For Publication

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

COMMONWEALTH DEVELOPMENT AUTHORITY,
Plaintiff/Appellee,

v.

MANUEL A. TENORIO, MARTINA C. TENORIO, et al.,
Defendants/Appellants.

Supreme Court Appeal No. 03-010-GA
Civil Action No. 97-0341

OPINION

Cite as: *Commonwealth Dev. Auth. v. Tenorio*, 2004 MP 22

Argued and submitted on October 9, 2003
Rota, Northern Mariana Islands
Decided October 19, 2004

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; FRANCES M. TYDINGCO-GATEWOOD, *Justice Pro Tempore*; ANITA A. SUKOLA, *Justice Pro Tempore*

DEMAPAN, Chief Justice:

¶1 Manuel A. Tenorio and Martina C. Tenorio ("the Tenorios") received three loans from the Economic Development Loan Fund Board, now the Commonwealth Development Authority ("CDA"), to start a commercial piggery on Saipan. When the Tenorios defaulted on their obligation under the loan agreement, CDA filed a complaint against the Tenorios. The Tenorios filed a counterclaim. Subsequently, the trial court granted a summary judgment in favor of CDA on both CDA's complaint and the Tenorios' counterclaim. The Tenorios appeal.

¶2 We AFFIRM the trial court's summary adjudication in part. We REMAND with an instruction that CDA provide the documents necessary to authenticate, in accordance with Rule 56(e) of the Commonwealth Rules of Civil Procedure, the monetary figures stated in the declaration of Joaquin Q. Dela Cruz, the manager of the Development Corporation Division of CDA.

I.

¶3 In 1983 and 1984, the Tenorios, a married couple, received three loans from CDA. Subsequent consolidations of the loans resulted in a new principal amount of $339,636.57,[1] and

[1] The first loan was for $240,000. In return, the Tenorios executed a promissory note promising to repay the loan plus 5% interest in monthly installments beginning December 7, 1984, until the loan was repaid in full on November 7, 2004. The promissory note was secured by a loan agreement, a first leasehold mortgage, an agreement to mortgage property, and a receivables and inventory security agreement. The second loan was for $31,556, and in return, the Tenorios executed a second promissory note promising to repay the loan plus 5% interest in monthly installments beginning August 8, 1985, until the loan was repaid in full on July 8, 2000. The second promissory note was secured by a loan agreement, a second leasehold mortgage, an agreement to mortgage property, a receivables and inventory security agreement, and a chattel mortgage security agreement. At the time the second loan was executed, CDA and the Tenorios executed a consolidation of loans, mortgages and security agreements; the consolidation combined the first two direct loans and the accrued interest, resulting in a new principal amount of $284,354.76, and the Tenorios agreed to repay the new principal amount in monthly installments beginning August 8, 1985, until the loan was repaid in full on July 8, 2000. The mortgages of the first two loans were also consolidated. The third loan was for $50,000, and in return, the Tenorios executed a third promissory note promising to repay the loan plus 5% interest in monthly installments beginning December 24, 1985, until the loan was repaid in full on May 24, 2000. The third promissory note was secured by a loan agreement, a third leasehold mortgage, an agreement to mortgage property, a fee simple mortgage (first mortgage), a receivables and inventory security agreement, and a chattel mortgage security agreement. At the time the third loan was executed, CDA and the Tenorios executed a modification of consolidation of mortgages; this consolidation combined

the Tenorios agreed to make their payments in monthly installments beginning February 24, 1986, until the loan was repaid in full on May 24, 2000. About eight years later, the Tenorios found themselves seven months in arrears on their loan payments. Consequently, in July 1993, CDA and the Tenorios entered into a Revision Agreement, which resulted in a new principal amount of $254,970.88 after combining the existing principal balance and the accrued interest; the Tenorios agreed to make their payments in monthly installments beginning August 24, 1993, until the loan was repaid in full on May 24, 2000.

¶4 Subsequently, the Tenorios breached their agreement with CDA by failing to adhere to the specified payment plan. Then, the Tenorios ceased making payments altogether beginning June 1994.

