

FOR PUBLICATION

Appeal No. 01-036

**IN THE SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

HIGHSMITH & O'MALLAN, P.C.,

Plaintiff-Appellant,

v.

PATRICK LEON GUERRERO & PACIFIC TECHNOLOGY, INC.,

Defendant-Appellee.

OPINION

Submitted on the briefs on June 5, 2002

Decided February 7, 2003

Cite as: *Highsmith & O'Mallan, P.C. v. Guerrero*, 2003 MP 4

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice.

DEMAPAN, Chief Justice:

¶1 Appellant Highsmith & O'Mallan, P.C. [hereinafter Highsmith] appeals the trial court's denial of its motion to modify an Order in Aid of Judgment. We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and 1 CMC § 3102(a). We reverse.

ISSUE PRESENTED AND STANDARD OF REVIEW

¶2 Did the trial court err when it denied Highsmith's motion to modify the Order in Aid of Judgment? We review the trial court's decision for abuse of discretion. *Triple J. Saipan, Inc. v. Rasiang*, 1999 MP 7, N.M.I. 232. Under the abuse of discretion standard, we will uphold the trial court's ruling unless it was based on a clearly erroneous finding of material fact or the trial court did not apply the correct law. *Pangelinan v. Itaman*, 4 N.M.I. 114, 118 (1994).

FACTUAL AND PROCEDURAL BACKGROUND

¶3 The facts in this case are undisputed. On February 24, 2000, the Guam Superior Court awarded Highsmith a \$20,990 judgment by default against Patrick Leon Guerrero and Pacific Technology, Inc. [hereinafter Guerrero] for unpaid legal services. On September 11, 2000, a copy of the Guam judgment was filed with the Commonwealth Superior Court and on October 31, 2000, Highsmith moved for an Order in Aid of Judgment to enforce that judgment. Upon stipulation of both parties, on April 2, 2001, the trial court ordered Guerrero to pay the judgment at the rate of \$25 biweekly.

¶4 After entering into the stipulated order, Highsmith became aware that Guerrero's

financial resources were significantly higher than had been disclosed previous to entering into the stipulation.¹ Based on this new information, on June 14, 2001, Highsmith moved the trial court for modification of the Order in Aid of Judgment. The trial court denied this motion and Highsmith timely appeals.

ANALYSIS

¶5 Highsmith moved to modify the Order in Aid of Judgment, pursuant to 7 CMC § 4207,² on the grounds that “the [\$25] biweekly payments failed to cover both the accruing interest and principal, and that [Guerrero] had failed to disclose other financial resources that could be used to pay the Judgment more quickly.”³ Excerpts of Record [hereinafter E.R.] at 25-26. On October 2, 2001, the trial court held a hearing on Highsmith’s motion. Before the hearing, Guerrero was ordered to provide Highsmith and the trial court with a joint income and expense declaration. At the hearing, however, the court inexplicably failed to allow questioning on the income and expense declaration, despite requests from Highsmith’s attorney for the opportunity to examine on “some matters on the statement which require some clarification.”⁴ E.R. at 23.

¹ “Specifically, it was learned that Mr. Leon Guerrero was married; that his wife was a high-level employee of the Commonwealth Government, making an excellent salary; and that her income, as well as Leon Guerrero’s, were used to pay family expenses.” Opening Br. at 8-9.

² Pursuant to 7 CMC § 4207, “[a]ny order in aid of judgment made under this chapter may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court’s own motion.”

³ Because Highsmith has failed to provide this Court with a copy of its motion to modify the Order in Aid of Judgment, our summary of the arguments contained therein comes from the trial court’s October 9, 2001, Decision and Order.

⁴ The transcript record of this exchange is as follows:

THECOURT: All right, I’ll issue findings of facts. And, the first finding that I find in this case is that Mr. Leon Guerrero has no ability to pay whatever you’re asking for beyond that—

MR. WHITE (Highsmith’s attorney): Your Honor, may I have the opportunity to examine him before the court enters that finding?

