IN THE

SUPREME COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ATKINS KROLL (SAIPAN), INC.,

Plaintiff-Appellant,

v.

PRIMO FERRERA, JR.

Defendant-Appellee.

SUPREME COURT NO. 2019-SCC-0003-CIV

SUPERIOR COURT NO. 18-0126

OPINION

Cite as: 2019 MP 10

Decided December 13, 2019

Michael White, Saipan, MP, for Plaintiff-Appellant.

Primo Ferrera, Jr. (Pro Se), Saipan, MP, for Defendant-Appellee.

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

MANGLOÑA, J.:

¶ 1 Plaintiff-Appellant Atkins Kroll (Saipan), Inc. ("Atkins Kroll") sued Defendant-Appellee Primo Ferrera, Jr. ("Ferrera") in small claims for a deficiency judgment on a vehicle purchase. The small claims court ruled for Ferrera, holding that Atkins Kroll failed to meet the notice requirement of 5 CMC § 9504(3) ("Section 9504(3)").[1] On appeal in the Superior Court, Atkins Kroll requested a new trial, which the trial court denied in its Order Denying Plaintiff's Appeal ("Order"). For the following reasons, we REVERSE the trial court's Order and REMAND for a new trial in the Superior Court.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Ferrera entered into a loan agreement with Atkins Kroll to purchase a motor vehicle but subsequently failed to pay monthly installments required under the agreement. Atkins Kroll repossessed and resold the vehicle, then sued Ferrera in small claims court for a deficiency judgment of $3,675.02, including pre-judgment interest, court costs, and attorney's fees. The small claims court decided in favor of Ferrera because Atkins Kroll failed to meet the notice requirement of Section 9504(3). While Atkins Kroll provided the small claims court with certified mail notice letters from First Hawaiian Bank addressed to Ferrera, it did not provide return receipts. The small claims court also did not accept into evidence a statement by Atkins Kroll's counsel that the letters were mailed to Ferrera.

¶ 3 Atkins Kroll appealed to the Superior Court, asserting it was entitled to a "trial de novo" under *Chen's Corp. v. Hambros*, 2007 MP 4, which it understood as synonymous with a new trial. In reviewing the small claims judgment, the trial court stated that "the Superior Court reviews appeals from small claims cases de novo." *Atkins Kroll, Inc. v. Ferrera, Jr.*, Civ. No. 18-0126 (NMI Super. Ct. Mar. 6, 2019) (Order at 2). The trial court appeared to understand its review as deferring to the small claims court's factual findings and reviewing its legal conclusions de novo. The trial court denied the appeal, refusing to conduct a new trial and affirming the small claims court's legal determination that Atkins Kroll failed to meet the Section 9504(3) notice requirement. Atkins Kroll appeals.

II. JURISDICTION

¶ 4 We have appellate jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

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[1] Section 9504(3) states, in relevant part: "[R]easonable notification of the time and place of any public sale or reasonable notification of time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor . . . ." 5 CMC § 9504(3).

III. STANDARD OF REVIEW

¶ 5 The only issue on appeal is whether the trial court erred in refusing to grant Atkins Kroll a new trial under Rule 83 of the NMI Rules of Civil Procedure ("Rules"). We review an order denying a new trial on appeal from a small claims judgment for manifest or gross abuse of discretion. *Bank of Hawaii v. Sablan*, 1997 MP 9 ¶ 3. "A trial court abuses its discretion when it clearly exceeds the bounds of reason or disregards rules or principals of law and practice to the substantial detriment of a party or litigant." *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 2. Whether the trial court correctly interpreted Rule 83's procedures for small claims appeals is a question of law reviewed de novo. *Ishimatsu v. Royal Crown Ins. Corp*., 2012 MP 17 ¶ 27.

IV. DISCUSSION

¶ 6 Atkins Kroll relies on *Hambros* for the proposition that it was entitled to a new trial in the Superior Court, in which it would have the opportunity to present new evidence. Opening Br. 3. It relies on language citing the Rules, that "[a] defendant who has had a small claims judgment rendered against him may appeal the judgment by requesting, in writing, a *new trial in the Superior Court* within 30 days after the judgment was entered." *Hambros*, 2007 MP 4 ¶ 5 (emphasis added). Atkins Kroll contends that the trial court erred in accepting the small claims court's factual findings at face value rather than giving the parties the opportunity to present new evidence. Opening Br. 3. Ferrera did not file a response brief.

