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

TRIPLE J SAIPAN, INC. d/b/a TRIPLE J MOTORS,
Plaintiff-Appellant,

v.

VICENTE M. SANCHEZ and CARMENCITA V. SANCHEZ,
Defendants-Appellees,

SUPREME COURT NOS. CV-04-0027-GA & CV-04-0030-GA
SUPERIOR COURT NO. 01-0555

Cite as: 2007 MP 23

Decided October 24, 2007

Vicki King Taitano, Saipan, Northern Mariana Islands, for Appellees
Michael White, Saipan, Northern Mariana Islands, for Appellant

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

DEMAPAN, C.J.:

¶ 1 Appellants, Vicente and Carmencita Sanchez (collectively "debtors"), appeal the trial court's decision that appellee Triple J Saipan, Inc., d/b/a Triple J Motors ("Triple J") did not resell debtors' repossessed vehicle in a commercially reasonable manner. Debtors also argue that the trial court incorrectly calculated offsetting damages to debtors, and improperly awarded attorney's fees to Triple J. Triple J cross-appeals, contending that the $2,200 credit awarded to debtors was clear error and the trial court failed to award reasonable attorney's fees. We find that the vehicle's resale was commercially reasonable, the trial court should have relied upon the rebuttable presumption rule and 5 CMC § 9507(1) in determining damages, and the trial court erred in awarding $800 in attorney's fees. For these reasons, we REVERSE and REMAND.

I

¶ 2 In August 1999, debtors entered into a contract with Triple J to purchase a used vehicle for $6,075, plus additional fees. On August 16, 1999, debtors entered into a contract with the Bank of Hawaii ("bank") to finance the vehicle. Debtors agreed to pay the bank eighteen consecutive payments of $339.81 starting September 16, 1999. The contract preserved the bank's right to repossess in the event of default, and a payment guarantee clause required Triple J to assume responsibility for the remaining payments under the contract if debtors defaulted.

¶ 3 Debtors made four monthly payments despite mechanical problems that began the day of purchase.[1] In December 1999, the vehicle broke down, and debtors had the vehicle towed to Triple J. Triple J informed debtors that repairs would cost $1,800. Unable to pay for the repairs, debtors left the vehicle with Triple J. Debtors then called the bank and told them they surrendered the vehicle. Consequently, debtors did not pay their monthly payments in January and February 2000.

¶ 4 On February 23, 2000, the bank repossessed the vehicle. The following day the bank sent a notice of repossession and intent to sell, which provided that debtors owed $4,499.46 on the loan, with 17% interest per annum. The notice informed debtors they had fifteen days to redeem the vehicle or the bank would declare the entire loan due and reassign the purchase contract back to Triple J, at which time the vehicle would be put up for sale. The notice also informed debtors they would be responsible for any difference in the amount owing on the loan and the sale price

[1] On the day of purchase the vehicle overheated. Debtors brought the vehicle back to Triple J and Triple J fixed the problem. For four months debtors used the vehicle, driving over 4,000 miles. According to debtors, the vehicle overheated multiple times during this period. Debtors, however, never brought the vehicle back to Triple J for repairs until December 1999.

of the vehicle. On the same day, the bank sent a notice to Triple J informing it of the repossession and demanding payment on the defaulted loan.

¶ 5 Debtors did not redeem the vehicle, and on March 13, 2000, Triple J paid the bank $4,499.46 in satisfaction of debtors' defaulted loan. In return, the bank reassigned its rights to payment and its security interest in the vehicle back to Triple J. Triple J then repaired the vehicle for $3,662.57, and displayed it on its used car lot. On February 1, 2001, almost a year after being repossessed, the vehicle was resold for $2,080.

¶ 6 Triple J filed a complaint seeking a judgment for $7,056.88, representing the amount Triple J paid the bank to satisfy debtors' loan, interest, and attorney's fees and costs. Although Triple J could have sought extra damages for selling the vehicle at a loss, Triple J decided not to seek payment for its loss ─ the difference between repair costs and resale price. Instead, Triple J asked for the sum they paid to the bank, interest, costs of resale, and reasonable attorney's fees.

