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

KI DONG KIM AND JONG WOO LEE,
Plaintiffs-Appellants,

v.

HONG SIK BAIK AND CHIL LYE LEE,
Defendants-Appellees.

Supreme Court No. 2014-SCC-0014-CIV

Superior Court No. 11-0271B

OPINION

Cite as: 2016 MP 5

Decided May 27, 2016

James S. Sirok, Saipan, MP, for Plaintiffs-Appellants.

Robert H. Myers Jr., Saipan, MP, for Defendants-Appellees.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

MANGLONA, J.:

¶ 1 Plaintiffs–Appellants Ki Dong Kim ("Kim") and Jong Woo Lee ("Lee") appeal the trial court's order denying their claims for breach of warranty, fraud and forgery, and requests for declaratory and injunctive relief. The case arises out of an ownership dispute over a leasehold interest in beachfront property, Lot No. 1937-New-12 ("the property"). Kim and Lee sued Hong Sik Baik ("Baik") and Chil Lye Lee ("Chil Lye"), asserting ownership of the lease pursuant to two 2008 contracts, the "Deed of Sale and Conveying Ownership and Loan Agreement" ("the Deed of Sale") and the Assignment of Lease Agreement ("the Assignment of Lease"). Kim and Lee argue the trial court erred by considering extrinsic evidence in interpreting the Assignment of Lease and by denying their request for declaratory and injunctive relief for fraud and forgery. For the reasons discussed below, we AFFIRM the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Kim and Lee sued to enjoin Baik and Chil Lye's use and possession of the property, asserting their ownership of the lease. Kim and Lee contend a nonparty third person, Jin San Park ("Park"), assigned them the lease. Park, in turn, allegedly obtained ownership of the lease from Baik pursuant to three sets of contracts: (1) the Deed of Sale and Assignment of Lease executed on October 17, 2008; (2) the November 17, 2008, Joint Venture Agreement; and (3) the second Joint Venture Agreement and the Memorandum of Agreement executed on December 3 and 18, 2008.

A. The Deed of Sale and Assignment of Lease

¶ 3 After moving to Saipan from Korea, Baik and Chil Lye entered a fifty-five year lease agreement for the property on October 16, 2000. Baik and Chil Lye live and operate a business on the property.

¶ 4 In April 2008, while on a business trip in the Philippines, Baik met Park. The two met again in August 2008 to talk about starting a telecommunications business together. According to Baik, Park agreed to loan Baik $250,000 for Baik to invest in the business. In turn, Baik agreed to guarantee completion of the business venture by pledging the property as security.

¶ 5 On October 17, 2008, Baik executed the Deed of Sale, which pledged as collateral the leasehold interest in the property, securing a $250,000 loan from Park. Under the Deed of Sale, Baik agreed "to make Assignment of Lease Agreement to release the ownership [of the property] for borrowing money in the amount of $250,000.00 at no interest and due to pay back to [Park] within 60 days from execution of this agreement."[1] Pls.' Ex. 1, at 2. Park warranted

[1] Park and Baik are both Korean nationals. The contracts contain several grammatical and linguistic errors that complicated the trial court's interpretation of the agreements.

"that Assignment of Lease Agreement as Section One (1), that has made on October 17, 2008,[2] will hold until 60th day after closing of this agreement. [Park] further warrants that he will not process until mature date of 60th day." *Id.* Park also agreed to give fifteen days notice if Baik defaulted on the agreement. Baik agreed to repay the loan "within 60 days due time, but if not performed payment, upon due date to [Park], then [Baik] shall warrant to release and relinquish the entire rights of the property to [Park] without having any dispute and further any action." *Id.* at 2–3. In the event of default, "[Baik] agrees to release to [Park] and [Park] shall have to right to possess, keep or sell the property . . . without disputing and consent from [Baik]." *Id.* at 3. The agreement also includes an integration clause.[3]

