

**SURANGEL WHIPPS d/b/a SURANGEL
& SONS CO.,
Appellant,**

v.

**JERRY NABEYAMA,
Appellee.**

CIVIL APPEAL NO. 08-030
Civil Action No. 07-280

Supreme Court, Appellate Division
Republic of Palau

Decided: October 21, 2009

[1] **Civil Procedure:** Attorney’s Fees

Deciding whether post-judgment attorney fees are warranted is one of the essential discretionary functions of the Trial Division.

[2] **Judgments:** Stipulations

Courts have broad discretion in determining whether to hold a party to a stipulation, and may set aside a stipulation where enforcement would not be conducive to justice. A stipulation may be binding on the parties, but it is not binding on the court.

[3] **Appeal and Error:** Pro Se Litigants

There is a long standing, and oftentimes unspoken, tradition in the United States and here in Palau of courts employing a heightened duty to its pro se litigants. We find that this tradition serves the interest of justice in helping to ensure meaningful access

to the courts of Palau to all Palauan citizens, regardless of their socio-economic status.

Counsel for Appellant: David Shadel

Counsel for Appellee: Pro se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

Appellant, Surangel & Sons (“Appellant”), by and through its attorney David Shadel, appeals a judgment entered by the Trial Division in an action to recover credit card debt. Although judgment was entered in favor of Appellant, Appellant now challenges the Trial Division’s deviation from the parties’ stipulation. Specifically, Appellant challenges the Trial Division’s deletion of certain language regarding post-judgment attorney fees. For the reasons that follow, we AFFIRM the Judgment of the Trial Division.

BACKGROUND

Appellant filed its complaint against Appellee to enforce payment of Appellee’s debt under his October 2002 Customer Credit Card Application and Credit Agreement. The agreement stated in relevant part,

Applicant will pay . . .
reasonable attorney’s fees

(including without limitation, at trial and on appeal) that may be incurred in any manner of collection of any account past due.

The complaint was filed on September 26, 2007, for the principal amount of \$6,007.55, interest of \$4,368.37, plus attorneys fees and court costs. Then, on October 18, 2007, Appellant and Appellee entered into and filed a stipulation with the Trial Division, which stated,

Judgment is now entered in favor of plaintiff and against defendant for \$10,913.82 (\$6,007.55 of principal, \$4,415.77 of prejudgment interest, \$440.00 of attorney fees, and court costs of \$50.50) as of October 12, 2007, **and further daily interest of \$2.96, costs, and attorney fees thereafter.** Such judgement's unpaid balance of \$6,007.55 shall continue to earn 18% annual interest, and the rest shall earn annual interest at the maximum rate allowed by law (currently 9%). **Defendant is liable for and will pay plaintiff's further reasonable attorney fees herein at the rate of at least \$137.50 per hour.**

The Trial Division entered judgment based on that stipulation but did not award all of the

attorney fees contained in the stipulation. Instead, the Trial Division simply removed the bolded language above pertaining to post-judgment attorney fees, but otherwise substantially included the rest of the language stipulated by the parties. This appeal followed.

STANDARD OF REVIEW

We review the amount of attorney fees awarded by the trial court under the abuse of discretion standard. *W. Caroline Trading Co. v. Philip*, 13 ROP 28 (2005). Appellant attempts to characterize the issue on appeal alternately as (1) a review of a trial court's interpretation of a contract, or (2) a review of a denial of due process. In either proposed situation, this Court would be bound to exercise a *de novo* standard. *See NECO v. Rdialul*, 2 ROP Intrm. 211, 217 (1991) (holding "we review a lower court's interpretation of a contract *de novo*."); *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 21 (1994) (holding "where factual issues are not in dispute, the denial of due process is a pure question of law that this court reviews *de novo*.") We reject both of Appellant's characterizations.

In his first argument, Appellant asserts that the parties freely entered into a stipulation, which is akin to a contract, and which provided that "Defendant is liable for and will pay plaintiff's further reasonable attorney fees herein at the rate of at least \$137.50 per hour." When the Trial Division removed the language of the Stipulation from its own Judgment, the Appellant asserts that the removal was tantamount to an interpretation of the contract.

In his second argument, Appellant states that “[d]ue process . . . requires a court . . . to provide notice to be heard before sanctions are imposed . . .” *Martin v. Brown*, 63 F.3d 1252, 1262 (3rd. Cir. 1995). Thus, Appellant argues that the Trial Division’s *sua sponte* deletion of language in the stipulation, without providing the parties an opportunity to brief the issue, was a sanction of sorts. Thus, the Trial Division’s failure to allow a hearing on the matter amounted to a denial of Appellant’s procedural due process.