¶5 In April 1997, CDA filed a complaint against the Tenorios, seeking, *inter alia*, monetary damages and judicial foreclosure of the mortgaged property. In their counterclaim, the Tenorios alleged: (1) breach of fiduciary duty under 4 CMC §§ 10102, 10102(b)(1), 10102(b)(2), 10203(a)(21), 10406(a), and 10406(b); (2) promissory estoppel; and (3) breach of contract under 4 CMC §§ 10102, 10102(b)(1), 10102(b)(2), 10203(a)(21), 10406(a), and 10406(b). In November 1997, CDA filed a Motion for a Summary Judgment. In support of its motion, CDA submitted, *inter alia*, a declaration by Joaquin Q. Dela Cruz ("Dela Cruz"), the manager of the Development Corporation Division of CDA. The motion was granted, and the Tenorios appeal.

II.

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

III.

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the previously-consolidated loans, the accrued interest, and the third loan, resulting in a new principal amount of $339,636.57.

¶7 The issues on appeal are: (1) was there a genuine issue as to the amount owed to CDA which should have precluded the trial court's summary adjudication in favor of CDA? (2) Under Rule 56(e) of the Commonwealth Rules of Civil Procedure, was CDA's evidence on the issue of damages hearsay and insufficient to support the trial court's summary adjudication? (3) Should the trial court have *sua sponte* granted a summary judgment to the Tenorios instead? And (4) Did the trial court violate the requirements of the Real Estate Mortgage Law, 2 CMC §§ 4511, *et seq.*?

¶8 We review a trial court's grant of a summary judgment *de novo*. *Santos v. Santos*, 4 N.M.I. 206, 209 (1994). We review questions of law *de novo*. *Agulto v. Northern Mariana Inv. Group, Ltd.*, 4 N.M.I. 7, 9 (1993).

A. Summary Judgment

¶9 The Commonwealth Rules of Civil Procedure provide for summary adjudication when "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 that the moving party is entitled to a judgment as a matter of law." Com. R. Civ. P. 56(c). A summary judgment may be granted on the issue of liability alone, even when there is a genuine issue as to the amount of damages. *Id*. In deciding a summary judgment motion, the evidence, and inferences drawn therefrom, are construed in favor of the non-moving party. *Santos*, 4 N.M.I. at 209. Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to set forth admissible, specific facts to show a genuine issue for trial. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280, 283 (1995). "For purposes of opposing a summary judgment motion, general denials or conclusory statements are insufficient." *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268, 272 (1995) (internal citations omitted). A genuine issue

exists if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Muna*, 4 N.M.I. at 283-284.

i. Was there a genuine issue as to the amount owed to CDA which should have precluded the trial court's summary adjudication in favor of CDA?

¶10 The first issue on appeal is whether there was a genuine issue as to the amount owed to CDA which should have precluded the trial court's summary adjudication in favor of CDA. We review a trial court's grant of a summary judgment *de novo*. *Santos*, 4 N.M.I. at 209.

¶11 In support of their contention that the trial court erred in granting a summary judgment to CDA, the Tenorios argue that a material fact was in dispute. The material fact in dispute, they contend, was the precise amount of money owed to CDA. In response, CDA argues that the Tenorios' contention stems from their unilateral confusion about the evidence presented in the record, that no disputed issue of material fact existed, and that the grant of a summary judgment was proper.

¶12 Having reviewed the record, this Court agrees with the Tenorios and concludes that the precise amount of money owed to CDA was a genuine issue in dispute, which should have precluded the trial court from summarily adjudicating on the issue of damages, solely for the reason that Dela Cruz's declaration was not properly proffered for the trial court's review. Our reasoning as to why Dela Cruz's declaration was improperly proffered to the trial court will be discussed under the following section ii. For now, we discuss our disagreement with all the other arguments made by the Tenorios on the issue of damages.

¶13 First, it is noted that the Tenorios do not deny having entered into the various agreements pertaining to their loans from CDA. They do not dispute the fact that they were seven months in arrears in their loan payments by June 1993 nor do they deny the fact that they made no

payments after May 1994. Therefore, no genuine issue existed as to the Tenorios' liability, and the trial court's summary adjudication on the issue of liability was proper.

¶14 Turning to the issue of damages, the Tenorios did not meet their burden of setting forth admissible, specific facts to show a genuine issue for trial when they brought forth the following specific facts: (1) the amount stated in the Notice of Default sent by CDA conflicted with the amount stated in Dela Cruz's declaration; and (2) the loan agreements did not provide for the interest and late charges claimed by CDA.