¶ 6 That same day, Baik, Chil Lye, and Park executed the Assignment of Lease, in which Baik and Chil Lye assigned to Park their fifty-five year lease to the property. The assignment states: "for good and valuable consideration of Two Hundred Fifty Thousand Dollars ($250,000) (the "Purchase Price"), of which is paid by [Park] as set forth below." Pls.' Ex. 2, at 1. The assignment acknowledges Baik received full payment:

> Section Three: PAYMENT OF PURCHASE PRICE:
>
> This is to acknowledge in receipt of full payment of U.S. Two Hundred Fifty Thousand Dollars ($250,000.00) by Assignor for the Purchase Price on OCT 17,[4] 2008.

Id. at 3. The Assignment of Lease further contained an integration clause: "There are no agreements, warranties or representations except those expressly set forth herein." *Id.*

¶ 7 Baik later testified that the $250,000 payment from Park represented Park's initial investment in the telecommunications business venture. According to Baik, the lease was collateral guaranteeing his obligations to

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The original language of the agreements is preserved in this opinion where paraphrasing would require interpretation of the parties' intent.

[2] The printed deed indicates October 2008, but leaves the exact date blank. The 17th is filled in by pen and Korean text appears next to it. Kim later testified that the date was filled at the meeting between Baik and Park in the Philippines in November 2008.

[3] The integration clause stated that the agreement "contains the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written contract shall be valid or binding, and this contract may not be enlarged, modified, or altered except in writing signed by the parties endorsed hereon." Pls.' Ex. 1, at 3.

[4] "OCT 17" is written in pen and next to it is what appears to be a signature and Korean writing. According to Baik, the date was filled in around December 18, 2008 in the Philippines when Park made a disbursement of $100,000. Baik claims Park requested him to enter the date "October 17."

complete the business deal rather than collateral for a loan. Baik further testified that he never received the full $250,000 from Park.

¶ 8 According to a representative of Pacific American Title, the Deed of Sale was recorded with the Commonwealth Recorder on October 21, 2008—four days after it was executed. The Assignment of Lease was not recorded at this time.

¶ 9 Meanwhile, toward the end of October 2008, Park solicited a $100,000 loan from Kim. Park assured Kim he would be able to repay the loan because he would be the owner of the property within sixty days. The trial court found that sometime in November 2008, Kim asked Lee for a $100,000 loan. In turn, Kim told Lee that he owned a property in Saipan that he would assign to Lee.

B. The First Joint Venture Agreement

¶ 10 About one month after executing the Deed of Sale and Assignment of Lease, Baik, Park, and Kim met in the Philippines. At this meeting, Baik and Park entered a Joint Venture Agreement, in which Baik's company, Global Resources and Holding Corporation ("GRHC"), agreed to provide Park with office and internet facilities in exchange for $200,000. The $200,000 was to be paid in three installments—Park would pay $100,000 upon signing, $50,000 ten days after testing was completed, and another $50,000 when operations were ready to begin. Park further agreed to provide $200,000 monthly to cover business expenses, and if Park failed to provide a monthly payment, Baik would be entitled to close and stop business immediately.

¶ 11 Kim testified he gave Baik $100,000 in cash at this meeting. On the other hand, Baik testified that he received no money. There was no evidence that Kim withdrew these funds nor was there documentation confirming that Baik received them. Considering Kim's work as a moneylender and the lack of documentation of the transaction, the trial court found Kim's assertions implausible and concluded Baik did not receive any funds at that meeting.

¶ 12 Furthermore, the trial court found that Kim took possession of the Deed of Sale and Assignment of Lease at that meeting and that Baik filled in the date in the blank portion of section 3 in the previously-executed Deed of Sale, which acknowledged his receipt of the "[p]urchase [p]rice." *Id.*

¶ 13 According to Baik, Park failed to make the payments required under the first Joint Venture Agreement. As a result, the business project did not proceed.

