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

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**JOAQUIN M. MANGLONA,**
Plaintiff-Appellant,

**v.**

**THERESITA B. BAZA, TRACY B. PANGELINAN, JOSEPHINE B. PANGELINAN, CATHERINE B. PANGELINAN, AND MELISSA P. MCCONNELL**
Defendant-Appellees.

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**SUPREME COURT NO. 2009-SCC-0033-CIV**
SUPERIOR COURT NO. 08-0072 and 08-0153

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**OPINION**

**Cite as: 2012 MP 4**

Decided April 5, 2012

Douglas F. Cushnie, Saipan, MP for Plaintiff-Appellant.
Ramon K. Quichocho, Saipan, MP for Defendant-Appellees.
BEFORE: ALEXANDRO C. CASTRO, Acting Chief Justice; EDWARD MANIBUSAN, Justice Pro Tem; HERBERT D. SOLL, Justice Pro Tem

CASTRO, A.C.J.:

¶ 1 Plaintiff-Appellant Joaquin Manglona ("Manglona") appeals the trial court's decision finding him liable for breach of contract. On appeal, Manglona argues that the trial court erred when it: (1) concluded he had breached the relevant contracts; (2) found that Defendant-Appellees Theresita Baza, Josephine Pangelinan, Catherine Pangelinan, Melissa McConnell, and Tracy Pangelinan (collectively "Defendants") did not violate the covenant of good faith and fair dealing; (3) awarded Baza $79,806.45 in back rent; (4) found forfeiture of the property appropriate under the circumstances; and (5) chose not to grant Manglona equitable relief. For the reasons stated herein, we vacate the trial court's damage award

pertaining to back rent and remand for a recalculation of back rent consistent with this opinion. We affirm the trial court's judgment on the remaining issues.

**I**

¶ 2 This case arises from a series of contracts concerning a lease and purchase of real property. On December 31, 1984, Herman Pangelinan ("Pangelinan") – Appellee Theresita Baza's husband – and Manglona entered into a twenty-five year lease agreement ("Lease Agreement") for Lot E.A. 869-2 ("the Lot"). In November 1987, Manglona subleased the property to Lee Kum Joo ("Lee") for a period of twenty two years. In October 1993, Pangelinan died and, in accordance with Chamorro intestacy law, the Lot was distributed as follows: Theresita Baza received a life estate and their children – Josephine Pangelinan, Catherine Pangelinan, Melissa McConnell, and Tracy Pangelinan – obtained a vested remainder in fee simple to the property. In 1995, Baza obtained a $120,000 loan ("CDA loan") from the Commonwealth Development Authority ("CDA"), which was secured by a fee simple mortgage in a separate piece of property that was owned by Defendants.

¶ 3 Defendants subsequently agreed to sell the Lot to Manglona and the parties executed a Conditional Contract of Sale of Real Property ("Conditional Contract") during June 1997. The Conditional Contract set the purchase price at $250,000, payable in three parts. First, $10,000 was due upon execution of the contract under Section 3(a).[1] Second, under Section 3(b) Manglona agreed to make payments on certain outstanding portions of the $120,000 CDA loan. Finally, Section 3(c) required Manglona to make a second lump sum payment of $108,506.25 in June 2002. Thereafter, in October 1997, Defendants and Lee entered into an Attornment Agreement concerning the Lot, under which Lee would attorn as lessee to Defendants in the event of default by Manglona under the Lease Agreement.[2]

¶ 4 Manglona began making CDA loan payments; however, he missed many payments between 1997 and 2004. In addition, as conceded by Manglona during his testimony at trial, he never paid the $108,506.25 due in June 2002.

¶ 5 In May 2004, Defendants sent a letter to Manglona through counsel informing him that he was in default and breach of the Conditional Contract because of missed payments. Defendants gave Manglona thirty days to cure the default by paying the CDA loan and the second lump sum payment. Ten days later, Manglona responded through counsel. He claimed that Manglona had complied with the Conditional Contract, but that because Defendants had refinanced the loan, the CDA loan payments differed from the payment amounts listed in the Conditional Contract. Manglona also requested details regarding the outstanding balance due on the CDA loan. Defendants sent a "second demand letter to cure [Manglona's]

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[1] The parties agree that Manglona made this first payment, which was never at issue before the trial court.

[2] An attornment agreement is "[a] tenant's agreement to hold the land as the tenant of a new landlord." Black's Law Dictionary 148 (9th ed. 2009).

default" in July 2005. Excerpts of Record ("ER") at 148. The record does not show whether Manglona responded to that second demand letter. Defendants also sent a third letter to cure default on February 13, 2008.[3] Manglona responded on March 3, 2008. He reiterated that a refinancing issue had arisen and stated that, while he was prepared to make the CDA loan payments, he wanted to know the current balance on the CDA loan in order to ensure he did not overpay. On March 20, 2008, Defendants delivered a Notice of Termination to Manglona; however, Manglona remained in possession of the Lot and continued to collect rent from Lee.[4]

¶ 6 Five days after receiving the Notice of Termination, Manglona filed a complaint asking the trial court to: order Defendants to disclose all records relating to the CDA loan; to enjoin any attempted foreclosure of Manglona's interest in the Lot; to find Manglona had fully satisfied all contract obligations; and to confer title in the Lot to him. Defendants responded that Manglona had failed to make required payments and that Manglona should be afforded no relief. Defendants also filed a counterclaim for possession and breach of contract, and asserted that Manglona had interfered with the family's right to collect rent from Lee.

¶ 7 The trial court conducted a bench trial and issued its Findings of Facts and Conclusions of Law in July 2009. At trial, Manglona's accountant testified regarding payments made on the CDA loan between June 1997 and January 2005, and presented a report reflecting these purported payments. The trial court found several deficiencies in the report. Records prepared by CDA reflecting payments received on the loan were also presented at trial. After considering both sets of records, the trial court concluded that the CDA records – and not Manglona's records – were more reliable, and accordingly found that Manglona had repeatedly failed to make payments on the CDA loan. This included missed payments in 1997 and 1998, and twenty-nine missed payments between 1999 and 2004. The trial court found that as a result of Manglona's failure to make payments, Defendants' CDA loan became delinquent and CDA insisted that the loan be refinanced. As a result "on October 22, 1998, Defendants refinanced the CDA Loan and incurred additional costs and damages." *Manglona v. Baza*, Civ. No. 08-0072 (NMI Super. Ct. July 1, 2009) (Findings of Facts and Conclusions of Law at 4) ("Findings"). Relying on Manglona's own testimony, the trial court also concluded that he did not remit the lump sum payment of $108,506.25, which was due by June 2002.

