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

COMMONWEALTH DEVELOPMENT AUTHORITY,
Plaintiff-Appellee,

v.

ANTONIO S. CAMACHO, et al.,
Defendants-Appellants.

SUPREME COURT NO. CV-06-0040-GA
SUPERIOR COURT NO. 04-0588

Cite as: 2010 MP 19

Decided December 21, 2010

G. Anthony Long, Saipan, Northern Mariana Islands for Defendants-Appellants
F. Matthew Smith, Saipan, Northern Mariana Islands for Plaintiff-Appellee
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; TIMOTHY H. BELLAS, Justice Pro Tem

DEMAPAN C.J.:

¶ 1 Appellants Antonio S. Camacho and Elphida MSP Camacho (collectively referred to as the "Camachos") appeal a default judgment entered against them and in favor of the Appellee Commonwealth Development Authority ("CDA") that allowed for the foreclosure of their real property. The Camachos argue that this Court lacks jurisdiction to hear this appeal because the final judgment fails to comply with Commonwealth Rule of Civil Procedure 54(b). In the alternative, they argue that if jurisdiction exists, then this Court must vacate the final judgment because CDA did not comply with the notice or redemption provisions of the Real Estate Mortgage Law ("REML"), 2 CMC §§ 4511-4555, in seeking to foreclose on their property. CDA counters that the trial court properly certified the judgment as final pursuant to Rule 54(b), but that this Court should nevertheless dismiss this appeal because the Camachos never moved to set aside the entry of default pursuant to Commonwealth Rule of Civil Procedure 55(c), or vacate the judgment pursuant to Rule 60(b). If, however, the Camachos can proceed, CDA argues that this Court still cannot consider their notice and redemption arguments because the Camachos raise those issues for the first time on appeal. We hold that the judgment was properly certified pursuant to Rule 54(b), the Camachos are not required to first challenge the final judgment in the trial court, the notice argument cannot be considered because its resolution requires an examination of facts that were not part of the trial court's record, and the judgment preserves the Camachos' redemption rights. Therefore, we AFFIRM the trial court's final judgment.

I

¶ 2 Between 1986 and 1988, the Camachos' obtained several loans from CDA secured by promissory notes, mortgages on real property, and security agreements. CDA and the Camachos entered into several agreements consolidating, modifying, and revising the loans. The final consolidation occurred in 1996 with the Camachos owing a single principle amount of $379,935.44. The previous mortgages and security agreements secured the consolidation. In 2001, the parties executed a Revision Agreement that changed the total amount due and modified the payment schedule. The Revision Agreement stated that it was a revision and not a novation.

¶ 3 In 2003, CDA issued a Notice of Default to the Camachos written in both English and Chamorro and sent to their residence by certified mail. The notice listed all twelve mortgages, the amounts due, and the amounts necessary to cure the default. The notice did not mention the Revision Agreement. Roughly one year later, CDA filed a foreclosure action against the Camachos and named the Department of Finance ("DOF") as a subordinate lien holder. CDA served the Camachos with a copy of the complaint at their home, but they never responded or appeared in court. DOF, however, did answer the complaint and also filed a cross-claim against the Camachos. DOF filed a cross-claim because several years earlier it placed a tax lien on some of the Camachos' real property for their alleged failure to pay taxes. CDA

brought DOF into the lawsuit because both parties possessed liens on the property, and in order for CDA to obtain the proceeds from a foreclosure sale, the trial court had to determine the priority of the two liens. The Camachos failed to respond to DOF's cross-claim.

¶ 4 CDA then filed for and obtained an entry of default pursuant to Commonwealth Rule of Civil Procedure 55(a). CDA subsequently sought and obtained a default judgment in its favor pursuant to Commonwealth Rule of Civil Procedure 55(b)(2). Three months later, CDA moved for an order in aid of judgment, and the trial court ordered the Camachos to appear. They appeared with counsel. This was their first participation in this litigation. The Camachos successfully opposed the order in aid of judgment on the grounds that it was premature. The Camachos did not, however, move to vacate the default judgment. Several months later, CDA and DOF entered into a stipulated judgment between themselves that established that CDA held the superior lien for the Camachos' real property. The stipulated judgment also provided that CDA would transfer any surplus proceeds from the foreclosure sale to the trial court pending resolution of DOF's cross-claim against the Camachos. CDA then moved for a final judgment, which the trial court granted; DOF's cross-claim against the Camachos was still pending at this time. The Camachos now appeal from the final judgment.

