Dalton v. Bank of Guam, 11 ROP 212 (2004)

MARGARITA B. DALTON,
Appellant,

v.

BANK OF GUAM,
Appellee.

CIVIL APPEAL NO. 03-058
Civil Action No. 01-113

Supreme Court, Appellate Division
Republic of Palau

Argued: June 11, 2004
Decided: September 10, 2004

Counsel for Appellant: Mark Doran

Counsel for Appellee: David F. Shadel

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

MICHELSEN, Justice:

Appellant Margarita Dalton ("Dalton") filed this appeal challenging the trial court's decision to grant summary judgment to the Bank of Guam ("the Bank"), arguing that real estate foreclosures may only be ordered after ⊥213 a plaintiff has called witnesses to testify in open court. Because we believe that such testimony is not required in cases where the defendant has not filed any opposition to a motion for summary judgment, we deny the appeal.

BACKGROUND

In 2001, the Bank sued to enforce the terms of Dalton's promissory note for $150,000, including foreclosures on a mortgage on Dalton's interest in a land use agreement, and other chattel mortgages. She timely answered. The Bank subsequently filed a motion for summary judgment. Dalton failed to respond. On September 23, 2003, the trial court granted the Bank's motion, instructed it to suggest language for a proposed judgment, and gave Dalton seven days to object to the form of the proposed judgment. Dalton then filed a motion for relief from judgment pursuant to ROP R. Civ. P. 60(b), which the trial court denied October 20, 2003. On November 13, 2003, the trial court entered judgment in favor of the Bank in the amount of $238,400.90, and

foreclosed the mortgages. On December 15, 2003, Dalton appealed "the final judgment entered in this matter on November 13, 2003, and all preceding orders to obtain judgment."

DISCUSSION

The Bank's first argument is procedural. It suggests that because Dalton is appealing the Court's denial of her Rule 60(b) motion, the appeal should be dismissed because it challenges an interlocutory order, and "there can be no appeal from such orders." [1] Yet, Dalton unquestionably appealed from "the final judgment entered in this matter." We therefore conclude the case was properly appealed.

Having determined that the appeal is properly before us, we next consider what issues may be raised by an appellant who did not oppose a summary judgment motion. Our standard for review of a grant of summary judgment is now a familiar one. "We review the trial court's entry of summary judgment *de novo*, applying the same standards that govern at the trial level." *Dilubech Clan v. Ngeremlengui State*, 8 ROP Intrm. 106, 108 (2000). This review "includes both a review of the determination that there is no genuine issue of material fact, and whether the substantive law was correctly applied." *ROP v. S.S. Enters., Inc.* , 9 ROP 48, 51 (2002). In summary, review of a Trial Division decision to grant summary judgment is "plenary." *Akiwo v. ROP*, 6 ROP Intrm. 105, 106 (1997). Here, Appellant failed to contest the factual averments of the Bank or object to the admissibility of the documents submitted in the Trial Division, and consequently she has waived all factual issues. However, Dalton may still argue that, assuming the correctness of the facts as presented by the Bank, the trial court failed to properly apply the substantive law.

Dalton's argument (made in the trial court in the context of a motion to vacate the judgment) is that the provisions of 39 PNC § 664 require that the trial court hear testimony from witnesses in open court in foreclosure actions, even when the matter is uncontested. Because there was no such testimony taken in this case, Dalton argues that the procedure was deficient as a matter of law and that this Court should remand the ⊥214 case so that appropriate witnesses may be called.

We disagree with Dalton's suggested reading of the statute. Section 664 provides:

> If, upon trial in a foreclosure action, the court shall find the facts set forth in the complaint to be true, the court shall ascertain the amount due to the plaintiff upon the underlying debt or obligation, including interest, costs, and attorney's fees, and shall render judgment for the sum so found due, and order that the same be paid into court within a period of three months from and after the date on which the order is made.

We construe statutory language consistent with the meaning intended by the legislature. *Pierantozzi v. GMHP Assocs.* , 8 ROP Intrm. 288, 289 (2001). Words and phrases as used in the

[1] See *ROP v. Black Micro Corp*., 7 ROP Intrm. 46 (1998) for a discussion of this Court's "final judgment" rule.

Palau National Code "shall be read with their context and shall be interpreted according to the common and approved usage of the English language." 1 PNC § 202. A "trial" is a

> judicial examination and determination of issues between parties to action, whether they be issues of law or fact, before a court that has jurisdiction. A judicial examination, in accordance with law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has proper jurisdiction.

Black's Law Dictionary 1504 (6th ed. 1990) (citation omitted). In other words, it is "the examination of a cause before a court of law, often involving issues both of fact and of law." *Random House Webster's College Dictionary* 1423 (1996). Because such a judicial determination of the facts and law occurred in the Trial Division, there was a "trial" in this case.

Using this standard definition is consistent with the clear intent of § 664: that no judgment by default be entered in a foreclosure action and that there be a judicial finding that both the facts and the law support entry of judgment. Such a judicial finding can be made by a review of the pleadings and documents of record where, as here, defendant does not contest any factual assertions of the plaintiff. In such cases, the law does not require the empty exercise of testimony from the witness stand to recite the undisputed facts. Accordingly, for purposes of § 664, the trial requirement was satisfied in this case.

The result we reach here is hardly novel. Courts considering the meaning of the word "trial" have broadly interpreted the term to encompass most forms of judicial consideration of the evidence, and they hold that when a court hears and determines issues of law for the purpose of determining the rights of the parties, it is considered a trial. *McDonough Power Equip. Co. v. Superior Ct.*, 503 P.2d 1338, 1340-42 (Cal. 1972) (holding that court granting demurrer and entering judgment constitutes a trial because parties had the opportunity to litigate the merits). "The meaning of the term 'trial' is not restricted to jury or court trials on the merits, but includes other procedures that 'effectively dispose of the case.'" *Mary Morgan, Inc. v. Melzark*, 57 Cal. Rptr. 2d 4, 7 (Cal. 1996) (internal quotations and citation omitted). An order granting summary ⊥215 judgment constitutes a trial because the parties have received a full consideration of the merits, factual and legal, by the Court. *Royster Co. v. Eastern Distribution Inc.*, 389 S.E.2d 863, 864 (S.C. 1990) (holding that a grant of summary judgment is a trial); *see also Valenzuela v. Brown*, 919 P.2d 1376, 1378-79 (Ariz. 1996) (same); *Kapusta v. DePuy Mfg. Co.*, 229 N.E.2d 828, 830 (Ind. App. 1967) (same); *Storey v. Shane*, 384 P.2d 379, 382 (Wash. 1963) ("[A]ny proceeding which, under the rules of procedure, may produce in due course a final adjudication on the merits is a trial or hearing.").

CONCLUSION

For the reasons stated above, we deny the appeal in all respects. Appellant's request for sanctions is denied.