¶ 7 On March 5, 2002, the trial court entered default judgment for Triple J for $7,056.88 after debtors failed to respond to Triple J's complaint. Several months later, debtors were granted relief from judgment and filed an answer. Debtors claimed, inter alia, that Triple J was barred from default judgment because Triple J failed to dispose of the repossessed vehicle in a commercially reasonable manner. Triple J moved for summary judgment, and in support of its motion, Triple J attached a declaration explaining the circumstances surrounding the repair and resale of the vehicle. Debtors offered no evidence in opposition. On June 4, 2004, the trial court granted the motion in part and denied in part. The trial court found that no issue of material fact existed as to the commercial reasonableness in reselling the vehicle. However, the trial court left open the issue of damages, necessitating a trial on that issue.

¶ 8 Immediately after receiving the summary judgment order, the parties began a bench trial. Despite the summary judgment order on the issue of commercial reasonableness, and Triple J's objections,[2] the trial court heard testimony from debtors on the issue of commercial reasonableness. The testimony indicated that an unusual delay in preparing the vehicle for resale caused the vehicle to depreciate substantially in value. On October 15, 2004, in light of the new evidence, the trial court rescinded its earlier order granting summary judgment on the issue of commercial reasonableness of the resale of the vehicle. The trial court found that while the method of resale was reasonable, the timing was not. The trial court found that Triple J acted in bad faith and failed to mitigate the damages that debtors' default created. The trial court reasoned:

---

[2] The trial court sustained the objection, noting, that it had ruled on commercial reasonableness.

> [Debtors] originally paid $6075 for the vehicle. [Debtors] were later informed that it would cost an additional $1800 to repair the vehicle. As [debtors] could not afford these repairs, they were forced to default. [Triple J] subsequently resold the vehicle for only $2000-*after* spending $3662 repairing the vehicle for resale. Thus, [debtors] lost over $1600 on the resale. Of course, [Triple J] knew that [debtors] could be held liable for the difference of any shortfall. This creates a strong inference of bad faith tactics on the part of [Triple J], considering [Triple J's] duty to mitigate [debtors'] damage yet absolutely no credit whatsoever generated for [debtors].
>
> Furthermore, assuming this vehicle was worth somewhere in the neighborhood of $6000 when [Triple J] originally sold it to [debtors], what happened to its value? [Triple J] spent $3662 to return the car to the proper working condition it presumably was in (approximately) when originally sold to [debtors]. Apparently the car depreciated significantly, well over $4000, in the time it sat on [Triple J's] lot awaiting preparation for resale.
>
> It would be inequitable for this court to further burden [debtors] with [Triple J's] poor business judgment in delaying the resale of the vehicle, and performing repairs far beyond what could reasonably be recouped in the sale. Therefore, the court finds that the repairs in excess of the original $1800 estimate are not chargeable to [debtors]. As the car sold for $2000, the difference of $200 is credited to [debtors]. Further, at least $2000 of the vehicle's $4000+ in depreciation was attributable to the excessive time it sat waiting for repairs and resale.

Appellee's Excerpts of Record ("ER") at 48-49 (footnotes omitted). In sum, the trial court granted debtors a credit of $2,000 in depreciation and an additional credit of $200 for the resale of the vehicle.

¶ 9 The trial court also awarded attorney's fees of $800 to Triple J, but only for work performed prior to March 5, 2002, the date of Triple J's request for default judgment. The trial court held there was no true prevailing party, and that the contract for sale of the vehicle contained no express provision for attorney's fees.

II

Commercial Reasonableness

¶ 10 Triple J contends that the trial court's grant of $2,200 to debtors was without any basis in fact. That is, the trial court erred in holding that Triple J did not resell the vehicle in a commercially reasonable manner when it resold the vehicle in a year. Generally, commercial reasonableness is a question of fact for the jury. *See, e.g.*, *Leasing Serv. Corp. v. River City Constr., Inc.*, 743 F.2d 871, 878 (11th Cir. 1984).[3] "Where there are no disputes as to material