¶ 8 Relying on these findings and conclusions, the trial court ruled in favor of Defendants. The court ordered Manglona to immediately vacate the property and pay Defendants: (1) $79,806.45 in back rent; (2) all rent collected from subtenant Lee between March 20, 2008, when the Notice of Termination was

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[3] It is unclear from the record what, if any, action was taken between July 2005 and February 13, 2008.

[4] On October 2, 2008 the trial court ordered rental payments from sub-tenant Lee to be deposited into the court registry.

sent, and October 2, 2008, when the funds were ordered deposited into the court registry; and (3) attorney fees pursuant to Section 7(e) of the Conditional Contract. The trial court also allowed Defendants to retain the payments made on the CDA loan. This appeal followed.

**II**

¶ 9 The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court. 1 CMC § 3102(a).

**III**

¶ 10 Manglona raises five issues on appeal: (1) whether Manglona defaulted under the Conditional Contract; (2) whether Defendants violated the implied covenant of good faith and fair dealing, thus excusing Manglona's non-performance; (3) presuming the Conditional Contract was breached, whether the trial court miscalculated back rent due; (4) whether forfeiture is allowed as a matter of law; and (5) whether the trial court abused its discretion by failing to grant equitable relief.

*A. Breach of the Conditional Contract and Lease Agreement*

¶ 11 Manglona argues that Section 4(a)(3) of the Conditional Contract conditions breach upon his failure to pay the monthly CDA Loan and either subsequent foreclosure or other adverse proceedings. Thus, according to Manglona, he could not have breached the Conditional Contract because CDA did not institute the requisite proceedings. We disagree.[5] Whether an asserted condition is in fact a condition is a question of law and reviewed de novo. *In re Bubble Up Delaware, Inc.*, 684 F.2d 1259, 1264 (9th Cir. 1982) ("Whether the contract, by its terms, contained such a condition is a matter of contract interpretation. The question of interpretation of a contract is a question of law subject to *de novo* review, and not a question of fact."); *see also Fusco v. Matsumoto*, 2011 MP 17 ¶ 26 ("Interpretation of contract terms is a question of law that we review de novo.").

¶ 12 It is important to first look at the terms that relate to payments within the Conditional Contract. "The intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms." *Riley v. Pub. Sch. Sys.*, 4 NMI 85, 88 (1994). To purchase the Lot, Section 2 of the Conditional Contract required Manglona to pay Defendants $250,000[6] in accordance with the schedule outlined in Section 3.[7] Section 3(a) and (c) required Manglona to make lump sum payments and Section

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[5] Because we find breach occurred in other ways, we do not reach whether the trial court was correct when it found that adverse proceedings had occurred. Even then, we note that adverse proceedings may include alternative dispute resolution, such as arbitration, or other methods provided by contract that are enforceable against the parties. *See Leslie v. Estate of Tavares*, 994 P.2d 1047, 1050 (Haw. 2000) ("As ordinarily used, [the term proceeding] is broad enough to include all methods of invoking the action of courts and is generally applicable to any step taken to obtain the interposition or action of a court.").

[6] Section 2 of the Conditional Contract states: "The total purchase price is Two Hundred Fifty Thousand Dollars and 00/100 ($250,000.00)." ER at 46.

[7] Section 3 of the Conditional Contract states, in relevant part:

3(b) required ninety-two monthly payments. In addition, Section 2 "automatically assume[d] the place of the rental payments" in the Lease Agreement. ER at 47.[8] Accordingly, any breach of the Conditional Contract related to Section 2 or other payment provisions was a breach of Manglona's duty to pay rent under the Lease Agreement. *See Sablan Enters., Inc. v. New Century, Inc.*, 1997 MP 32 ¶ 8 ("A tenant has an obligation to pay rent . . . ." (citing Restatement (Second) of Property: Landlord and Tenant § 12.1 (1977))).

¶ 13 The trial court found that Manglona never tendered the lump sum payment due under Section 3(c) of the Conditional Contract. "Breach of a contract occurs upon the nonperformance of a contractual duty of immediate performance." *Manglona v. Commonwealth*, 2005 MP 15 ¶ 15 (citing *Del Rosario v. Camacho*, 2001 MP 3 ¶ 96); *see also* Restatement (Second) of Contracts § 235(2) (1979) ("When performance of a duty under a contract is due any non-performance is a breach."). Section 3(c) of the Conditional Contract imposed a duty on Manglona to pay $108,506.24 in June 2002.[9] Manglona admitted

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Purchase price shall be paid in accordance with the following:

> (a) Upon execution of this Contract, BUYER shall pay SELLER the amount of Ten Thousand Dollars and 00/100 ($10,000.00);
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> (b) BUYER shall assume making payment of certain outstanding portions of a loan obtained by SELLER-Theresita B. Pangelinan from the Commonwealth Development Authority (CDA) in the principal sum of One Hundred Twenty Thousand Dollars and 00/100 ($120,000.00) . . . . BUYER shall assume and pay until its full and complete satisfaction such portions of the [CDA] debt, in accordance with the following schedule:
>
> > (1) One Thousand Six Hundred Ninety Six Dollars and 40/100 ($1,696.40) for the next 8 months commencing on June 14, 1997 and ending on January 14, 1998.
> >
> > (2) One Thousand Four Hundred Three Dollars and 84/100 ($1,403.84), for the next 84 months, commencing February 14, 1998 and ending on January 14, 2005 . . . .
>
> (c) On June __, [sic] 2002, five (5) years from the date of the execution of this Contract, BUYER shall pay SELLER the remaining balance in the sum of One Hundred Eight Thousand Five Hundred Six Dollars and 24/100 ($108,506.24) . . . .