II

A. Rule 54(b)

¶ 5 Whether this Court can exercise jurisdiction over an appeal is a threshold question that "must always be resolved before the merits of an appeal are examined or addressed." *Camacho v. Demapan*, 2010 MP 3 ¶ 21 (citing *Pac. Amusement Inc. v. Villaneuva*, 2005 MP 11 ¶ 7). As a general matter, this Court can only exercise jurisdiction over final orders from the trial court.[1] Commonwealth Constitution Article IV, Sec. 3;[2] *see* 1 CMC § 3102(a);[3] *see also Bank of Guam v. Mendiola*, 2007 MP 1 ¶ 4; *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 9. Commonwealth Rule of Civil Procedure 54(b),[4] however,

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[1] There are certain limited exceptions to this rule such as mandamus review, the collateral source rule, *see Commonwealth v. Guerrero*, 3 NMI 479, 481-82 (1993), and other exceptions created by law, *see In re Roberto*, 2010 MP 7 ¶¶ 11-12. This case does not fall within one of the exceptions.

[2] Article IV, § 3 provides: "The Commonwealth supreme court shall hear appeals from final judgments and orders of the Commonwealth superior court."

[3] 1 CMC § 3102(a) provides: "The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth." In *Commonwealth v. Hasinto*, 1 NMI 377, 385 (1990), we construed 1 CMC § 3102(a) to only allow for appeals from final judgments.

[4] Com. R. Civ. P. 54(b) Judgment Upon Multiple Claims or Involving Multiple Parties.
When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon *an express determination that there is no just reason for delay and upon an express direction for the entry of judgment*. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or

carves out an exception to this requirement when multiple claims and/or multiple parties are involved. Rule 54(b) allows the trial court to certify an order as final and ready for appeal "upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Com. R. Civ. P. 54(b). The Camachos allege that the trial court improperly granted Rule 54(b) certification for the final judgment. Whether an order is "final" for the purposes of an appeal pursuant to Rule 54(b) is a legal question that we review de novo. *Mendiola*, 2007 MP 1 ¶ 3; *Chan v. Chan*, 2003 MP 5 ¶ 2; *Teregeyo v. Lizama, et al.*, 1997 MP 12 ¶ 3; *Ito v. Macro Energy, Inc.*, 2 NMI 459, 463. If an order is final, then we review the trial court's determination that no just reason for delay exists for an abuse of discretion. *Teregeyo*, 1997 MP 12 ¶ 3; *Ito*, 2 NMI at 463; *see also PYCA Indus. v. Harrison County Waste Water Mgmt. Dist*., 81 F.3d 1412, 1421 (5th Cir. 1996).

¶ 6 In *Camacho*, 2010 MP 3 ¶ 1, we considered whether we could hear an appeal from a partial summary judgment order in a quiet title action for real property when the trial court did not determine and direct the entry of a final judgment pursuant to Rule 54(b). We stated that the trial court can direct the entry of a final judgment as to fewer than all of the parties or claims provided that it "makes an express determination that there is no just reason for delay and an express determination for the entry of judgment." *Id*. ¶ 24. Those express determinations must be made on a separate document just like all final judgments. *Id*. ¶ 25; *Kumagai*, 2006 MP 20 ¶ 22. Furthermore, Rule 54(b) certification cannot be implied from the trial court's actions or language; the certification must occur in a separate document. *Camacho*, 2010 MP 3 ¶ 25. In making these determinations, the trial court must make two inquiries. *Kumagai*, 2006 MP 20 ¶ 12. First, the trial court must determine if the order is final. *Id*. Second, in determining whether there is no just reason for delay, the trial court must balance the "costs and risks of multiple proceedings and the policy with respect to judicial efficiency" against "the need for an early and separate judgment to some claims or parties." *Id*. (citing *GHURA v. Pacific Superior Enters. Corp.*, 2004 Guam 22 ¶ 20). In determining whether there is no just reason for delay, however, the trial court does not have to articulate its reasons in the judgment. *Mendiola*, 2007 MP 1 ¶ 8 (citing *Teregeyo*, 1997 MP 12 ¶ 15). While the reasons for the trial court's decision to certify a judgment as final and ready for appeal must appear in the *record*, the trial court's failure to include those reasons in the *judgment* is not fatal to our exercise of jurisdiction. *Mendiola*, 2007 MP 1 ¶ 9. We then held that before we could exercise jurisdiction over a partial final order, "the separate entry of judgment must expressly state that the trial court has considered Rule 54(b) and it finds that: (1) the judgment is final as to all the parties and/or the issues involved; and (2) the judgment is one that warrants immediate appealability." *Camacho*, 2010 MP 3 ¶ 25 (quoting

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the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before. (emphasis added).

Mendiola, 2007 MP 1 ¶ 13). We held that since there was no Rule 54(b) certification, we could not exercise jurisdiction.

