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

COMMONWEALTH PORTS AUTHORITY, a Public Corporation,
Plaintiff-Appellant,

v.

TINIAN SHIPPING COMPANY, INC.,
Defendant-Appellee.

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

Cite as: 2007 MP 22

Decided October 15, 2007

Douglas F. Cushnie, Saipan, Commonwealth of the Northern Mariana Islands, for Plaintiff-Appellant.
G. Anthony Long, Saipan, Commonwealth of the 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 Commonwealth Ports Authority ("CPA") appeals the trial court's decision regarding a lease agreement between CPA and Tinian Shipping Company ("Tinian Shipping"). The dispute centers on CPA's attempt to collect fees from non-revenue passengers from March 1999 through July 2000. We find that the trial court erred in allowing Tinian Shipping to introduce course of performance evidence of contract modification, and in holding that CPA was not entitled to the fees for the disputed time period. We therefore REVERSE and REMAND this case to the trial court for calculation of damages due to CPA for unpaid fees during the disputed time period for every passenger embarking from the Saipan Ferry Terminal. Such calculation, however, shall not include fees for Tinian Shipping staff members, since these fees have been waived by CPA.

I

¶ 2 CPA and Tinian Shipping entered into a lease agreement (the "Lease") for dock space at the Tinian and Saipan Seaports. The Lease allowed Tinian Shipping the use of both the Saipan and Tinian Ferry Terminals in exchange for monthly rental payments of $180.00 for the dockage fee, $.20 per square foot for the dock space at Saipan, $.05 per square foot for the dock space at Tinian, and a per person fee of $3.75 for "every person boarding a [Tinian Shipping] vessel at the Saipan Ferry Terminal." Tinian Shipping leased the ferry terminals in order to operate a ferry service between the islands.

¶ 3 Tinian Shipping commenced its ferry services in 1996 after executing the Lease. In order to calculate the per person Lease payments, Tinian Shipping submitted monthly passenger reports to CPA showing the number of passengers boarding at the Saipan Seaport. These reports identified the passengers as fare-paying boarding on Saipan, fare-paying boarding on Tinian, complimentary, infant, and staff. CPA used these reports to determine the monthly passenger fee as required in the Lease. Although the Lease required a per person fee for every person, this was not how the parties performed.

¶ 4 Non-revenue passengers boarding at Saipan were never included in the Lease payment calculations. CPA contends that it waived the passenger fee for non-revenue passengers who were Tinian Shipping staff members. This system was analogous to the airline industry's practice of allowing staff free travel. Tinian Shipping, however, understood non-revenue to be a much larger class of people. Subsequently, Tinian Shipping started to exempt large numbers of non-employees by issuing complimentary tickets to regular passengers. Initially, CPA did not object.

Tinian Shipping continued to send monthly reports showing large numbers of non-revenue passengers.

¶ 5 From 1996 through February 1999, passengers listed as infants, staff, complimentary, and fare-paying passengers boarding at Tinian were not included in the Lease payments. Beginning July 1, 1999, however, CPA sought to enforce the literal contract language under the Lease and charged a fee for all persons boarding at the Saipan Ferry Terminal. Tinian Shipping, however, refused to accept CPA's decision to charge fees for all persons boarding.

¶ 6 Because of the large numbers of non-revenue passengers, CPA failed to meet its minimum gross revenue requirements. The Lease contained an escalation clause that allowed for the hiring of an independent consultant to revise the fee agreement. In accordance with this provision, CPA commissioned a report by Booz Allen Hamilton. Based upon the findings in the report, CPA increased the per person charge to $5.85. Tinian Shipping refused to accept this increase and negotiations commenced that resulted in both parties agreeing that Tinian Shipping would pay a flat monthly passenger fee of $20,000. The dispute in this case centers on CPA's attempt to collect fees from non-revenue passengers from March 1999 through July 2000.

¶ 7 CPA demanded strict adherence to the terms of the Lease and insisted that it was entitled to collect fees for "every person boarding . . . at the Saipan Ferry Terminal." Tinian Shipping disputed this claim as a new interpretation of the Lease. The parties could not agree and Tinian Shipping brought suit. A bench trial ensued and the trial court ruled that CPA was not entitled to recover any passenger fees prior to August 2000. CPA filed this appeal.