¶6 In its Order and Decision, the court held:

Pursuant to 7 CMC § 4207, the court may modify any order in aid of judgment ‘as justice may require.’ The court finds that in the case at hand, justice requires that Defendant (Guerrero) not bear the extreme burden of being brought to court to defend a motion to modify an Order in Aid of Judgment when there is no basis for such motion.

E.R. at 26.

¶7 The trial court issued findings of fact to support its conclusion, including the finding that “at the time the parties signed the stipulation, [Highsmith’s] attorney had full knowledge of [Guerrero’s] financial condition and had determined that [Guerrero] could only pay the limited sum of \$25.00 biweekly,” and the (seemingly inconsistent) finding that Highsmith’s delayed discovery of Guerrero’s true financial status was a result of Highsmith’s own inadequate investigation, rather than Guerrero’s failure to disclose. E.R. at 25-26.

¶8 The trial court’s finding that Highsmith had full knowledge of Guerrero’s true financial condition at the time the stipulated order was entered into has no basis in the facts. The trial transcript and the parties’ briefs make clear that Highsmith was patently unaware of Guerrero’s true financial condition at the time the stipulated order was entered into, and there is not one piece of evidence supporting a finding to the contrary; even Guerrero, whose position is certainly advanced by the trial court’s finding, argues repeatedly that Highsmith

THE COURT: He filed a financial statement with this court, I assume that that’s a statement that we’ve been trying to get for consideration.

MR. WHITE: That’s correct, Your Honor. I believe that there are some matters on the statement which require some clarification.

THE COURT: I’ll issue findings of facts and conclusions of law which you can appeal, Mr. White, if you want to.

Excerpts of Record at 23-24.

was, in fact, unaware of his true financial condition when the stipulated order was entered into, but that this ignorance was due to Highsmith's own inadequate investigation.⁵

¶9

In this case, because its decision was based on clearly erroneous findings of fact, we must reverse the trial court's determination that Highsmith was not entitled to a modification of the Order in Aid of Judgment.⁶

CONCLUSION

¶10

For the above reasons, we REVERSE the Commonwealth Superior Court's denial of Highsmith's motion for a modification of the Order in Aid of Judgment. We hereby remand for further proceedings consistent with this opinion.

⁵ Guerrero testified at the October 2, 2001 hearing on Highsmith's motion regarding Highland's ignorance of his true financial status at the time the stipulated order was entered into:

Mr. White has many years of experience in dealing with credit and collections, he's probably the top collection attorney on the island and I have a pretty good command of the English language and we sat across from each other for about 30 minutes and he went over my complete financial situation and he asked – I answered every question truthfully and honestly that he asked me and at no time did he ever ask me if I had a spouse, if I was married or anything like that. We agreed to the stipulation.

E.R. at 18.

In his briefs, Guerrero again argues that Highsmith did not know about his true financial status when the stipulated order was entered into:

failed to ask me what he needed to know, and this cannot somehow now be made to be my fault. I had no legal duty to tell him anything, and I was not trying to be sharp. Again, I assumed he would ask what he needed to know, I assumed he knew about my wife, and I did not even think her income was relevant.

Opening Br. at 5.

Guerrero makes a similar point later in his brief when he writes:

Had [Highsmith] asked me about my wife, I would have told him...[T]his case is about providing an incentive to collections attorneys, starting with the most prominent one, to conduct reasonably adequate investigations, such as asking about a spouse's income, *before* they enter into binding stipulations on behalf of their clients.

Opening Br. at 7.

⁶ Guerrero argues that this Court should uphold the trial court's ruling because "[b]asic fairness dictates that my former attorneys [Highsmith] and their counsel are bound to the stipulated order in aid of judgment." Opening Br. at 5. This argument holds no water here, where the trial court based its ruling on a clearly erroneous finding of fact.

SO ORDERED THIS 7TH DAY OF FEBRUARY 2003.

/s/
MIGUEL S. DEMAPAN, CHIEF JUSTICE

/s/
ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

/s/
JOHN A. MANGLONA, ASSOCIATE JUSTICE