IN THE SUPREME COURT OF GUAM

RICHARD T. DAMIAN,
Plaintiff-Appellee,

v.

JOSHUA CAMACHO DAMIAN and
DEPARTMENT OF LAND MANAGEMENT,
GOVERNMENT OF GUAM,
Defendants-Appellants.

OPINION

Cite as: 2015 Guam 12

Supreme Court Case No.: CVA14-014
Superior Court Case No.: CV0184-12

Appeal from the Superior Court of Guam
Argued and submitted on October 14, 2014
Hagåtña, Guam

Appearing for Defendants-Appellants:
Catherine Bejerana Camacho, *Esq.*
Law Office of Catherine Bejerana Camacho
267 S. Marine Corps Dr., Ste. 302
Tamuning, GU 96913

Appearing for Plaintiff-Appellee:
Peter F. Perez, *Esq.*
Law Office of Peter F. Perez
DNA Bldg., Ste. 802
238 Archbishop Flores St.
Hagåtña, GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ALBERTO E. TOLENTINO, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] Joshua Camacho Damian appeals from the trial court's Decision and Order granting summary judgment in favor of his uncle, Richard T. Damian. Joshua argues that the trial court erred when finding that the real property at issue is "separate" property and that Richard's previously recorded Quitclaim Deed was superior to Joshua's later recording of title. Joshua also argues that the underlying action was precluded by the doctrine of *res judicata*.

[2] For the reasons set forth below, we disagree and affirm the Decision and Order of the trial court.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] This case involves a dispute over title to a property known as Lot No. 141-54 ("Property") located in Mongmong-Toto-Maite. Defendant-Appellant Joshua Camacho Damian ("Joshua") is the son of the late Roy T. Damian, Sr. ("Roy") and Teresita Cecilia Camacho Damian ("Teresita"). Plaintiff-Appellee Richard T. Damian ("Richard") is Roy's brother and Joshua's uncle.

[4] Roy acquired an interest in a property known as Lot No. 141-54, by way of a Decree Settling Final Account of Administrator and Final Distribution, following the death of his mother, Consolacion Tydingco Damian ("Consolacion"). Prior to issuance of the Decree, the other heirs to the Consolacion estate, including Richard, quitclaimed to Roy any interest they may have had in the Property. Accordingly, a Certificate of Title was issued to Roy by the Department of Land Management ("DLM") on July 12, 1971, certifying that he was the sole

registered owner in fee simple of the Property.[1] Roy was married to Teresita at the time he acquired the fee simple interest in the Property.

[5] Roy and Teresita resided in the split-level concrete house located on the Property for the next 35 years and expended "community funds" to maintain and improve the Property, where they also raised their four children—including Joshua. Record on Appeal ("RA"), tab 34 at 1 (Aff. of Def. Joshua C. Damian, Feb. 22, 2013); *see also* Appellant's Br. at 4 (July 9, 2014).

[6] In September 1997, Teresita initiated divorce proceedings against Roy by filing a complaint for divorce with the Superior Court. In her complaint for divorce, Teresita identified certain assets which she alleged constituted community property acquired during the marriage. Teresita included in that list the "[h]ouse and lot located at 942 Roy T. Damian, Jr. Street, Toto, Guam," in reference to the Property. RA, tab 33, Ex. A at 3 (Compl. for Divorce, Sept. 24, 1997). In his answer and counterclaim, Roy specifically denied the allegations contained in paragraph 6 of Teresita's complaint, which included her claim that the Property constituted community property. Moreover, in Count V of his counterclaim, Roy alleged that "Lot No. 141-54 Mongmong-Toto, Maite, Guam" was his "sole and separate property." RA, tab 33, Ex. B at 4 (Answer & Countercl., Oct. 14, 1997).

[7] Three years after the divorce proceedings commenced, a Final Decree of Dissolution of Marriage was issued by the court dissolving Roy and Teresita's marriage. The decree, however, provided that the court was not "attributing fault to either reserving that consideration until a hearing on the disposition of the community indebtedness and assets . . . ." RA, tab 33, Ex. H at 1 (Final Decree of Dissolution of Marriage, Dec. 2, 2000). The decree also provided that "[t]he

[1] "A certificate of title . . . is evidence that a titleholder's interest has been recorded under Guam's Land Title Registration Act." *Sananap v. Cyfred, Ltd.*, 2009 Guam 13 ¶ 60 (citing 21 GCA §§ 29101-29206 (2005)).

Court retains jurisdiction to resolve and consider the issues of the division and disposition of the community indebtedness and assets." *Id.*

[8] Notwithstanding the court's decree retaining jurisdiction over the disposition of community assets, Roy executed a quitclaim deed on October 12, 2004, in which he conveyed "all [his] right, title and interest in" the Property, as well as the building thereon, to Richard, in exchange for "consideration of the sum of One ($1.00) Dollar . . . and other good and valuable consideration." RA, tab 20, Ex. F at 1 (Quitclaim Deed, Oct. 12, 2004). The deed was recorded on November 3, 2004, and a Certificate of Title was issued on October 26, 2006. RA, tab 20, Ex. H at 1 (Certificate of Title, Oct. 26, 2006).