¶ 7 We limit our inquiry to whether the trial court abused its direction in denying Atkins Kroll a new trial. *See Bank of Hawaii*, 1997 MP 9 ¶ 3 (affirming denial of a new trial on appeal from a small claims judgment). We will find an abuse of discretion if the trial court disregarded the Rules to the substantial detriment of Atkins Kroll. *See Kim*, 2001 MP 9 ¶ 2. Atkins Kroll suffered such a substantial detriment if it was actually prejudiced by denial of its motion for a new trial and it could have prevented such prejudice at trial. *Robinson v. Robinson*, 1 NMI 81, 91 (1990) (citing *Guam Memorial Hospital v. Dale*, 2 CR 291, 304 (Dist. Ct. App. Div. 1985)). The proper interpretation of Rule 83 is a question of law reviewed de novo. *Ishimatsu*, 2012 MP 17 ¶ 27.

¶ 8 Appeal from an adverse small claims judgment is heard first by the Superior Court, to "give the lower court an opportunity to make a ruling based on more formal rules of evidence and procedure" and "make any resulting appeal to the Supreme Court more capable of setting forth an adequate record." *Hambros*, 2007 MP 4 ¶ 5. Whereas small claims adjudications prioritize speed and informality, new trials on appeal follow formal rules of evidence and procedure. Small claims procedures are governed by NMI Rule of Civil Procedure 83. At the time *Hambros* was decided, in 2007, appeals from small claims judgments to the Superior Court were governed by what was then Rule 83(i), Small Claims Procedure; the controlling section of the current Rule is 83(j). It then read, in pertinent part, "[a]ny defendant who has had a small claims judgment rendered against him/her may appeal the judgment by requesting, in

writing, a new trial in the Superior Court within 30 days after the judgment was entered." NMI R. CIV. P. 83(i), *repealed by* Administrative Order 2015-ADM-0003-RUL (NMI Sup. Ct. Mar. 3, 2015). Subsequent amendment to the rule's language did not substantively alter the procedure for small claims appeals in the Superior Court.

¶ 9 Here, the Superior Court misinterpreted our holding in *Hambros*. It cited *Hambros* for the proposition that it "reviews appeals from small claims cases de novo," which it took to mean accepting the small claims court's factual findings and merely reviewing its legal determinations. Order at 2 n.3. This was a misreading of *Hambros*, which clearly states that a party is entitled to a new trial on appeal from a small claims judgment, in accord with then-controlling Rule 83(i). 2007 MP 4 ¶ 5. As *Hambros* noted, the practice in many jurisdictions, including Vermont and California, was that "the losing party in small claims court may appeal to Superior Court and obtain a *de novo* trial." *Id.* (citing *Cold Springs Farm Development, Inc. v. Ball*, 661 A.2d 89, 92 (Vt. 1995); *Perez v. City of San Bruno*, 616 P.2d 1287, 1291–92 (1980)). That is, "de novo trial" means a new trial, not simply de novo review of legal determinations.

¶ 10 Granting a new trial is, however, discretionary rather than as of right, as we held in *Bank of Hawaii*, 1997 MP 9 ¶ 9. There, we interpreted an earlier version of Rule 83(i), which was amended before our *Hambros* decision. It then read, "[e]ither party to a small claims judgment *may* have a new trial in the same court according to the usual trial procedure for larger claims by filing a request for a new trial within thirty (30) days after the small claims judgment." COM. R. CIV. PRO. R. 83(i) (emphasis added). The only material change between this version and that which we interpreted in *Hambros* is that the *Bank of Hawaii* version permitted either party to appeal. When we decided *Hambros*, only defendants could appeal; under the current version of the Rule, either party can once again appeal. *See* NMI R. CIV. P. 83(j); *infra* ¶ 12.

¶ 11 The discretion of the Superior Court does not however extend so far as to prejudice the litigants by disregarding rules or procedures. Denial of Atkins Kroll's motion for a new trial prejudiced it by denying it the opportunity to prove it met the Section 9504(3) notice requirement, a defect which could be remedied with a new trial. *See Robinson*, 1 NMI at 91. Atkins Kroll stated in its pleading before the Superior Court that it would produce a certified mail receipt in a new trial. *Atkins Kroll, Inc. v. Ferrera, Jr.*, Civ. No. 18-0126 (NMI Super. Ct. Aug. 30, 2018) (Memorandum 3). The trial court's citation to *Hambros* to support the proposition that it could review the small claims judgment's legal conclusions de novo while leaving its factual findings intact was in error. Atkins Kroll maintains that the small claims court did not give sufficient weight to its evidence purporting to show that notice was actually delivered; this justifies new factual findings in a new trial. Denial of a new trial in *Bank of Hawaii* was precisely premised on the absence of a need for new factual findings. "[H]ad a new trial been granted, it would have been based solely on [a] legal issue . . . [which] had already been addressed at the small claims court." 1997 MP 9 ¶ 9. Here, by

contrast, additional factual findings on remand may be dispositive of the notice issue.