C. The Second Joint Venture Agreement and Memorandum of Agreement

¶ 14 On December 3, 2008, Baik and Park executed a second Joint Venture Agreement, in which Park agreed to provide $200,000 in three installments. The first $100,000 would be paid upon signing, the second $50,000 would be paid ten days after the completion of testing, and the final $50,000 payment would be made ten days after operations were ready. Similar to the first Joint Venture Agreement, GRHC agreed to provide office and internet facilities, and Park agreed to provide $200,000 monthly to cover business expenses. The

agreement further provided that it would take effect upon signing and that operation would begin within thirty days by registering the Venture Corporation.

¶ 15 According to the trial court's findings, on December 5, 2008, Kim and Baik opened a bank account in Manila, into which Kim deposited $100,000. Three withdrawals totaling $100,000 were made from this account between December 12 and 18, 2008. On December 16, Baik wrote to Park to terminate the Assignment of Lease and Deed of Sale and request the return of the documents because Park failed to release the $250,000 loan.[5] Although there was no evidence Park received this letter, two days later, on December 18, 2008, Baik acknowledged receipt of $100,000 from Park as the initial investment agreed upon in the second Joint Venture Agreement.

¶ 16 Also on December 18, 2008, Park and Baik executed a Memorandum of Agreement, which acknowledged that Park and Baik entered the second Joint Venture Agreement. The Memorandum of Agreement stated that Park agreed to make a $100,000 payment upon signing the Memorandum of Agreement, Baik would bear costs of testing telecommunication lines up to about $100,000, Park would pay an additional $100,000 upon the completion of testing, and Baik would surrender his ownership of the property to Park "if the JOINT VENTURE AGREEMENT will not push through within the period of 30 working days from signing of this Memorandum of Agreement. . . ." Defs.' Ex. C at 1. Baik further agreed that upon signing the agreement he would not "appropriate, use, alienate, encumber, or in any manner represent ownership of the subject property in Saipan," *id.* at 2, and acknowledged his receipt of the $100,000 initial investment as provided for in the second Joint Venture Agreement.[6]

¶ 17 The trial court found that Baik began work on the business venture in January 2009. The court further found Baik did not receive the money he was owed by Park under that contract and that Baik traveled to Korea in 2009 to meet with Park and another businessperson, Haeng Woo Lee, to discuss Park's failure to fulfill his obligations under the deal.

¶ 18 The Assignment of Lease was recorded on March 30, 2009. That same day, Park sent Baik and Chil Lye a notice to vacate the premises, which explained that he owned the leasehold under the Assignment of Lease. On April 7, 2009, Park assigned his interest in the lease agreement to Kim. Kim testified he paid $200,000 and forgave Park's outstanding debt in exchange for the

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[5] Baik did not send the letter directly to Park; instead, he sent it to Haeng Woo Lee because he believed Haeng Woo Lee would deliver the letter to Park.

[6] The date is handwritten as December 18 on the Agreement. However, the Agreement was executed on December 18 and explicitly mentions the second Joint Venture Agreement from December 3. Thus, the trial court concluded the handwritten date was a mistake.

interest in the lease agreement. In turn, Kim transferred an undivided one-third interest in the lease to Lee on October 28, 2009.[7]

¶ 19 In July 2010, Baik forged three withdrawal letters that purported to surrender the property interests of Kim, Lee, and Park and return those interests to Baik. He recorded the withdrawal letters that September.

¶ 20 In October 2011, Kim and Lee filed their complaint against Baik and Chil Lye, seeking relief for breach of warranty, fraud and forgery, and declaratory and injunctive relief. The court denied each of Kim and Lee's requests for relief and concluded Baik and Chil Lye retained ownership of the lease. Kim and Lee now appeal.

II. JURISDICTION

¶ 21 We have jurisdiction over final judgments and orders issued by the Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 22 "Interpretation of contract terms is a question of law that we review de novo." *Fusco v. Matusmoto*, 2011 MP 17 ¶ 26.