[3] Other courts also hold that determining commercial reasonableness is a question of fact for the jury. *See In re Excello Press Inc.*, 890 F.2d 896, 905 (7th Cir. 1989) ("Whether a sale was commercially unreasonable is, like other questions about 'reasonableness,' a fact-intensive inquiry[.]"); *Comfort Trane Air Conditioning Co. v. Trane Co.*, 592 F.2d 1373, 1386 (5th Cir. 1979) ("The question of commercial reasonableness is generally for the jury."); *United States v. Conrad Publi'g Co.*, 589 F.2d 949, 954 (8th Cir. 1978) ("[W]hether a sale of collateral was conducted in a commercially reasonable manner is essentially a

facts, however, the issue becomes a question of law." *Id.*; *see Leigh Co. v. Bank of New York*, 617 F. Supp. 147, 153 (S.D.N.Y. 1985) (finding that where the material facts are undisputed, the court may determine commercial reasonableness as a matter of law); *Appleton State Bank v. Van Dyke Ford, Inc.*, 90 Wis. 2d 200, 205-06 (1979) (stating that in most cases what constitutes commercial reasonableness will be a fact question, but "where a record would not support a finding of disposition of collateral . . . a court could rule as a matter of law that a particular sale was not done in a commercially reasonable manner").

¶ 11 Triple J originally moved for summary judgment, and submitted evidence regarding the commercial reasonableness of the vehicle's resale. Debtors did not offer evidence in opposition, thus conceding there was no issue of material fact. Because there are no issues of material fact in dispute regarding commercial reasonableness of the resale of the vehicle, we review commercial reasonableness as a matter of law. Questions of law are reviewed de novo. *See, e.g.*, *Santos v. Santos*, 3 NMI 39, 46 (1992).

¶ 12 The Uniform Commercial Code of the Northern Mariana Islands ("the Code") governs the repossession and resale of collateral. 5 CMC §§ 1101 *et seq.* Under the Code, every aspect of the disposition of collateral "including the method, manner, time, place and terms must be commercially reasonable." 5 CMC § 9504(3).[4] When commercial reasonableness is at issue, the burden of proof that every aspect of the sale was commercially reasonable is on the creditor. *Vic Hansen & Sons, Inc. v. Crowley*, 57 Wis. 2d 106, 113 (1973); *see Westgate State Bank v. Clark*, 231 Kan. 81, 91 (1982) (placing burden on plaintiff creditor).

¶ 13 Although the Code does not define commercial reasonableness, the Code does provide rules to determine commercial reasonableness.[5] These rules are found in 5 CMC § 9507(2). The first rule provides that, "[t]he fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner." 5 CMC § 9507(2). The other rules provide that a creditor disposes of collateral in a commercially reasonable manner if the secured party either: sells the collateral in the usual manner in any

---

factual question."); *Leigh Co. v. Bank of New York*, 617 F. Supp. 147, 153 (S.D.N.Y. 1985) (determining commercial reasonableness is a factual determination best made by the trier of fact).

[4] We note that 5 CMC §§ 9101 *et seq.* has not been updated to conform to the latest revisions of Article 9 of the UCC.

[5] Under 5 CMC § 9501(3), "parties may by agreement determine the standards by which the fulfillment of [their] rights and duties [under the Code are] to be measured if such standards are not manifestly unreasonable[.]" *See Ford Motor Credit Co. v. Solway*, 825 F.2d 1213, 1217 (7th Cir. 1987) (holding that where underlying a contract describes a particular method of disposition as commercially reasonable, compliance with that provision creates strong evidence of commercial reasonableness).

recognized market; sells at the price current in that market at the time of sale; or sells in conformity with the reasonable commercial practice among dealers in the type of property sold. *Id.*[6]

¶ 14 In reversing summary judgment in the instant case, the trial court found the resale of the vehicle was commercially unreasonable because the resale was untimely. Triple J argues that a lengthy delay in completing the resale does not make the resale commercially unreasonable. For instance, in *Brown v. Ford*, 280 Ark. 261, 263-64 (Ark. 1983), the Arkansas Supreme Court held that a sixteen month delay in reselling a repossessed vehicle was commercially reasonable where extensive repairs were necessary in order to attract a buyer. Not only was the resale reasonable after such a delay, but the court also awarded the car company the full price of the repairs. *Id.* at 264. Indeed, Triple J did not resell the vehicle for a year after debtors abandoned it at Triple J. However, two months after spending $3,662.57 in extensive repairs, the vehicle was placed on the lot where all other vehicles are displayed for sale. Two months is hardly untimely for extensive repairs for a nine-year-old vehicle on Saipan where parts are not readily available. Thus, when Triple J resold the vehicle in a year the resale was timely, and the trial court erred in reversing its finding of commercial reasonableness based on the timing of the resale of the vehicle.[7]