¶15 The fact that the amount stated in the Notice of Default conflicted with the amount stated in Dela Cruz's declaration did not by itself create a genuine issue as to the damages. The Notice of Default sent to the Tenorios stated that the principal amount of $46,102.08, plus the interest in the amount of $24,097.96, plus the late charge in the amount of $2,208.36, for a total amount of $72,408.40, was due as of July 24, 1996, and that the Tenorios would be in default if the total amount was not paid within 30 days of the service of the Notice of Default. On the other hand, the "total owed as of 11/26/97" was stated to be $293,827.59 in Dela Cruz's declaration. But this discrepancy between the amount stated in the Notice of Default and the amount stated in Dela Cruz's declaration did not create a genuine issue for trial because, as CDA correctly points out, the Notice of Default served only to notify the Tenorios of the amount needed to be paid to bring the loan current, not the entire amount owed by the Tenorios at the time.

¶16 Similarly, no genuine issue for trial was created when the Tenorios' argued that the loan agreements did not provide for the interest and late charges claimed by CDA. All the agreements relating to the loans specifically provided for interest and late charges. Each of the three loan agreements, as well as the two consolidation agreements, and the last agreement executed between the Tenorios and CDA, the Revision Agreement, all provided for an interest

assessed at the rate of 5 percent per annum. The Tenorios' argument that there is a genuine issue as to the interest claimed by CDA is baseless.

¶17 Their argument that there is a genuine issue as to the late charges claimed by CDA is also baseless. In support of their contention, the Tenorios state that the Modification of Consolidation of Mortgages ("the Second Consolidation Agreement") executed on June 24, 1985, did not provide for late charges. However, the Second Consolidation Agreement--which consolidated the previously-consolidated loans, the accrued interest, and the third loan, resulting in a new principal amount of $339,636.57--specifically provided that "[t]he Loan Agreement and other security instruments executed by mortgagors securing the same indebtedness secured by the notes and mortgages hereinabove mentioned shall continue in full force and effect, except as modified by this agreement." The same provision was also contained in the Consolidation of Loans, Mortgages and Security Agreements ("the First Consolidation Agreement") executed on February 8, 1985. Therefore, the terms of the three loan agreements were to carry through and continue in full force and effect even after the execution of the First Consolidation Agreement and the Second Consolidation Agreement. And each of the three loan agreements had specifically provided that a late payment charge was to be assessed in the event an installment payment was not made within 15 days after the due date of the installment at the rate of 3 percent of the amount of the installment due.

¶18 Additionally, the Revision Agreement, which was the last agreement executed between the Tenorios and CDA, specifically provided that the Revision Agreement was "a revision only (with regard to the Tenorios' payment schedule), and not a novation; and [that]… all of the terms of conditions of the [agreements related to the three loans] shall remain in full force and effect." Therefore, the late charge provisions of the three loan agreements were in full force and effect,

and there is no basis for the Tenorios' argument that the loan agreements did not provide for the interest and late charges claimed by CDA.

¶19 Notwithstanding the discussions above, however, we find that the precise amount of money owed to CDA was in fact a genuine issue in dispute and the trial court's summary adjudication on the issue of damages was improper. This is so because Dela Cruz's declaration, from which the trial court derived its calculation of damages, was inadmissible evidence, which should not have been considered by the trial court in rendering its summary adjudication. The inadmissibility of Dela Cruz's declaration is discussed below.

ii. Under Rule 56(e) of the Commonwealth Rules of Civil Procedure, was CDA's evidence on the issue of damages hearsay and insufficient to support the trial court's summary adjudication?

¶20 The second issue on appeal is whether, under Rule 56(e) of the Commonwealth Rules of Civil Procedure, CDA's evidence on the issue of damages was hearsay and insufficient to support the trial court's summary adjudication. We review a trial court's grant of a summary judgment *de novo*. *Santos*, 4 N.M.I. at 209.

¶21 The Tenorios argue that the declaration of Dela Cruz constituted hearsay and was insufficient to support the trial court's summary adjudication. First, it is noted that this argument was never raised in the trial court. Generally, the appellate court does not consider arguments raised for the first time on appeal. *Camacho v. Northern Marianas Ret. Fund*, 1 N.M.I. 362, 372 (1990).

