FOR PUBLICATION

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

GUADALUPE P. MANGLONA,
Plaintiff/Appellee,

v.

MARGARITA R. TENORIO,
Defendant/Appellant.

Civil Action No. 93-1061
Supreme Court Appeal No. 02-015-GA

OPINION

Cite as: *Manglona v. Tenorio*, 2004 MP 17

Argued and submitted on August 12, 2003
Saipan, Northern Mariana Islands
Decided September 2, 2004

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice;* JESUS C. BORJA, *Justice Pro Tempore;* ANITA A. SUKOLA, *Justice Pro Tempore*

DEMAPAN, Chief Justice:

¶1 Margarita R. Tenorio ("Tenorio") appeals a judgment of $249,000 against her and in favor of Guadalupe P. Manglona ("Manglona") for unjust enrichment. Because the trial court erred in granting leave to amend the pleadings, we REVERSE the trial court judgment.

I.

¶2 Tenorio owns real property on Saipan known as the I-Liyang. She also owns a commercial building on that property.

¶3 In October 1990, Manglona, Tenorio, Dr. Larry Hocog and Tenorio's husband, Dr. Joaquin A. Tenorio, met at the Sunset Restaurant to discuss the purchase of the I-Liyang property. At the close of the meeting, Manglona orally agreed to purchase the I-Liyang property from Tenorio.

¶4 After the meeting, Tenorio received a cashier's check for $100,000 dated October 29, 1990, from Manglona for the I-Liyang property. After this initial payment of $100,000, Manglona continued to make payments to Tenorio. From October 29, 1990, for a period of three months, Tenorio received payments totaling $249,000 from Manglona for the I-Liyang property.

¶5 In 1990, Manglona was the president of Marianas Health Management (dba Saipan Health Clinic). Manglona intended to use the I-Liyang property to house the Saipan Health Clinic, and Dr. Hocog was the principal medical professional. Manglona and Dr. Hocog had a close association. However, in February, 1991, Manglona severed her relationship with Dr. Hocog and the Clinic.

¶6 On April 5, 1991, Manglona informed Tenorio, in writing, that Manglona no longer intended to purchase the I-Liyang property. By letter dated December 24, 1991, Tenorio

informed Manglona that Tenorio would reimburse Manglona when the I-Liyang "property is purchased." Tenorio made a payment to Manglona of $1,000 on July 9, 1992.

¶7 On April 1, 1991, Manglona billed and collected $3,000 rent from Dr. Hocog for the Clinic's use of the I-Liyang property. However, after meeting with Tenorio, Dr. Hocog began paying rent to Tenorio, instead of Manglona, in the amount of $2,000 per month.

¶8 The stipulated total amount in issue before trial was $249,000. The matter was tried in late 1994 on a complaint that sought recovery of the $249,000 on the theory that the money was a loan. Tenorio argued at the trial that the transaction was not a loan but rather a failed loan contract. The trial court found there had been no loan but *sua sponte* gave leave to amend the complaint to allege a theory of unjust enrichment. *Manglona v. Tenorio,* Civ. No. 93-1061 (N.M.I. Super. Ct. July 31, 1995) (Partial Judgment and Order for Status Conference).

¶9 The trial judge was then appointed to the Supreme Court and was replaced by a new judge in this matter. Both parties moved for summary judgment, and the new judge denied the motions and set the matter for a new trial on the unjust enrichment theory. After the second trial, the trial court found for Manglona and awarded her $249,000 on the unjust enrichment theory. *Manglona v. Tenorio,* Civ. No. 93-1061 (N.M.I. Super. Ct. June 10, 2000) (Findings of Fact and Conclusions of Law). This appeal is from that judgment.

II.

¶10 This Court has jurisdiction pursuant to Article IV, Section 3 of the Northern Mariana Islands Constitution and Title 1, Section 3102(a) of the Commonwealth Code.

III.

¶11 Tenorio argues that the trial court erred in granting leave to amend the complaint to allege unjust enrichment after the first trial. We review the trial court's decision to grant such

leave under an abuse of discretion standard. *Save Lake Washington v. Frank*, 61 F.2d 1330, 1339-1340 (9th Cir. 1981). Because it was improper in this situation for the trial court to grant leave to amend the pleadings to allege unjust enrichment, we agree with Tenorio that the trial court abused its discretion here.

¶12 The trial court granted leave to amend pursuant to Rule 15(b) of the Commonwealth Rules of Civil Procedure. This rule provides that:

> 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 to so amend does not affect the result of the trial of these issues.

Com. R. Civ. P. 15(b).

¶13 The trial court found that the issue of unjust enrichment was tried by the consent of the parties. The court held that the circumstances of this case fall squarely within Rule 15(b) because the parties consented to try the unjust enrichment claim based on a failed land sale. We disagree.

¶14 The trial court, in determining that the unjust enrichment claim was tried by the consent of the parties, stated:

> [T]hroughout the trial, [Tenorio] elicited testimony raising several issues in support of an alleged land transaction. The Court is aware that [Tenorio] originally raised the land transaction issue in its answer to disprove [Manglona's] loan theory. However, during [Manglona's] deposition and throughout trial, [Tenorio] extracted admission after admission from [Manglona] discrediting her loan theory and bolstering [Tenorio's] theory about an attempted land transaction.