[9] During the course of proceedings, on May 11, 2005, the parties' attorneys appeared before the court to discuss any remaining issues that had not been resolved regarding the distribution of their assets. The parties indicated that "the only asset that has not been amicably . . . resolved is the distribution of the house and lot." RA, tab 33, Ex. K at 2 (Tr. of Proceedings, May 11, 2005). After a recess, the parties returned and indicated that they had arrived at a settlement. Teresita's attorney stated: "[The Property] would go to [Roy] with . . . either in the form of a life estate and then to Joshua or similar pledge. . . . The understanding, of course, is that Joshua will end up with the house." *Id.* at 9. Roy's attorney responded, "the lot is actually titled in the name of [Roy]; but, absolutely, this will be going to their son, Joshua." *Id.* at 13. The parties also agreed to the distribution of various other assets, including housewares and furniture. Teresita's attorney agreed to prepare a stipulation and order, and the proceedings concluded.

[10] Roy passed away before the court issued a final order of property division. Roy's passing was revealed to the court in proceedings held on January 20, 2006. Roy's attorney argued that in

light of Roy's passing, the court no longer had jurisdiction over the matter and could no longer comply with the parties' previously agreed upon settlement of distribution of the assets. Roy's attorney also informed the court, apparently for the first time, that Roy previously quitclaimed the Property to his brother, Richard. Roy's attorney ultimately argued that "the only appropriate way to pursue [the matter] is for the court to order a probate case initiated on behalf of the decedent." RA, tab 33, Ex. L at 4 (Tr. of Proceedings, Jan. 20, 2006). Following the January 20, 2006 proceedings, the parties were afforded the opportunity to submit briefs on the matter. Teresita submitted a brief arguing that the court retained jurisdiction over the final settlement and that the conveyance of what was purportedly community property was "null and void." RA, tab 33, Ex. M at 1-8 (Pl.'s Br. Re Jurisdiction Over Final Settlement & Prop., Feb. 1, 2006).

[11] On September 25, 2006, the domestic court issued its Decision and Order. The court relied primarily on the case *In re Marriage of Hilke*, 841 P.2d 891, 894 (Cal. 1992), which held that although "the death of one of the spouses abates a cause of action for dissolution, [it] does not deprive the court of its retained jurisdiction to determine collateral property rights if the court has previously rendered judgment dissolving the marriage." Reasoning that because it previously had issued a decree dissolving the marriage at the request of the parties, and because all factual and legal disputes had been resolved at the time of Roy's death, the court retained jurisdiction over the property division such that the agreed upon settlement terms could be enforced.

[12] The court issued its final Order of Property Division on November 27, 2007, *nunc pro tunc*, September 25, 2006. RA, tab 33, Ex. O at 1 (Order of Prop. Div., Nov. 27, 2007). Therein, it granted a life estate in the Property to Roy, who was deceased, with a remainder in fee simple to Joshua. Roy was also ordered to "seek refinancing for the house and pay [Teresita] fifty

percent (50%) of the equity in the home." *Id.* at 2. The order was recorded with the DLM on May 13, 2008.

[13] Teresita passed away on January 31, 2008, and a probate case was opened. Marcia K. Damian, the daughter of Roy and Teresita, filed a Petition for Letters of Administration with the Superior Court which listed the Property as community property belonging to the decedents' estate. Joshua subsequently entered an appearance and moved to dismiss. The probate court, relying on the September 26, 2006 Order and Decision of the domestic court, struck the Property from the list of community property included in Marcia's Petition for Letters of Administration.

[14] Joshua obtained a Certificate of Title from the DLM, dated April 21, 2009, certifying him as the owner of the Property. Relying on the Certificate of Title, Joshua obtained a $130,000.00 loan to renovate the Property and moved into the house.

[15] In February 2012, Richard filed a two-count complaint against Joshua. Therein, Richard sought to quiet title and to cancel Joshua's Certificate of Title to the Property. In response, Joshua filed an amended answer to the complaint and a counterclaim in which he sought to quiet title, to cancel the quitclaim deed from Roy to Richard, and to cancel Richard's Certificate of Title.

[16] Richard subsequently moved to dismiss Joshua's counterclaim, and, in the alternative, moved for summary judgment. Richard argued that his claim to title is superior to Joshua's based on the quitclaim deed from Roy on October 12, 2004, and the subsequent issuance of the Certificate of Title by the DLM prior to the judicial proceedings that purported to transfer title to Joshua. Further, Richard moved for summary judgment on the ground that there remained no genuine issue of material fact as to whether his quitclaim deed was recorded prior to Joshua's,

and pursuant to Guam's race-notice statute, 21 GCA § 37102, he had a superior interest in the Property as a matter of law.