ER at 46-47 (emphasis omitted).

[8] In relevant part, Section 4(a)(2) states that the "purchase price referred and described in Section 2 [of the Conditional Contract] shall automatically assume the place of the rental payments prescribed under the said Lease Agreement." ER at 47.

[9] Manglona superficially asserts that Baza waived his breach by accepting payments made to CDA on her behalf; however, he does not provide the appropriate legal rule, provide any legal analysis to support his claim, or develop this as a separate issue. We consider only those arguments sufficiently developed to be cognizable. *Commonwealth v. Minto*, 2011 MP 14 ¶ 46 n.8; *People v. Freeman*, 882 P.2d 249, 265 n.2 (Cal. 1994). Moreover, citing to a case without more is inadequate. Therefore, Manglona waived this argument. *See In re Blankenship*, 3 NMI 209, 216 (1992) ("[W]e generally will dismiss issues that are not discussed and supported in a party's brief. . . . [A]ppellant does not discuss or analyze the issues he presents. For this reason, we treat those issues as being waived and no longer before the Court for decision." (citing *Lucky Dev. Co. v. Tokai, U.S.A., Inc.*, 3 NMI 79, 92 (1992))).

during trial that this payment was never tendered.[10] Thus, failure to remit the required lump sum payment in June 2002 and continued failure to tender the amount due "constituted a breach upon which relief could be granted." *Reyes v. Ebeteur*, 2 NMI 418, 429 (1992).

¶ 14 Manglona's arguments are unpersuasive. First, Manglona argues that his non-payment was excused because he had made overpayments on the CDA loan and thus needed Defendants to tell him the overpayment amount so he could deduct it from the lump sum payment. Even if we were to believe Manglona's loan repayment figures – which the trial court did not – he only paid $130,086.78 to CDA. This is less than the $131,493.76 in monthly payments due by January 2005 under the Conditional Contract. Accordingly, we do not see how there could have been an overpayment.

¶ 15 Second, Manglona only considers breach relative to Section 4(a)(3) of the Conditional Contract and neglects to recognize that breach may occur through other terms in the contract. Section 4(a)(3) only discusses breach in the context of missed monthly payments. It states: "[Manglona] shall be in default and breach of this Contract if [Manglona] fails to pay the *monthly CDA Loan when due*, and that such failure [will] le[a]d to the foreclosure of the chattel mortgage and/or other adverse proceedings pursuant to the CDA Agreement." ER at 47 (emphasis added). In contrast, Section 5 of the Conditional Contract more broadly applies to all payments due under Section 3, including the lump sum and monthly payments. Section 5 states that "[u]pon the *fulfillment of each of the conditions* mentioned in Section 3 above and other applicable provisions herein, [Defendants] shall execute in favor of and deliver to [Manglona] a good and sufficiency Warranty Deed . . . ." ER at 48 (emphasis added). "[U]nless a contrary intent is evident, words used in one sense in one part of a contract are deemed of like significance in another part." *Thompson v. Amoco Oil Co.*, 903 F.2d 1118, 1121 (7th Cir. 1990) (quoting *Cedar Park Cemetery Ass'n v. Vill. of Calumet Park*, 75 N.E.2d 874, 880 (Ill. 1947)); *see also Taracorp, Inc. v. NL Indus.*, 73 F.3d 738, 744-45 (7th Cir. 1996) (noting that this principle parallels the statutory interpretation principle that "we assume that the same words have the same meaning in a given act and that the choice of substantially different words to address analogous issues signifies a different approach."). Thus interpreted, the default provision in Section 4(a)(3) of the Conditional Contract only applies when default is triggered by missed monthly payments related to the CDA Loan; this provision does not apply to other payments missed by Manglona to which default rules for determining breach apply. Therefore, because Manglona breached his duty to pay the $108,506.24 lump sum due under Section 3(c), we do not need to determine whether breach occurred under Section 4(a)(3).

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[10] On cross-examination, Baza's attorney asked Manglona the following question: "Isn't it true, Mr. Manglona, that you haven't paid a penny of that $108,506.24 to Ms. Baza as required of you under Section 3(c) of this contract?" He answered: "I haven't paid . . . ." ER at 119.

*B. The Covenant of Good Faith and Fair Dealing*

¶ 16 If non-performance of a contractual duty is justifiable, then there is no breach. *Del Rosario*, 2001 MP 3 ¶ 96. Manglona contends that Defendants failed to abide by the implied covenant of good faith and fair dealing and that his non-performance should thus be excused even if this Court concludes that he breached the Conditional Contract. "[E]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Id.* ¶ 99 (quoting Restatement (Second) of Contracts § 205 (1981)). Failure to comply with this implied covenant can excuse non-performance. *See, e.g., Fortune v. Nat'l Cash Register Co.*, 364 N.E.2d 1251, 1258-59 (Mass. 1977) (holding that breach of implied covenant of good faith and fair dealing excuses the other party from performance of conditions imposed upon him).

¶ 17 The trial court concluded that Defendants did not violate the covenant of good faith and fair dealing. It found that the "amount that [Manglona] was obligated to pay and the timing of said payments was specifically provided for in the Conditional Contract. No other information was necessary for [Manglona] to make the required payments. There were no uncertainties as to what [Manglona] was to pay." Findings at 9. The court further reasoned that no provision in the Conditional Contract imposed a duty on Defendants to provide Manglona with CDA loan details, much less made provision of such information a condition to Manglona's performance. Finally, the court stated that Manglona's breach could not be excused on the basis of Defendants' failure to provide loan information because Manglona's first request for such information was made "seven years after [Manglona] had already breached the Conditional Contract by failing to make timely payments." Findings at 10. The trial court's decision on this matter is a mixed question of law and fact subject to de novo review; the trial court's factual findings are reviewed for clear error. *Santos v. Santos*, 2000 MP 9 ¶ 3.

