

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.

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

DENIAL OF PETITION FOR REHEARING

Cite as: *Manglona v. Tenorio*, 2004 MP 21

Petition submitted on September 16, 2004
Saipan, Northern Mariana Islands
Decided September 30, 2004

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

PER CURIAM:

¶1 Appellee Guadalupe P. Manglona (“Petitioner”) petitions this Court for rehearing, claiming that our Opinion, *Manglona v. Tenorio*, 2004 MP 17, was based on our misunderstanding of the trial court’s findings. We have reviewed the trial court’s Partial Judgment and Order for Status Conference and we find no law or fact that we overlooked or misapprehended. Accordingly, we DENY this petition.

I.

¶2 Petitioner claims that, contrary to this Court’s conclusion, the trial court had not determined whether the parties had expressly or impliedly consented to trying the issue of unjust enrichment.

¶3 However, the trial court rested its judgment on its finding of consent. In fact, the trial court concluded as follows: “[p]ursuant to Com. R. Civ. P. 15(b) . . . this court GRANTS the plaintiff leave to amend her [C]omplaint” *Manglona v. Tenorio*, Civ. No. 93-1061 (N.M.I. Super Ct. Jul. 31, 1995) (Partial Judgment and Order for Status Conference at 11). Rule 15(b) provides, “[w]hen 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.” Here, the trial court made a finding of consent by the parties, and as we discussed previously in *Manglona v. Tenorio*, 2004 MP 17 ¶ 13, the trial court’s reasoning was flawed. There was neither express nor implied consent by the parties to try a claim of unjust enrichment, and as such, the trial court abused its discretion when it granted leave to amend the complaint.

II.

¶4 For the reasons stated above, Petitioner has failed to show any points of law or fact that this Court overlooked or misapprehended. The Petition for Rehearing is hereby DENIED.

SO ORDERED THIS 30th DAY OF SEPTEMBER 2004.

/s/ _____
MIGUEL S. DEMAPAN
Chief Justice

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

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