

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

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COMMONWEALTH PORTS AUTHORITY,  
Plaintiff-Appellant,

v.

TINIAN SHIPPING COMPANY,  
Defendants-Appellee.

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SUPREME COURT NO. 04-0017-GA  
SUPERIOR COURT NO. 02-0347E

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**DENIAL OF PETITION FOR REHEARING**

**Cite as: 2008 MP 2**

Decided February 11, 2008

Robert T. Torres, Saipan, Northern Mariana Islands, for Plaintiff-Appellant.  
G. Anthony Long, Saipan, Northern Mariana Islands, for Defendant-Appellee.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice;  
F. PHILIP CARBULLIDO, Justice Pro Tem

CASTRO, J.:

¶ 1 Petitioner Tinian Shipping Company (“petitioner”) requests a rehearing on the grounds that this Court erred in holding that a contract must be ambiguous for the trial court to consider course of performance evidence, and also argues that this Court did not address its estoppel argument. We hold that our opinion properly addressed both issues and, therefore, DENY the petition for rehearing.

## I

¶ 2 The facts of this case are contained in *Commonwealth Ports Auth. v. Tinian Shipping*, 2007 MP 15 ¶¶ 2-7.

## II

¶ 3 A petition for rehearing may be filed when the Court ignores or incorrectly construes legal issues or factual matters while reaching its decision. *In re Estate of Deleon Guerrero*, 1 NMI 324, 326 (1990). Com R. App. P. 40 requires that a “petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended.”

¶ 4 Petitioner alleges that this Court erred in its holding that the trial court should not have allowed and considered course of performance evidence because there was no contractual ambiguity in its contract with the Commonwealth Ports Authority (“CPA”). Petitioner claims that this Court reached this conclusion without properly relying upon the Restatement or Commonwealth case law as required by 7 CMC § 3401.<sup>1</sup> Finally, petitioner argues that this Court improperly relied upon case law from outside the Commonwealth and ignored its estoppel argument.

¶ 5 This Court cited both Commonwealth case law and the Restatement, and, as a result of our analysis of these sources, we determined that the trial court erred in evaluating course of performance in assessing an unambiguous contract. *Tinian Shipping* at ¶ 15-17. In support of our analysis and our conclusion, we cited several cases from outside the Commonwealth. *Id.* at

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<sup>1</sup> 7 CMC § 3401 reads:

In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary; provided, that no person shall be subject to criminal prosecution except under the written law of the Commonwealth.

¶¶ 16-17. Although we did so, we made clear that we reached our conclusion “based upon [*Riley v. Public School Sys.*, 4 NMI 85 (1994)] and the Restatement.” *Id.* at ¶ 16. Citing additional cases outside of the Commonwealth that support our analysis does not violate 7 CMC § 3401.

¶ 6 Petitioner also argues that the Court did not address its argument that estoppel precluded CPA from claiming that Tinian Shipping had to pay a passenger fee for non-fare paying passengers. As the opinion makes clear, this Court reviewed all considerations resulting from the conduct of the parties, and determined that such considerations did not outweigh the language of the contract, especially in light of the contract’s non-waiver provision. *Id.* at ¶ 18. The plain meaning of the contract and the non-waiver clause render estoppel inapplicable.

### III

¶ 7 For the foregoing reasons, we conclude that our opinion fully addressed the issues raised by petitioner. This Court did not ignore or incorrectly construe any legal issues or factual matters alleged by the petitioner. Accordingly, the petition for rehearing is DENIED.

Concurred By:  
Demapan, C.J., Carbullido, J.P.T.