II

¶ 8 Before addressing the merits of the case, we must clarify whether we have jurisdiction. The trial court, in effect, issued two rulings. In its Findings of Fact and Conclusions of Law (Conclusion Judgment), dated May 21, 2004, the trial court issued the following:

> Wherefore, based on the evidence and testimony presented in this matter it is hereby ORDERED, ADJUDGED, AND DECREED THAT:
>
> (1) Judgment is entered in favor of CPA, and against Defendant, for $80,000 in unpaid passenger fees for the period August, 2000 through May, 2002.
> (2) CPA is not entitled to any recovery of passenger fees prior to August, 2000; and
> (3) Each party shall bear its own attorneys fees and costs.

¶ 9 Subsequently, on June 18, 2004, the trial court issued a Judgment containing the following:

> IT IS SO ORDERED, AND ADJUDGED:

(1) That the Plaintiff, The Commonwealth Ports Authority recover of the defendant the sum of eighty thousand ($80,000) dollars in unpaid passenger fees for the period of August 2000 through May 2002.
(2) That the Plaintiff, the Commonwealth Ports Authority is not entitled to recover [sic] of passenger fees prior to August, 2000.
Each party shall bear its own attorney fees and costs.

¶ 10 CPA filed its notice of appeal on June 23, 2004. Under Commonwealth law, a notice of appeal must be filed within thirty days of judgment or this Court lacks jurisdiction. *Tudela v. Marianas Pub. Land Corp.*, 1 NMI 179, 182, 187 (1990) (requiring notice of appeal to be filed within thirty days of entry of judgment and noting that the requirement is mandatory and jurisdictional); *see also* Com. R. App. P. 4(a). CPA's Notice of Appeal is timely filed for the June 18, 2004 Judgment, but not timely for the Conclusion Judgment dated May 21, 2004. The issue, therefore, is which order constituted a final judgment for purposes of the thirty-day timetable set out in the Commonwealth Rules of Appellate Procedure.

¶ 11 Under the Federal Rules of Civil Procedure, "[e]very judgment shall be set forth on a separate document. A judgment is effective only when so set forth." Fed. R. Civ. P. 58. Under the Federal Rules, this is a simple matter. However, the Commonwealth's Rules of Procedure do not mirror the Federal Rules. Rather, Commonwealth Rule 58 is a reiteration of sections (e) and (f) of Rule 14 of the Commonwealth Rules of Practice. *Compare* Com. R. Prac. 14(e)-(f) *with* Com. R. Civ. P. 58. We recently addressed this issue in *Commonwealth v. Kumagai*, 2006 MP 20.

¶ 12 In *Kumagai*, we noted that "[w]hile our rules do not explicitly state the obvious, we find that an entry of judgment or order issued as a separate document is a necessary adjunct that must be filed with the Superior Court clerk." *Id.* at ¶ 22 (footnote omitted). We went on to state that "[a] thorough evaluation and collective reading of our Rules of Appellate Procedure, Rules of Civil Procedure and Rules of Practice make evident that without such an entry of judgment or order, this Court has no jurisdiction." *Id.* Furthermore, we took explicit note that "Rule 54(a) . . . state[s]: 'A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.'" *Id.* at ¶ 19 (quoting Com. R. Civ. P. 54(a)).

¶ 13 In the present case, the Judgment acted as the separate entry of judgment we require. The Conclusion Judgment contained the findings of fact and conclusion of law of the trial judge. However, under *Kumagai* and Rule 54(a), it did not constitute the necessary separate entry of the trial court's decision required for the filing clock to begin to toll. As a separate document is necessary for entry of judgment, the Judgment acted as that separate document. As the instant appeal was timely appealed from the Judgment, we have jurisdiction in this matter.

III

¶ 14 Section 3.1(b)(1) of the Lease requires a "[p]assenger fee of $3.75 per person for every person boarding a company vessel at the Saipan Ferry Terminal." This language is simple and straightforward. Furthermore, the Lease contains a non-waiver clause in Section 29. As such, it is unclear why the trial court admitted evidence regarding the parties' conduct prior to March 1999 and used the conduct to aid in the interpretation of an unambiguous contract. While mixed questions of law and fact are reviewed de novo, *Agulto v. Northern Marianas Inv. Group Ltd.*, 4 NMI 7, 9 (1993), the trial court's findings of fact are reviewed under the clearly erroneous standard, and this Court will not reverse those findings unless left with a firm and definite conviction that clear error has been made. *Camacho v. L & T Int'l Corp.*, 4 NMI 323, 325 (1996).

¶ 15 Under Commonwealth law, "[t]he 'interpretation' of a contract relates to 'the ascertainment of its meaning,'" *Riley v. Public School Sys.*, 4 NMI 85, 88 n.8 (1994) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 200 (1981)), and the intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms. *Id.* at 88. The language need only be given legal effect, or construed, by the court and may be disposed of by summary judgment. *Id.* Given that it is the court's function to interpret the contract, the analysis turns on what the proper steps are for analyzing the Lease.

¶ 16 As the trial court noted, there is an absence of case law on the issue of course of performance in the Commonwealth. However, in the Commonwealth, our primary concern in contract interpretation is to determine and give effect to the intentions of the parties as expressed in the instrument, *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983), and the intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms. *Riley*, 4 NMI at 88. Furthermore, in the absence of available common law, statutory code allows the use of the Restatements to aid a court. 7 CMC § 3401. Under the Restatement, "[i]nterpretation of contracts deals with the meaning given to the language and other conduct by the parties rather than with the meaning established by law."[1] While course of performance evidence is allowed in some jurisdictions as evidence when there is no ambiguity in a contract,[2] there are also jurisdictions that do not permit the use of course of performance evidence in such situations.[3] However, based upon *Riley* and the Restatement, it is clear to us that the second approach –

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[1] RESTATEMENT (SECOND) OF CONTRACTS § 212 cmt. a (2005).

[2] *See, e.g.*, *Personal Finance Co. v. Meredith*, 350 N.E.2d 781, 789 (Ill. App. 1976).

[3] *Cincinnati v. Gas Light & Coke Co.*, 41 N.E. 239, 241 (Ohio 1895). "[I]f the contract is not ambiguous, it must be enforced according to its terms, without regard to the construction heretofore placed upon it by the parties in the course of its performance." *Id.*

barring course of performance evidence when there is no contractual ambiguity – is the appropriate law to apply in our developing Commonwealth.

¶ 17 Today we reaffirm the principles of law set forth in *Riley* and hold that the language in a contract is to be given its plain grammatical meaning unless doing so would defeat the parties' intent. *DeWitt County Elec. Coop., Inc. v. Parks*, 1 S.W.3d 96, 101 (Tex. 1999). Furthermore, in determining the intention of the parties, we look only within the four corners of the agreement to see what is actually stated, and not at what was allegedly meant. *Cook Composites, Inc. v. Westlake Styrene Corp.*, 15 S.W.3d 124, 131 (Tex. App. 2000). Confining our inquiry to the four corners of a contract is the most equitable method of determining the parties' intent. Doing so allows the court to interpret what both parties agreed to and not what the contract may have devolved into. We note that, in reaching its decision, the trial court looked to the Restatement. Because there was no ambiguity in the contract, we find that consulting the Restatement was an error on the part of the trial court.

¶ 18 It is clear from the Lease that the parties intended to charge $3.75 for "every person boarding a [Tinian Shipping] vessel at the Saipan Ferry Terminal." Tinian Shipping's argument notwithstanding, both parties agreed to this fee. The fact that CPA attempted to alleviate Tinian Shipping's obligations by exempting employees of Tinian Shipping, or that CPA seemed to acquiesce to Tinian Shipping's complementary fares for passengers, does not modify or waive CPA's rights on a permanent basis, especially in light of the Lease's non-waiver clause in Section 29. By its very terms, Tinian Shipping agreed to a charge of $3.75 for every person boarding a vessel at the Saipan Ferry Terminal. Tinian Shipping and CPA made a bargain and both sides are required to live up to it. This includes CPA's waiver of the fee for employees of Tinian Shipping as admitted in their briefs.

IV

¶ 19 As noted above, the language in the Lease makes clear that the parties intended to charge $3.75 for every passenger leaving the Saipan Ferry Terminal. Although CPA subsequently entered into a mutual modification of the contract that waived its initial contractual right to collect the fee from employees of Tinian Shipping, this change is limited in scope and does not amount to a course of performance modification regarding the remaining passengers. Furthermore, when a contract's four corners are explicit, as is the situation in the present case, there is no need to go outside the document itself. Therefore, we REVERSE the trial court's decision and REMAND this case to the trial court for a determination of the damages owed to CPA for unpaid fees prior to August 2000 for every passenger embarking from the Saipan Ferry

Terminal. Such calculation, however, shall not include fees for Tinian Shipping personnel, since these fees have been waived by CPA.

Concurring:
Demapan, C.J., Carbullido, J.P.T.