IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GUADALUPE P. MANGLONA, Plaintiff. v. MARGARITA R. TENORIO, Defendant.	Civil Action No. 93-~~1197~~ **PARTIAL JUDGMENT AND ORDER FOR STATUS CONFERENCE**

This matter came before the Court for a bench trial on November 21, 1994. The parties have essentially asked the Court to place a label on several monetary exchanges between the Plaintiff. Guadalupe P. Manglona, and the Defendant, Margarita R. Tenorio totaling $250,000.00. At the start of the trial, the Plaintiff requested that the Court limit the triable issues to one: whether the funds that she transferred to the Defendant constituted a loan made at the Defendant's request. However, in addition to the evidence of a loan put forth by the Plaintiff, the parties presented evidence and extracted testimony suggesting that the funds were either partial payment for the Plaintiff's purchase of the Defendant's property, or an attempt to get the Defendant to give her an option to purchase the Defendant's property. Although the evidence presented at trial all but begs the Court to explore the possibility that the monetary exchange in question constituted either partial payment on a contract for the sale of land or payment for an option contract, the Court here limits its substantive inquiry to the existence of a loan.

L FACTS

In October of 1990, the Plaintiff and Dr. Larry Hocog were both involved in the operation of the Saipan Health Clinic (the Clinic). Although the Clinic had been located in the Horiguchi Building, arrangements were underway to move the Clinic into the Saipan Office Supply Building located on the

Defendant's lot in I-Liyang on Beach Road (I-Liyang property). The record reflects that by December 1, 1990, the Plaintiff and Dr. Hocog had already leased and begun renovations on a portion of the I-Liyang property in order to meet the needs of the Clinic. Defendant's Exh. N.

Also in October of 1990, the Plaintiff and the Defendant, in the company of Dr. Larry Hocog and the Defendant's husband, Dr. Joaquin A Tenorio, met at the Sunset Restaurant in Susupe to discuss the possible purchase of the entire I-Liyang property as the future site of the Clinic. At the close of the Sunset Restaurant meeting, the Plaintiffhad orally agreed to purchase the I-Liyang property. However, the parties have had an ongoing dispute about the actual purchase price. For example, the Plaintiff claims the Defendant requested $1.6 million for the I-Liyang property. Dr. Hocog recalls the figure to be $1.2 million. Although the Defendant's papers claim that the purchase price was $1.4 million, see *Defendant's* Findings of Fact and Conclusions of Law at 2, she wrote the Plaintiff a letter indicating the purchase price to be $2.2 million. Plaintiff's Exh. 1. Although Joaquin set the purchase price at $1.8 million in a warranty deed memorializing the oral agreement, the deed was never signed by either party.

During the three months immediately following this conversation, the Plaintiff made several monetary transfers to the Defendant totaling $250,000.00. At Plaintiff's request, Dr. Hocog issued a check to the Defendant in the amount of $15,000.00. The Plaintiff originally submitted that these transfers constituted a loan that she had made at the Defendant's request. However, after trial, the Plaintiff conceded that the monetary exchange was also an attempt to get the Defendant to give her and Dr. Hocog the option to purchase the I-Liyang property. See Plaintiff's Proposed Findings of Fact and *Conclusions* of Law at three (Plaintiff's Findings). The Defendant has countered that the funds were actually partial payment for the Plaintiff's purchase of the I-Liyang property.

In February of 1991, the Plaintiff severed her business relationship with Dr. Hocog and the Clinic. At that time, it became clear to the Plaintiff that she should not go through with the purchase for several reasons including: (1) the Plaintiff could not afford to purchase the I-Liyang property without Dr. Hocog and the Clinic; (2) the Plaintiff was concerned that her purchase of the property would violate Article XII because a recent Superior Court decision, Manglona *v. Kaipat*, Civil Action No. 90-0618 (Order of February 28, 1991), had adjudged her not to be of Northern Mariana decent; (3) the Defendant's lease

obligations to other current tenants on the I-Liyang property would stand in the way of the Plaintiff's plan to immediately purchase and use the premises as a health clinic; and (4) the Plaintiff believed the I-Liyang property was still the subject of a probate proceeding.