Notice

¶ 15 Debtors argue that proper notice was not given as required under 5 CMC § 9504(3) to alert them of, and provide them time to participate in, the resale of the vehicle. The issues of commercial reasonableness and notice are separate and distinct under the Code. While commercial reasonableness was challenged in the trial court, notice was not. Nor have debtors presented evidence that notice was at issue in the trial court. Notice was not brought up in the

---

[6] Although not applicable here, another rule to determine commercial reasonableness is contained in Section 9507(2). This rule provides that if a disposition "has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable[.]" 5 CMC § 9507(2). However, this does not mean that any disposition that is not approved is not commercially reasonable.

[7] Debtors further argue that if Triple J did more to advertise the vehicle, such as placing a "for sale" sign on it, the vehicle might not have taken a year to sell. However, "[s]peculation on whether a different mode of sale may have brought a better price does not support a finding that disposition of collateral was commercially unreasonable." *In re Estate of Sagmiller*, 615 N.W.2d 567, 571 (N.D. 2000). Debtors' argument that a "for sale" sign placed on the vehicle would have led to reselling the vehicle before a year is mere speculation. Certainly, reasonable people know that most, if not all, vehicles on a commercial car lot are for sale. It is hard to imagine that a "for sale" sign would make any difference.

The parties also argue extensively over the definition of a "recognized market" under 5 CMC § 9507(2). The recognized market exception does not apply to used vehicles. *See Aspen Enterprises, Inc. v. Bodge*, 37 Cal. App. 4th 1811, 1824 (1995) ("[I]t is clear that the recognized market exemption definitely applies to stocks and bonds traded on exchanges such as the New York Stock Exchange, and definitely does not apply to used cars.").

trial court and is therefore not preserved on appeal.[8] *See In re Estate of Deleon Castro*, 4 NMI 102, 106 (1994) (finding that we will not entertain factual issues raised for the first time on appeal); *Riley v. Public Sch. Sys.*, 4 NMI 85, 89 (1994) (determining that on appeal from a grant of summary judgment, a party may not allege a genuine issue of material fact where it failed to raise the issue below).

Deficiency Judgment

¶ 16 Triple J contends that the trial court erred in awarding $2,200 to debtors after reversing its earlier decision and finding that the resale was not commercially reasonable. Debtors were first credited $2,000 for "depreciation" of the vehicle as it sat on the lot for a year before resale. The trial court took $6,000, the price of the vehicle when it was sold, and subtracted $2,000, the price of the vehicle when resold, to get the $4,000 depreciation amount. The trial court then divided $4,000 by two to reach the $2,000 credit. Debtors were credited an additional $200 based on the difference between the original repair estimate of $1,800 and the eventual resale price of $2,000.

¶ 17 Even though we find that the vehicle's resale is commercially reasonable, we want to clarify the remedy available for a debtor when resale of collateral is not conducted in a commercially reasonable manner. The trial court should have relied upon 5 CMC § 9507(1). The statute expressly provides for a debtor's remedy in the event that the secured party does not proceed in a commercially reasonable manner. Section 9507(1) reads:

> If it is established that the secured party is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this chapter. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price.

5 CMC § 9507(1).

¶ 18 The first formula of Section 9507(1) applies in a prospective manner, whereas the latter formula applies where the resale has already occurred. In order to promote consistency in the law, we encourage adherence to the statutory provisions allowing for the proper recovery when available. Therefore, it is the latter formula, not those the trial court created, which should be applied in the event that a resale of collateral is deemed to be commercially unreasonable.

---

[8] We are puzzled as to why debtors did not raise the sufficiency of notice in the trial court. If debtors had raised the notice issue, the outcome of this case may have turned out differently.