[17] Joshua responded with his own motion for summary judgment based on four arguments: (1) Richard's action was precluded pursuant to the doctrine of *res judicata*, because two previous courts—the domestic and probate courts—had determined that Joshua is the rightful fee simple owner of the Property; (2) Roy's quitclaim deed to Richard is "null and void" because the Property is community property that could not be conveyed without Teresita's consent and because the transfer is analogous to a fraudulent transfer during a bankruptcy proceeding; (3) because Richard could not acquire more than what his grantor Roy had, which was adjudged to be a life estate in the Property, Richard received at most only that interest, and not clear title to the Property; and (4) Richard's recording of the quitclaim deed did not afford him protection under Guam's Land Registration Law because he was not an initial registrant or a bona fide purchaser. RA, tab 33 at 10-17 (Def.'s Mem. Supp. Mot. Summ. J., Feb. 22, 2013). Both Richard and Joshua submitted affidavits in support of their Motions for Summary Judgment.

[18] The court rendered its Decision and Order granting summary judgment in favor of Richard. The court noted that Roy initially received the interest in the Property from the distribution of his mother's estate. Citing 19 GCA § 6101(a)(6), the court found that the Property constituted separate property, that Roy validly quitclaimed his interest to Richard, and that Roy did not need to obtain Teresita's consent to do so. The court then turned to Guam's race-notice statute, determining that Richard's 2004 quitclaim deed had priority over the later judicial determinations—made in 2006, 2007, and 2009—and Joshua's subsequent recording of title. The court issued a Judgment and Decree Quieting Title. A Notice of appeal was timely filed.

II. JURISDICTION

[19] This court has jurisdiction over appeals from final judgment pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-296 (2014)) and 7 GCA §§ 3107(b) and 3108(a) (2005).

III. STANDARD OF REVIEW

[20] "We review the grant of a motion for summary judgment *de novo*." *Camacho v. Estate of Gumataotao*, 2010 Guam 1 ¶ 12; *see also Iizuka Corp. v. Kawasho Int'l (Guam), Inc.*, 1997 Guam 10 ¶ 7.

[21] The trial court's characterization of property as community or separate is reviewed *de novo*. *Babauta v. Babauta*, 2011 Guam 15 ¶ 18.

IV. ANALYSIS

A. Whether the Property is Separate or Community Property

[22] The first issue on appeal is whether the trial court erred in finding that the Property was separate property that Roy could transfer freely without Teresita's consent. We hold that the trial court did not err in its finding that the Property was Roy's separate property and that Roy had the right to transfer the Property without his wife's consent.

1. Separate Property

[23] "Characterization of property . . . is the determination by the trial court of what property owned by the parties is separate or community property." *Hart v. Hart*, 2008 Guam 11 ¶ 24. Generally, property acquired during the marriage by either spouse is presumed to be community property. 19 GCA § 6105(a) (2005). "The spouse asserting the separate character of property acquired during the marriage has the burden of overcoming this presumption." *Kloppenburg v. Kloppenburg*, 2014 Guam 5 ¶ 23 (citing *Babauta*, 2011 Guam 15 ¶ 30). "Whether or not the

presumption of community property is overcome is a question of fact for the trial court." *Id.* ¶ 23. Under 19 GCA § 6101(a)(6), separate property includes "property acquired by either spouse by gift, bequest, devise, or descent." 19 GCA § 6101(a)(6) (2005). Community property is "property acquired by either spouse during marriage which is not separate property." 19 GCA § 6101(b).

[24] The character of property is generally fixed at the time of acquisition. *In re Marriage of Rossin*, 91 Cal. Rptr. 3d 427, 432 (Ct. App. 2009) ("The character of the property as separate or community is fixed as of the time it is acquired; and the character so fixed continues until it is changed in some manner recognized by law, as by agreement of the parties."); *see also* 19 GCA § 6101(c) (requiring community property determination to be made "at the time of acquisition" when dividing community property between spouses); 19 GCA § 6101(d) (requiring community property determination to be made "at the time of acquisition" when determining property rights of a surviving spouse upon death of the other).

[25] Roy acquired his interest in the Property, consisting of a lot and a house constructed thereupon, from the distribution of his mother's estate on June 8, 1971. RA, tab 20, Ex. A at 1 (Decree Settling Final Account of Adm'r & Final Distribution, July 8, 1971). At trial, undisputed evidence was presented that showed that (1) Roy's mother died intestate, (2) her husband and heirs relinquished their rights to the Property to Roy through quitclaim deeds, and (3) the terms of the distribution of Roy's mother's estate conveyed the Property to Roy as "separate property." *Id.* at 2 ("It is further ordered, adjudged and decreed that the residue of said estate . . . be distributed . . . : To: Roy T. Damian: Lot No. 141-54 . . . (separate property), with the building thereon." (emphasis omitted)); RA, tab 20, Ex. B at 1-2 (Quitclaim Deed, June 4,

1971; Quitclaim Deed, Jan. 5, 1971); RA, tab 20, Ex. C at 1-2 (Quitclaim Deed, June 1, 1971; Quitclaim Deed, July 8, 1971).