On April 5, 1991, the Plaintiff wrote a letter to the Defendant explaining that she no longer intended to purchase the I-Liyang property. Plaintiff's Exh. 2. The Plaintiff characterized the monetary exchange as "several loans for [Defendant's] consideration to give [Dr. Hocog and I] the first option to purchase your lot..." *Id* On December 24, 1991, the Defendant wrote a letter back to the Plaintiff. Plaintiff's Exh. 1. The Defendant refers to the $250,000.00 as a contribution "that will be reimbursed to [the Plaintiff] when [the Clinic] executed the purchase agreement." ***Id.*** at 2. Nevertheless, on July 9, 1992, the Defendant did make a payment to the Plaintiff in the amount of $1,000.00.

Although the Plaintiff began the trial by focusing on her loan theory, her trial briefs level arguments which admit to the possibility that the transaction in question was an attempted option contract which became impossible to execute for several reasons. The Defendant contends that the Court must enter judgment in favor of the Defendant because the Defendant only pled a loan theory and has since abandoned that theory.

II. PROCEDURAL HISTORY

On September 28, 1993, the Plaints filed her complaint claiming that the entire $250,000.00 transfer of funds had been a loan extended from the Plaintiff to the Defendant. During the early stages of this litigation, the Defendant claimed that she received funds from the Plaintiff pursuant to a partial payment for the I-Liyang property. ***Declaration of Margarita R Tenorio*** (Nov. 30, 1993). Despite this claim, Defendant did not present the Court with a counterclaim for specific performance of the alleged aborted real estate purchase agreement. Likewise, Plaintiff did not amend her complaint to address the allegation leveled by the Defendant. Rather, on April 24, 1994, the Plaintiff requested that this matter proceed to trial solely on the theory that the $250,000.00 exchange constituted a loan. The Defendant objected on the basis that no discovery had yet occurred. On May 11, 1994, the Court ordered the parties to complete discovery by June 18, 1994 and set the matter for trial on June 23, 1994. For a

myriad of reasons, the discovery deadline and trial date in this matter were pushed back several times.

During the course of discovery, the parties exposed conflicting documentary evidence and oral testimony which supported the Plaintiff's loan theory, as well as an option to purchase theory, and the Defendant's theory involving the attempted purchase of her property. ***See Deposition of Guadalupe P. Manglona*** (Aug. 17 and 24, 1994). Again, despite the emergence of a factual dispute regarding an alleged land transaction gone awry, the Plaintiff only pursued her loan theory, and the Defendant did not file a counterclaim for specific performance. Thus, when the matter finally came to trial on November 21, 1994, the sole issue before the Court was whether or not the $250,000.00 exchange of funds constituted a loan.

III. ISSUES

1. Whether the $250,000.00 in funds transferred from the Plaintiff to the Defendant constituted a loan.

2. If not, whether the Court will maintain jurisdiction over this matter.

IV. ANALYSIS

A. The Plaintiff's Loan Theory

The Plaintiff claims that she transferred $250,000.00 to the Defendant as part of a loan agreement. During trial, the Defendant made a convincing showing that no formal loan practices were exercised by the Plaintiff: For example, the Plaintiff admits that no written promissory note or loan agreement evincing the alleged loan exists. In addition, the Plaintiff testified that she set no cap on the amount of money she was willing to loan the Defendant and failed to establish any repayment schedule until over a year after the $250,000.00 exchange. Finally, on April 5, 1991, the Plaintiff attempted to memorialize an indefinite repayment schedule by writing the Defendant a letter referring to a $250,000.00 loan payable with "a fair interest rate immediately upon the sale of [Defendant's] property." Thus, the Defendant established that the alleged loan was undocumented and granted practically without condition.

Unarmed with the usual documentation evincing a loan, the Plaintiff relied primarily on: (1) the existence of several personal checks made payable to the Defendant totaling $250,000.00; (2) the fact that the Defendant responded to the Plaintiff's April 4th letter with a written correspondence indicating that she would reimburse the Plaintiff for the total amount of $250,000.00; and (3) the fact that the Defendant actually returned $1,000.00 to the Plaintiff on July 9, 1992. However, the Plaintiff readily admits that the alleged loan payments began on October 29, 1990, and immediately followed the Sunset Restaurant meeting which concerned the Plaintiff's possible purchase of the I-Liyang property.