> However, there are three exceptions to this rule: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the case.

Id. Here, whether Dela Cruz's declaration complied with the requirements of Rule 56(e) of the Commonwealth Rules of Civil Procedure is an issue of law not relying on any factual record.

Moreover, plain error occurred when the trial court calculated the damages based on the figures provided in Dela Cruz's declaration. Therefore, we address the substance of the Tenorios' argument.

¶22 Under Rule 56(e) of the Commonwealth Rules of Civil Procedure:

> [s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

Com. R. Civ. P. 56(e). The Tenorios argue that because CDA did not attach any documents to Dela Cruz's declaration to prove the monetary figures stated in it, summarily adjudicating based on Dela Cruz's declaration was inappropriate.

¶23 Here, Dela Cruz's declaration was based on his personal knowledge, as he was involved with the Tenorios' loans all along as the Manager of CDA's Development Corporation Division. However, as the Tenorios correctly point out, none of the documents to which the declaration referred were attached to the declaration. Therefore, the trial court erred in considering and using the monetary figures stated in Dela Cruz's declaration to summarily adjudicate on the issue of damages.

iii. Should the trial court have *sua sponte* granted a summary judgment to the Tenorios instead?

¶24 The third issue on appeal is whether the trial court should have *sua sponte* granted a summary judgment to the Tenorios instead. If one party moves for a summary judgment and, at the hearing, it is made to appear from all the records, files, affidavits and documents presented that there is no genuine dispute as to a material fact essential to the proof of the movant's case and that the movant's case could not be proved should a trial be held, the court may *sua sponte* grant a summary judgment to the non-moving party. *Cool Fuel, Inc. v. Connett*, 685 F.2d 309,

311 (9th Cir. 1982); *Bird v. Glacier Elec. Coop., Inc.*, 255 F.3d 1136, 1152 (9th Cir. 2001). The appellate court has the discretion to order that a summary judgment be entered for the non-moving party without requiring that a cross-motion for a summary judgment be filed in the non-moving party's favor. *Neal v. Shimoda*, 131 F.3d 818, 831 n.16 (9th Cir. 1997).

¶25 The Tenorios argue on several grounds that a summary judgment should have been granted in their favor. The Tenorios argue that CDA breached its duty of good faith and fair dealings by giving a Notice of Default for a principal amount of $46,102.08 plus interest and late charges, yet litigating for a principal amount of $251,020.80 plus interest and late charges. We have already addressed, under section i of this Opinion, the seeming discrepancy existing between the figures stated in the Notice of Default and in Dela Cruz's declaration; therefore, we move on to the next argument made by the Tenorios.

¶26 The Tenorios argue that CDA breached its duty of good faith and fair dealings by "extorting modification of contracts by 'consolidations' … which increased [the] 'principal' by adding interest to the original principal amount and thus charging [the Tenorios] interest on interest." Extortion happens when there is a threat that the speaker will say or do something unpleasant unless one takes, or refrains from taking, certain actions. *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists*, 244 F.3d 1007, 1015 n.8 (9th Cir. 2001). Here, the Tenorios provide no evidence to show that CDA engaged in any conduct amounting to extortion; in fact, the Tenorios appeared to have entered into each of their contractual agreements with CDA as willing parties. Additionally, there was nothing improper or extortion-like in restructuring the Tenorios' loans by consolidating the outstanding principal and interest due and creating a new principal; obviously, as far as the amount owed by the Tenorios was concerned, there was no mathematical difference between accruing 5 percent

interest on the outstanding interest and the outstanding principal separately, versus accruing 5 percent interest on a new principal created from combining the outstanding principal and interest due.

¶27 The Tenorios also argue that they should be discharged from paying back the loans under the doctrine of frustration of purpose because the government failed to maintain the operation of a slaughterhouse crucial to the successful operation of their commercial piggery. Frustration of purpose arises when a change in circumstances makes one party's performance virtually worthless to the other. *7200 Scottsdale Rd. Gen. Partners v. Kuhn Farm Mach.*, 909 P.2d 408, 412 (Ariz. 1995) (*citing* RESTATEMENT (SECOND) OF CONTRACTS § 265 cmt. a (1981)). In other words, "[p]erformance remains possible, but the expected value of performance to the party seeking to be excused is destroyed by a fortuitous event, which supervenes to cause an actual but not literal failure of consideration." *Id*. (*citing Lloyd v. Murphy*, 153 P.2d 47, 50 (Cal. 1944)). Here, however, there was no performance left on the part of CDA that could have lost its expected value to the Tenorios; CDA had performed its part of the bargain in full when it made the three loans to the Tenorios and agreed to the subsequent loan modifications. Accordingly, the Tenorios were the only parties still having any performance left to perform.