[26] Thus, although Roy was married to Teresita at the time he acquired the Property, based on this evidence, the trial court properly determined that the Property was separate property. RA, tab 58 at 7 (Dec. & Order, Mar. 24, 2014). Conveyed to Roy through his mother's estate, the Property falls squarely under the definition of separate property under 19 GCA § 6101(a)(6), overcoming the community property presumption.

2. No Change to the Character of the Property

[27] Having confirmed that the Property was Roy's separate property received in distribution from his mother's estate, we now must examine whether the character of the Property was later changed from separate to community property.

[28] Joshua argues that Roy admitted the Property was community property and that his admission was sufficient to change the character of the Property.[2] Appellant's Br. at 12. The trial court disagreed, determining the Property underwent no subsequent change in character. RA, tab 58 at 7 (Dec. & Order).

[29] Joshua relies on *Pettibone v. Pettibone*, 529 P.2d 724 (Ariz. Ct. App. 1974), for the proposition that an averment becomes an admission of fact when the defendant fails to specifically deny the asserted fact in a responsive pleading. Following this approach, if Teresita asserted that the Property was community property in her complaint and Roy failed to deny the assertion, it would be appropriate for the trial court to treat the Property as community property for the purposes of the divorce proceeding. *See Pettibone v. Pettibone*, 529 P.2d 724, 726 (Ariz.

[2] Separate property may be changed to community property, but all contracts between a husband and wife of which the subject matter is their separate property or community property must be in writing and executed and acknowledged in like manner as a grant of land is required to be executed and acknowledged. *See* 19 GCA § 6112(a) (2005). No such writing ever came into being between Roy and Teresita.

Ct. App. 1974) ("[T]he averment characterizing the home as community property was not denied an appellant's answer; it was therefore admitted. The trial court did not err in basing its decree upon the fact that the home was community property when it was so presented to it." (citations omitted)).

[30] In her Complaint for Divorce, Teresita asserted that the entirety of the Property—house and lot—was community property. RA, tab 33, Ex. A at 1 (Compl. for Divorce) ("Since the marriage of the parties, the parties have accumulated community property as follows: a) House and lot located at 942 Roy T. Damian, Jr. Street, Toto, Guam.").

[31] Joshua points to two instances during his parents' divorce that he contends demonstrate that Roy failed to deny Teresita's assertion, admitting the Property was community property.

[32] First, Roy admitted in his Answer and Counterclaim that the house constructed on the land was community property to which Teresita was entitled a one-half interest upon divorce. RA, tab 33, Ex. B at 3 (Answer & Countercl.) ("The following community property shall be confirmed to [Teresita] as her sole and separate property: . . . "One half (1/2) the fair market value of home located on lot 141-54, Mongmong-Toto, Maite Guam.").

[33] However, in the same Answer and Counterclaim, Roy expressly denied that the land itself was community property, asserting that it was separate property to which Teresita was entitled to no interest. *Id.* at 4 ("The following is the sole and separate property of [Roy] . . . : . . . Lot No. 141-54 Mongmong-Toto, Maite, Guam."). Because Roy specifically denied the assertion by Teresita that the land was community property, Joshua cannot rightfully characterize his response as an admission.

[34] Second, during a divorce proceeding on May 11, 2005, Roy's counsel acknowledged "the community property interest" Teresita held in the house. RA, tab 33, Ex. I at 12 (Tr. of

Proceedings, May 11, 2015) ("More specifically, the community property interest in the house which is situated on Lot 141-54 [Property], as [opposing counsel] has indicated[.]"). However, at the same hearing, he distinguished the land as separate property. *Id.* at 13 ("See, the lot is actually titled in the name of [Roy.]").

[35] The facts of the instant case are sufficiently distinct from the facts of *Pettibone* to distinguish the unbinding authority. In *Pettibone*, the appellate court affirmed the trial court's characterization of property as community property. 529 P.2d at 726. Here, Joshua requests that we overturn the trial court's characterization of the Property as separate property. In *Pettibone*, the defendant failed to deny the character of the property. *Id.* at 725. Here, Roy specifically denied the lot should be characterized as community property. Unlike in *Pettibone*, here the domestic court was never specifically tasked with making a finding as to the character of the Property. Instead, the parties agreed to distribute the Property under the terms of a settlement agreement reached during the May 11, 2005, divorce proceeding. RA, tab 33, Ex. K at 9 (Tr. of Proceedings, May 11, 2005). In its Order of Property Division, the domestic court simply enforced the prior agreement of the parties. RA, tab 33, Ex. L at 1 (Order of Prop. Div., Sept. 25, 2006).[3] Thus, Joshua's reliance on *Pettibone* is misguided.

