

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

CENTURY INSURANCE COMPANY, LTD.,
Counter-Claimant-Appellee,

v.

GUERRERO BROTHERS, INC., et al.,
Counter-Defendant-Appellant.

SUPREME COURT NO. 2009-SCC-0009-CIV
SUPERIOR COURT NO. 01-0478B

Cite as: 2010 MP 13

Decided September 9, 2010

Douglas F. Cushnie, Saipan, Commonwealth of the Northern Mariana Islands, for Appellant
Kelley M. Butcher, Saipan, Commonwealth of the Northern Mariana Islands, for Appellee

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

CASTRO, J.:

¶ 1 Guerrero Brothers Incorporated (“GBI”) appeals the trial court’s denial of its motions to alter or amend judgment and for attorney fees. Because GBI failed to raise any grounds that would justify amending the judgment and GBI was not a prevailing party at trial, the trial court’s judgment is AFFIRMED.

I

¶ 2 GBI and the Public School System (“PSS”) contracted in 1993 for the construction of Tinian High School, and GBI contracted with Century Insurance Company (“CIC”) for the required payment and performance bonds. Under the terms of the bonds, CIC guaranteed that if GBI defaulted on the contract it would step in and finish the project. GBI also secured a loan and a revolving line of credit from the Bank of Saipan, and the Commonwealth Development Authority (“CDA”) guaranteed these sums. GBI commenced construction, but four years later PSS terminated GBI’s contract for default. According to the terms of the bonds, CIC fulfilled its obligations by paying all of the laborers and suppliers and finishing construction of the school. It subsequently sought \$867,867.16 in reimbursement from PSS for the sums it expended in completing construction.

¶ 3 Due to numerous disputes between PSS and GBI, the parties entered into a settlement agreement in 2001, which required PSS to pay GBI \$500,000, change the termination for default into a termination for the convenience of the government, and interplead the remaining \$804,049.73 in contract funds¹ into a then on-going action by CDA against GBI.² In response to the settlement agreement, CIC filed suit against GBI and PSS seeking to recover, among other things, the \$867,867.16 it claimed PSS owed it for completing construction. In its answer, PSS requested a declaratory judgment determining whether CIC, GBI, or CDA was entitled to the remaining funds allocated to the project, and counter-claimed to bring CDA into the lawsuit because it was potentially entitled to all of the remaining funds on the contract as a result of its assignment of GBI’s debt. PSS did not claim the funds and sought to avoid exposing itself to liability, and furthermore, stated that it could not interplead the funds because the Department of the Interior (“DOI”) would not release them without a court order. Four months later, however, PSS

¹ This was all of the remaining money allocated for the contract.

² At this time, CDA was suing GBI in Civil Action No. 97-0677 for GBI’s breach of its loan agreement with the Bank of Saipan. CDA, as the guarantor of that loan, had paid the Bank of Saipan ninety-percent of the loan’s value and was seeking compensation from GBI. The case was ultimately appealed to this Court, and we issued *Commonwealth Development Authority v. Guerrero Brothers, Inc.*, 2007 MP 32, upholding the trial court’s finding that GBI was liable to CDA.

transferred all of the remaining money allocated for the project to CIC in exchange for a total release from liability. PSS did not interplead the funds as it promised to do under the terms of the settlement agreement.

¶ 4 Several years later, in 2007, GBI and CDA filed cross and counter claims, respectively, against PSS.³ CDA and GBI claimed that PSS breached its contract with GBI when it released the remaining funds to CIC and sought damages for this breach; CDA contended that as GBI's lien creditor it was a third-party beneficiary to the settlement agreement and harmed by the breach of that agreement. A year later the trial court *sua sponte* bifurcated the trial, and a jury heard the case. After the close of the first phase, the jury found GBI liable to CIC for damages.⁴ After the trial court bifurcated the trial, GBI and CDA claimed that PSS harmed their interests as a result of the breach. GBI filed a motion for partial summary judgment against PSS claiming that PSS breached the settlement agreement. The court granted the motion even though PSS asserted that it was legally impossible for it to interplead the funds without a judgment. The trial court rejected this explanation because PSS transferred the funds to CIC without a judgment. PSS then filed a motion for judgment as a matter of law claiming that GBI suffered no harm from the breach of the settlement agreement, and the trial court granted the motion on the grounds that GBI presented legally insufficient evidence demonstrating injury. PSS's similar motion asserting that CDA was not harmed by the breach, however, was denied.

