IN THE SUPERIOR COURT

FOR THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SHIGEKI YOSHIDA, Plaintiff, v. KTT CORP., FUKUMOTO CORP., SAKURA KOBAYASHI AND KAZUO KOBAYASHI Defendants.	)	Civil Action No. 96-0162 DECISION AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Defendant KTT Corp. et al. ("KTT") brings its second motion for summary judgment in the course of this litigation. Plaintiff Shigeki Yoshida ("Yoshida") opposed the motion and moved for imposition of sanctions. KTT filed a reply, moving to strike Yoshida's motion for sanctions. In response, Yoshida filed a notice of intent to strike KTT's reply. Lastly, KTT filed a notice and motion for an extension of time to reply to Yoshida's notice. The court, having reviewed all briefs, declarations, exhibits, and having heard and considered the arguments of counsel now renders its written decision.

II. FACTS AND PROCEDURAL BACKGROUND

On December 3, 1997, after hearing KTT's first motion for summary judgment, then Presiding Judge Castro denied it on the record, stating: **[p. 2]**

> Based upon the pleadings and arguments of counsel this morning, this is one of those cases that must go to the jury for a decision. Motion for summary judgment denied. There are disputed facts.

Judge Castro left the Superior Court bench to join the Supreme Court bench. The case was

reassigned to this court. On December 23, 1998, KTT brought its second motion for summary judgment. The motion raised substantially the same issues previously raised before Judge Castro. There has been no change in appellate case law in the interim.

On January 4, 1999, Yoshida filed its opposition to the summary judgment motion as well as a motion for imposition of sanctions. Counsel for Yoshida argued that the filing of the second summary judgment motion was improper as there was no legal basis to do so. He also cited to difficulties with opposing counsel in extending time deadlines as well as personal attacks made by opposing counsel. Specifically, a letter was sent wherein KTT's counsel refused to extend Yoshida's time to oppose the summary judgment motion. KTT's counsel additionally stated in the letter that counsel for Yoshida is "(...a functional illiterate who is constitutionally incapable of thinking, reading or writing)." (Yoshida Opp., Exhibit 3).

On January 11, 1999 at 5:06 p.m., KTT filed a motion to strike Yoshida's motion for sanctions. Counsel for KTT served the motion to strike on counsel for Yoshida on January 12, 1999 after, he attests, his fax machine malfunctioned. On January 12, 1999, Yoshida moved to strike the nineteen page reply served on January 12, 1999 on the grounds that it was served late under Com. R. Civ. P. 6(a) and exceeded the page limit set by Com. R. Civ. P. 7(b)(6).

III. ISSUES

1. Whether this second motion for summary judgment is actually a motion for reconsideration under Rule 60(b).
2. Whether Judge Castro's decision was valid even though it was not in written form.
3. Whether the law of the case doctrine precludes this court's consideration of the subsequent motion.
4. Whether counsel for KTT has acted in a manner warranting sanctions.

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IV. ANALYSIS

A motion for summary judgment may be granted only if "...the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Com. R. Civ. P. 56(c). The Court's role is issue finding, not issue determination. Rachel Concepcion v. American International Knitters, 2 CR 940 (1986). Further, the court will view the facts in a light most favorable to the nonmoving party. Cabrera v. Heirs of De Castro, 1 N.M.I. 172 (1990).

Rule 60 of the Commonwealth Rules of Civil procedure provides for relief from final judgments. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §2852. Denial of a summary judgment motion is an interlocutory order and a trial court may reconsider or reverse its decision for any reason at any time. Id.; 27A Fed Proc, L Ed §62:739, 757; *See* Ito v. Macro Energy, 2 NMI 459 (1992). Judge Castro's decision denying summary judgment was an interlocutory order. As a result, KTT's second motion for summary judgment is not a motion for reconsideration under Rule 60(b). Accordingly, the instant motion will be considered a summary judgment motion under Rule 56(b) as plead.

As to the validity of Judge Castro's initial decision, Rule 56 does not require that a court deciding a summary judgment motion make findings of fact, conclusions of law, or even state reasons for its decision. Com. R. Civ. Pro., Rule 56; 27A Fed Proc, L Ed §62:734. In addition, the Commonwealth Code does not require that decisions be made in written form unless the decision has either determined the outcome of the case or a "substantial question of procedure or substantive law." 1 CMC §3404. Further, the Commonwealth Rules of Practice do not require any further formal order after a judge has orally made a ruling from the bench. Com. R. Prac., Rule 14. Judge Castro's interlocutory decision denying summary judgment did not make a determination about the case or decide a substantial question of procedure or substantive law. As a result, it was not necessary for his decision to be in writing. Therefore, Judge Castro's denial of KTT's motion for summary judgment has the same force and effect as any other judicial decision and order.

Although due consideration will be given to Judge Castro's decision, this court is not **[p. 4]** required to follow it. The law of the case doctrine does not absolutely bar reconsideration of issues already decided. All rulings of a trial court are "subject to revision at any time before the

entry of judgment" where an order or decision adjudicates fewer than all the claims of the parties. Com.R.Civ.P. 54(b); United States v. Houser, 804 F.2d 565 (9th Cir. 1986). The practice of courts, embodied by the law of the case doctrine, is to generally refuse to reopen matters which have been already decided.[1] However, the law of the case doctrine does not limit a judge's power to change a decision. Leslie Salt Co. v. U.S., 55 F.3d 1388 (9th Cir. 1995). Furthermore, the fact that a judge has denied a summary judgment motion does not preclude a successor judge from reconsidering such a ruling and then granting it. Paulson v. Greyhound Lines, Inc., 628 F.Supp. 888 (D.Minn. 1986); Whirlpool Corp. v. U.M.C.O. Intern. Corp., 748 F.Supp. 1557 (S.D.Fla. 1990).