¶28 Moreover, even if assuming *arguendo* that CDA also had some of its performance left to perform, the Tenorios would not be discharged from paying back the loans under the doctrine of frustration of purpose. The purpose of a contract is to place the risks of performance upon the promisor, and the circumstances surrounding the contract formation must be examined to determine whether it can be fairly inferred that the risk of the event that has supervened to cause the alleged frustration was not reasonably foreseeable. *Lloyd*, 153 P. 2d at 50; *Gold v. Salem Lutheran Home Ass'n of the Bay Cities*, 347 P.2d 687, 689 (Cal. 1959) (holding that frustration

is no defense if the frustrating event was reasonably foreseeable). If it was reasonably foreseeable, there should have been a provision for it in the contract, and the absence of such a provision gives rise to the inference that the risk was assumed. *Lloyd*, 153 P.2d at 50. "The burden of proving that the risk of the frustrating event was not reasonably foreseeable rests with the party seeking to excuse performance of a contractual obligation." *Gold*, 347 P.2d at 689.

¶29 Here, the Tenorios did not provide any evidence to meet its burden of proving that the operational problems with the slaughterhouse were not reasonably foreseeable. In fact, as the Tenorios themselves state in their counterclaim, beginning in 1982, the slaughterhouse was forced to shut down its operation many times for violating federal health and safety regulations. Therefore, when the Tenorios took out their first loan in 1983, it was reasonably foreseeable to the Tenorios that the slaughterhouse was beset with problems. Nonetheless, none of the contracts executed between CDA and the Tenorios contained a provision relating to the reliable operation of the slaughterhouse. Accordingly, in light of the absence of any contractual provision regarding such a reasonably foreseeable event, we find that the Tenorios assumed the risk of dealing with a slaughterhouse having operational problems.

¶30 The Tenorios also argue that they should be discharged from paying back the loans under the doctrine of impracticability of performance. Impracticability of performance rises "when certain events occurring after a contract is made constitute an impediment to performance by either party." *Kuhn Farm Mach.*, 990 P.2d at 412. The event that occurred must be an event "the non-occurrence of which was a basic assumption on which the contract was made." *Opera Co. of Boston, Inc. v. Wolf Trap Found. for Performing Arts*, 817 F.2d 1094, 1100 (4th Cir. 1987) (*citing* RESTATEMENT (SECOND) ON CONTRACTS § 263 (1981)). Although absolute unforeseeabilty is not a requirement, the occurrence of the event must have been unexpected.

The foreseeability sufficient to render the defense of impracticability unacceptable is an issue of degree, the question being "whether the non-occurrence of the event was sufficiently unlikely or unreasonable." *Id*. at 1101-102. Here, as discussed above, it was reasonably foreseeable that the slaughterhouse would have operational problems.

¶31 Additionally, the impracticability must involve conditions approaching impossibility; merely a somewhat greater expense of performance than anticipated is insufficient. *Ocean Air Tradeways, Inc. v. Arkay Realty Corp.*, 480 F.2d 1112, 1117 n.4 (9th Cir. 1973). It is important to note that while it may be an overstatement to say that increased cost and difficulty of performance *never* constitute impracticability, under contract law, "the impracticability defense largely pertains to the performance of a physical act." *OWBR LLC v. Clear Channel Communications, Inc.*, 266 F. Supp. 2d 1214, 1222 (D. Haw. 2003). Mere market shifts or financial inability do not usually effect discharge of the obligation to perform. *Id*. Here, due to their failure to maintain a successful piggery, the Tenorios are seemingly faced with financial hardships. Unfortunately, this may mean that they will have to take out another loan to pay their debt owed to CDA; the only performance to be rendered by the Tenorios is purely financial in nature, and moreover, we see no basis to find conditions approaching impossibility to support their impracticability defense.