[36] The instances illuminated by Joshua show only that Roy conceded that a community property interest existed in the house. The evidence does not suggest that Roy conceded anything with regard to the lot itself. To the contrary, he expressly maintained throughout the proceedings that the lot was his separate property. Importantly, Roy did not concede that the title to the Property, which he alone held, was impaired.

[3] Unfortunately, the settlement agreed could not be effectuated because Roy quitclaimed the Property to Richard prior to the Order of Property Division.

3. Community Contribution

[37] Joshua argued at trial that the Property was "community property because community funds were expended to build the residence on the Property, and to maintain and improve the residence." RA, tab 58 at 8 n.1 (Dec. & Order). He does not make this argument on appeal.

[38] Nevertheless, we draw the same distinction as the trial court between title and a community interest based upon community contribution. "Although Roy's wife may have alternative avenues to recoup the contributions to the Property, Roy retained title to the Property." *Id.* Teresita's contribution to the improvement made on the Property relates to her community interest in the house, which Roy did not deny. However, such a community interest in the house does not affect the underlying character of the Property itself as separate property under 19 GCA § 6101(a)(6), the title to the Property, or Roy's ability to freely transfer the Property. Subject to certain exceptions which are not applicable here, Roy may transfer, convey, encumber or lease his separate real property without Teresita's joinder or consent. 19 GCA § 6106(a) (2005).

[39] We hold that the trial court did not err in finding that the Property was Roy's separate property and that he had the right to transfer it without his wife's consent.

B. Whether the Domestic Court Maintained Jurisdiction Over the Property

[40] The second issue on appeal is whether the trial court erred in determining that Roy could validly transfer his interest in the Property when the court handling the domestic case purported to retain jurisdiction over all community indebtedness and liabilities. In its Final Decree of Dissolution of Marriage, the domestic court "retain[ed] jurisdiction to resolve and consider the issues of the division and disposition of the community indebtedness and assets." RA, tab 33, Ex. H at 2 (Final Decree of Dissolution of Marriage).

[41] Joshua argues the trial court erred in determining that Roy could validly transfer his interest in the Property when the court purported to retain jurisdiction over all "community indebtedness and liabilities." Appellant's Br. at 11-17. He contends the domestic court retained jurisdiction over the Property because it was a community asset. *Id.* Since we have determined that it was not community property, the issue of whether the domestic court retained jurisdiction turns on whether the domestic court may take jurisdiction over separate property so as to prevent transfer to a third party.

[42] Since the statutes governing Guam law of community property, 19 GCA §§ 6101-6114, were adopted from the California Civil Code, California cases pertaining to community property and interpreting like statutes are persuasive authority. *See* 19 GCA §§ 6101-6114, NOTE.

[43] Prior to 1986, the statutes of California, like Guam, authorized the division of community property in dissolution of marriage but contained no reference to distributing separate property. Throughout this period, California caselaw held that domestic courts had "no jurisdiction" over the separate property of either spouse in dissolution of marriage proceedings. *Reid v. Reid*, 44 P. 564 (Cal. 1896); *see, e.g.*, *Buford v. Buford*, 202 Cal. Rptr. 20, 22 (Ct. App. 1984); *Porter v. Superior Court*, 141 Cal. Rptr. 59, 65 (Ct. App. 1977).

[44] However, the California legislature modified this rule by enacting section 4800.4 of the California Civil Code, a statute that has since been replaced by section 2650 of the California Family Code. *See* Cal. Fam. Code § 2650, SOURCE.[4]

[4] "In a proceeding for division of the community estate, the court has jurisdiction, at the request of either party, to divide the separate property interests of the parties in real and personal property, wherever situated and whenever acquired, held by the parties as joint tenants or tenants in common. The property shall be divided together with, and in accordance with the same procedure for and limitations on, division of community estate." Cal. Fam. Code § 2650.

[45] We hold that the domestic court may not take jurisdiction over separate property in dissolution of marriage proceedings except as where specifically provided by law.[5] While it is true that under Guam law a domestic court may in certain circumstances take jurisdiction over the separate property of a spouse, there are no allegations or evidence to suggest that such circumstances were met in the present case. For this reason, the domestic court did not retain jurisdiction over Roy's separate property, and the order purporting to retain jurisdiction over community indebtedness and assets had no bearing on Roy's ability to transfer his interest in the Property. Therefore, the trial court did not err in determining that Roy could validly transfer the Property by quitclaim deed.

C. Whether the Trial Court Erred in Applying the Race-Notice Statute to Find that Richard's Quitclaim Deed was Superior to Joshua's Recording of Title

[46] The third issue on appeal is whether the trial court erred in determining that pursuant to Guam's race-notice statute, 21 GCA § 37102, Richard's previously recorded 2004 quitclaim deed was superior to Joshua's 2009 recording of title.