Despite the fact that the transfer of funds closely followed the parties' discussion concerning the purchase of real property, the Plaintiff testified that the transfer of funds constituted a loan from the very beginning. However, as the trial progressed, the Plaintiff admitted that she originally gave the money to the Defendant to obtain an option to purchase the I-Liyang property,[1/] and that the monetary exchange became a loan after it became clear that she could not go through with the purchase. According to the Plaintiff, the parties agreed that the money which was originally meant to secure an option should be considered a loan because the I-Liyang property was under probate.

Not only does the Court find sparse evidence of a loan in the record, but the self-impeaching testimony of the Plaintiff makes her loan theory entirely disingenuous. After trial the Plaintiff herself seemed to abandon hope for her loan theory:

> The [$250,000.00 and $15,0001 amounts were given by Plaintiff to Defendant for the following reasons: (a) Defendant was her friend and she needed help with the construction of her new building; and, (b) *Plaintiff was **hoping that Defendant will consider giving her and Dr. Hocog the option to purchase Defendant's property.***

[1/] The prelude to this admission came two months prior to trial during the Plaintiff's deposition:

> Attorney for Defendant: Do you have any documents of any kind -- well, in what form did you disburse the proceeds of the $250,000.000 loan to Margarita Tenorio?
> Guadalupe Manglona: Actually it's like a down payment or an option to purchase her property, yes.
> Attorney for Plaintiff: That won't do.
> Attorney for Defendant: Oh, please don't stop her. She is telling the truth.
> Attorney for Plaintiff: Of course she is going to tell the truth, but that wasn't--
> Attorney for Defendant: Please continue.

Deposition of Guadalupe Manglona at 17 (Aug. 17, 1994) (*Plaintiff's Dep.*)

Plaintiff's Findings at 3 (emphasis added). Although the Defendant did indicate an intent to return the Plaintiff's money, and in fact did return $1,000.00, the Court views her actions as an admission that she personally felt that she had no right to keep the $250,000.00. Accordingly, the Court finds that the $250,000.00 transfer was not a loan.

Although the Defendant contends that the Court must enter judgment in her favor because the Plaintiff only pled a loan theory, the Court will maintain jurisdiction over this dispute for two reasons. First, the Court is convinced the circumstances presented in this case fall within the domain of Rule 15(b) of the Commonwealth Rules of Civil Procedure and the ***Estate of Taisacan*** v. *Hattori* decision entered by our Supreme Court ***Estate of Taisacan*** v. ***Hattori,*** Appeal No. 92-031 ***slip op.*** at 1 ***(N.M.I.*** Aug. 9, 1993). Second, law of equity entreats the Court to explore the theory of quasi-contract and the possibility that the Defendant has been unjustly enriched with the Plaintiff's money.

B. Trial Court's Duty under Rule 15 of the Comm. R. Civ. P. and TAISACAN

Rule 15 of the Commonwealth Rules of Civil Procedure states:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; ***but failure so to amend does not affect the result of the trial of these issues.*** If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admissions of such evidence would prejudice him in maintaining his action or defense upon the merits.

Comm. R Civ. P. Rule 15(b).

The circumstances presented in the case at bar fill squarely within Rule 15(b). The Plaintiff's complaint only alleges a cause of action based on a loan theory which, as the Court has found, is not supported by the evidence. Nevertheless, the Plaintiff has alleged, albeit unclearly, that the parties