We disagree on both counts. The Trial Division made no findings of law or fact regarding the Stipulation. Rather, it gave effect to the stipulation in large part, issuing a Judgment which even included \$440.00 of attorney fees. Even though the stipulation can conceivably be analogized to a contract, to suggest that the Trial Division’s issuance of Judgment, which was a purely discretionary function, subsequently became an exercise in contract interpretation asks too much. Likewise, Plaintiff’s reliance on a due process argument is simply inapposite. We see no conceivable way to construe a Judgment awarding Appellant the principal debt, interest, costs and attorney fees as a sanction—and Appellant has provided no convincing argument otherwise.

[1] Rather, in deciding whether post-judgment attorney fees were warranted in the case, the Trial Division simply exercised one of its essential discretionary functions. *See W. Caroline Trading Co. v. Kloulechad*, 15 ROP 127 (2008) (the award of attorneys fees is a matter of discretion (citing *Philip*, 13 ROP at 28)). Thus, we reject Appellant’s suggestion that the proper standard of review is *de novo*

and reemphasize that we review the amount of attorney fees awarded by the trial court under the abuse of discretion standard. *Philip*, 13 ROP at 28.

DISCUSSION

The gist of Appellant’s argument on appeal is that the Trial Division was not entitled to depart from the language of the parties’ Stipulation when it issued its Judgment. Appellant states that, pursuant to the Credit Card Agreement, it had a right to seek an award of its expenses, including post-judgment attorney fees. Indeed, the language in the Credit Card Agreement provides as much. Thus, Appellant argues, it was “reasonable” to include those post-judgment fees in the Stipulation, i.e., the Court should not substitute its judgment regarding the “reasonableness” of attorney fees for the judgment of the parties themselves.¹ If Appellee stipulated to the award of post-judgment attorney fees, Appellant argues, then the Trial Division is bound to enter that stipulation because it was “reasonable.”

[2, 3] This argument is unconvincing. The fact that Appellee stipulated to Appellant’s entitlement to post-judgment attorney fees makes no real difference. In a nearly identical case in which the identical attorney, Mr. David Shadel, alleged that he was owed

¹ Indeed, Appellant took the opportunity to lecture this Court on the perils of the Palau judiciary acting as an advocate for the debtor, stating that it is a “slippery step towards the abyss of arbitrary interference with contract,” that will “lead to chaos” in Palau’s participation in the commercial and business world.

attorney fees based on a stipulation, the Supreme Court has already stated that “[c]ourts have broad discretion in determining whether to hold a party to a stipulation, and may set aside a stipulation where enforcement would not be conducive to justice.” *Kloulechad*, 15 ROP 127 (quoting 73 Am. Jur. 2d *Stipulations* § 12 (2001)). “A stipulation may be binding on the parties, but it is not binding on the court.” *Id.* Additionally, we previously noted that courts have discretion in awarding attorney fees. Thus, both acts complained of—the modification of the stipulation and the refusal to award of post-judgment attorney fees—are clearly within the Trial Division’s discretion. Given the fact that this is a case in which the Defendant was proceeding pro se and the attorney fees were fairly sizeable compared to the principal at issue, the Trial Division was clearly entitled to modify the stipulation on attorney fees in the interest of justice.² Accordingly, we cannot

² Although neither the Supreme Court of Palau nor the Supreme Court of the United States have directly addressed the question of whether courts owe pro se civil litigants a duty to assist them during the *entire* trial process, in *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the Supreme Court of the United States held that judges should liberally construe pro se litigants’ pleadings. In *Bounds v. Smith*, 430 U.S. 817, 823 (1977), the Supreme Court also required that states provide pro se litigants with services to protect their adequate, effective, and meaningful access to the courts. Moreover, several lower courts of appeals have recognized pro se civil litigants are entitled to particularized instruction concerning the consequences of failing to respond to motions for summary judgment. See e.g., *Moore v. State of Florida*, 703 F.2d 516 (11th Cir. 1983); *Madison v. Sielaff*, 393 F. Supp 788 (N.D. Ill. 1975) (holding that, in the case of pro se plaintiffs,

say that the Trial Division abused its discretion when it removed the award of post-judgment attorney fees.

As a final note, Appellant argues as if the Trial Court summarily rejected any and all future claims on his behalf for attorney fees. However, nothing in the Trial Division’s judgment precludes counsel from seeking post-judgment attorney fees in the future, provided it appends an affidavit which sets out in some detail the actual work that was performed. As we noted before, this is not the first time this issue has been presented by this attorney. Thus, we reemphasize here that, in the exercise of its discretion, the Trial Division—not the attorney—gets to make the reasonableness determination about whether and to what extent to award attorney fees.

CONCLUSION

For the reasons set forth above, the judgment of the Trial Division is AFFIRMED.

courts should employ a heightened standard in construing well-pleaded allegations of fact in a complaint). There is a long standing, and oftentimes unspoken, tradition in the United States and here in Palau of courts employing a heightened duty to its pro se litigants. We find that this tradition serves the interest of justice in helping to ensure meaningful access to the courts of Palau to all Palauan citizens, regardless of their socio-economic status.