¶ 19 However, 5 CMC § 9507(1) is not a debtor's exclusive remedy for a creditor's failure to comply with the Code's requirements of commercial reasonableness and notice. *Liberty Bank v. Honolulu Providoring, Inc.*, 65 Haw. 273, 279 (1982). Section 9507(1) is supplemental to remedies otherwise accorded to the debtor because the Code's drafters "must have been aware of the existing remedies available to the injured debtor under prevailing commercial law and therefore the absence of language in UCC § 9-507(1) making its provisions explicitly exclusive implies that UCC § 9-507(1) was not intended to supersede supplemental remedies under general principles of law and equity." *Id.* at 279-80.

¶ 20 Although there is general agreement among other jurisdictions that an injured debtor is not limited only to his remedy for actual damages under UCC § 9-507(1), there is no uniform agreement as to the appropriate remedy to be accorded the debtor with respect to the secured creditor's right to a deficiency judgment. *Id.* at 280. There are, however, three general rules: absolute bar, set-off, and rebuttable presumption.

¶ 21 The absolute bar rule holds that the creditor's failure to comply with commercial reasonableness and notice requirements absolutely bars the creditor from obtaining a deficiency judgment. *Id.*; *Connecticut Bank & Trust Co. v. Incendy*, 207 Conn. 15, 26 (1988). Strict compliance with the Code's requirements of commercial reasonableness and notice are conditions precedent to the creditor's right to deficiency judgment because "an absolute forfeiture of the right to a deficiency judgment is the only sufficient deterrent to a secured creditor's misbehavior." *Liberty Bank*, 65 Haw. at 280. The absolute bar rule, however, is unduly harsh and punitive to creditors, at least as a method of redressing commercial reasonableness. *Id.* at 281.

¶ 22 The set-off rule holds that the creditor may still obtain a deficiency judgment subject to a set-off for damages resulting from failing to follow the Code's requirements of notice and commercial reasonableness. *Chittenden Trust Co. v. Andre Noel Sports*, 159 Vt. 387, 394 (1992). We reject this rule because the debtor has the burden of proving damages, thereby providing little incentive for creditors to comply with the Code's requirements. *Id.*

¶ 23 The rebuttable presumption rule places the burden on the creditor to rebut the presumption that the value received for the collateral at resale equals the balance due on the outstanding debt. *Liberty Bank*, 65 Haw. at 281. When resale does not conform to the Code's requirements of commercial reasonableness and notice, the creditor has the burden of proving the collateral's market value is less than the indebtedness through evidence other than the resale price. *Id.* Unlike the absolute bar rule, under the rebuttable presumption rule the creditor is still

permitted to seek deficiency judgment from the debtor despite the creditor's failure to comply with the commercial reasonableness and notice requirements. *Id.*

¶ 24 In the Commonwealth, deficiency judgments are denied where a creditor fails to provide reasonable notice of the resale of collateral. *Economic Development Loan Fund v. Arriola*, 2 CR 213, 219 (Dist. Ct. App. Div. 1985). Even though *Arriola* was decided before the adoption of the Code in the Commonwealth, the absolute bar rule is easily administered, and provides incentive for creditors to comply with the notice requirements of 5 CMC § 9504(3). It does not necessarily flow from *Arriola* that a commercially unreasonable sale should similarly be an absolute bar to recovery because, unlike a commercially unreasonable sale, notice is an either-or element. Thus, we do not abandon the holding in *Arriola*. The absolute bar rule still applies to notice situations.

¶ 25 As to commercial reasonableness, policy considerations favor the rebuttable presumption rule. The absolute bar remedy is punitive, involves a forfeiture, and creates a penalty that has no relation to the commercial reasonableness of resale. *Bank of Chapmanville v. Workman*, 185 W. Va. 161, 167 (1991); *see Emmons v. Burkett*, 256 Ga. 855, 858 (1987) (determining that the absolute bar rule is contrary to intent of the UCC because the debtor receives a windfall and the creditor is arbitrarily penalized even if the debtor suffered no damage). If we adopted the absolute bar rule for commercial reasonableness:

> [A] disposition of collateral, conducted in the most commercially reasonable manner possible, that realized a price in excess of the existing fair market value for the collateral but less than the amount of the debt owed, would deprive the secured party of a deficiency judgment, even when such a price was obtained solely as a result of the good faith efforts of the secured party.