¶ 18 We agree with the trial court. The implied covenant of good faith and fair dealing only requires that neither party do anything that will injure the other party's right to receive the benefits of the agreement. *Del Rosario*, 2001 MP 3 ¶ 99 (quoting *Ellingstad v. Alaska Dep't of Natural Res.*, 979 P.2d 1000, 1009 (Alaska 1999)). Here, "[t]here were no uncertainties as to what [Manglona] was to pay." Findings at 9. The required CDA loan payments are explicitly and unambiguously laid out in Section 3(b) of the Conditional Contract, which details ninety-two payments that Manglona was required to pay CDA on Defendants' behalf, and no additional information was needed to establish the payment amounts.[11] Moreover, as conceded by Defendants, under the plain terms of the Conditional Contract, Manglona only

[11] At any point during the term of the Conditional Contract, Manglona or his accountant could have easily recalculated how much was still owed under Section 3(b). The Conditional Contract did not contain any contingencies on the CDA Loan balance that would have altered the amount due from Manglona. Thus, the total amount due under the Conditional Contract was a fixed amount and computing the balance due did not call for complex analysis.

remained liable for the loan payments detailed in the Conditional Contract, and *not* liable for any of the late fees or increased payment amounts. Consequently, Manglona's inability to keep accurate records did not excuse his failure to make the $108,506.24 payment in June 2002. Moreover, we agree with the trial court that the timing of Manglona's requests for loan information occurred long after he missed payments and is further evidence that Defendants refusal to provide loan information is insufficient to discharge Manglona's contractual obligations. Therefore, the trial court acted properly when it found Defendants had not violated the covenant of good faith and fair dealing and we affirm on this point.

### *C. Remedies*

¶ 19 After finding Manglona in breach, the trial court awarded Defendants: (1) possession of the Lot; (2) $79,806.45 in back rent; (3) all rentals collected from subtenant Lee from March 20, 2008 (the date the Letter of Termination was sent) to present, including all funds deposited with the court registry; and (4) reasonable attorney fees. While not specifically listed as granted relief, the trial court did not order Defendants to return to Manglona any of the payments previously made on the CDA loan. Manglona contests the relief award on three grounds. First, he argues the trial court miscalculated back rent. Second, he argues that forfeiture is inappropriate because, although he received the notice to terminate the Conditional Contract from Defendants, a separate notice was required concerning the original lease. He further argues that such notice was not sent, thus, the Lease Agreement remains in effect. Lastly, he argues the remedy was inequitable.

#### *1. Back Rent Calculations*

¶ 20 Manglona disputes the amount of back rent the trial court awarded Defendants. He asserts that the trial court incorrectly calculated that he owes $79,806.45 in back rent. "The amount of a party's recoverable damages is a question of fact, and is reviewed under a clearly erroneous standard." *Saipan Achugao Resort Members' Ass'n v. Wan Jin Yoon*, 2011 MP 12 ¶ 61 (citing *Manglona v. Commonwealth*, 2005 MP 15 ¶ 66). Thus, "[t]he lower court's damage award cannot be overturned unless its factual basis is clearly erroneous." *Manglona v. Commonwealth*, 2005 MP 15 ¶ 66 (citing *Davis v. United States*, 375 F.3d 590, 592 (7th Cir. 2004)).

¶ 21 The trial court erred when it awarded Defendants $79,806.45 in back rent. The trial court reasoned that, "[a]s testified to by David Demapan [("Demapan")], Plaintiff owes $79,806.45 to Defendants in rental payments. *See* Exhibit 17 and 18." Findings at 18. However, that amount is not found in Exhibit 17 or 18. To the contrary, Demapan repeatedly referred to another figure, $97,575.54, in

his testimony.[12] Moreover, the trial court did not make an explicit finding of fact as to the amount Manglona had paid in monthly installments pursuant to Section 3(b), which is essential to determining back rent owed.[13] On remand, the trial court will need to explicitly make this finding of fact to calculate damages.

¶ 22 Under the Restatement (Second) of Property, Baza is entitled to recover "the amount of the rent that is due." Restatement (Second) of Prop.: Landlord and Tenant § 12.1(2) (1977) ("[I]f there is a breach of the tenant's obligation to pay the rent reserved in the lease, the landlord may: (a) recover from the tenant the amount of the rent that is due . . . ."); *see also Estate of Ogumoro v. Han Yoon Ko*, 2011 MP 11 ¶ 64 (stating that Restatement (Second) of Prop.: Landlord and Tenant § 12.1 "provides [a landlord] with a right to terminate [a tenant] for non-payment of rent"). "Our primary concern in contract interpretation is to determine and give effect to the intentions of the parties as expressed in the instrument, and the intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms." *Saipan Achugao*, 2011 MP 12 ¶ 15 (quoting *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2007 MP 22 ¶ 16). Moreover, our focus is on interpreting "what both parties agreed to and not what the contract may have devolved into." *Tinian Shipping*, 2007 MP 22 ¶ 17. As discussed above, according to the plain terms of Section 4(a)(2), the purchase price identified in Section 2 of the Conditional Contract assumed the place of rental payments in the Lease Agreement. Moreover, the parties intended the Lease Agreement to survive even if Manglona breached the Conditional Contract. First, the Conditional Contract does not contain a clause that terminates or otherwise conflicts with the Lease Agreement's expiration date. Second, Section 3 of the Conditional Contract states that the "[p]urchase price *shall* be paid in accordance with the following" schedule. ER at 46 (emphasis added). Compliance with the payment schedule was mandatory based on the parties' original intent. *N. Marianas Coll. v. Civil Serv. Comm'n*, 2007 MP 8 ¶ 9 ("The word 'shall' is unambiguous and means 'must.'" (citing *Aquino v. Tinian Cockfighting Bd.*, 3 NMI 284, 292 (1992))). The payment schedule ended on January 14, 2005, more than five years before the expiration date of the Lease Agreement. Consequently, upon signing the Conditional

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[12] Demapan is an accountant who testified on behalf of Baza. He calculated the $97,575.54 figure using the outstanding balance amount provided by CDA in its February 2009 letter to Manglona. According to Demapan, this figure includes a combination of principal, interest, and penalties. During oral argument, Baza conceded that Manglona was only responsible for paying CDA according to the payment schedule in Section 3(b) of the Sales Contract. Furthermore, Baza conceded that she is directly responsible for the difference between the amounts due to CDA and Manglona's obligations under the Conditional Contract, in addition to interest and penalties that accrued. Therefore, any reliance the trial court placed on Demapan's figure is also clearly erroneous.