¶32 Finally, the Tenorios argue that public policy considerations support a decision to write off their balance owed to CDA. The crux of the Tenorios's argument is this: CDA has a legal duty to deem that the balance due from the Tenorios is not recoverable and therefore write it off. However, CDA has no such duty. In fact, CDA must "engage in prudent financial management of all its assets" pursuant to 4 CMC § 10403(a), and there is no basis to find that writing off the Tenorios' debt would constitute an act of prudent financial management. Furthermore, pursuant

to 4 CMC § 10305(a)(5), the CDA Board of Directors has a duty to assure that the provisions of loan agreements are complied with. Finally, even setting the legal duties on the part of CDA aside, this Court is unable to find any public interest that would be served by CDA writing off the balance owed. The only interest served by such an action would seem to be the Tenorios'.

¶33 For the foregoing reasons, the trial court had no basis to *sua sponte* grant a summary judgment in the Tenorios' favor.

iv. Did the trial court violate the requirements of the Real Estate Mortgage Law?

¶34 The fourth and final issue on appeal is whether the trial court violated the requirements of the Real Estate Mortgage Law, 2 CMC §§ 4511, *et seq.* We review questions of law *de novo*. *Agulto v. Northern Mariana Inv. Group, Ltd.*, 4 N.M.I. 7, 9 (1993).

¶35 First, it is noted that whether the trial court violated the requirements of the Real Estate Mortgage Law was never raised in the trial court. Generally, the appellate court does not consider arguments raised for the first time on appeal. *Camacho v. Northern Marianas Ret. Fund*, 1 N.M.I. 362, 372 (1990). However, as mentioned above, there are three exceptions to this rule: (1) a new theory or issue arises because of a change in the law while the appeal was pending; (2) the issue is only one of law not relying on any factual record; or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the case. *Id*. Here, whether the trial court violated the requirements of the Real Estate Mortgage Law is an issue of law not relying on any factual record; therefore, we will address the substance of the Tenorios' arguments.

¶36 The Tenorios argue that, under 2 CMC § 4534(c) of the Real Estate Mortgage Law, CDA had no authority to file its complaint seeking sums not stated in the Notice of Default, and therefore the trial court had no jurisdiction over CDA's complaint. Section 4534(c) provides:

> Not less than 30 days prior to the commencement of any action or proceeding seeking foreclosure of a mortgage, written notice of default shall be served as provided in 2 CMC § 4524. The notice shall be written in the English language and in either Chamorro or Carolinian and shall contain the following:
> . . . .
> (c) The amount due for principal and interest, separately stated

2 CMC § 4534(c). And pursuant to subsection (d) of 2 CMC § 4534, the Notice of Default is to contain "[a] statement that if the amount due is not paid within 30 days from the date of service, the mortgagor shall be in default and proceedings shall be commenced to foreclose the mortgage." 2 CMC § 4534(d). Therefore, the Notice of Default was to notify the Tenorios of the amount needed to be paid to bring the loan current, not the entire amount owed by the Tenorios at the time. Accordingly, there is no indication that CDA failed to comply with the relevant statutes.

¶37 The Tenorios also argue that the trial court failed to enter judgment in accordance with the requirements of 2 CMC § 4537(d) of the Real Estate Mortgage Law, which states:

> If, upon trial in the action, the court finds the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage 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 was made.

The Tenorios argue that the trial court erred by ordering the sale of the mortgaged property without first ordering that the sum found due be paid into court within a period of three months from the date of the judgment order. In response, CDA argues that the trial court's order was in compliance with the Real Estate Mortgage Law because the judgment stated that the mortgaged property be sold at a public auction, "in the manner prescribed by 2 CMC § 4537[,]" thereby

incorporating all provisions of § 4537, including subsection (d) of § 4537. This Court agrees with CDA.

IV.

¶38 For the foregoing reasons, we AFFIRM the trial court's summary adjudication in part. We REMAND with an instruction that CDA provide the documents necessary to authenticate, in accordance with Rule 56(e) of the Commonwealth Rules of Civil Procedure, the monetary figures stated in Dela Cruz's declaration.

SO ORDERED THIS 19th DAY OF OCTOBER 2004.

/s/_____
MIGUEL S. DEMAPAN
Chief Justice

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

/s/_____
FRANCES M. TYDINGCO-GATEWOOD
Justice *Pro Tempore*