[47] On October 12, 2004, Roy conveyed his interest in the Property to his brother Richard through a valid quitclaim deed. RA, tab 20, Ex. F at 1 (Quitclaim Deed). The quitclaim deed was recorded with the Department of Land Management on November 3, 2004. *Id.* A Certificate of Title was issued on October 26, 2006. RA, tab 20, Ex. H at 1 (Certificate of Title, Oct. 23, 2004).

[48] A quitclaim deed "transfers whatever interest the grantor had in the described property at the time the conveyance was made." *Taitano v. Lujan*, 2005 Guam 26 ¶ 19 (quoting *In re Marriage of Gioia*, 14 Cal. Rptr. 3d 362, 368 (Ct. App. 2004)); *see also Mich. Dep't of Natural*

[5] *See, e.g.*, 19 GCA § 6104 (2005) (allowing the domestic court to reach separate property when satisfying community debts); 19 GCA §§ 8407, 8411 (2005) (allowing the domestic court to reach separate property of a spouse for support and education of children, maintenance and alimony, and homestead).

Res. v. Carmody-Lahti Real Estate, Inc., 699 N.W. 2d 272, 283 (Mich. 2005) ("A quitclaim deed is, by definition, '[a] deed that conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid.'" (alteration in original) (emphasis omitted)).

[49] At the time the conveyance was made, Roy held title to the Property as his separate property in fee simple. There is no evidence in the record to suggest that this title was encumbered. Since a grantee takes the interest held by the grantor at the time of conveyance, Richard acquired title to the Property in fee simple on October 12, 2004.

[50] Joshua argues that the trial court erred in applying the Guam race-notice statute, 21 GCA § 37102, to Richard's recording of the quitclaim deed. Appellant's Br. at 20. We disagree.

[51] Title 21 GCA § 37102 has been identified by this court as Guam's "race-notice statute." *See Taitano*, 2005 Guam 26 ¶ 52. It states the following:

> Every conveyance of real property, other than a lease for a term not exceeding one (1) year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless such conveyance shall have been duly recorded prior to the record of notice of action.

21 GCA § 37102 (2005).

[52] Joshua argues that applying the race-notice statute was error because the quitclaim deed recorded in 2004 was invalid. Appellant's Br. at 21. Joshua premises this conclusion upon his belief that the Property was community property. *Id.* Indeed, if the Property were community property, as he suggests, the quitclaim deed would be invalid because Roy would have been barred from conveying title to the Property without Teresita's joinder or consent. *See* 21 GCA § 29157 (2005) (stating that recorded community property cannot be transferred without the written consent of both spouses); 19 GCA 6106(a) (requiring that both spouses join in all

transfers of any interest in community real property). However, as previously noted, the Property was properly characterized as separate property. The consent of both spouses is not required to transfer separate property. Thus, Joshua's argument that the court erred in applying the race-notice statute is unpersuasive.

[53] Next, Joshua argues that the race-notice statute does not apply to Richard because he is not a "bona fide purchaser." Appellant's Br. at 22. "Under the bona fide purchaser doctrine, a good faith real estate purchaser for value who is without actual or constructive notice of another's interest in the property purchased has the superior interest in the property." *Taitano*, 2005 Guam 26 ¶ 27; *see also* 21 GCA § 37102; *Morioka v. I & F Corp.*, No. 91-00027A, 1991 WL 255842, at *3 (D. Guam App. Div. Nov. 18, 1991) ("To become a bona fide purchaser of property one must acquire title through payment of value, in good faith, and without actual or constructive notice of another's rights.").

[54] Joshua argues that Richard was not a bona fide purchaser because he did not provide adequate consideration for the Property—$1.00 for property appraised at a market value between $270,000.00 and $290,000.00. Appellant's Br. at 23.

[55] Since 21 GCA § 37102 was adopted from the California Civil Code, related California law is instructive. *See Taitano*, 2005 Guam 26 ¶ 52 (noting that 21 GCA § 37102 was adopted from California Civil Code section 1214); *People v. Superior Court (Laxamana)*, 2001 Guam 26 ¶ 8.

[56] "It is a matter of common knowledge that where a consideration of one dollar is mentioned in a contract, other considerations usually pass between the parties to the agreement. A consideration of one dollar is ordinarily sufficient to support a contract at law." *Abers v. Rounsavell*, 116 Cal. Rptr. 3d 860, 870 (Ct. App. 2010) (citation omitted); *see also San Diego*

City Firefighters, Local 145, AFL-CIO v. Bd. of Admin. of San Diego City Emps.' Ret. Sys., 141 Cal. Rptr. 3d 860, 880 (2012) ("[A]ll the law requires for sufficient consideration is the proverbial 'peppercorn.'" (citation omitted)).