¶ 7 Before we turn to the final judgment, we must first clarify a discrepancy that arose in *Mendiola* and that was affirmed in *Camacho*. Rule 54(b) states that the trial court may direct the entry of a final judgment as to one or more claims or parties when it makes an express determination that there is no just reason for delay and makes an express direction for the entry of judgment. Com. R. Civ. P. 54(b). In *Kumagai*, 2006 MP 20 ¶ 13, we affirmed the language from Rule 54(b) as requiring that the trial court issue a certificate that expressly determines that there is no just reason for delay and that expressly directs the entry of judgment.[5] In *Mendiola*, 2007 MP 1 ¶ 13, however, we required the trial court to expressly find that the judgment is final and that it warrants immediate appealability. The presence of the "immediate appealability" language comes from our interpretation of *Curtiss-Wright v. General Electric Co.*, 446 U.S. 1, 7 (1980). In that case, the United States Supreme Court discussed the steps the district court must take to determine whether a Rule 54(b) certification is appropriate. It explained how the district court should determine if a judgment is final, and it also stated how a district court should ascertain whether any just reason for delay exists. *Id*. at 7-8. In discussing whether a just reason for delay exists, the Court held that the district court must determine whether a judgment is ready for immediate appeal and that determination is within the sound discretion of the district court. *Id*. Thus, the immediate appealability phrase comes from *Curtiss-Wright's* discussion of how the district court determines whether there is any just reason for delay. *Mendiola's* discussion of *Curtiss-Wright* stated that a Rule 54(b) certification must find that the order warrants immediately appealability. *See Mendiola*, 2007 MP 1 ¶ 9. This is correct, but the opinion should have stated that whether an order is ready for appeal is a primary consideration in determining if there is any just reason for delay. In *Camacho*, 2010 MP 3 ¶ 25, we affirmed both the "no just reason for delay" language from our earlier cases, as well as, *Mendiola's* "immediate appealability" language. We take this opportunity to address this discrepancy. As long as the trial court determines that there is no just reason for delay, it satisfies *Mendiolas's* requirement that the judgment warrants immediate appeal. Thus, the second prong from *Mendiola*, 2007 MP 1 ¶ 13, is satisfied if the trial court expressly determines that no just reason for delay exists.

¶ 8 Unlike *Camacho,* the trial court here specifically invoked Rule 54(b) in issuing the final judgment. On its face, the final judgment expressly invoked Rule 54(b), expressly determined that no just reason for delay existed, and expressly entered final judgment. *See* Appellant's Excerpt's of Record ("ER") at 2. Thus, on its face, the final judgment conforms to Rule 54(b)'s certification requirements. The

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[5] We also provided the trial court with a balancing test to use in determining whether any just reason for delay exists. Since we never required the trial court to explicitly conduct the balancing test in the judgment, there is no need for us to address how the trial court should apply the test. It is provided to help guide the lower court.

Camachos allege, however, that the trial court erred in certifying the judgment as final and in determining that no just reason for delay existed. They make three arguments in support of their contention that Rule 54(b) certification was premature. First, they assert that it is improper for two governmental agencies to "collude" between themselves to obtain a certified judgment solely for the purpose of allowing one of the government entities to foreclosure on the property before the other's lawsuit is fully adjudicated. The Camachos fail to support this argument with any citation to legal authority, and we, therefore, decline to address it.[6] *See* NMI Sup. Ct. R. 28(a)(9)(A) and 31-2. Second, they claim that the final judgment grants DOF an interest in any remaining proceeds from the foreclosure sale even though its claim against the Camachos is not resolved. Finally, they argue that CDA's noncompliance with the REML's notice provisions will impact the remaining litigation. We will examine the second and third arguments to determine whether the final judgment was properly certified pursuant to Rule 54(b).

¶ 9 Before we examine the Camachos substantive arguments, we will briefly examine what occurred in the trial court. At the time this appeal was filed, DOF's suit against the Camachos for back taxes was still pending as a cross-claim.[7] CDA brought DOF into this lawsuit because DOF placed a tax lien against some of the Camachos' real property. In order for a foreclosure sale to transfer unencumbered title to the prospective buyer, junior lien holders had to be made a part of the mortgage foreclosure proceeding, and thus, DOF's claim/lien also had to be resolved. 2 CMC § 4537(c)(7).[8] The stipulated judgment between CDA and DOF established that CDA's liens enjoyed priority over DOF's lien, and provided that DOF was entitled to any surplus money left over from CDA's foreclosure sale of the Camachos' property if DOF was successful in its suit for back taxes. The stipulated judgment required CDA to transfer any surplus funds to the trial court pending resolution of DOF's suit as to the Camachos. The trial court found that the stipulated judgment allowed it to enter a final judgment in the instant matter because the only unresolved issue of the litigation was the priority of the CDA and the DOF liens. With this issue resolved, the trial court found that even without a judgment as to DOF's claim against the Camachos, the suits could now proceed independent of each other. As a result, the final judgment for CDA issued, and this appeal ensued.