[13] The trial court made findings with regard to how much was paid under Section 3(a) and (c). It found that Manglona "paid the initial $10,000" due under Section 3(a). Findings at 3. In addition, it found that Manglona did not pay any portion of the $108,506.24 due under Section 3(c). Thus, "[p]ursuant to Section 3(c) of the Conditional Contract [Manglona] still owes [Baza] the principle sum of $108,506.24 plus interest." Findings at 7.

Contract on June 18, 1997, the total rent due during the remaining life of the Lease Agreement was $250,000, as identified in Section 2.

¶ 23 Therefore, the balance of rent due equals the total amount of rent due between June 18, 1997 and December 31, 2009 ($250,000) minus the amount paid under Section 3 of the Conditional Contract. As conceded by Defendants, Manglona is not liable for penalties or other costs associated with the CDA loan related to the refinance or Manglona's tardiness in paying monthly installments when due. Moreover, due to the Attornment Agreement, Defendants' damages were limited because Lee immediately took the place of Manglona as tenant. Thus, back rent awarded by the trial court should be prorated to reflect the mitigation of Defendants' damages provided by the Attornment Agreement. In addition, courts may allow prejudgment interest as part of a damage award to compensate for detention of money or property even when interest is not stipulated for by contract or authorized by statute. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 43 (citing *United States v. North Carolina*, 136 U.S. 211, 216 (1890)). Thus, Defendants may recover prejudgment interest on money due from the time her claim accrued upon termination of the lease until judgment is entered. *Id.* (quoting *West Virginia v. United States*, 479 U.S. 305, 310 n.2 (1987)). Consequently, we remand to the trial court for determination of the amount of back rent owed to Defendants consistent with this opinion.[14]

*2. Forfeiture*

¶ 24 Manglona contends that the trial court erred when it permitted forfeiture as a remedy for breach of the Conditional Contract. Specifically, Manglona argues that although he received Defendants' notice of termination of the Conditional Contract, Defendants did not send a separate notice concerning the original lease. According to Manglona, Defendants were required to give him specific notice "delineating precisely what provision of the lease [had] been violated so that [Manglona] may cure the problem within the time permitted." Appellant's Opening Br. at 13 (citing *Gallagher v. Borden, Inc.*, 616 N.E.2d 577 (Ohio Ct. App. 1992)). Interpretation of contract terms and whether notice is defective are questions of law that are reviewed de novo. *Sablan Enters.*, 1997 MP 32 ¶ 10 ("Whether notice is defective is a question of law"); *Fusco*, 2011 MP 17 ¶ 26 ("Interpretation of contract terms is a question of law that we review de novo.").

*a. Forfeiture at Law*

¶ 25 Forfeitures of leased property are enforced at law only where the parties clearly intended forfeiture as a remedy. *Blue Ridge Metal Mfg. Co. v. Proctor*, 194 A. 559, 561 (Pa. 1937) ("Forfeitures are odious in law, and are enforced only where there is the clearest evidence that that was what was meant

[14] Because we hold that Manglona breached the Conditional Contract, Baza is also entitled to the other monetary damages awarded by the trial court, including: (1) all rentals collected from subtenant Lee from March 20, 2008 to present including all funds deposited with the court registry; and (2) reasonable attorney fees.

by the stipulations of the parties." (internal quotation marks omitted)). In this case, Section 17 of the Lease Agreement ("Section 17") specifically provides for forfeiture as a remedy in the event Manglona breaches. In pertinent part, Section 17 states:

> Where lessee is in default, Lessor shall notify lessee in writing of such default and if lessee fails to cure the same within thirty (30) days of receipt of such notice, *lessor may thereafter renenter and retake the premises*, and declare the lease terminated.

ER at 41 (emphasis added).

¶ 26 We must examine the relationship between the parties to determine whether the forfeiture provision in Section 17 also applies to Manglona under the Conditional Contract. When a tenant enters into an agreement to purchase land from their landlord, "the general rule is that execution of a contract of sale between landlord and tenant serves to merge the landlord-tenant relationship into the vendor-vendee relationship and thus effectively terminates the former, unless the parties clearly intend the contrary result." *Barbarita v. Shilling*, 489 N.Y.S.2d 86, 87 (N.Y. App. Div. 1985); *see also Marshall v. Bare*, 687 P.2d 591, 594 (Idaho Ct. App. 1984) ("As a general rule, 'the relationship between a vendor and a vendee in possession under a contract to purchase land is not . . . that of landlord and tenant.'" (quoting 77 Am. Jur. 2d Vendor and Purchaser § 322 (1975))). However, "the parties may 'deviate from the general rule and avoid a merger' by an express declaration in the agreement to this effect." *Hadlick v. DiGiantommaso*, 545 N.Y.S.2d 816, 818 (N.Y. App. Div. 1989) (quoting *Barbarita v. Shilling*, 489 N.Y.S.2d at 87). Accordingly, while the general rule is that the landlord and tenant relationship will terminate and that of vendor and purchaser will arise, the two relationships will exist simultaneously if there is a clear intent to maintain a landlord-tenant relationship until the purchase amount is satisfied. *See Sid Farber Hempstead Corp. v. Buckley*, 317 N.Y.S.2d 30, 33-34 (N.Y. Sup. Ct. 1970) (noting that the general rule is to apply the rule of merger absent an express provision in the agreement or where the surrounding facts and circumstances exhibit an intent to the contrary).