[57] In the present case, the 2004 quitclaim deed conveys the Property to Richard for one dollar "and valuable consideration[.]" RA, tab 20, Ex. F at 1 (Quitclaim Deed). Joshua presents no authority for the proposition that this is inadequate to support the quitclaim under 21 GCA § 37102. His argument is therefore unpersuasive.

[58] Joshua further argues that Richard was not a bona fide purchaser because he had either actual or constructive notice of another individual's rights in the Property. Appellant's Br. at 23. This argument is premised upon Joshua's supposition that Richard should have known Teresita had a "superior interest" in the Property. *Id.* However, the record is devoid of any fact that would support a finding that Richard had actual or constructive knowledge of anyone else's rights in the Property.

[59] In fact, Roy's title in the Property originated when his siblings and father quitclaimed their interests to him after the death of his mother in 1970. RA, tab 33, Ex. D at 1-2 (Decree Settling Final Account Adm'r & Final Distribution); Ex. D at 3-4 (Quitclaim Deed, Oct. 22, 1970); Ex. E at 1-4 (Quitclaim Deed, June 14, 1970; Quitclaim Deed, Jan. 5, 1971; Quitclaim Deed, June 1, 1971; Quitclaim Deed, July 6, 1971). On October 22, 1970, Richard quitclaimed a separate interest to Roy. RA, tab 33, Ex. D at 3-4 (Quitclaim Deed). This fact supports an inference that Richard was aware of the character of the Property as separate property and equally unaware of any competing interests in the same.

[60] For these reasons, the trial court's application of the Guam race-notice statute and its finding that Richard's previously recorded 2004 quitclaim deed was superior to Joshua's 2009 Certificate of Title was not error.

D. Whether Res Judicata Precluded the Underlying Action

[61] The final issue on appeal is whether the trial court erred by electing not to apply the doctrine of *res judicata* to preclude the underlying action, in light of two previous judgments relating to the disposition of the Property.

[62] Joshua argues that *res judicata* precluded Richard from bringing a quiet title action against him after he obtained two separate judgments that he was the owner of the Property. Appellant's Br. at 25. We disagree.

[63] The first judgment was an Order of Property Division, issued on Nov. 27, 2007, by the domestic court. RA, tab 33, Ex. O at 1 (Order of Prop. Div., Nov. 27, 2007). This order purported to grant a life estate in the Property to Roy and a remainder in fee simple to Joshua upon Roy's death. *Id.* The second was a Decision and Order, issued on Mar. 3, 2009, by the probate court. RA, tab 33, Ex. P at 1 (Dec. and Order, Mar. 3, 2009). This order upheld the previous Order of Property Division by ruling that the Property "immediately passed into [Joshua's] possession as a matter of law upon the death of [Roy]." *Id.* at 3.

[64] *Res judicata*, or "claim preclusion," is "the doctrine by which a 'judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.'" *In re Application of Leon Guerrero*, 2001 Guam 22 ¶ 20 (quoting *Trans Pac. Exp. Co. v. Oka Towers Corp.*, 2000 Guam 3 ¶ 13).

> Under this doctrine, all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date. *Res judicata* precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different

> relief. A predictable doctrine of *res judicata* benefits both the parties and the courts because it 'seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration.

Mycogen Corp. v. Monsanto Co., 51 P.3d 297, 302 (2002) (emphasis, citations, and internal quotation marks omitted).

[65] *Res judicata* is codified at 6 GCA § 4209. This section adopted California Code of Civil Procedure section 1908(a), which codified the common law doctrine. *See* 6 GCA § 4209 (2005), SOURCE; *Castro v. Higaki*, 37 Cal. Rptr. 2d 84, 87 (Ct. App. 1994) ("*Res judicata* is a well-established doctrine[,] . . . expressed statutorily in Code of Civil Procedure section 1908."). As such, California case law interpreting the common law doctrine is persuasive.

[66] In order for claim preclusion to apply, three requirements must be met: "(1) a final judgment on the merits; (2) the party against whom claim preclusion is asserted was a party or is in privity with a party in the prior suit; and (3) the issue decided in the prior suit is identical with the issue presented in the later suit." *Presto v. Lizama*, 2012 Guam 24 ¶ 22.

1. Final Judgment

[67] A final judgment on the merits is "one in which the merits of [a party's] claim are in fact adjudicated [for or] against the [party] after trial of the substantive issues." *Reyes v. First Net Ins. Co.*, 2009 Guam 17 (alteration in original) (citations omitted) (quoting *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 487, 502 (2001)).

[68] While the two judgments at issue purported to create and uphold a distribution of the Property to Joshua, they were not sufficient to bar all subsequent claims to title by third parties, such as Richard.

[69] Title 6 GCA § 4209 provides:

> The effect of a judgment or a final order in an action or special proceedings before a court or judge of Guam, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows:
>
> 1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person;
>
> 2. In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided that they have notice, actual or constructive, of the pendency of the action or proceedings.