¶ 10 Turning now to the Camachos arguments, and the applicable rules for analyzing their claims, we will first determine whether the trial court's judgment was final for the purposes of Rule 54(b). A final

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[6] We note that stipulated judgments are favored and not lightly set aside. *McCoy v. Feinman*, 785 N.E.2d 714, 719 (N.Y. 2003).

[7] The record is silent regarding whether the Camachos ever responded to DOF's cross-claim.

[8] Title 2 CMC § 4537(f) states: "The names and residences of all persons having or claiming an interest in the property subordinate in right to that of a holder of the mortgage, all of whom shall be made defendants in the action."

order is one that "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment,'" *Mendiola*, 2007 MP 1 ¶ 5 (quoting *Chan*, 2003 MP 5 ¶ 13), and it also adjudicates all of the rights and liabilities of all of the parties. *Id*. (citing *Kumagai*, 2006 MP 20 ¶ 10); *see Curtiss-Wright*, 446 U.S. at 7 (1980) (A judgment is final if it is "a 'judgment' in the sense that it is a decision upon a cognizable claim for relief, and it must be 'final' in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'") (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)). We review the arguments of the Camachos to ascertain whether the trial court properly certified the judgment as final pursuant to Rule 54(b).

¶ 11 When the final judgment was issued, there was nothing left for the trial court to do other than execute the judgment. *See Mendiola*, 2007 MP 1 ¶ 5. The merits of the case, whether CDA could foreclose on the Camachos' real property, were established, and there were no other issues with respect to CDA needing further determination. Thus, all of CDA's claims against the Camachos were resolved with the issuance of the final judgment. The Camachos argue that CDA's claim is intertwined with DOF's claim, and that certification of the judgment as final was improper. They argue that "the stipulated judgment and final judgment each seek to grant DOF an interest in the surplus remaining from any foreclosure sale conducted by CDA." Appellant's Opening Brief at 8. The final judgment incorporates the stipulated judgment between CDA and DOF. The stipulated judgment provides that "any surplus proceeds, if any, shall be brought to the court [sic] by CDA for the use of DOF or the defendant, subject to the order of this Court." ER at 7. The Camachos' assertion that the final judgment awards excess foreclosure proceedings to DOF is not supported by the record, and therefore, is not a basis to find that the judgment is not final. The Camachos also argue that the judgment cannot be final because CDA did not comply with the REML's statutory notice provisions. *See* 2 CMC § 4534. The Camachos neither made this argument before the trial court, nor did they introduce any evidence in the record before the trial court to support this claim. ER at 43-46, *Commonwealth Development Authority v. Camacho, et al.*, (NMI Super. Ct. December 13, 2006) (Certificate of Record by Clerk). Therefore, at the time that the final judgment was issued, the Camachos had not contested the effectiveness of CDA's notice. When the final judgment issued, any alleged infirmity did not bar execution of the judgment. Thus, this is not a viable basis on which to hold that the judgment is not final. Therefore, the judgment constitutes a final judgment that can be appealed pursuant to Rule 54(b).

¶ 12 We now turn our attention to whether the trial court abused its discretion in determining that no just reason for delay existed. In *Ito*, 2 NMI at 462, the Court considered whether it could review two partial summary judgment orders that were certified pursuant to Rule 54(b). The Court determined that one of the orders was final because it fully adjudicated the case with respect to two of the parties. *Id*. at 465. The Court then addressed "whether the trial court abused its discretion when it determined that there

is no just reason for delay." *Id*. at 465-66. In determining whether there was no just reason for delay, the Court considered three factors: (1) "whether our hearing the appeal taken from the certification would have us determining questions that are before the trial court with regard to other claims;" (2) "the possibility that the need for review might be mooted by future developments in the trial court;" and (3) "the possible impact of an immediate appeal on the remaining trial proceedings." *Ito*, 2 NMI at 463 (citing 10 C. Wright, A. Miller and M. Kane, Federal Practice and Procedure: Civil § 2659 at 105-08). We will examine the arguments of the Camachos in light of these factors to determine whether the trial court abused its discretion in determining that there was no just reason for delay in issuing the final judgment.

