov. 10, 2008). In doing so, we found that "[t]here was also no credible evidence submitted that the amounts transferred to FLMCO were actually intended to be shareholder loans instead of additional contributions to capital." *In re Moylan*, 2011 Guam 16 ¶ 59. Accordingly, we "reverse[d]" and "remand[ed] the matter back to the trial court to determine the amount of the Wards' shareholder loan account with FLMCO." *Id.* The mandate issued from this court concerning this issue stated only that the court "REMAND[ED] this matter back to the trial court." *In re Moylan*, CVA08-16, Mandate (Oct. 18, 2011).

[32] On remand, the trial court did not hold any additional evidentiary hearings. Rather, the court resolved this issue upon the parties' briefing. In addition, the trial court accepted a declaration of Steffy, the Moylan family accountant, which stated, *inter alia*, that no documentation exists suggesting that transfers were intended to be loans (other than the fact that they were accounted for in a shareholder account on FLMCO's balance sheet) and that financial records are unavailable to actually calculate the amount of any outstanding loans. *See* RA, tab 404C ¶ 6(d)-(e) (Decl. Robert J. Steffy). The court relied upon this declaration, as well as other information, to determine that it had "not been provided sufficient facts upon which it can make a finding of an enforceable loan agreement between the Wards and FLMCO" and that "given the undisputed assertions of the impossibility of ascertaining an accurate accounting, . . . additional

investigation would be futile." RA, tab 471C at 7 (Dec. & Order, Dec. 1, 2015). We see no error in the trial court's resolution of this matter on remand. In reaching its decision without a full evidentiary hearing, the trial court did not violate this court's mandate nor did it abuse its discretion.

[33] Neither the mandate nor the opinion provided specific instructions to conduct a further evidentiary hearing. Therefore, it was in the trial court's discretion whether such a hearing was necessary. *See Town House*, 2003 Guam 6 ¶ 21. This court specifically noted in reversing a portion of the Findings of Fact during the prior appeal that the trial court's findings with respect to the loan amount "seemed to rely entirely on the Look Back Report," which we found to be unreliable evidence. *In re Moylan*, 2011 Guam 16 ¶¶ 56-59. This would seem to indicate that on remand the trial court was required to take additional evidence. The court did take some additional evidence by way of affidavit, *see* RA, tab 404C ¶ 6(d)-(e) (Decl. Robert J. Steffy), which was what Richard initially requested on remand, *see* RA, tab 402.01 at 2 (Mem. Supp. of Loan Repayment to Ward, Jan. 18, 2012). There was also significant additional evidence in the record that resulted from the previously conducted eleven-day evidentiary hearing. *Cf. Town House*, 2003 Guam 6 ¶ 23; *Pangelinan v. Camacho*, 2011 Guam 9 ¶ 14. We see no abuse of discretion in the court's reliance upon "the substantial record and supplemental briefing and oral arguments presented at the final status hearing." *Pangelinan*, 2011 Guam 9 ¶ 15.

[34] Nor does this court find any error in the trial court's ultimate resolution of this matter on remand. Our prior mandate did not account for the fact that documentation was potentially unavailable to properly determine the amount of loans between FLMCO and the Wards to a reasonable degree of certainty. *Cf. Young*, 267 F. App'x at 878. Rather, the court expected that more concrete and reliable financial documentation would be available beyond that used to

compile the Look Back Report. On remand, however, Steffy stated in a sworn declaration that no such documentation existed. Richard points to no additional documentation or alternative theories that could be used to properly calculate the amount of loans existing between the Wards and FLMCO. *Cf. Duenas ex rel. Quichocho v. George & Matilda Kallingal, P.C.*, 2015 Guam 19 ¶ 31 (finding court failed to properly apply mandate because it did not consider alternative theories of damages). A finding that determining this amount would be futile was therefore in line with the spirit of the mandate, though not its letter.

[35] For these reasons, we cannot conclude that the trial court abused its discretion in failing to conduct an additional evidentiary hearing or in its findings that it was impossible to determine the amount of shareholder loans to a reasonable degree of certainty.

2. Richard Has Not Established a Due Process Violation

[36] Richard's last argument on appeal is that the Wards' constitutional due process rights were violated because of an irreconcilable conflict of interest between the Majority Siblings and the Wards as a result of their co-ownership of FLMCO, which resulted in the guardians actively advocating against the Wards' interests. Appellant's Br. at 22-28. Richard provides no legal authority for this proposition and fails to articulate his theory of a due process violation, including whether the purported violation is procedural or substantive.

[37] In *Mainor v. Nault*, the Nevada Supreme Court was presented with—and rejected—an argument that a guardian's conflict of interest presented both a procedural and substantive due process violation. 101 P.3d 308, 314 (Nev. 2004), *abrogated on other grounds by Delgado v. Am. Family Ins. Grp.*, 217 P.3d 563, 567 (Nev. 2009), *as recognized in In re Frei Irrevocable Tr. Dated Oct. 29, 1996*, 390 P.3d 646, 652 n.8 (Nev. 2017). The court rejected the claim of procedural due process because "procedural due process generally is violated when the

adjudicator, not the guardian, has a conflict of interest," and "[t]here is no evidence that the . . . court was biased toward any party." *Id.* at 314-15. Similarly, "[t]he substantive due process claim lacks merit because substantive due process concerns the adequacy of the *government's* [i.e., the court's] reason for depriving a person of life, liberty or property. It is not meant to protect against alleged fraud upon the court by private individuals" such as a potentially conflicted guardian. *Id.* For much the same reasons, Richard has failed to articulate how the Wards' due process rights were violated in this case.

V. CONCLUSION

[38] For the reasons set forth above, we **REVERSE** the trial court's finding that an enforceable transfer of property occurred between Princess and the Wards, and we **AFFIRM** the trial court's finding that determining the amount of shareholder loans between the Wards and FLMCO would be futile. The matter is remanded for further proceedings not inconsistent with this opinion.

/s/
ROBERT J. TORRES
Associate Justice

/s/
JOHN A. MANGLONA
Justice *Pro Tempore*

/s/
F. PHILIP CARBULLIDO
Presiding Justice