¶ 12 Our holdings in *Bank of Hawaii* and *Hambros* are unchanged by the subsequent amendment of the Rules. Rule 83(j), adopted in 2015, now controls procedure for appeals to the Superior Court. It reads, in part, "[a]ny party may appeal an adverse judgment to the Superior Court within 30 days after the judgment was entered . . . ." NMI R. CIV. P. 83(j). This language is admittedly less straightforward than the previous Rule 83(i), as it no longer explicitly includes the phrase "new trial." Nonetheless, it remains the case that appellants from small claim's judgments are entitled to a new trial in the Superior Court.

¶ 13 The intention in amending the language of Rule 83 was in part to grant the right to plaintiffs as well as defendants to appeal an adverse judgment. Rule 83(j) now reads "[a]ny *party* may appeal an adverse judgment . . . ." whereas the former Rule 83(i) reads "[a]ny *defendant* . . . may appeal . . . ." (emphases added). The new language also clarifies the timeline for a status conference and hearings in a small claims appeal. Language added to 83(j) includes the following:

> Within 30 days of the filing of a Notice of Appeal, the judge to which the case is assigned shall set the case for a status conference. At the status conference, the judge may issue appropriate orders for the conduct of the case, in accordance with the Commonwealth Rules of Civil Procedure.

This status conference is the occasion for the judge to determine if, for example, the parties intend to present evidence not admitted in small claims, in accord with formal rules of evidence and procedure. The clause "in accordance with the Commonwealth Rules of Civil Procedure" clarifies that a new trial is conducted on appeal.

¶ 14 The dissent's fear that our decision today opens the floodgates to meritless small claims appeals is unfounded. Small claims procedure is designed so that such cases may be "fully disposed of with less formality, paperwork, and expenditure of time than is required by the ordinary procedure for larger claims." NMI R. CIV. P. 83(b). All that was required here was for the small claims judge to provide Atkins Kroll with the later opportunity to supplement its notice letter with a receipt slip, an opportunity that likely would have been afforded to a pro se litigant. A new trial in the Superior Court is not a second bite at the apple; it is simply rectifying the failure of the small claims court to "assist the parties, as it deems appropriate, to expedite the presentation of the evidence being offered." NMI R. CIV. P. 83(f). Unnecessary costs and protracted litigation are to be avoided through informal and efficient procedure in small claims in the first place, not through denying a party's right to a new trial on appeal. On these facts, a new trial is appropriate.

¶ 15 The trial court's holding that it reviews small claims judgments de novo but without the opportunity to make new factual findings was a mistaken application of *Hambros* and of Rule 83(j). Rule 83(i) at the time of the *Hambros*

decision clearly provided for a new trial on appeal in the Superior Court, and that remains the procedure despite the change in the Rule's language. Though granting a new trial on appeal from a small claim's judgment is discretionary rather than as of right, the court abused that discretion in denying Atkins Kroll the opportunity to present new evidence that may prove dispositive.

¶ 16 It is for the trial court to determine on remand, with the benefit of new findings of fact, whether Atkins Kroll met the Section 9504(3) notice requirement.

V. CONCLUSION

¶ 17 For the foregoing reasons, we REVERSE the trial court's Order and REMAND for a new trial in the Superior Court.

SO ORDERED this 13th day of December, 2019.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLOÑA
Associate Justice

INOS, J., dissenting:

¶ 18 I find the trial court properly denied Atkins Kroll's appeal and, therefore, respectfully dissent.