attempted[2/] to enter into either an oral land contract or an oral option contract concerning the purchase of the I-Liyang property and that the purchase or option to purchase was not possible for several reasons. For example, the Plaintiff has testified that the monetary exchange "was like a down payment or an option to purchase [Defendant's] property." *Plaintiff's Dep.* at 17. During the trial, the Plaintiff admitted that she gave the Defendant money to pbtain an option to purchase the I-Liyang property. However, the Plaintiff went on to express her misconception that the option to purchase acted like a down payment for an actual purchase agreement. In order to dispel the evidence that an intended purchase agreement or option to purchase ever occurred, the Plaintiff points out that no signed document exists to memorialize the alleged agreements, in violation of the Commonwealth's Statute of Frauds. Plaintiff's Trial Brief at 12. In addition, although the Defendant highlighted evidence that the alleged land transaction failed due to circumstances controlled by the Plaintiff[3/], the Plaintiff's testimony explains other circumstances, controlled by the Defendant, which made the exercise of her option impossible. ***See Part I supra*** at 2-3.[4/]

Rule 15(b) of the Commonwealth Rules of Civil Procedure mirrors Federal Rule 15(b). Federal Rule 15(b) procedures for allowing ***amendments to conform to the evidence*** were put in place "to avoid the tyranny of formalism" and eliminate harsh rulings which resulted from the practices of prior courts which refused to consider evidence that was at variance with allegations in the pleadings. 6A WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, § 1491, pp. 4-8 (1990) (WRIGHT & MILLER). Rule 15(b) also acts to minimalize the inequities that can result from the relative pleading skills of counsel. *Id.* According to Rule 15(b), a court can ***sua sponte*** direct an amendment of the pleadings to include issues raised at trial if the parties have expressly or impliedly consented to the adjudication of the issues. ***Id.*** at § 1493, pp. 15-18.

[2/] To the extent that this was an attempted land contract or option contract, the record contains substantial evidence that the contractual terms lacked the specificity (purchase price, payment schedule etc.) necessary to give rise to a contractual obligation.

[3/] The record contains some evidence that Plaintiff had recently been deemed not of Northern Mariana decent and no longer had adequate funds to complete the purchase.

[4/] The record contains some evidence that at the time of the transaction between the parties, the I-Liyang property was tied up in probate and/or currently being leased to other tenants.

The decision whether an issue was tried with the express or implied consent of the parties is a matter entrusted to the sound discretion of the trial court, and its finding in this regard will not be disturbed on appeal in the absence of an abuse of discretion. Bragg. v. Marion, 663 P.2d 505, 507 (Wyo. 1983) citing FEDERAL PROCEDURE, L.ED. § 62:289 (1981). In the Bragg decision, plaintiffs in a quiet title action appealed the trial court's refusal to allow them to amend their pleadings with an action in ejectment to conform to the evidence. *Id.* at 506. The Supreme Court of Wyoming reversed and remanded the matter holding that the question of whether the parties had expressly or impliedly litigated an action in ejectment was best left for the trial court's determination. Id.

Having read the *Bragg* decision and others like it, the Court would otherwise be inclined to allow the parties to brief and argue the issue of whether the parties expressly or impliedly consented to litigate the underlying issues concerning the attempted oral land contract or option contract concerning the purchase of the I-Liyang property and the issue of impossibility. However, the Court must heed the directives of the Taisacan decision.

In Taisacan, the Plaintiff appealed an adverse judgment entered by the Superior Court in an encroachment action. Estate of Taisacan v. Hattori, Appeal No. 92-031 slip op. at 1 (N.M.I. Aug. 9, 1993). Although the Supreme Court agreed with the trial court's determination that no encroachment had occurred, the Court went on to explain that the parties, as well as the trial court, had proceeded through the trial with an incorrect assumption that the Plaintiff's claim was an encroachment claim Taisacan at 8. Citing Rule 15 of the Commonwealth Rules of Civil Procedure, the Court stated:

> This case is instead an action to quiet title, that is an action to resolve a boundary dispute resulting from an allegedly erroneous survey; it is not an encroachment case. Although the Plaintiff's complaint alleges only an encroachment cause of action which is not supported by the evidence, the parties did litigate the underlying *boundary* dispute issue . . . . The [Plaintiff's] failure to technically plead a quiet title claim for relief does not preclude the Court from granting declaratory relief which resolves the boundary dispute between the parties.

