Ngirmeriil v. Armaluuk, 11 ROP 122 (2004)

MEROL NGIRMERIIL, SETSUO NGIRMERIIL, ANTONIA NGIRMERIIL, ANTINA MAUI, ANATANIO KIKUO, SYLVIAL TANGELBAD, KIKLANG SEBAL, GABRIEL SKILANG, HUANES SKILANG, BRENGIEI MASAMI, ETEI RENGCHOL, MISIUSCH MARTIN NGCHAR, DECHOL NGCHAR, and NGERKETIIT LINEAGE,
Appellants,

v.

FRANCISCO ARMALUUK,
UBURK NGCHAR,
EUSEBIO RECHUCHER,
NGETCHEDONG RENGIIL, and
BENJAMIN SKILANG,
Appellees.

CIVIL APPEAL NO. 03-049
Civil Action No. 98-222

Supreme Court, Appellate Division
Republic of Palau

Decided: April 7, 2004

Counsel for Appellants: Johnson Toribiong

Counsel for Appellees: No appearance

BEFORE: LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN, Associate Justice, presiding.

PER CURIAM:

The notice of appeal in this matter sought review of the Findings of Fact and Conclusions of Law on Remand issued by the ⊥123 Trial Division. After reviewing the nature of that appeal, and noting that the trial court had adjudicated the rights on only one party in a multi-party suit, this Court directed Appellants to show cause why their appeal should not be dismissed as interlocutory pending a full adjudication of the underlying case. Appellants responded by stating that they would request the trial court for certification of the appeal pursuant to Rule 54(b). The trial court denied without prejudice Appellants' first motion for certification on procedural grounds. Appellants corrected their procedural mistake and filed a second motion. The trial court denied the second motion, noting that entry of a partial judgment was inappropriate because "Plaintiffs have not pointed to any harsh result if all of these claims for relief are

resolved at this level." *See* ROP R. Civ. P. 54(b) ("[T]he 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."). This appeal is therefore subject to dismissal for want of a final judgment. *See Kuniyoshi Fishing Co. v. ROP*, 8 ROP Intrm. 49 (1999). Seeking to avoid this result, Appellants filed a second response to the show cause order arguing that the trial court abused its discretion by denying Rule 54(b) certification. Contemporaneously with their second response to the show cause order, Appellants also filed a mandamus petition to direct the Trial Division to grant Rule 54(b) certification.

Appellants' efforts are unavailing. Although they seek to preserve their appeal by challenging the trial court's order denying their Rule 54(b) motion, that order is itself interlocutory and not subject to immediate appeal. *See Jeannette Sheet Glass Corp. v. United States*, 803 F.2d 1576, 1581 (Fed. Cir. 1986) (discussing general proposition that a refusal to grant Rule 54(b) certification is not a ground for appellate action). Appellants cannot bootstrap their initial interlocutory appeal by putting forward yet another interlocutory appeal.

Nor is the issuance of a writ of mandamus appropriate in these circumstances. A writ of mandamus to compel interlocutory review of non-final orders by the district court is generally not available because those orders can be reviewed after final judgment. *See In re Beard*, 811 F.2d 818 (4th Cir. 1987) (holding a writ of mandamus available only when the petitioner has no other means to obtain the requested relief and when he has shown a clear right to that relief). To ensure that mandamus remains an extraordinary remedy, petitioners must show that they lack adequate alternative means to obtain the relief they seek and carry the burden of showing their right to the issuance of the writ is clear and indisputable. *Klongt v. Paradise Air Corp.*, 7 ROP Intrm. 159, 160 n. 1 (1999); *Dalton v. Beattie,* 5 ROP Intrm. 18 (1994); *BMC Corp. v. Ngiraklsong*, 3 ROP Intrm. 336, 338 (1993); *see also Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 109 S. Ct. 1814, 1822 (1989). Appellants have not shown that they lack adequate alternative means to obtain the relief they seek because Appellants may challenge the trial court's conclusions on appeal after final judgment.[1]

Moreover, as Appellants recognize, the question whether "there is no just reason ⊥124 for delay" justifying the entry of a partial judgment pursuant to Rule 54(b) is reviewed under an abuse of discretion standard. *W.L. Gore & Assoc. v. Int'l Med. Prosthetics Research Assoc.*, 975 F.2d 858, 862 (Fed. Cir. 1992). As a matter confined to the trial court's discretion, it cannot be said that a litigant's right to a particular result is "clear and indisputable." *Allied Chem. Corp. v. Daiflon, Inc.*, 101 S. Ct. 188, 191 (1980) (citation omitted); *Jeannette Sheet Glass Corp.*, 803 F.2d at 1581; *Chaparral Communications, Inc. v. Boman Indus.*, 798 F.2d 456, 459 (Fed. Cir. 1986) (finding that district court, in its discretion, determined that the "need for an immediate appeal was clearly outweighed by the policy against piecemeal adjudication" and thus the appellant failed to establish a "serious, perhaps irreparable, consequence" permitting review of an interlocutory order). Although one treatise has hypothesized that "there may be exceptional cases where an appellate court is justified in mandamusing the [trial] court" to enter judgment

[1]Appellants raise the possibility that the Estate of Eusebio Rechucher, in whose favor the trial court rules, may be closed before they are able to obtain appellate review. Nothing in this Order precludes Appellants from seeking appropriate relief, as they see fit, within the estate proceeding itself.

pursuant to Rule 54(b), it states "as a general proposition" that the denial of such a motion "will not be interfered with by an appellate court," 6 J. James Wm. Moore et al., *Moore's Federal Practice* ¶ 54.41[3] (3d ed. 1999), and appellants have not cited any case where such relief was granted. *See Makuc v. Am. Honda Motor Co.*, 692 F.2d 172, 173 (1st Cir.1982) ("[W]e are unaware of any cases in which a court of appeals has reviewed the denial of a Rule 54(b) motion [or] where mandamus powers have been applied to require the granting of a Rule 54(b) motion.").

Accordingly, it is ordered that Appellants' petition for a writ of mandamus is denied.