6 GCA § 4209 (2005).

[70] However, it does not follow from 6 GCA § 4209(1) that a decree of final distribution is conclusive as to title held by all who had notice of the probate. *See Hemlani v. Nelson*, 2000 Guam 20 ¶ 33 (known heirs hold title in fee simple subject to any claims by third parties); *Shelton v. Vance*, 234 P.2d 1012, 1014 (Cal. Dist. Ct. App. 1951) ("While a decree of distribution is conclusive as to the rights of heirs, legatees, or devisees, insofar as they claim in such capacities, it does not determine that the deceased had any title to property distributed; nor does it bind third persons who claim an interest adverse to that of the intestate or testator."). Moreover:

> [This court has also rejected] the theory that 6 GCA § 4209(2) should be read to preclude later claims by those who had actual or constructive notice of the actions mentioned in 6 GCA § 4209(1), although preclusion by notice may still apply under the common law. Rather, 6 GCA § 4209(2) is simply a catch-all statute applying to all "other cases." It applies claim preclusion to parties "litigating for the same thing under the same title and in the same capacity" provided they had "notice, actual or constructive," of the prior action.

Zahnen v. Limtiaco, 2008 Guam 5 ¶ 15 (citations omitted). "A distribution, however, does not quiet title to property, the reason being that [a] decree of distribution distributes only such title as the deceased had at the time of his death." *Id.* ¶ 17 (citations omitted).

[71] Although the orders were issued in relation to the final distribution of the decedents' property, they do not preclude Richard from seeking a judgment as to who actually holds title to the Property that was purportedly distributed.

2. Party or in Privity with a Party

[72] Under Guam law, the parties are deemed the same when "those between whom the evidence is offered were on opposite sides of the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either." 6 GCA § 4211 (2005). Here, Joshua admits that Richard was not a "party" to the prior judgments. Appellant's Br. at 26. He argues instead that Richard should be precluded from bringing a quiet title action because he was in privity with Roy. *Id.* at 25-26.

[73] A third party is in privity when "so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved." *United States v. Bhatia*, 545 F.3d 757, 759 (9th Cir. 2008) (citation and internal quotation marks omitted).

[74] Joshua's argument misinterprets the law of *res judicata*. By arguing that Roy is in privity with Richard, Joshua assumes that because Richard received the Property from Roy he should be considered a successor in interest for *res judicata* purposes. Appellant's Br. at 26.

[75] However, at the time of the domestic and probate court judgments, 2007 and 2009 respectively, Roy no longer held any valid, legal interest in the Property because he had already quitclaimed his interest to Richard in 2004. RA, tab 20, Ex. F at 1 (Quitclaim Deed). The

conveyance of the Property in 2004 predated the domestic and probate judgments, thus nullifying their effect on the disposition of the Property.

[76] Richard cannot be construed as a successor in interest for the purposes of *res judicata* because he received the Property through a valid quitclaim deed prior to the judgments. These facts stand in contrast to a typical *res judicata* scenario whereby a party to a prior judgment later transfers property to a successor in interest. The cases cited by Joshua do not speak to these facts and thus are not persuasive.

3. Identical Issues

[77] Lastly, Joshua argues that the issues decided in the two judgments were identical to those in the present case. "A judgment serves as a bar to a subsequent lawsuit only where the 'identical' issue was decided in the prior case by a final judgment on the merits." *Presto*, 2012 Guam 24 ¶ 32. "[C]laim preclusion bars a party from instituting a subsequent action where the parties, subject matter, and the causes of action are identical or substantially identical." *Id.* (emphasis omitted).

[78] Richard brought an action to quiet title, basing his claim on Guam's race-notice statute and priority of claims. The prior judgments involve the distribution of property related to a divorce action and the distribution of an estate. "A distribution . . . does not quiet title to property, the reason being that [a] decree of distribution distributes only such title as the deceased had at the time of his death." *Zahnen*, 2008 Guam 5 ¶ 14 (alteration in original) (citations omitted). Thus, a quiet title action is demonstrably different from a distribution of assets or a judgment upholding a distribution of assets.

[79] For these reasons, the trial court did not err by electing not to apply the doctrine of *res judicata* to the underlying action.

V. CONCLUSION

[80] It is clear that the Property held by Roy was separate property, beyond the jurisdiction of the domestic court. It is also clear that Roy transferred title to the Property, by valid quitclaim deed, to Richard before any judgments were issued by the domestic court. Therefore, the trial court's application of Guam's race-notice statute was proper, and the doctrine of *res judicata* is inapplicable to this set of facts.

[81] For these reasons, we **AFFIRM**.

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Associate Justice

Original
Signed by: Alberto E. Tolentino

ALBERTO E. TOLENTINO
Justice *Pro Tempore*

Original Signed By: Robert J. Torres

ROBERT J. TORRES
Chief Justice