Incendy, 207 Conn. at 27. Such a result "would encourage debtors in default to walk away from their obligations." *Id.* The rebuttable presumption rule at least affords some protection to the debtor on a case by case basis without being unduly punitive like the absolute bar rule. We thus adopt the rebuttable presumption rule for commercial reasonableness.

¶ 26 In the Commonwealth, therefore, if a creditor disposes of collateral in a commercially unreasonable manner, the creditor has the burden of rebutting the presumption that the fair market value of the collateral equals the unpaid balance of the outstanding debt. *State Bank of Burleigh County Trust Co. v. All-American Sub, Inc.*, 289 N.W.2d 772, 779-80 (N.D. 1980); *accord United States v. Whitehouse Plastics*, 501 F.2d 692, 695-97 (5th Cir. 1974). In proving the fair market value of the collateral, the creditor who fails to comply with the Code's requirements may not rely solely on the value received on resale, but must prove the value of the collateral through other evidence. "Generally, this requires evidence of such things as the amount of advertising done, the number of people contacted, normal commercial practices in disposing of the particular

collateral, the length of time between the repossession and the sale, whether any deterioration in the collateral has occurred, the number of bids received, and the price obtained." *Incendy*, 207 Conn. at 28. Moreover, to the extent the creditor's failure to dispose of collateral in a commercially reasonable manner harms the debtor, the debtor is entitled under 5 CMC § 9507(1) to have the amount of damages subtracted from any deficiency the creditor would otherwise recover.

Attorney's Fees

¶ 27 Triple J contends that the trial court arbitrarily awarded $800 in attorney's fees for work performed prior to March 5, 2002, and denied Triple J the opportunity to request reasonable attorney's fees for work performed subsequent to that date. We review the award of attorney's fees for an abuse of discretion. *See, e.g.*, *Wabol v. Camacho*, 4 NMI 388, 389 (1996). Under the abuse of discretion standard, we will uphold the trial court's ruling unless it was based on a clearly erroneous finding of material fact or if the trial court did not apply the correct law. *Highsmith & O'Mallan, P.C. v. Guerrero*, 2003 MP 4 ¶ 2.

¶ 28 In its order reversing summary judgment, the trial court stated that the sales agreement between Triple J and debtors did not contain an express provision for attorney's fees if debtors defaulted on the contract. The contract between debtors and Triple J, however, expressly provides that: "If after default we hire an attorney . . . to collect this Contract, you will also have to pay us a reasonable attorney's fee. If we have to file suit to collect this Contract, you will pay our court costs, whether or not we hire an attorney." ER at 29.

¶ 29 In *Wabol*, the parties agreed that if one of them brought a court proceeding for interpretation or enforcement of the agreement, then the prevailing party would be entitled to recover attorney's fees. 4 NMI at 391. Defendant ultimately prevailed, and therefore, under the terms of the agreement, was entitled to attorney's fees. *Id.* The parties here agreed to the attorney's fees provision; that is, Triple J would be entitled to attorney's fees if they sued in order to recover for a default on the loan. As the parties freely contracted the attorney's fees provision, this provision should have been enforced. The trial court's finding that the contract provision did not exist is, therefore, clearly erroneous. Under Com. R. Civ. P. 54(d)(2), Triple J may submit a motion in the trial court for reasonable attorney's fees for work performed after March 5, 2002. Accordingly, we reverse the issue of attorney's fees and remand to the trial court to determine the correct amount.

III

¶ 30 We hold that the vehicle's resale was commercially reasonable, the trial court should have relied upon the rebuttable presumption rule and 5 CMC § 9507(1) in determining damages,

and the trial erred in awarding $800 of attorney's fees. We REVERSE and REMAND to the trial court to recalculate damages under the rebuttable presumption rule and 5 CMC § 9507(1), and determine the issue of attorney's fees.

Concurring:
Castro, Manglona, JJ.