¶ 13 The first *Ito* factor asks us to consider "whether our hearing the appeal taken from the certification would have us determining questions that are before the trial court with regard to other claims." 2 NMI at 466. Nothing in the final judgment relates to DOF's tax claim against the Camachos other than approving of the stipulated judgment between DOF and CDA, and specifying that CDA will transfer any surplus foreclosure proceeds to the trial court. The rest of the judgment is limited to discussing various aspects of CDA's foreclosure on the Camachos' real property. Similarly, the stipulated settlement establishes that CDA's mortgages enjoy priority over DOF's lien. Like the final judgment, it goes on to provide that any excess money resulting from a foreclosure sale shall be brought to the trial court for its use in satisfying any amount awarded as a result of the outstanding litigation between DOF and the Camachos. Turning to the Camachos' first argument, neither the stipulated settlement nor the final judgment grant DOF an interest in the remaining proceeds. The trial court will maintain custody of any surplus funds, not DOF, and after the resolution of DOF's claim, the prevailing party shall receive any remaining proceeds. The judgment does not award DOF surplus proceeds from the foreclosure sale before the trial court establishes the Camachos tax liability, and therefore, our determination of this appeal will not answer any questions that will affect the status of that lawsuit. Second, the issue of CDA's defective notice does not impact DOF's claim against the Camachos. DOF's claim will establish whether the Camachos owe unpaid taxes and fees, and if they do, then DOF can satisfy that amount through any available legal means. Whether their debt is satisfied from the excess proceeds from the foreclosure sale or through other mechanisms is irrelevant to the question of whether CDA gave the Camachos proper notice. Our decision in this appeal concerning the notice argument does not affect any questions before the trial court concerning DOF's claim. Therefore this appeal does not require us to decide issues presently before the trial court.

¶ 14 The second *Ito* factor directs our attention to "the possibility that the need for review might be mooted by future developments in the trial court." *Id*. Despite the Camachos' argument to the contrary, neither the final judgment nor the stipulated judgment grants DOF an interest in the remaining proceeds from the foreclosure sale. Any surplus proceeds shall be held by the trial court—not DOF. Thus, the trial

court's determination of which party is entitled to the surplus funds does not affect this appeal because the question of whether CDA properly foreclosed on the Camachos' property is unrelated to the disposition of that money. Similarly, future developments in the trial court cannot moot this appeal concerning defective notice. No relationship exists between CDA's claim and DOF's claim, and thus, no resolution of any issue from DOF's suit can moot this Court's determination of whether CDA gave adequate notice.

¶ 15 The third *Ito* factor asks us to consider "the possible impact of an immediate appeal on the remaining trial proceedings." *Id*. No relationship exists between any facts or law in the two lawsuits. DOF's suit against the Camachos is wholly independent from the final judgment. First, the potential surplus from the foreclosure sale will not impact the remaining litigation because if DOF is successful it will take those funds, and inasmuch as those funds do not cover the Camachos' alleged unpaid tax liability, DOF will use other means to satisfy its judgment. If, however, the Camachos prevail on the tax suit, then any remaining proceeds will revert to them. In any event, the disposition of any remaining proceeds shall depend on the trial court's resolution of the tax claim; the money will neither go to DOF nor the Camachos until that case is resolved. Thus, this appeal will neither affect the status of the relative priority of CDA's mortgages and DOF's lien, nor any remaining proceeds transferred into the trial court. Second, the notice issue will also not impact the remaining proceedings. Even if CDA gave defective notice then, at best, it could affect the determination of whether CDA properly foreclosed on the Camachos' real property. It would not change the priority of CDA's mortgages and DOF's lien. It would also not preclude DOF from litigating its claim against the Camachos. If DOF is successful in obtaining a judgment then it may pursue any collection remedies available to it, regardless of whether CDA properly foreclosed on the Camachos' real property. If it is determined that the Camachos do not owe any unpaid taxes, the issue of their potential tax liability is unrelated to their unpaid debt to CDA. In sum, the notice issue will not effect DOF's suit. Therefore, the trial court did not abuse its discretion in certifying the judgment as final pursuant to Rule 54(b), and we properly exercise jurisdiction.

B. Appeals from Default Judgments

¶ 16 We must address another jurisdictional issue before we turn to the merits of this appeal. CDA contends that we lack jurisdiction on the basis that the Camachos neither moved to set aside the entry of default nor vacate the default judgment in the trial court pursuant to Commonwealth Rules of Civil Procedure 55(c) or 60(b) respectively. Thus, CDA argues that we should dismiss this appeal as premature; the Camachos fail to address this argument in their reply brief. Whether a party must first move to set aside an entry of default or vacate a default judgment before filing an appeal is a novel question in this jurisdiction. Thus, we will look to the restatement and the common law as it is generally understood in the United States to answer this question, 7 CMC § 3401, and when interpreting our rules of civil procedure,

which are patterned after the federal rules, we will principally look to federal interpretation for guidance. *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60.

¶ 17 The Restatement (Second) of Judgments § 78 (1982), states: "[r]elief from a judgment must be obtained by means of a motion for that purpose in the court that rendered the judgment unless relief may be obtained more fully, conveniently, or appropriately by some other procedure." Comment e "[r]elation to motion for new trial or appeal" discusses the effect of an appeal from a default judgment without first moving to vacate the default in the trial court. In discussing the relationship between moving to vacate a default judgment and an appeal, the comment provides that:

> Serious errors of the kind that can be remedied by a 60(b) motion can be complained of through appeal. *But appeal is an effective remedy only if the matter in question has been made part of the record that can be put before the appellate court at a point when the time to appeal has not expired. . . . On the other hand, if the ground for relief in question involves factual matters that were not placed before the trial court prior to judgment, or in connection with a motion for new trial, ordinarily they cannot be included in the record of an appeal. . . .* Hence, even if the time for appeal has not expired, resort to a 60(b) motion is justified when additional evidence is required to establish the basis for attacking the judgment, assuming that the applicant can also justify his failure to employ a motion for new trial.