¶ 19 I understand a new trial on appeal under Rule 83 to be more limited than does the majority. Its purpose is to allow the Superior Court to make its rulings based on formal rules of evidence and civil procedure and to set forth an adequate record if a party further appeals to the Supreme Court. *See Hambros*, 2007 MP 4 ¶ 5. Small claims proceedings are informal, the parties are encouraged to personally handle their claims without counsel, and the usual rules of evidence or procedure are not binding. NMI R. CIV. P. 83(b). The aim of a new trial is not to give the losing party unbounded license to relitigate any issue already tried in small claims. Specifically, I would hold the purpose of a new trial is not to present new evidence that was not offered in small claims. What this case amounts to is that Atkins Kroll did not meet its evidentiary burden to prove it met the Section 9504(3) notice requirement. Rule 83(j) is not intended to circumvent a party's failure to present sufficient evidence in small claims.

¶ 20 Atkins Kroll's reliance on *Hambros* is misplaced. There, we emphasized that Rule 83 called for a new trial in the Superior Court because the parties had bypassed the appeal to the Superior Court altogether, appealing directly from small claims to the Supreme Court. 2007 MP 4 ¶ 1. Neither party was represented by counsel and the record of the resulting appeal was inadequate. *Id.* ¶ 3. It was entirely proper in that context to dismiss the appeal.

¶ 21 The facts of the case before us are quite different. First, Atkins Kroll was represented by counsel. Second, while the proceeding was supposed to be conducted informally and the rules of evidence and civil procedure do not apply, Atkins Kroll made numerous objections, allowing the court to make formal evidentiary and procedural rulings.[2] Third, Atkins Kroll did not offer the certified return receipt, or a copy thereof, to prove that the notice at issue was sent. It offered no witness to testify to this. If it had put the small claims court on notice that it had this evidence and had still lost and been denied a new trial, I would reverse the trial court. However, it simply rested on the notice letter which Ferrera and another witness testified they did not receive. Finally, Atkins Kroll is not seeking an appeal to avail itself of the rules of evidence or civil procedure but to introduce new evidence which was not available or offered in small

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[2] Atkins Kroll did not provide transcripts of the small claims trial or the hearing in the Superior Court when assembling the record. Ferrera, proceeding pro se, did not supplement the record, and it was accordingly necessary to consult audio transcripts of proceedings below. *See Commonwealth v. Sebuu*, 2011 MP 15 ¶ 5 n.2 ("We were not provided a written transcript of the entire proceedings below, and we therefore found it necessary to review the entire audio transcript in reaching our decision"); NMI SUP. CT. R. 2 ("the Court may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs.")

claims.[3] In the end, the conduct of the proceeding was the functional equivalent of the formal trial that Rule 83(j) contemplates.

¶ 22 We held in *Bank of Hawaii* that granting a new trial on appeal to the Superior Court is discretionary, and denial of a new trial will be overturned only if it constitutes a "manifest or gross abuse of discretion." 1997 MP 9 ¶ 3. There, we upheld denial of a new trial because "had a new trial been granted, it would have been based solely on [a] legal issue" which "had already been addressed" in small claims. *Id.* ¶ 8. This case is no different. Atkins Kroll litigated in small claims no differently than it would have in a trial fully governed by the evidentiary or procedural rules; it simply failed to call witnesses or introduce documents to support its case. Order at 4. It did not meet its evidentiary burden to show it met the statutory notice requirement, and it should not be able to supplement that evidence on appeal. A new trial would be based solely on the legal issue of interpreting the requirements of Section 9504(3) and the trial court therefore correctly interpreted Rule 83(j).

¶ 23 The appellate record from small claims is sufficiently well-developed, and further proceedings to "make any resulting appeal to the Supreme Court more capable of setting forth an adequate record" are unnecessary. *Hambros*, 2007 MP 4 ¶ 5. Procedures approximating those of a formal trial were followed in small claims, including the exclusion of counsel's own statement that the certified mail at issue was actually sent, for example. Order at 2.

¶ 24 Rule 83(j) should not be read so as to permit a party to present new evidence. Allowing this would open the floodgates to every losing party suddenly discovering additional evidence on appeal and create the opportunity for gamesmanship, undermining the policy goal to "enable small claims to be justly decided and fully disposed of with less formality, paperwork, and expenditure of time than is required by the ordinary procedure for larger claims." NMI R. CIV. P. 83(b).

¶ 25 Since granting a new trial is discretionary, the small claims proceeding was adequately formal, and the record is already complete, I would hold that the trial court did not abuse its discretion in denying a new trial. I would AFFIRM the Order.

/s/

PERRY B. INOS
Associate Justice

3 Atkins Kroll stated in its Memorandum: "At trial, the Plaintiff will produce a certified mail receipt, proving that the letter of May 24, 2017 was actually sent to the defendant." App. 5.