¶ 27 In the instant case, the Conditional Contract evidences the parties' clear intent for the relationship to remain landlord-tenant until payment of the purchase price. "The intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms." *Riley*, 4 NMI at 88. Specifically, Conditional Contract section 4(a)(1) states that for "the period prior to delivery of the Warranty Deed conveying title . . . Buyer's status shall be that of a Lessee as defined under the said Lease Agreement, subject to the provisions therein." ER at 47. Additionally, Section 4(a)(2) states that the "purchase price referred and described in Section 2 [of the Conditional Contract] shall automatically assume the place of the rental payments prescribed under the said Lease Agreement." *Id.*

¶ 28 Moreover, Section 5 states that "[u]pon the *fulfillment of each of the* conditions mentioned in Section 3 above and other applicable provisions herein, [Defendants] shall execute in favor of and deliver to [Manglona] a good and sufficiency Warranty Deed . . . ." ER at 48 (emphasis added). "A condition is

an event, not certain to occur, [but] which must occur, unless its non-occurrence is excused, before performance under a contract becomes due." *Del Rosario*, 2001 MP 3 ¶ 97 (quoting Restatement (Second) of Contracts § 224 (1981)).[15] Although conditions are not favored in the law, we may construe a contract term as a condition if the parties unambiguously require such construction. *Shovel Transfer & Storage v. Pa. Liquor Control Bd.*, 739 A.2d 133, 139 (Pa. 1999) ("Generally, an act or event designated in a contract will not be construed as a condition unless that clearly appears to be the intention of the parties."); *Victoria S.S. Co. v. W. Assurance Co. of Toronto*, 139 P. 807, 810 (Cal. 1914) ("'Courts are disinclined to construe the stipulations of a contract as conditions precedent, unless compelled by the language of the contract plainly expressed. The reason for this disinclination is that such a construction prevents the court from dealing out justice to the parties according to the equities of the case.'" (quoting *Front St., Mission and Ocean R.R. v. Butler*, 50 Cal. 574, 577 (1875))).

¶ 29 According to its plain language, full satisfaction of Section 3 is a condition for Defendants' duty to convey title to Manglona. Section 5 expressly refers to payments due under Section 3 as the event that must occur. Although the parties' use of the term "conditions" is not dispositive, it is persuasive within this context. *See Bank of Brewton, Inc. v. Int'l Fid. Ins. Co.*, 827 So. 2d 747, 753 (Ala. 2002) ("[I]n determining whether terms in a contract constitute a condition precedent, we do not look for 'magic' words, but we look to the document as a whole for its intended meaning."). Additionally, Manglona's full satisfaction of Section 3 was not certain to occur as it was intended to be completed over a number of years. Moreover, Defendants time for performance did not mature unless and until Manglona completed payments under Section 3. Defendants were only required to convey title "[u]pon the fulfillment of each" of the payment provisions in Section 3. Accordingly, the parties explicitly made payment of the $250,000 purchase price a condition to Defendants' duty to convey title.

¶ 30 Read together, these sections evidence a clear intent of the parties to remain landlord and tenant until the purchase price was paid, and thus the general rule governing merger of lease and sale agreements does not apply. We also note that, based on the plain terms of the contract, Manglona has always been considered a lessee under both agreements because he never completed payments required for Defendants to convey the property under Section 5. Consequently, the trial court correctly ruled that both agreements remained in effect following execution of the Conditional Contract.

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[15] The Restatement (Second) of Contracts "eliminate[ed] the term[] 'condition precedent.' " because the "terminology has long been criticized and has caused confusion when used . . . ." Restatement (Second) of Contracts § 224 reporter's note (1981). "Conditions precedent are referred to simply as 'conditions.' " *Id.* Likewise, "the trend in recent years is to abolish the concept of 'condition subsequent' and to ask whether the occurrence or non-occurrence of the event in question discharges an existing duty." *W. Am. Ins. Co. v. Hernandez*, 669 F. Supp. 2d 1211, 1223 (D. Or. 2009) (citing Restatement (Second) of Contracts § 224 cmt. e (1981)).

¶ 31 Thus, like other provisions of the Lease Agreement, Section 17 applies to the Conditional Contract unless it is inconsistent or in conflict with the Conditional Contract pursuant to Section 4(a)(2).[16] In this case, the Conditional Contract does not contain any explicit provisions dictating what occurs if Manglona materially breaches the contract. Accordingly, the forfeiture provision in Section 17 applies to breach of rental provisions under the Conditional Contract and forfeiture is an available remedy.

*b. Adequacy of Notice*

¶ 32 We now turn to whether Manglona received adequate notice of his default. According to the plain terms of Section 17, Defendants were required to notify Manglona in writing that he was in default. *See Riley*, 4 NMI at 88 ("The intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms."). Manglona acknowledges that he received written default notices sent by Defendants on three separate occasions, in May 2004, July 2005, and February 2008. In the first instance, Defendants identified two distinct ways Manglona was in breach under Section 3 of the Conditional Contract. The second letter in July 2005 incorporated the earlier May 2004 letter, while the third demand letter sent in February 2008 notified Manglona that, "pursuant to Sections 3 and 4 . . . you are in default and breach." ER at 74. Manglona concedes that "[n]otice was given regarding the . . . conditional sales contract." Appellant's Reply Br. at 6. However, he argues that the letters did not sufficiently furnish him with notice of his default of the Lease Agreement. We disagree.

¶ 33 First, Manglona asserts that Defendants' February 2008 letter does not qualify as adequate notice under the common law. The Commonwealth does not have written, customary, or case law defining what constitutes adequate demand for rent. Therefore, pursuant to 7 CMC § 3401, the rules of the common law as expressed in the restatements of the law apply. *See Estate of Ogumoro*, 2011 MP 11 ¶¶ 57-62 (holding that under 7 CMC § 3401 the Restatements of Law are the "operative rules of decision" in the absence of written or customary law even when the relevant provision does not accord with United States common law). To execute forfeiture for nonpayment of rent the common law generally requires a landlord to identify the precise sum due when demanding that her tenant pay rent.[17] *Werner v. Sargeant*, 264 P.2d 217, 219 (Cal. Ct. App. 1953) (noting that the applicable California statute is based on the "common law view that in order to work a forfeiture of a lease for nonpayment of rent the landlord must demand the precise sum due, and that a demand in excess of the judgment will not support the judgment"). This general rule does not apply in this particular case. We do not find a case—and Manglona does not point

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[16] In pertinent part, Section 4(a)(2) of the Conditional Contract states that: "any and all provisions in the Lease Agreement that are inconsistent and/or in conflict with the provisions of [the Conditional Contract], are hereby deemed superseded, abrogated, and rescinded . . . ." ER at 47.

[17] Most states have modified or dispensed with the common law requirement of demand for rent through statute. Restatement (Second) Prop: Landlord and Tenant § 12.1 cmt. n, statutory note, reporter's cmt. 13. The parties may also modify or dispense with the rule through contractual terms.

us toward one—that applies this common law rule to a lease such as the one at bar that was substantially modified and partly superseded by a subsequent contract.

¶ 34 Moreover, the cases cited by Manglona are not analogous and are easily distinguished from this case. *Gallagher* involved an attempted forfeiture of property where a tenant missed three installments of ongoing monthly rental payments under a pure lease agreement. 616 N.E.2d at 579. The purported default notice sent by the landlord only noted that the tenant was behind on rent due. *Id.* The tenant subsequently paid some but not the entire amount past due, which prompted the landlord to attempt a forfeiture. *Id.* The *Gallagher* court held that it was unclear to which months the notice of default applied because of the ongoing rental obligations and, therefore, the tenant was not given an adequate opportunity to cure the default. *Id.* at 579-80. In comparison, the lease at issue in this case has been modified and its rental obligations superseded by the payment provisions in the Conditional Contract, which is not a lease. Furthermore, all payments under the Conditional Contract and Lease Agreement at issue had been due for more than three years before Defendants' letter. Only the remaining balance was due in February 2008, thus it was clear what was in default.

¶ 35 Similarly, *Josephson v. National Screen Service Group, Inc.* involved a notice of default under a pure lease agreement where the tenant failed to send the landlord proof of insurance and a property tax receipt. 810 S.W.2d 708 (Mo. Ct. App. 1991). The tenant had paid the taxes and insurance but neglected to see the landlord's document request, which had been included as a small part of a lengthy letter to the tenant relating to a transfer of the leasehold interest. *Id.* The *Josephson* court noted that "one would have to search the letters and the lease to find what the tenant's default was." *Id.* at 709. In contrast, Defendants' February 2008 letter was on a single page and directly identified the provisions in default.

¶ 36 Second, Manglona also argues that Defendants were required to give separate breach notices for the Conditional Contract and Lease Agreement. The purpose of notice requirements is to give the breaching party an opportunity to cure. *Cf. Scott-Reitz Ltd. v. Rein Warsaw Assocs.*, 658 N.E.2d 98, 104 (Ind. Ct. App. 1995) ("[W]hen a party deviates from strict performance called for by the contract, the former cannot suddenly declare the deviation a breach of contract. Notice must be given to the other party that strict performance will be required in the future, then if the party continues to deviate, a default can be declared." (citation omitted)). Here, Manglona conceded that he received notice regarding the Conditional Contract and thus had at least thirty days to cure his breach. Moreover, as with statutory interpretation, we avoid contract interpretations that will defy common sense or lead to absurd results. *See Commonwealth Ports Auth. v. Hakubotan Saipan Enter.*, 2 NMI 212, 224 (1991) ("'A court should avoid interpretations of a statutory provision which would defy common sense [or] lead to absurd results . . . .'" (quoting *Office of the Att'y Gen. v. Cubol*, 3 CR 64, 78 (Dist. Ct. App. Div. 1987))); *Beanstalk Grp. v. AM Gen. Corp.*, 283 F.3d 856, 860 (7th Cir. 2002) ("[A] contract will not be interpreted literally if doing

so would produce absurd results, in the sense of results that the parties, presumed to be rational persons pursuing rational ends, are very unlikely to have agreed to seek."). As discussed above, the contractual terms involved were shared by both agreements. Section 4(a)(2) of the Conditional Contract "superseded, abrogated, and rescinded" the rental provisions of the Lease Agreement and explicitly applied the $250,000 purchase price to both contracts. Section 3 of the Conditional Contract, in turn, provided the modified rental payment terms. Thus, breach of these payment provisions breached both agreements. In addition, any notice sent regarding a breach of the payment provisions for either agreement would be sent pursuant to Section 17. Thus, in circumstances where Manglona breached the shared payment provision, it would defy common sense to interpret the Conditional Contract to require separate notices of default.

¶ 37 Accordingly, at the time the Conditional Contract was formed, the parties intended a single default notice to suffice when the shared payment provisions were breached. Further, we hold that because all payments under Section 3 had been due by January 2005, a general default notice after that date would have given Manglona a sufficient opportunity to cure his breach. Therefore, Defendants gave sufficient notice of default under the Conditional Contract and the Lease Agreement in her February 2008 letter. Manglona subsequently failed to cure his breach within thirty days as required by Section 17, which then allowed Defendants to terminate the Conditional Contract and Lease Agreement. Consequently, forfeiture of the Lot was an appropriate remedy for Manglona's breach.

*3. Equitable Relief from Foreclosure*

¶ 38 Lastly, Manglona argues that forfeiture was inappropriate in the instant case because it was inequitable for the trial court to award Defendants the property, back rent, and previous CDA loan payments. Under Manglona's theory, the award constitutes double recovery, which "is simply not permitted at law."[18] Appellant's Opening Br. at 14. He asks this Court to grant him the property or, in the alternative, require all payments made under the Conditional Contract be returned to him. The trial court found that the remedy was appropriate in the instant case because "[Manglona] failed to pay more than half of his obligation under the Conditional Contract, [] had multiple notices of default, [sic] extended opportunities to cure, and [was] seven years late in fulfilling his contract obligations." Findings at 13. In addition to Manglona forfeiting the property and previously-made CDA loan payments, the trial court also ordered him to pay back rent. The court reasoned that Manglona was unjustly enriched by receiving rental payments from sub-tenant Lee while not paying Defendants for the property he was sub-leasing. We review the trial court's use of its equitable powers for abuse of discretion. *Saipan Achugao*, 2011 MP 12 ¶ 41 (citing *Pangelinan v. Itaman*, 4 NMI 114, 117 (1994)). "'An abuse of discretion occurs when the

[18] We note that although Manglona asserts double recovery is not allowed at law, his argument is based on equity.

decision rests upon a clearly erroneous finding of fact, errant conclusion of law, or an improper application of law to fact.'" *Id.* (quoting *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 33).