Restmt. § 78 cmt. e. (emphasis added). Under the restatement approach, a party may directly appeal from a default judgment without first challenging it in the trial court, but the appellate court cannot consider matters that were not part of the lower court's record.

¶ 18 Turning to the circuit courts, we find that a majority of those courts allow direct appeals from default judgments, but similar to the approach espoused by the restatement, a party failing to first move to vacate a default judgment limits an appellate court's review. In *Bonilla v. Trebol Motors Corp.*, 150 F.3d 77, 80 (1st Cir. 1998), the court stated "a default judgment bars the defaulting party from disputing the facts alleged in the complaint, but it preserves for appeal arguments of law made below as to whether the facts as alleged state a claim." In *Pecarsky v. Galaxiworld.com Ltd.*, 249 F.3d 167, 170-71 (2d Cir. 2001), the court recognized that a defendant will typically move to set aside an entry of default or vacate a default judgment, but because a default judgment constitutes a final disposition of a case, a defendant may directly appeal the judgment. *See Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (holding that a party that directly appeals from a default judgment without first moving to set aside the judgment "may not challenge the sufficiency of the evidence, [but] is entitled to contest the sufficiency of the complaint and its allegations to support the judgment.").

¶ 19 Similarly in, *e360 Insight, LLC v. The Spamhaus Project*, 500 F.3d 594 (7th Cir. 2007), the court summed up the differences between a party who makes a direct appeal from a default judgment versus one who first requests relief from the trial court. It stated "a party is not required to file a Rule 60(b) motion in the district court to raise challenges to the entry of a default judgment, [sic] this court has

recognized that when a party does so, the failure to raise certain defenses specifically may waive those defenses for the purposes of appeal of the underlying judgment." *Id*. at 601. It went on to note that "when a party chooses to move for relief from judgment under Rule 60(b) in the district court, that party should raise those defenses which require factual development that it anticipates raising in an appeal taken from the underlying judgment." *Id*. It further justified this approach by reasoning that when a party seeks to vacate a default judgment it puts forth whatever infirmities it believes justify setting aside the default for factual development by the trial court so on appeal the appellate court only considers questions of law. *Id*. *See Fingerhut Corp. v. Ackra Direct Marketing Corp.*, 86 F.3d 852, 855 n.3 (8th Cir. 1996).

¶ 20 In *Consorzio Del Prosciutto Di Parma v. Domain Name Clearing Co., LLC*, 346 F.3d 1193, 1195 (9th Cir. 2003), however, the court refused to hear an appeal from a default judgment because the defendant did not first challenge the entry of default in the trial court. In refusing to consider the defendant's sufficiency of service argument, the court reasoned that an appeal cannot substitute for first attempting to set aside or vacate a default judgment pursuant to Federal Rules of Civil Procedure 55(c) or 60(b). The court dismissed the appeal without any further consideration. While the Ninth Circuit may be the only federal appellate court that refuses to accept direct appeals from default judgments, some states that adopted the federal rules of civil procedure follow this approach. In *Winesett v. Winesett*, 338 S.E.2d 340, 341 (S.C. 1985), the court refused to hear a direct appeal from a default judgment on the grounds that a party who does not first appear and answer in the trial court has no status to appeal, and second because the party will have no issues to raise in an appeal because nothing was raised at trial. *See Gloman v. Latham*, 643 S.E.2d 625 (N.C. 2007) (requiring a party to first challenge a default judgment at the trial level before an appeal will be accepted). *See also Maust v. Estate of Bair*, 859 N.E.2d 779, 783 (Ind. Ct. App. 2007)("[The defendant's] attempt to appeal the grant of the Plaintiffs' motions for default judgment is improperly before us because he failed to first file a motion to set aside the default judgment . . . .").