Nevertheless, the most appropriate situation for a second motion for summary judgment is where additional discovery has expanded the record or an appellate case decision has clarified applicable law. 27A Fed Proc, L Ed §62:739. In support of its motion for summary judgment, KTT cites to depositions taken in March and June of 1997. This is the same material available at the initial hearing. The "new" information raised by KTT is that defendant Kobayashi testified in January and March, 1998 depositions that there was no agreement to share profits with Yoshida. This testimony does nothing to change the factual disputes which make up this case. The court recognizes no new evidence presented which changes the import of the bulk of deposition materials gathered as of the last summary judgment motion. Instead the same voluminous references to deposition documents appear, which make a detailed written decision addressing each issue impractical.[2] Both sides contest the facts. Judge Castro recognized this, as well as the sheer volume of the disputed facts themselves, in his decision to proceed with this case to trial.

For example, in the March, 1997 depositions, Yoshida asserts that because there was a profit **[p. 5]** sharing agreement, he worked on numerous projects without drawing a salary, including

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[1] The case cited by both parties, Wabol v. Villacrusis, 4 N.M.I. 314 (1995) is not directly on point as it involves the failure of a trial court to follow a remand instruction prescribed by an appellate court. Although the general legal principle stated, that "…courts are generally required to follow legal decisions of the same or a higher court in the same case...." is correct, there are times when a court can diverge from that general requirement. *See* Camacho v. J.C. Tenorio Enters., Inc., 2 N.M.I. 407 (1992).

[2] Additionally, the court is further impeded by the fact that movant has failed to provide excerpts from the deposition cited, as required by Com. R. Civ. P. 32(c).

property management and bookkeeping. According to Yoshida, the profit sharing agreement was sealed with a handshake. Yoshida raises questions about who controlled KTT which bear directly on the liability that any of the defendants may have had. He also raises questions about whether the profit sharing agreement could be accomplished within one year.

Generally, summary judgment is not appropriate in situations where there is a dispute of fact over whether a contract has been formed or the parties had an agreement, as this involves the parties' state of mind. 27A Fed Proc, L Ed §62:747. Here, the numerous factual disputes which precluded Judge Castro from granting summary judgment remain the same. As a result, the second motion for summary judgment is denied.

As to KTT's motion to strike Yoshida's motion for sanctions, it is stricken for failure to file and serve on time. In addition, KTT's motion to extend its time to file is denied. Striking a late opposition is within the discretion of the trial court. Estate of Mendiola v. Mendiola, No. 90-042 (N.M.I. April 4, 1991) (slip op.). In this case, the hearing on the motion was scheduled for January 13, 1999. The court is not inclined to extend the time limit imposed by the Commonwealth Rules of Civil Procedure where counsel failed to serve the court within business hours and gave opposing counsel less than one day to prepare. Further, the court sua sponte strikes all references to Moore's Federal Practice and Mallen & Smith's Legal Malpractice in all briefs. The court does not have access to these materials and counsel have not followed Rule 83.2(e) of the Commonwealth Rules of Civil Procedure.

Regarding Yoshida's motion for sanctions, Rule 11 requires attomeys to certify that "...all pleadings are legally tenable and well grounded in fact...." Primus Auto. Fin. Serv., Inc. v. Batarse, 115 F.3d 644, 648 (9th Cir. 1997). Further, Rule 11 "...governs only papers filed with the court." Id. Letters between attorneys are not considered sanctionable under Rule 11. Legault v. Zambarano, 105 F.3d 24, 27 (1st Cir. 1997). The fact that KTT filed a second motion for summary judgment is not enough for an imposition of sanctions. The motion was not legally baseless, nor was it strictly intended to harass the plaintiff, although the additional evidence presented by KTT was not persuasive. KTT's refusal to extend Yoshida's time is also not enough to warrant sanctions. Yoshida

[p. 6] was not unable to make its extension request to the court.

Although Rule 11 sanctions are not applicable here, the court does have inherent power to sanction outside of Rule 11. Chambers v. NASCO, Inc., 111 S.Ct. 2123 (1991), *reh.den.* 112 S.Ct. 12 (1991). KTT's counsel's behavior in engaging in childlike name-calling is disturbing to the court. In addition, the tone taken by KTT's counsel in his reply to further strike plaintiff's motion for sanctions, in which counsel suggests he is prepared to prove opposing counsel is illiterate, will not be tolerated by this court. (Reply to further strike, P. 4). As that motion was stricken, the motion for sanctions is denied, but it may be renewed if further unprofessional behavior occurs during the course of these proceedings. In addition, Mr. Mitchell is on notice that any further unprofessional conduct will be sanctioned sua sponte if the court deems it appropriate.

V. CONCLUSION

For the foregoing reasons, KTT's second motion for summary judgment is denied. The motion to strike the motion for sanctions is stricken. The motion to extend KTT's time to file its reply to Yoshida's motion for sanctions is denied. The motion for sanctions is denied but may be renewed if further unprofessional conduct occurs.

So ordered this 18 day of February, 1999.

/s/ Edward Manibusan
EDWARD MANIBUSAN, Presiding Judge