¶ 5 After the second part of the bifurcated trial, the jury returned the following verdict: (1) CIC did not breach its contract to provide interim payments to GBI; (2) CIC did not unreasonably delay in providing performance and payment bonds to GBI; (3) CIC tortiously interfered with the settlement agreement reached between GBI and PSS; (4) GBI suffered no harm as a result of the tortious interference; and (5) CDA was entitled to damages in the amount of \$804,049.73 for PSS's breach of the GBI-PSS settlement agreement. PSS subsequently filed a renewed motion for judgment as a matter of law against CDA. In granting the motion, the trial court first found that pursuant to principles of equitable subrogation, CIC enjoyed priority over GBI, and consequently CDA, to any remaining contract funds, and second, that the parties presented insufficient evidence for a jury to find that CDA suffered harm as a result of PSS's breach of the settlement agreement. At this point, GBI filed a motion to alter or amend the judgment. It argued that the jury's verdict awarding the remaining contract funds to CDA essentially constituted a payment of GBI's debt, and without upholding the jury's award, GBI suffered an injury because it was now liable for what it owed CDA. The trial court disagreed. GBI also filed a motion for

³ The parties and the record are silent as to why nothing occurred in the case for five years. PSS did seek a dismissal for failure to prosecute, but the trial court rejected this because GBI and CDA were not positioned as plaintiffs; CIC was the original plaintiff in the suit.

⁴ The decision from the first phase of the trial was not appealed.

attorney fees pursuant to the settlement agreement, which was denied on the grounds that it was not the prevailing party, and that its request for fees was unreasonable. The final judgment, which incorporated both phases of the bifurcated trial, ordered: (1) damages in favor of CIC against GBI; (2) no damages to GBI from CIC on the claim of tortious interference with the contract; and (3) the jury verdict awarding CDA damages for PSS's breach of the PSS-GBI settlement agreement be set aside. GBI now appeals the trial court's ordering denying its motion to alter or amend the judgment, and the order denying its motion for attorney fees.

II

A. Motion to Alter or Amend Judgment

¶ 6 We must determine if the trial court erred in denying GBI's motion to alter or amend the judgment pursuant to Commonwealth Rule of Civil Procedure 59(e). We review for an abuse of discretion the trial court's denial of a motion to alter or amend judgment. *Angello v. Louis Vuitton Saipan, Inc.*, 2000 MP 17 ¶ 24. A court grants a motion pursuant to Rule 59(e) when the controlling law changes, new evidence becomes available, or a need to correct a clear error or prevent a manifest injustice arises.⁵ *Angello*, 2000 MP 17 ¶ 23. GBI must satisfy one of these criteria in order for this Court to grant relief. The relief sought from the altered or amended judgment is specific performance—namely that the \$804,049.73 in remaining contract funds be interpleaded into the court registry. In the event that specific performance is the appropriate remedy, we review the trial court's decision to deny that relief for an abuse of discretion. *Pangelinan v. Itaman*, 4 NMI 114, 117 (1994).

¶ 7 In *Angello*, 2000 MP 17, the plaintiff filed a claim with the Division of Employment Services ("DES") against her employer Louis Vuitton alleging a claim for preferential treatment as a relative of a U.S. citizen. DES denied her claim, but the Department of Labor and Immigration ("DOLI") reversed, and ordered DES to conduct further proceedings. Eventually DES issued a notice of violation, and the DOLI scheduled a hearing. The DOLI officer found in favor of Louis Vuitton. Angello then filed suit in the trial court for defamation and intentional infliction of emotional distress, but not for judicial review of the administrative decision. Angello later amended her complaint to include a claim for such review. Louis Vuitton filed a motion to dismiss, claiming in relevant part that she was untimely in seeking judicial review of the administrative decision. The trial court agreed. She then filed a motion for reconsideration, which the court denied, and she subsequently appealed that denial, among other issues, to this Court. In discussing the denial of the motion for reconsideration we stated:

⁵ Under the federal rules of civil procedure, the four grounds on which a Rule 59(e) motion may be granted are: (1) the need to correct manifest errors of law or fact upon which the judgment is based; (2) the presentation of newly discovered or previously unavailable evidence; (3) the need to prevent manifest injustice; or (4) an intervening change in controlling law.