¶ 21 As discussed above, we have jurisdiction over final orders, Commonwealth Constitution Article IV, Sec. 3, and the final judgment constitutes a final order. The majority of the circuit courts to directly address this issue hold that a party is not required to first challenge the default judgment in the trial court, but the failure to do so limits the appellate court's review. The restatement similarly provides for direct appeals, but acknowledges that a party who appeals a default judgment without first moving to vacate it at the trial level loses the ability to introduce favorable facts into the record. Restmt. § 78 cmt. e. We adopt the restatement approach, and allow a party to directly appeal a default judgment without first moving to set it aside pursuant to Commonwealth Rules of Civil Procedure 55(c) or 60(b). Therefore, we properly exercise jurisdiction over this appeal. However, if a party fails to first challenge a default judgment in the trial court, it foregoes the ability to submit new evidence into the record and raise issues on appeal that require factual development. This strictly limits our review to matters that were part of the record or

questions of law. Restmt. (Second) of Judgments § 78; *Bonilla*, 150 F.3d at 80; *e360 Insight, LLC*, 500 F.3d at 601. Stated differently, if a party wishes to raise defenses to a default judgment that require factual development, it must first raise those issues in the trial court before it notices an appeal, otherwise it intentionally or unintentionally waives those defenses. *e360 Insight, LLC*, 500 F.3d at 601.

III

¶ 22 Since this Court properly exercises jurisdiction over this appeal, we now turn our attention to the merits. We apply an abuse of discretion standard in reviewing the trial court's grant of a default judgment. *J.C. Tenorio Enters. v. Pedro*, 2006 MP 22 ¶ 9; *see Pecarsky*, 249 F.3d at 171 ("We review the district court's decision to grant the default judgment for abuse of discretion."); *Fingerhut Corp.*, 86 F.3d at 856 (entering default judgment is reviewed for an abuse of discretion). As stated above, pursuant to the approach espoused by the Restatement § 78, we only consider issues that are part of the trial court's record or are questions of law; we will not consider *any* issue that requires us to examine facts that were not established below. Turning to the Camachos' arguments, they first allege that CDA failed to comply with the notice provisions of the REML, and that this failure warrants vacating the default judgment. They also allege that the judgment deprives them of their right of redemption as conferred by the REML.

¶ 23 The Camachos first maintain that CDA failed to comply with the REML's notice requirements, contained in 2 CMC § 4534,[9] prior to its instigation of foreclosure proceedings. Specifically, CDA failed to include the Revision Agreement in its notice to the Camachos that it intended to foreclose on their property. The Camachos argue that this oversight rendered the notice fatally defective, and thus, CDA could not commence foreclosure proceedings and obtain a default judgment. The Camachos assert that this issue is purely one of law. The Camachos also claim that they cannot waive rights and privileges conferred by the REML, so this Court must consider CDA's failure to comply with any portion of the REML.[10] CDA contends that the notice provisions contained in section 4534 do not require that the

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[9] 2 CMC § 4534:
Not less than 30 days prior to the commencement of any action or proceeding seeking foreclosure of a mortgage, written notice of default shall be served as provided in 2 CMC § 4524. The notice shall be written in the English language and in either Chamorro or Carolinian and shall contain the following:

(a) A description of the real property;
(b) The date and amount of the mortgage;
(c) The amount due for principal and interest, separately stated; and
(d) A statement that if the amount due is not paid within 30 days from the date of service, the mortgagor shall be in default and proceedings shall be commenced to foreclose the mortgage.

[10] The Camachos allege in their reply brief that a mortgagor cannot waive rights conferred by the REML, and that this Court can consider CDA's failure to comply with the REML's statutory requirements. They go on to assert that their failure to file an answer to CDA's complaint does not waive any rights they possess under the REML. They fail, however, to legally support this statement. The rights and privileges conferred by the REML do not expand this Court's power of review. If a party fails to adequately preserve or develop an issue for appeal, we cannot address it simply because it involves a statutorily conferred right. The Camachos' general claim in the trial court that CDA failed to comply with all of the REML's procedures does not necessarily allow it to bring to this

Revision Agreement be included, and therefore, the notice it gave contained all of the requirements stated in section 4534.

¶ 24 The Camachos did not challenge the notice CDA gave them in the trial court, and the Revision Agreement was not part of the record established below. ER at 43-46. While the Camachos did not formally move to set aside the entry of default or the default judgment pursuant to Rule 55(c) or 60(b), they did file a document entitled "The Order in Aid of Judgment is Premature or Otherwise Improper at this Time." Appellee's Supplemental Excerpts of Record at 19. While the Court is unclear exactly what this document is, the Camachos did not take issue with the notice CDA gave them in the lower court. Instead, they argued that the default judgment failed to comply with 2 CMC § 4537(d).[11] Nowhere do the Camachos allege that CDA gave defective notice, or submit any documents into the record pertaining to defective notice. Since we lack the benefit of the trial court's factual findings in determining whether the Revision Agreement was the type of document that must be part of a notice of foreclosure pursuant to the REML, we will only consider the issue if it is purely one of law. *Bonilla*, 150 F.3d at 80.