Manglona v. Tenorio, Civ. No. 93-1197 (N.M.I. Super. Ct. July 31, 1995) (Partial Judgment and Order for Status Conference at 10).

¶15 The trial court concluded that since Tenorio introduced evidence and elicited admissions to prove that the transaction at issue was a failed land sale instead of a loan, Tenorio consented

to trying the case again on a theory that the transaction was a failed land sale that entitled Manglona to unjust enrichment damages. The trial court's reasoning, however, is flawed. In the first trial, Tenorio did indeed introduce evidence and elicit admissions to prove that the transaction was a failed land sale. However, at the second trial, it was Manglona, and not Tenorio, arguing that the transaction was a failed land sale (to show that she was entitled to unjust enrichment damages). In effect, the evidence introduced by Tenorio at the first trial became ammunition against her in the second.

¶16 In this way, Tenorio could not have reasonably thought that the evidence she was introducing on a failed land sale in the first trial would be used to try an unjust enrichment claim in a second trial, so there was no consent to try this issue. She only understood such evidence to be refuting Manglona's loan theory claim. If the parties were indeed trying the unjust enrichment claim in the first trial, Tenorio and Manglona would have been on opposite sides of this argument.

¶17 Tenorio was arguing for a contract theory in the first trial and then was forced to argue against a contract theory in the second. Similarly, Manglona argued against the contract theory in the first trial, opting instead to further a loan theory, while in the second trial she asserted a contract theory. Therefore, this is not a situation where the parties are litigating a claim that the Plaintiff mistakenly left out of the pleadings. In this case, the amendment left the parties inverting their respective sides of the arguments, leading to great unfairness.

¶18 The only reason Tenorio introduced the evidence on unjust enrichment at the first trial was that she was trying to defeat the loan theory claim, not an unjust enrichment claim. She would have introduced much different evidence if trying to defeat an unjust enrichment claim. The evidence she introduced at the first trial helped Manglona's unjust enrichment claim at the

second trial, not defended against it. Not only would Tenorio have crafted a much different defense if on notice of possible unjust enrichment claims, it is entirely possible that Tenorio's counsel would have urged his client to take a different course to resolution, such as settlement.

¶19 The problem with the amendment is that it actually resulted in a grave injustice to Tenorio. Tenorio was doing everything possible to defeat the claim that the transaction in question was a loan. In doing so, she brought forward evidence to establish that the transaction was really a quasi-contract. She did such a good job in bolstering this theory that the trial court totally believed her and concluded that Manglona should have pled unjust enrichment instead.

¶20 We cannot expect the attorneys to be prescient. The litigants are doing their best to defeat the arguments made by the other side and cannot anticipate claims that the court may come up with after the trial.

¶21 Manglona's assertion that Tenorio consented to trying the unjust enrichment claim because she refrained from objecting to evidence introduced on the attempted land sale is sophistry. Tenorio refrained from objecting because it was Tenorio herself introducing the evidence, as this evidence was bolstering her defense.

¶22 The trial court's decision also relied on *Estate of Taisacan v. Hattori*, 4 N.M.I. 26 (1993). *Estate of Taisacan* involved a land boundary dispute, and the plaintiff alleged in the pleadings that the defendant was encroaching on the plaintiff's land. The Court found no evidence of encroachment, but still granted declaratory relief to quiet the title because the parties below had vigorously litigated where the property boundary should be located. The Court held that the technical mistake in the pleadings did not preclude the Court from settling the boundary dispute that the parties had actually litigated in the trial court.

¶23 The present situation is inapposite to *Estate of Taisacan*. Here, the parties did indeed litigate whether the transaction was a failed contract, but they were on opposite sides of the issue in the second trial from the first. This is not a case of a technical mistake where the trial court simply allowed amendment of the pleadings to accurately reflect what the parties actually litigated at trial. The trial court here took Tenorio's defense, the theory Manglona argued against at trial, and gave leave to amend the pleadings to make this defense a new claim for Manglona. This is not an accurate reading of *Estate of Taisacan*.

¶24 There was neither express nor implied consent by the parties to try a claim of unjust enrichment. As such, the Superior Court abused its discretion when it granted leave to amend the complaint to conform to the evidence and to amend her complaint. *Patelco Credit Union v, Sahni*, 262 F.3d 897 (9th Cir. 2001); *Deere & Co. v. Johnson*, 271 F.3d 613 (5th Cir. 2001); and *Brown v. Cooper Clinic, P.A.*, 734 F.2d 1298 (8th Cir. 1984).

¶25 Since our decision on this issue completely resolves the appeal, we do not need to address the remaining issues on appeal.

IV.

¶26 Accordingly, the trial court's decision to allow amendment of the pleadings is REVERSED, and the judgment on the first trial for Tenorio shall stand.

SO ORDERED THIS 2nd DAY OF SEPTEMBER 2004.

/s/_____
MIGUEL S. DEMAPAN, Chief Justice

/s/_____
JESUS C. BORJA, Justice Pro Tempore

/s/_____
ANITA A. SUKOLA, Justice Pro Tempore