¶ 39 Equity abhors forfeiture and may provide a party some relief when forfeiture is allowed as a matter of law. *See* Restatement (Second) of Prop.: Landlord and Tenant § 13.1 cmt. j (1977) ("Equitable considerations . . . may entitle the tenant to relief against the forfeiture of his lease for a mere failure to perform his promise."); *Fellows v. Martin*, 584 A.2d 458, 463 (Conn. 1991) ("It is well settled that equity will relieve against the forfeiture of a lease for nonpayment of rent.") (*citing Kann v. King*, 204 U.S. 43, 54-55 (1907))); *Blue Ridge Metal*, 194 A. at 561 ("'It is true as a general statement that equity abhors a forfeiture . . . .'"). "Courts of equity regard the performance of covenants in leases as the real object desired, and the right of entry as mere security for such performance . . . ." *Food Pantry, Ltd. v. Waikiki Bus. Plaza, Inc.*, 575 P.2d 869, 876 (Haw. 1978) (quoting *Henrique v. Paris*, 10 Haw. 408, 411 (1896)). Thus, courts of equity may grant relief from forfeiture where there has been a breach of a covenant caused by accident or mistake, or failure to perform a collateral duty such as to repair or insure, in addition to situations where the lessor can be placed in the same position as if the breach had not occurred. *Mactier v. Osborn*, 15 N.E. 641, 645 (Mass. 1888). In that regard, equity may award an injured party compensation rather than decree forfeiture against the offending party unless to do so would be an injustice. *Food Pantry*, 575 P.2d at 876 ("Equity does not favor forfeitures, and where no injustice would thereby be visited upon the injured party, equity will award him compensation rather than decree a forfeiture against the offending party."). Consequently, courts often provide relief from forfeiture instead of strictly relying on the legal rights of the parties, especially if full and exact compensation can be made to the injured party. *Id.*

¶ 40 A party does not have a right to equitable relief. Instead, "a bill to set aside a forfeiture of a lease is addressed to the conscience of the court, and is granted only as a matter of grace." *Blue Ridge Metal* 194 A. at 561. Thus, the trial court is vested with broad discretion to determine whether forfeiture is permitted in a particular instance. *Food Pantry*, 575 P.2d at 876 ("[T]his matter is addressed to the sound discretion of the trial court acting in accordance with established principles of equity, and its determinations will not be set aside unless manifestly against the clear weight of the evidence."). When sitting in equity, the court must weigh the equities and "fashion a decree to meet the requirements of the situation and to conserve the equities of the parties." *Hendrickson v. Freericks*, 620 P.2d 205, 212 (Alaska 1980) (quoting *Food Pantry*, 575 P.2d at 876). In considering whether to grant equitable relief from forfeiture, courts should consider: "(1) whether, in the absence of equitable relief, one party will suffer a loss '*wholly disproportionate* to the injury to the other party'; and (2) whether the injury to the other party is reparable." *Fellows*, 584 A.2d at 463 (quoting 3 J. Story, Equity Jurisprudence §§ 1727-28 (14th ed.)); s*ee also Sablan Enters.*, 1997 MP 32 ¶ 47 (1997) (Mack, Special J., concurring in part and dissenting in

part) (noting that this equitable test exists and is used by other courts, but then following the majority in declining to further consider the issue).

¶ 41 Furthermore, "[a] court of equity will apply the doctrine of clean hands to a tenant seeking such equitable relief; . . ." *Fellows*, 584 A.2d at 464; *see also Finkovitch v. Cline*, 128 N.E. 12, 13 (Mass. 1920) ("A fundamental maxim of equity is that one seeking its protection must come into court with clean hands with reference to the particular matter in issue."). In that regard, a tenant will not be entitled to relief where the breach was willful, grossly negligent, or lacked good faith. *See Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933) ("[W]henever a party [seeking judicial review] . . . has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him *in limine*; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." (quoting 1 Pomeroy, Equity Jurisprudence, § 397 (4th ed.))); *United States v. Forness*, 125 F.2d 928, 940 (2d Cir. 1942) ("This requirement bars relief to one who has been negligent - or at least grossly so - or who has inexcusably or deliberately gone into default."); *Fellows*, 584 A.2d at 464 ("a tenant whose breach was 'willful' or 'grossly negligent' will not be entitled to relief").

¶ 42 Consistent with these principles, a court may decline a party's request for relief from forfeiture in circumstances "where lack of good faith persists with respect to continuous failure to pay rent [due] under a lease . . . ." *Cabrera v. Sun Bae Young*, 2001 MP 19 ¶ 24. In *Cabrera*, tenants either missed or were late tendering rent payments on at least five different occasions over a five-year period. *Id.* ¶ 25. Like the tenants in *Cabrera*, Manglona failed to tender at least thirty rent payments over a seven-year period, in addition to the $108,506.25 lump sum payment due in 2002. Further, as a result of the missed monthly payments, Defendants incurred additional debt obligations under her CDA loan. Moreover, Manglona's collection of rent from his sub-tenant while not fulfilling contractual obligations to pay rent under a lease agreement exemplifies a "lack of good faith." *Id.* ¶ 24. Due to Manglona's unclean hands, we hold that the trial court did not abuse its discretion when it declined to use its equitable powers to grant Manglona relief from the forfeiture provision of the Lease Agreement.

**IV**

¶ 43 For the foregoing reasons, the judgment of the Superior Court as to Defendants' damages is VACATED and this case is REMANDED for the trial court to recalculate damages consistent with this opinion. The trial court should: (1) recalculate the back rent portion of its damage award consistent with this opinion; and (2) award prejudgment interest. The remainder of the damage award is affirmed; Defendants are entitled to all rent paid by Lee after the notice of termination, as well as attorney fees and costs pursuant to the Conditional Contract. In all other respects the judgment of the trial court is AFFIRMED.

SO ORDERED this 5th day of April, 2012.

/s/
ALEXANDRO C. CASTRO
Acting Chief Justice

/s/
EDWARD MANIBUSAN
Justice Pro Tem

/s/
HERBERT D. SOLL
Justice Pro Tem