¶ 25 We cannot consider evidence not admitted by the trial court. *Pangelinan v. Itaman*, 4 NMI 114, 118 (1994); 3 CMC § 3103.[12] As stated above, the Revision Agreement is not part of the trial court's record. ER at 43-46. Since the lower court's record did not include the Revision Agreement, we cannot review it to determine if the REML required CDA to include it in the notice it gave the Camachos.[13] Furthermore, this holding is harmonious with the Restatement (Second) of Judgments § 78, *Bonilla*, 150 F.3d at 80, and *e360 Insight, LLC*, 500 F.3d at 601. When a party appeals from a default judgment without first moving to vacate the judgment, and thereby foregoes the opportunity to supplement the record, this Court cannot then consider *any* new evidentiary document regardless of its impact or importance. "The failure to raise certain defenses specifically may *waive* those defenses for the purposes of appeal[ing] [] the underlying judgment," *e360 Insight, LLC*, 500 F.3d at 601, and this Court will only

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Court's attention for the first time a specific claim that CDA failed to comply with a certain provision of the REML. The papers filed with the trial court concerned CDA's failure to comply with 1 CMC § 4537—this argument does not allow the Camachos to come into this Court and argue that 1 CMC § 4534 was also not complied with if the question of non-compliance with section 4534 requires us to examine facts not established by the trial court. These constitute distinct claims, and if these distinct claims first require even a modicum of factual development, that development must occur below. We are statutorily prohibited from reviewing evidence that was not first submitted to the trial court. 3 CMC § 3103. The fact that both claims concern alleged violations of the REML is irrelevant.

[11] The Camachos do not advance this argument on appeal.

[12] ". . . the Supreme Court may not take new or additional evidence, consider issues of fact de novo, . . ." 3 CMC § 3103.

[13] Furthermore, *Economic Development Loan Fund v. Pangelinan*, 2 C.R. 453, 461 (1986), is not persuasive precedent in this instance because in that case the defective notice was properly before the court. In this case, the factual basis for the alleged infirmity, the Revision Agreement, is not properly before us.

consider matters that are part of the record or questions of law. *Bonilla*, 150 F.3d at 80. (emphasis added). The nature of this document is a factual question that the trial court must first determine. *See Triple J Saipan, Inc. v. Sanchez*, 2007 MP 23 ¶ 15 (refusing to consider an inadequate notice argument because it is a factual matter that was not first raised in the trial court). Since the Camachos base their defective notice argument solely on CDA's failure to include the Revision Agreement, we cannot address their argument because the document was not part of the trial court's record. Therefore, we decline to overturn the final judgment on this basis.

¶ 26 The Camachos next argue that the default judgment denies them their right of redemption as conferred by 2 CMC § 4541. CDA disputes this contention. Once again, the Camachos failed to raise this issue in the trial court, but its resolution only requires us to consider the final judgment and the relevant provisions of the REML. Therefore, we can consider it.

¶ 27 The Camachos claim that paragraph six of the final judgment divests them of their right of redemption. Paragraph six states that the Camachos "be foreclosed of all equity or other interest they may have, jointly or severally, in the real property sold or in any part thereof or in any interest therein." ER at 3. Paragraph five, however, explicitly states that the Camachos' real property "shall be sold in accordance with and in the manner prescribed by 2 CMC § 4537." Title 2 CMC § 4537(f) provides:

> Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this chapter, . . . the property is subject to redemption. At the expiration of the time for the redemption of the property, if the property is not redeemed, the person making the sale, . . . must make to the purchaser, the purchasers heirs, or assignees, or to any person who has acquired the title of the purchaser by redemption or otherwise, a deed or deeds to the property.

The final judgment does not divest the Camachos' of their right of redemption because the judgment explicitly states that the sale shall be conducted in accordance with 2 CMC § 4537, and subsection (f) preserves the right of redemption. While the final judgment does not mention 2 CMC § 4541, the redemption provision, this omission is irrelevant because by referencing section 4537, the judgment explicitly does not divest the Camachos of their right to redeem. This argument is without merit, and therefore, the trial court did not abuse its discretion in entering the final judgment.

IV

¶ 28 For the foregoing reasons, we hold that certification of the judgment according to Commonwealth Rule of Civil Procedure 54(b) was proper, and that a party may appeal from a default judgment without first challenging that judgment in the trial court. When a party fails to first move to vacate a default judgment, however, this Court's review is strictly limited to the record developed by the lower court, and we can only address issues not part of that record if they are strictly questions of law. Thus, we cannot consider whether CDA gave inadequate notice because the resolution of that question depends on facts

not determined by the trial court and not part of the record established below. We have considered the redemption issue, but hold that the language of the final judgment preserves the Camachos' redemption rights, and thus, the trial court did not abuse its discretion in entering the final judgment under appeal. Therefore, we AFFIRM the trial court's final judgment.

SO ORDERED this 21st day of December, 2010.

___/s/___________________________
MIGUEL S. DEMAPAN
Chief Justice

___/s/___________________________
ALEXANDRO C. CASTRO
Associate Justice

__/s/___________________________
TIMOTHY H. BELLAS
Justice Pro Tem