Id. (emphasis added). As evidence of the Taisacan plaintiff's litigation of the underlying, though unstated, action to quiet title, our Supreme Court quoted the transcript of the trial as well as the plaintiff's trial brief to expose the underlying issue. Id. Specifically, the Supreme Court honed in on defense counsel's statement that "the dispute . . . is basically a boundary dispute," and the plaintiff's brief

acknowledging a boundary dispute. Rather than remanding the matter to the trial court for an "express or implied consent" determination consistent with Rule 15(b), the Supreme Court, citing only these two statements, proceeded to decide the underlying boundary dispute. In a footnote, the Supreme Court went on to explain that the trial court's proper response to such unusual situations where the parties litigate, but fail to plead, the true cause of action implicated by a dispute is to allow the plaintiff "to amend [his or her] complaint to conform to the evidence in order to assert a cause of action [pursuant to] Commonwealth Rule of Civil Procedure 15." *Taisacan* at 8, fn. 4. The Supreme Court neither cites Rule 15(b), nor mentions the need for an express or implied consent determination by the trial court before an amendment, let alone a determination, can take place. Rather, the Supreme Court cites *Manglona v. CNMI Civil Serv. Comm.*, 3 *N.M.I.* 243 (1992)[5/] for the proposition that "obtain[ing] a ruling from the trial judge regarding the boundary dispute would unjustifiably raise form over substance and waste judicial resources." ***Id.***

Although the Supreme Court in *Taisacan* did not address Rule 15(b) per se, the fact that it referred to Rule 15 in a footnote leads the Court to believe that the *Taisacan* Court was conscious of the usual appellate practice of remanding cases like *Taisacan* to the trial court for an express or implied consent determination. Having decided to reach the mispleaded, underlying issue in *Taisacan* and having suggested that future Superior Court judges should sua sponte grant plaintiffs 'leave to amend [their] complaints] to conform to the evidence. . ." when they spot issues argued but mispleaded, the Supreme Court has effectively decided to break away fiom the federal traditions of Rule 15 practice by removing the trial court's discretionary responsibility to determine express or implied consent to litigate. In other words, if during the course of a trial the parties begin to argue a mispleaded issue which may be dispositive, the trial court has a duty to flag the mispleaded issue for the parties and must grant the plaintiff leave to amend his complaint without the benefit of an express or implied consent determination.

Essentially, a trial court must act as a bloodhound, which in addition to assessing the merits of a plaintiff's expressed claim, must ferret out underlying claims which, although not expressly stated by

---

[5/] The *Manglona* decision used the "form over substance" doctrine to excuse the plaintiff for merely mislabeling his complaint, and did not involve a consent to litigate determination.

a plaintiff, become apparent through the testimony and arguments presented at trial. Although the breadth of a trial court's obligations as announced by our Supreme Court places an additional onus on the trial court, and tends to relieve plaintiffs' attorneys of possible malpractice claims, the Court can only presume that the *Taisacan* decision represents a policy statement tailored for a jurisdiction where it is notoriously difficult for practicing attorneys to obtain malpractice insurance. To be sure, the Court finds it very disturbing that Mr. Wiseman failed to amend his client's original complaint to include these claims even after their existence became painfully obvious to all concerned (including himself).[6/] His narrow pleading and his obtuse trial practice have not served his client. Nevertheless, the *Taisacan* Court's application of Rule 15(b) make it mandatory that the Court allow the Plaintiff to amend her complaint to conform to the evidence.

If the parties were afforded the opportunity to argue the existence of express or implied consent, the result might, or might not be different. In addition to evidence presented by the parties, the Court would consider several factors which bear on consent. For example, at one point during trial, Mr. Mitchell explained to the Court that his client had not *impliedly* consented to litigate any issues other than the loan issue. However, throughout the trial, Mr. Mitchell elicited testimony raising several issues in support of an alleged land transaction. The Court is aware that the Defense originally raised the land transaction issue in its answer to disprove Plaintiff's loan theory. However, during Plaintiff's deposition and throughout trial, Mr. Mitchell extracted admission after admission from Plaintiff discrediting her loan theory and bolstering his client's theory about an attempted land transaction. In fact, Counsel for both parties spent more time at trial probing into the nature of the unalleged attempted land transaction than they did on Plaintiff's alleged loan theory.