IV. DISCUSSION

A. Contract Interpretation

¶ 23 Kim and Lee argue the trial court erred by considering extrinsic evidence in interpreting the meaning of the Assignment of Lease because the Assignment was a fully integrated document and the parol evidence rule restricts the court to the four corners of the document. The parol evidence rule bars "evidence of prior or contemporaneous agreements or negotiations to change or modify the terms of a binding integrated agreement." *Del Rosario v. Camacho*, 2001 MP 3 ¶ 68 (citing Restatement (Second) of Contracts §§ 213 cmt. a, b, 215 (1981)). Under the parol evidence rule:

> (1) A binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them.
>
> (2) A binding completely integrated agreement discharges prior agreements to the extent that they are within its scope.
>
> (3) An integrated agreement that is not binding or that is voidable and avoided does not discharge a prior agreement. But an integrated agreement, even though not binding, may be effective to render inoperative a term which would have been part of the agreement if it had not been integrated.

Id. ¶ 67 (quoting Restatement (Second) of Contracts § 213 (1981)). Under the second Restatement:

> (1) An integrated agreement is a writing or writings constituting

[7] As discussed *supra* ¶ 9, Kim previously sought a $100,000 loan from Lee. Kim asserted he owned property in Saipan that he would assign to Lee.

> a final expression of one or more terms of an agreement.
>
> (2) Whether there is an integrated agreement is to be determined by the court as a question preliminary to determination of a question of interpretation or to application of the parol evidence rule.
>
> (3) Where the parties reduce an agreement to a writing which is in view of its completeness and specificity reasonably appears to be a complete agreement, it is taken to be an integrated agreement unless it is established by other evidence that the writing did not constitute a final expression.

Id. ¶ 71 (quoting Restatement (Second) of Contracts § 209 (1981)). If the writing itself is the agreement as a matter of law, "[e]xtrinsic evidence is excluded because it cannot serve to prove what the agreement was." *Hotle v. Miller*, 334 P.2d 849, 851 (Cal. 1959) (quoting *In re Estate of Gaines*, 100 P.2d 1055, 1060 (Cal. 1940)). However, the parol evidence rule does not bar evidence of modification by a subsequent agreement. *Id.* (The parol evidence rule "has no corresponding power to preclude future negotiations. 'Any contract, however made or evidenced, can be discharged or modified by subsequent agreement of the parties.'" (quoting 3 Corbin on Contracts, § 574)); *see also, e.g.*, *Atlas Petroleum Co. v. Cocklin*, 59 F.2d 571, 573 (8th Cir. 1932) ("It seems to be equally well settled that a written instrument may be canceled, rescinded, or abandoned by a subsequent oral agreement."); *Brandywine Shoppe, Inc. v. State Farm Fire & Cas. Co.*, 307 A.2d 806, 809 (Del. 1973) ("Evidence of a subsequent oral agreement modifying an earlier contract is not precluded by the parol evidence rule." (citing 3 Jones on Evidence (6th Ed.) 101-4 § 16:10)).

¶ 24 Here, the trial court concluded Park did not take ownership of the lease because he failed to meet his obligations under the subsequently entered Joint Venture Agreements and the Memorandum of Agreement. It further concluded the Joint Venture Agreements and the Memorandum of Agreement embodied the final written agreement between Baik and Park. Because of these subsequently entered contracts, the court declined to determine the parties' obligations under the Assignment of Lease and the Deed of Sale. In reaching this conclusion, the trial court noted the Deed of Sale and Assignment of Lease contradicted one another and that the original agreement regarding the property was modified by the subsequent agreements Baik and Park entered. Thus, assuming the Assignment of Lease was an integrated contract,[8] the parol

[8] Although the Deed of Sale and Assignment of Lease each contained an integration clause, it is not clear that the agreements are actually integrated. The Deed of Sale explicitly called for the execution of the Assignment of Lease. However, the Deed of Sale and the Assignment of Lease were inconsistent by their plain terms: the Deed pledged the lease as collateral while the Assignment purported to assign the lease. Park's recordation of the Deed of Sale on October 21—four days after the execution of the Assignment of Lease and Deed of Sale—further indicates the Assignment of

evidence rule would not bar evidence that the Joint Venture Agreements and Memorandum of Agreement modified the Assignment. Accordingly, we conclude the trial court did not violate the parol evidence rule by examining the Joint Venture Agreements and Memorandum of Agreement.