Angello has not presented any of the grounds upon which reconsideration may be granted. She has not pointed to any intervening change in the controlling law or the availability of new evidence. Likewise, she has failed to demonstrate any clear error or the need to prevent manifest injustice. There is no clear error where the trial court's decision to dismiss Angello's appellate claims was based upon the agreement of the parties that the court lacked subject matter jurisdiction.

Id. ¶ 25. Thus, we affirmed the trial court's decision denying the motion for reconsideration.

¶ 8 Similar to the plaintiff in *Angello*, GBI fails to frame its appeal in light of the Rule 59(e) factors even though it argues that the trial court erred in not granting the motion, and that it suffered harm from PSS's breach of the settlement agreement. In GBI's supplemental cross-claim against PSS, it argued that PSS must interplead \$804,049.73 into the court's registry so the ownership of the money as between itself and CDA could be determined. When the trial court granted PSS's motion for judgment as a matter of law against GBI, it found that even though PSS breached the agreement, GBI sustained no injury, and therefore, it was not entitled to specific performance. GBI suffered no injury because its claim to the money under the settlement agreement was superseded by CIC's superior claim. After the trial court granted PSS's motion for judgment as a matter of law against CDA, which reversed the jury's award of \$804,049.73 in CDA's favor, GBI then filed the motion to alter or amend judgment. It argued that with the reversal of the jury's verdict it was now "harmed in fact" because if CDA obtained the remaining contract funds from PSS, GBI's debt would be extinguished. With the judgment as a matter of law, GBI was still liable to CDA, and therefore, it suffered harm from PSS's failure to interplead the funds. In denying GBI's motion, the trial court found that GBI failed to introduce any new evidence demonstrating that it suffered harm from the breach, and that the judgment as a matter of law with respect to PSS and CDA did not impact the GBI-PSS aspect of the litigation. The trial court found that GBI sustained no injury because under the doctrine of equitable subrogation, neither it nor CDA would have obtained the remaining contract funds in an interpleader action because CIC as the surety enjoyed priority to any remaining money allocated for the project. Therefore, GBI did not suffer any harm from the breach of the settlement agreement, and it was not entitled to relief.

¶ 9 On appeal, GBI does not argue that the controlling law changed, and the record for this appeal does not contain any new evidence of the harm GBI suffered as a result of PSS's breach. *Angello*, 2000 MP 17 ¶ 25. Instead, GBI maintains that the trial court erred in refusing to grant the motion to alter the judgment because GBI suffered harm from PSS's breach of the settlement agreement. GBI alleges that PSS owes it money for work it completed, and GBI gave up its right to sue PSS for these unpaid sums because the parties reached a compromise. When PSS refused to interplead the funds, GBI argues it lost the benefit of obtaining that money through the interpleader action or an independent lawsuit. Therefore,

it was error for the trial court to not enforce the terms of the settlement agreement, and GBI is entitled to specific performance as a remedy for the harm PSS inflicted as a result of its breach.

¶ 10 We will first address how this Court interprets settlement agreements. In *Del Rosario v. Camacho*, 2001 MP 3, we considered disputes by twelve heirs over their respective property interests in the decedent's property. One of the heirs, Juan, obtained title to a piece of property, either by quitclaim deed or through partida, built a commercial building, and collected rents. Several of the heirs subsequently sued seeking an accounting. To avoid fully litigating their dispute, the parties entered into a settlement agreement, but eventually the heirs sued Juan for his alleged breach of the agreement. We held that a "breach of a settlement agreement is breach of a contract." ⁶ *Id.* ¶ 95. In interpreting settlement agreements in accordance with standard principles of contract law, we examined the duties placed upon the parties by the agreement. The Court found that while a duty to sell the property existed, there was no duty to find a buyer for the property, and since none of the parties to the agreement, including Juan, found a buyer, none of the heirs could sue him for breaching the agreement by failing to sell the property. Thus, even though the settlement agreement was breached, the Court could not fashion a remedy.