C. Eauitable Relief Argued

The Superior Court has original jurisdiction over all civil actions in law and in equity. 1 CMC §

6/ The Court is equally puzzled by Mr. Mitchell's decision to argue in favor of a land transaction without filing a counterclaim for specific performance. In short, Counsel for the Defense has not offered the Court a single legal or equitable theory to satisfy the Court that his client is the rightful possessor of the $250,000.00 at issue in this case.

3202. Where law and equity are merged under a jurisdiction's practice and procedure, the trial court will exercise its equitable powers to reach a fair and just result. 713 *Co.* v. Jersey *City*, 227 A.2d 530 (1967); *Rau v.* New Hampshire Div. of *Welfare*, 335 A.2d 657 (N.H. 1975). Although the Plaintiff submitted a narrowly drafted complaint, the Plaintiff's trial brief indicates her intention to establish that the Defendant had no right to retain the $250,000.00 which she received. Variations on the following argument appear throughout Plaintiff's trial brief:

> Defendant claims that she received the amount of $250,000.00 from Plaintiff in consideration of a land transaction between the parties, which, however, did not push through. Nowhere in the pleadings, records and file in this case does Defendant assert a definite connection between the amount of $250,000.00 and the purported land transaction nor does she assert any right and the source of such right to retain the $250,000.00after the land transaction did not push through.

Plaintiff's Trial Brief at 4-5 (emphasis added). This argument loosely articulates the equitable doctrine of unjust enrichment. Unjust enrichment of a defendant occurs when he has and retains money or benefits which injustice and equity belong to another. BLACK'S LAW DICTIONARY at 1705 (4th Ed. 1968), citing Hummel v. *Hummel*, 14 N.E.2d 923,927 (Ohio 1938).

Although a court of equity cannot grant relief without proper pleadings in writing, Lindsey v. Reeves, 37 So.2d 501, 504 (Ala. 1948), a mispleading in the matter of form in cases of equity can never be allowed to prejudice any party provided the case made is right in substance and supported by proper evidence. Morgan v. *Layne*, 56 S.W.2d 161, 162 (Tenn. 1933); Dewey v. *Jenkins, App.*, 567 S.W.2d 382, 386 (Mo.App. 1978); see also *Smith* v. Bryant, 82 So.2d 411 (Ala. 1955) (equity courts interested in substantive justice rather than mere technicalities of proceeding).

D. How the Parties Shall Proceed

Pursuant to Rule 15 (b) and the Taisacan decision, this Court GRANTS the Plaintiff leave to amend her complaint to conform with the evidence adduced at trial. Pursuant to the principles of equity, this Court also GRANTS Plaintiff leave to amend her complaint to state a claim for equitable relief in the form of unjust enrichment. The amended complaint shall be filed with the Court no later than ninety (90) days after the issuance of this Decision. The Defendant shall have the opportunity to answer and, if she

so desires, file any cross-claims to which the facts of this case may give rise. However, all such submissions must be with the Court within twenty (20) days after her receipt of the amended complaint.

Within sixty (60) days of the issuance of this Decision, the parties are further Ordered to split the costs of providing themselves and the Court with a transcript of the bench trial beginning November 21, 1994. The Court is confident that the testimony taken at the trial contains a considerable amount of evidence which the parties will find useful in addressing the remaining issues in this case. Only after the parties have certified to the Court that they have reviewed the transcript, will the Court entertain any motions for a supplemental hearing. The Court is deeply distressed by the actions of both counsel in this matter and, therefore, Orders both counsel to attend a status conference with the Court within thirty (30) days of this Decision ***in the company of their clients.***

V. CONCLUSION

For the Foregoing reasons, the Court finds that the $250,000.00 monetary transfer between the Plaintiff and the Defendant is not a loan. Further, the Court retains jurisdiction over this matter and grants the Plaintiff leave to amend her complaint in a manner consistent with this opinion pursuant to the ***Taisacan*** decision and principles of equity.

So ORDERED this 31st day of July, 1995.

MARTY W.K. TAYLOR, Associate Judge