¶ 25 Further, Baik and Park's dealings indicate the agreement embodied in the Assignment of Lease was subsequently modified. The Assignment of Lease, which Kim and Lee claim unconditionally transferred Baik's interest in property, was executed on October 17. Yet the Memorandum of Agreement, executed by the same parties just two months later, explicitly acknowledged Baik's continuing interest in the property: "WHEREAS, [Baik] undertakes that if the JOINT VENTURE AGREEMENT will not push through within the period of 30 working days from signing of this Memorandum of Agreement he will surrender ownership of his property to [Park] . . . ." Defs.' Ex. C, at 1. Thus, Kim and Lee's claim that the Assignment of Lease had already transferred ownership of the lease to Park is implausible. Simply put, it defies reason that Park would take as security property to which he was already entitled. Rather, the series of written agreements indicates the parties' business agreement was subject to ongoing modification. Under the final written contract—the Memorandum of Agreement—Baik incurred an obligation to effectuate the Joint Venture Agreement and pledged his interest in the property as security for Park's financial investment. Because there was no evidence Baik breached his obligations under this final agreement, we conclude the trial court did not err by determining Baik retained ownership of the lease.

¶ 26 Citing to *Del Rosario*, 2001 MP 3 ¶ 75, Kim and Lee also argue the Assignment of Lease unconditionally relinquished Baik's ownership right in the lease and cannot be rescinded or modified because delivery of an unconditional deed, with no language limiting or qualifying the estate it conveys, passes complete title regardless of occurrence or nonoccurrence of purported preconditions to the conveyance. In *Del Rosario*, this Court considered whether a party acquired ownership of a Garapan property from his siblings through a deed of gift. *Id.* ¶¶ 1, 3, 74–77. There, the siblings provided parol evidence, in the form of oral testimony, that suggested the deed was conditioned on a promise to convey a Talofofo property in exchange for the sibling's interests in the Garapan property. *Id.* ¶ 69. The Court noted that the parol evidence rule precluded the use of the testimony, *id.* ¶ 75, concluded the deed was valid, *id.* ¶ 78, and noted that allowing sellers to repudiate real estate sales upon the failure to pay "would render real estate titles 'dangerously uncertain.'" *Id.* ¶ 77 (citing *State v. Thom*, 563 P.2d 982, 989 (Haw. 1977)).

¶ 27 We conclude Kim and Lee read *Del Rosario* too broadly. Nothing in *Del Rosario* suggests a court must disregard contemporaneous and subsequent

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Lease did not void or replace the Deed of Sale. Rather, recordation of the Deed of Sale indicates both contracts were intended to operate simultaneously, and therefore, they must be read in harmony.

written agreements that indicate the parties intended to initiate a loan agreement rather than a conveyance. *See* Restatement (Third) of Property: Mortgages § 3.2(a) (1997) ("Parol evidence is admissible to establish that a deed purporting to be an absolute conveyance of real estate was intended to serve as security for an obligation, and should therefore be deemed a mortgage."). Reading the Deed of Sale together with the Assignment of Lease, it appears the parties may have intended to create a mortgage in which the lease secured a $250,000 loan. *See id.* § 3.2 cmt. f ("[P]arol evidence can be used to establish that the two writings (an absolute deed and a separate document showing that the deed was intended to serve as security for an obligation) really constituted one transaction."); *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 39 (noting that courts treat as an assignee one who acquires a lease through judicial sale when a lease is pledged as security and the mortgage is subsequently foreclosed upon).[9]