¶ 11 In *Sharpe v. F.D.I.C.*, 126 F.3d 1147 (9th Cir. 1997), a settlement agreement was breached when the plaintiffs received a cashier's check from the defendant bank instead of a wire transfer as the agreement required, and the cashier's check was subsequently not honored. The parties were engaged in a state court action, and instead of litigating the matter, entered into the agreement which required the plaintiffs to deliver certain deeds to the bank, and the bank to electronically transfer over half a million dollars to the plaintiffs. *Id.* at 1150. When the plaintiffs delivered the deeds, the bank instead issued a cashier's check, which the plaintiffs accepted. *Id.* at 1150-51. That same day, however, the FDIC was appointed receiver of the bank, and when the plaintiffs went to deposit the cashier's check, the FDIC refused to honor it. In discussing the settlement agreement the court stated that "[t]he FDIC failed to perform its obligations under the contract. It is beyond cavil that this failure to perform the express terms of the settlement agreement is a breach." *Id.* at 1153. The court further stated "that the bank's tender by cashier's check and the FDIC's subsequent refusal to honor the checks constitute material breaches of the settlement agreement." *Id.* If the FDIC had "honored the cashier's checks, the [plaintiffs] would have suffered no damages as a result of the breach; the failure to honor the checks gives rise to a cause of action for breach of contract with a remedy." *Id.* Thus, while the bank breached the settlement agreement when it tendered a cashier's check instead of a wire transfer, the FDIC's refusal to honor the cashier's

⁶ We also held that if non-performance is justifiable then there is no breach. *Id.* ¶ 95. While PSS challenged the trial court's decision that it breached the settlement agreement during trial, arguing that it was legally impossible for it to honor the terms of the settlement agreement, it did not appeal that issue to this Court. Therefore, we accept the trial court's determination that PSS breached the agreement.

check constituted the material breach that entitled the plaintiffs to relief. Therefore, actual damages must flow from the breach of a settlement agreement in order for a court to fashion a remedy.

¶ 12 We were clear in *Del Rosario* that a settlement agreement is a contract, and that we treat the breach of such an agreement like a breach of contract. 2001 MP 3 ¶ 95. The *Sharpe* court recognized the same rule, and stated that it could only fashion a remedy for actual damages flowing from the breach of a settlement agreement. 126 F.3d at 1153. Similarly, pursuant to the Restatement, in order for a party to receive damages for a breach of contract the party must suffer some harm. Restatement (Second) of Contracts § 346 (1981).⁷ GBI is not seeking damages, however, but specific performance. Pursuant to Restatement § 357(1): “[s]ubject to the rules stated in §§ 359-69, specific performance of a contract duty will be granted in the discretion of the court against a party who has committed or is threatening to commit a breach of the duty.” Under Restatement § 359, specific performance will not be granted if damages would adequately compensate a party for the breach.⁸ Another ground for refusing specific performance is unfairness such as if the contract was induced by a mistake or would cause unreasonable hardship. Restmt. § 364.⁹ Other grounds for refusing to grant specific performance are public policy considerations. Restmt. § 365.¹⁰ Subject to certain limitations, a court grants specific performance for a breach of contract at its discretion. Nevertheless, in fashioning a remedy for the breach of a settlement agreement, whether that remedy is damages or specific performance, harm must flow from the breach. Therefore, PSS’s breach of the settlement agreement alone is insufficient to warrant ordering specific

⁷ Restmt. § 346: Availability of Damages.

- (1) The injured party has a right to damages for any breach by a party against whom the contract is enforceable unless the claim for damages has been suspended or discharged.
- (2) If the breach caused no loss or if the amount of the loss is not proved under the rules stated in this Chapter, a small sum fixed without regard to the amount of loss will be awarded as nominal damages.

⁸ Restmt. § 360 Factors Affecting Adequacy of Damages

In determining whether the remedy in damages would be adequate, the following circumstances are significant:

- (a) the difficulty of proving damages with reasonable certainty,
 - (b) the difficulty of procuring a suitable substitute performance by means of money awarded as damages,
- and
- (c) the likelihood that an award of damages could not be collected.

⁹ Restmt. § 364 Effect of Unfairness

- (1) Specific performance or an injunction will be refused if such relief would be unfair because
 - (a) the contract was induced by mistake or by unfair practices,
 - (b) the relief would cause unreasonable hardship or loss to the party in breach or to third persons, or
 - (c) the exchange is grossly inadequate or the terms of the contract are otherwise unfair.
- (2) Specific performance or an injunction will be granted in spite of a term of the agreement if denial of such relief would be unfair because it would cause unreasonable hardship or loss to the party seeking relief or to third persons.

¹⁰ Restmt. § 365 Effect of Public Policy

Specific performance or an injunction will not be granted if the act or forbearance that would be compelled or the use of compulsion is contrary to public policy.

performance, and we must analyze the harm GBI suffered as a result of the breach to determine if the trial court erred in refusing to enforce the terms of the agreement.

¶ 13 The trial court found that GBI did not suffer any harm from PSS's breach of the settlement agreement because as a matter of law GBI's surety, CIC, was entitled to the remaining contract funds irrespective of GBI's settlement agreement with PSS. In *Century Insurance Co., Ltd. v. Guerrero Brothers Inc.*, 2010 MP 4 ("*Century II*"), CDA brought an appeal from the same underlying civil action before us now as a third-party beneficiary to the PSS-GBI settlement agreement. CDA acknowledged that its right to the remaining contract funds was through GBI because it was GBI's creditor, and thus, entitled to the remaining contract proceeds. We held that under no circumstances was GBI or CDA entitled to earned progress payments because when a contractor defaults it forfeits any right it has to those payments.¹¹ *Id.* ¶ 19. We further held that neither GBI nor CDA suffered harm from the breach of the settlement agreement¹² because as a matter of law the doctrine of equitable subrogation mandated that CIC, as the surety, was the only entity with any claim to the funds. *Id.* ¶¶ 16, 21. Even though the settlement agreement gives GBI a right to have the funds interpleaded, CIC's equitable subrogation rights trump GBI's rights under the terms of the settlement agreement. *Id.* ¶ 21; *See also Pearlman v. Reliance Ins. Co.*, 371 U.S. 132 (1962); *Prairie State Bank v. United States*, 164 U.S. 227 (1896).

¶ 14 While *Century II* established that CIC had priority to the money over GBI and CDA because it was the surety, we must still address whether PSS exposed itself to additional liability as a stakeholder that paid the surety before obtaining a judicial determination concerning whether the contractor was the rightful owner of the remaining funds. In *United States Fidelity & Guaranty Co. v. United States*, 475 F.2d 1377 (Ct. Cl. 1973), the surety sought to recover payments made by the United States Navy to the

¹¹ GBI is silent regarding the nature of the money PSS allegedly owes it. *See infra* n.15. Also, while the settlement agreement changed the termination for default into a termination for the convenience of the government, this does not change CIC's rights and responsibilities because the terms of the payment and performance bonds required it to step in and finish construction if PSS terminated GBI's contract for default. This is exactly what happened, and as a result, CIC completed construction. Thus, while the reason for the termination changed, this occurred well after CIC became liable to complete construction, and when it became liable to complete construction its rights as a surety also came into effect. PSS's decision to change the reason behind the termination is irrelevant as to CIC's subrogation rights generally and its right to the unearned progress payments specifically. *See* Restatement of Suretyship and Guaranty § 27 cmt. c. (1995); *see also infra* n.13.

¹² Since GBI did not bring to the Court's attention any new evidence of harm in this appeal our holding from *Century II* concerning GBI's harm as discussed by CDA is undisturbed. GBI makes a new argument for the harm it allegedly suffered in this appeal, but it does not support that argument with evidence. GBI had the opportunity in this appeal, however, to show the Court that new evidence proved that it suffered harm, and nothing from *Century II* limited GBI's ability to demonstrate that it suffered harm from the breach; our reasoning in that case concerned evidence of GBI's harm as introduced by CDA. While we recognize that GBI submitted the briefing for this appeal before we published *Century II*, there was more than adequate time to file additional documents concerning harm pursuant to NMI Supreme Court Rule 10. Therefore, if anything, *Century II* put GBI on notice concerning the harm issue because we already decided that GBI presented insufficient evidence of harm during trial.

contractor in violation of the surety's subrogation rights. The government conceded that it was a stakeholder of the retained fund because it could not keep the money. *Id.* at 1380. The court stated that "[t]he issue is, quite simply, to whom should the Government pay this fund?" *Id.* The government was not free to pay the contractor because the surety gave notice of its competing claim. *Id.* The court held that the government "must ordinarily await a judicial determination or an agreement between the parties before it may safely pay a contested amount." *Id.* Thus, the failure to secure a judicial determination concerning who a stakeholder must pay may expose the stakeholder to additional liability.

¶ 15 In *National American Insurance Co. v. United States*, 72 Fed. Cl. 451, 458-59 (2006), the court stated "once the surety steps into the shoes of the contractor, a payment to the latter no more discharges the government's obligation to the surety than would disbursing funds to a perfect stranger." The stakeholder may become liable to pay the claim twice if it decides the merits between the two competing claims, and a double payment becomes a possibility particularly when there is "little doubt as to who [is] entitled to the funds." *Id.* The court held that "plaintiff's right to equitable subrogation plainly attached, making defendant liable when it violated its duty as a stakeholder by making a final payment to the contractor." *Id.*; *Travelers Indem. Co. v. United States*, 72 Fed. Cl. 56, 66 (2006) (citing *Transamerica Premier Ins. Co. v. United States*, 32 Fed. Cl. 308, 314 (1994)) ("Where the Government has on hand contract funds owing for work done and is alerted, by the surety, to the possibility of unpaid materialmen's claims, and to the surety's demand that the contract funds be protected . . . it may not dispense those funds to the contractor--at least without running the distinct risk of having to pay twice."). While these cases stand for the proposition that a stakeholder may become liable to pay a claim twice, this only occurs when the stakeholder pays the defaulting contractor,¹³ and not the surety with the superior claim. While PSS paid CIC before obtaining a judicial determination of whom among GBI, CDA, or CIC had rightful claim to the money pursuant to either the settlement agreement or an interpleader action, PSS paid the right party. Therefore, PSS is not exposed to any additional liability by promising to pay GBI, and instead paying CIC, because it ended up paying the party with the superior claim as a matter of law.

¶ 16 There is no question that the remaining contract funds belong to CIC as a matter of law, and that PSS's breach of the settlement agreement does not expose it to additional liability. Our review of the record and the law of equitable subrogation unequivocally demonstrates that under no circumstance could GBI ever obtain any portion of the remaining money from PSS either in an independent lawsuit or in an

¹³ Neither GBI nor PSS makes *any* mention of the effect of the settlement agreement changing GBI's termination for default into a termination for the convenience of the government. Since neither party asserts that this change impacts the case, we hold that the parties' waive the issue, and we will not consider how, if at all, the change impacts PSS's liability to GBI. As stated above, *supra* n.11, the change does not affect CIC's rights. Therefore, due to the parties' failure to brief this potential issue on appeal, we operate from the assumption that the change is without effect.

interpleader action. GBI fails to present any legal authority to this Court that would cause us to diverge from the longstanding and directly applicable doctrine of equitable subrogation.¹⁴ See, e.g., *Pearlman*, 371 U.S. 132; *Prairie State Bank*, 164 U.S. 227. Although PSS's failure to interplead constitutes a breach of the settlement agreement, that breach did not harm GBI because no legal basis exists for it to assert ownership over the money in lieu of CIC's claim. Without legal authority explaining how PSS's breach harmed GBI, other than a bald assertion that a party always suffers harm when the other party breaches a settlement agreement, we find ourselves unable to fashion a remedy. GBI also did not present any evidence of its harm to the Court.¹⁵ The breach of a settlement agreement will be remedied if harm flows from the breach, or stated differently, the breach of a settlement agreement without a showing of harm will not entitle the non-breaching party to enforcement of the agreement. *Del Rosario*, 2001 MP 3 ¶ 95; *Sharpe*, 126 F.3d at 1153. Thus, even if PSS had interpleaded the funds, the result would be the same:

¹⁴ The Court finds GBI's case authority off-point, unhelpful, and in some cases miscited. For example, while *Posey v. Lambert-Grisham Hardware Co.*, 247 S.W. 30 (Ky. 1923), stands for the cited proposition, the case is completely dissimilar from the facts before us now. *Posey* concerned an employee allegedly stealing money from his employer, and his employer forcing him to sign over the deeds to certain property when it discovered the theft. Posey claimed duress in signing the deeds because his employer's agents intimidated him and threatened him with prosecution, but the court nevertheless upheld the agreement between the parties as a valid compromise. Nothing in the case even remotely discusses why a settlement agreement entered into between an obligor and an obligee should trump the secondary obligor's equitable subrogation rights. Likewise, *Jones v. First National Building Corp.*, 155 F.2d 815 (10th Cir. 1946), states that a compromise is a contract, but the case concerns taxes and profits. Not a single material fact from the case is related to the facts of this dispute. Similarly, while GBI properly cites to *Amantiad v. Odum*, 977 P.2d 160 (Haw. 1999), the case is not helpful. Nowhere in the case does the court mention suretyship, equitable subrogation, or what happens when the obligee breaches a settlement agreement with the principal obligor because the secondary obligor states a superior claim to funds contemplated by the settlement agreement.

While *Greene v. Town of Blooming Grove*, 935 F.2d 507 (2d Cir. 1991), also stands for the cited proposition, the case concerns a 42 U.S.C. § 1983 claim by an individual against a town and an unpleaded pendant state claim. The case has nothing to do with a breached settlement agreement in a suretyship context. *Continental Casualty Co. v. Howard*, 775 F.2d 876 (7th Cir. 1985), has nothing to do with settlement agreements or Rule 59(e), and the Court does not understand why GBI cited it without any explanation for why the case is relevant. GBI further errs by misciting *Pardi v. Kaiser Foundation Hospital*. The citation is incorrect. *Bundy v. HUD*, 89 F.3d 840 (8th Cir. 1996), has the 89 F.3d 840 citation, whereas, the Court is completely unable to find the *Pardi* case by using a party search.

Wilson v. Bogert, 347 P.2d 341 (Idaho 1959), is the most persuasive case GBI presents the Court for this issue, but it is still insufficient. This Court already has binding precedent holding that settlement agreements are treated the same as any other contract. *Supra* ¶ 10. Furthermore, as the case states, settlement agreements are "enforceable either at law or in equity according to the nature of the case." *Id.* at 345. The nature of the present case is that PSS had one source of money to pay outstanding claims, all of the parties were aware of this, and as between GBI, CDA, and CIC, CIC was the party with a superior right to the money. Thus, under the nature of this case, the interpleader provision of the settlement agreement is unenforceable as a matter of law in the face of CIC's claim.

¹⁵ GBI failed to state with even a remote degree of specificity the nature of its damages. GBI makes a general claim that PSS owes it money, but it does not provide the Court with a scintilla of evidence showing specifically how much PSS owes it or for what work PSS owes it. GBI asks the Court to take its assertion on faith alone. If PSS harmed GBI, GBI *must* present concrete proof of its harm for this Court to consider how to remedy that injury. Bald assertions that it was harmed because it gave up its right to sue are insufficient.

CIC would have been awarded the remaining contracts proceeds in their entirety either through an independent lawsuit or an interpleader action because they were less than the expenses it incurred in finishing the project, and both GBI and CDA would receive nothing because their rights under the settlement agreement did not expose PSS to additional liability.¹⁶ Therefore, the trial court did not abuse its discretion in denying GBI's motion to alter or amend the judgment because GBI suffered no actual harm from the breach.

B. Attorney Fees

¶ 17 We must next determine whether the settlement agreement entitles GBI to attorney fees; we review for an abuse of discretion the decision to award fees. *Pangelinan*, 4 NMI at 117. The settlement agreement between PSS and GBI provides that in the event of breach, the prevailing party in the litigation will be paid its attorney fees. While PSS breached the agreement, in order for PSS's liability for attorney fees to arise, GBI must be the prevailing party in the litigation. *Camacho v. L&T Int'l Corp.*, 4 NMI 323, 330 (1996). In *Camacho*, the Court discussed what a litigant must accomplish in order to qualify as a prevailing party. The case concerned a lease for real property. When the appellant-lessee failed to exercise its option to renew the lease within the specified timeframe, the appellee-lessor brought suit seeking a declaration that the lease expired, damages for unlawful detainer, and attorney fees. The lessee counter-claimed for restitution seeking reimbursement for allegedly valuable improvements it made to the property. When the trial court granted partial summary judgment on the lessor's motion, concluding that the lease expired, the lessee moved out. The lessor then filed a supplemental claim for waste, asserting that the improvements the lessee made to the property rendered it of no practical use, and for damages relating to personal property covered by the lease. The trial court found in favor of the lessor on all of his claims, and against the lessee on its counter-claim. On appeal, we affirmed on all counts except with respect to the issue of waste, finding that the lessor agreed to the changes at the time, and also that the lessor successfully defended against the counter-claim. *Id.* at 327-28.

¶ 18 Concerning the award of attorney's fees, the lessee claimed that the amount awarded was erroneous because the lessor should not be awarded fees for defending against the counter-claim, litigating the waste issue, the determination that the lease was terminated, and for unlawful detainer. *Id.* at 329. The lease agreement, which allowed for attorney fees, specified that if the lessor brought suit under the lease and prevailed the court would award him fees. *Id.* While we reversed the trial court on the waste claim, finding that the lessor was not entitled to damages, we still affirmed the entire fee award. *Id.* at 330. Furthermore, the counter-claim, while not initiated by the lessor, was brought in the context of the

¹⁶ If CIC failed to intervene in this hypothetical proceeding, and PSS paid either GBI or CDA, then PSS would become liable to CIC. *Nat'l. Am. Ins. Co.*, 72 Fed. at 458-59. We find this highly unlikely as CIC was the original plaintiff in this lawsuit, and it started these proceedings to ensure that its rights with respect to the remaining contract funds were protected. In other words, CIC was keeping track of the \$804,049.73.

litigation he initiated, and he prevailed on the whole in the litigation. *Id.* In determining what is necessary to prevail on the whole in the lawsuit, we found a prevailing party:

may be the party prevailing in interest, and not necessarily the prevailing person. To be such does not depend upon the degree of success at different stages of the suit, but whether, at the end of the suit . . . the party who has made a claim against the other, has successfully maintained it.

Id. (citing Black's Law Dictionary 1188 (6th ed. 1990)). While we reversed one claim on appeal, and the lessor did not initiate the counter-claim, we found that he was the prevailing party in the lawsuit on account of his overall success; therefore, we affirmed the entire fee award even though he was not successful on every cause of action. *Id.*

¶ 19 Similarly, in *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983), respondents brought suit against a Missouri state hospital challenging the constitutionality of their treatment and the conditions at the facility. They prevailed on five of their six causes of action, and the district court awarded attorney fees for all of the claims even though only some of the claims provided for a statutory fee award; the circuit court affirmed. In discussing an award of attorney fees in a suit with multiple causes of action the Court stated:

Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. (Citations omitted). Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters.

In *Hsu v. Abbara*, 891 P.2d 804, 833 (Cal. App. 1995), the court considered whether a party who sued on a contract was the prevailing party; it stated:

Deciding whether there is a party prevailing on the contract, the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made only upon final resolution of the contract claims and only by a comparison of the extent to which each party has succeeded and failed to succeed in its contention.

Whether a litigant is a prevailing party is determined not based on whether the party prevails on a certain cause of action, but based on whether it is successful on the whole at the end of the litigation.¹⁷

¹⁷ See also, *Szoboszlay v. Glessner*, 664 P.2d 1327, 1334-35 (Kan. 1983) ("Viewing the case in its entirety, it is without doubt the [plaintiff] . . . was the successful party. The [defendant] . . . was denied recovery in any form on

¶ 20 In this case, GBI failed to obtain any monetary relief; on the contrary, the trial court held it liable to CIC for \$170,069.49. While GBI did prevail on its claim that PSS breached the settlement agreement, and on its claim that CIC tortuously interfered with the settlement agreement, it received no monetary awards for those causes of action. The trial court aptly characterized the breach of the settlement agreement as technical, and found that GBI did not suffer any harm from either the breach or the interference. The biggest issue in the case, the ownership of the \$804,049.73, was decided against GBI and in favor of PSS and CIC. We affirmed that award in *Century II* and now again in this opinion. Viewing the litigation as a whole, GBI was unsuccessful on the main points of contention and failed to obtain any monetary relief on the minor issues it was successful on. Therefore, GBI was not the prevailing party in the litigation because it did not obtain the relief it sought, and the trial court did not abuse its discretion in deciding to not award it attorney fees.

III

¶ 21 GBI's motion to alter or amend judgment was properly denied because it failed to alert the trial court to a change in the controlling law, provide new evidence, or demonstrate how there was a need to correct a clear error or prevent a manifest injustice. Also, GBI is not entitled to attorney's fees because it was not the prevailing party. Therefore, we AFFIRM the trial court's judgment.

SO ORDERED this 9th day of September, 2010.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice

her counterclaim . . . The [plaintiff's] judgment was expressly affirmed, but was reduced by a small amount . . . The [plaintiff] prevailed on the main issue presented and therefore was the successful party.'").