¶ 28 In sum, Baik and Park's subsequent contracts and dealings indicate the agreement embodied in the Assignment of Lease was modified. Further, Kim and Lee's assertion that the Assignment of Lease could not be modified or rescinded by subsequent agreements is unpersuasive. Accordingly, the trial court did not err by concluding Park did not obtain title to Baik's lease through the Assignment of Lease agreement.[10]

B. Declaratory and Injunctive Relief

¶ 29 Next, we turn to Kim and Lee's argument that the trial court erred by denying their request for declaratory and injunctive relief for fraud and forgery. They assert they are entitled to a declaration that the withdrawal letters are forgeries and an order directing the Recorder's Office to void the recordation of

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[9] Furthermore, the Deed of Sale and Assignment of Lease could be interpreted together with the Joint Venture Agreements and the Memorandum of Agreement as creating a mortgage. *See* Restatement (Third) of Property: Mortgages § 3.2 cmt. f (1997) ("[T]he two writings need not be executed simultaneously. The fact that the written agreement of defeasance is executed after the absolute deed does not bar mortgage treatment so long as the parties actually agreed to the defeasance at the time the grantor delivered the deed.").

[10] We note that the factual development of this case was stymied by the failure to include Park—who was party to the relevant contracts—as a party or witness at trial. In the answer to Kim and Lee's complaint, Baik and Chil Lye asserted Park fraudulently induced them to execute the Deed of Sale and Assignment of Lease. At this point, it should have been clear Park's presence as a witness or party would be beneficial. Indeed, the trial court ultimately concluded Park repeatedly breached contractual duties to Baik and conveyed to Kim and Lee a lease to which he was not entitled. We also note that attorney Sirok represented Park, Kim, and Lee at different times with regard to the property—he drafted the first Notice and Demand to Vacate Premises on behalf of Park on March 30, 2009, subsequently prepared a Second and Final Notice to Vacate Premises on behalf of Park and Kim on October 14, 2011, and represented Kim and Lee at trial.

the letters. Kim and Lee opine that Baik violated CNMI law and that fraudulent and forged documents should not remain in the records.

¶ 30 We typically consider only those "arguments sufficiently developed to be cognizable." *Matsunaga v. Cushnie*, 2012 MP 18 ¶ 13 (quoting *Commonwealth v. Minto*, 2011 MP 14 ¶ 46 n.8). An issue is insufficiently developed when the party's principal brief fails to "provide[] legal authority or public policy, [or] appl[y] the facts of the case to the asserted authority in a non-conclusory manner." *Commonwealth v. Calvo*, 2014 MP 10 ¶ 8. "This requirement reflects a fundamental feature of our adversarial system: '[T]hat appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.'" *Id.* ¶ 7 (quoting *NASA v. Nelson*, 562 U.S. 134, 147 n.10 (2011)). Furthermore, "[r]ulings on undeveloped or poorly developed issues run the risk of 'being improvident or ill-advised.'" *Id.* (quoting *McBride v. Merrell Down and Pharm., Inc.*, 800 F.2d 1208, 1211 (D.C. Cir. 1986)). Thus, when parties insufficiently develop an argument, we have the discretion to find the issue waived. *Matsunaga*, 2012 MP 18 ¶ 13 (citing *In re Blankenship*, 3 NMI 209, 216 (1992)).

¶ 31 Here, Kim and Lee provide no legal authority in support of their argument that the trial court erred by failing to grant declaratory or injunctive relief. Nor do they offer legal support for the conclusions that the Superior Court is the proper avenue for relief, declaratory and injunctive relief is the proper remedy, they were entitled to such relief under the facts of this case, and they are entitled to relief upon appeal. Consequently, we conclude Kim and Lee's argument is inadequately developed to permit meaningful review; therefore, their argument is waived.

V. CONCLUSION

¶ 32 For the reasons discussed above, we conclude the trial court did not violate the parol evidence rule and Kim and Lee waived their claim for declaratory and injunctive relief. Accordingly, we AFFIRM the judgment of the trial court.

SO ORDERED this 27th day of May, 2016.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice