Estate of Tmetuchl v. Siksei, 14 ROP 129 (2007)
ESTATE OF ROMAN TMETUCHL,
Appellant,

v.

MASAZIRO SIKSEI,
Appellee.

CIVIL APPEAL NO. 06-042
Civil Action No. 68-96

Supreme Court, Appellate Division
Republic of Palau

Argued: June 18, 2007
Decided: June 22, 2007

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: Raynold Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

NGIRAKLSONG, Chief Justice:

Appellant Estate of Roman Tmetuchl appeals the denial of its ROP R.Civ.P. 60(b)(6) motion. Having considered the arguments of the parties, we reverse the judgment of the Trial Division.

BACKGROUND

In 1996, Appellee Masaziro Siksei brought suit against Roman Tmetuchl to recover the value of mahogany trees that Tmetuchl had harvested on land owned by Siksei in Aimeliik. At trial, Tmetuchl asserted that the trees were not taken from Siksei's land, but rather from land owned by Aimeliik State, which had given him permission to harvest them. The Trial Division, the Honorable R. Barrie Michelsen ⊥130 presiding, awarded Siksei $65,000 in compensation for the trees. *Siksei v. Tmetuchl*, Civil Action No. 68-96 (Order dated June 26, 1997). The Appellate Division subsequently affirmed the judgment against Tmetuchl. *Tmetuchl v. Siksei*, 7 ROP Intrm. 102 (1998). Following Tmetuchl's death, the Estate has been making incremental payments on the judgment.

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In 1999, Tmetuchl's Estate brought suit seeking indemnification against Aimeliik State for mistakenly authorizing Tmetuchl to cut down Siksei's trees. As Tmetuchl had before, Aimeliik defended on the basis that the trees were taken from state land, not land owned by Siksei. In this second lawsuit, however, the Trial Division, the Honorable Larry W. Miller presiding, concluded that, contrary to the prior trial court decision, the trees harvested by Tmetuchl were taken from government land rather than land owned by Siksei. *Estate of Roman Tmetuchl v. Aimeliik State*, Civil Action No. 99-226 (Decision dated Feb. 26, 2005).

Following this second decision, the Estate filed a motion to vacate the prior judgment in favor of Siksei under Rule 60(b)(6) of the ROP Rules of Civil Procedure. The Estate urged that it would be inequitable, in light of the recent outcome in favor of Aimeliik, to allow the prior judgment against the Estate to remain in place. Justice Miller disagreed, holding that (1) a Rule 60(b) motion would be properly filed in the earlier litigation between Tmetuchl and Siksei because that is the judgment that the Estate sought to overturn and (2) any unfairness the inconsistent judgments posed to Tmetuchl would be outweighed by the unfairness that would arise to Siksei, who was not party to the later litigation, if the court were to set aside the judgment against Tmetuchl. The Appellate Division subsequently affirmed the denial of the Estate's motion. *Estate of Tmetuchl v. Aimeliik State*, 13 ROP 176 (2006). In doing so, the Appellate Division noted that it did not limit the ability of the Estate to file a motion to set aside the judgment in the original trial case.

The Estate then filed a Rule 60(b)(6) motion for relief from the original Trial Division judgment. Justice Miller denied the motion because he did not find that the circumstances are extraordinary and because Siksei did not participate in the Aimeliik decision. The Estate now appeals the Trial Division's denial of its Rule 60(b)(6) motion. We review the denial of a motion to set aside a judgment pursuant to Rule 60(b) for abuse of discretion. *Masang v. Ngerkesouaol Hamlet*, 13 ROP 51, 54 (2006).

DISCUSSION

Rule 60(b) allows a party to move the trial court to set aside a judgment due to a number of factors, including mistake, inadvertence, excusable neglect, newly discovered evidence, and fraud. ROP R. Civ. P. 60(b). Here, the Estate seeks relief under Rule 60(b)(6), which covers "any other reason justifying relief from the operations of the judgment." This catch-all provision "affords relief from a final judgment only under extraordinary circumstances." *Irruul v. Gerbing*, 8 ROP Intrm. 153, 154 (2000) (citing *High v. Zant*, 916 F.2d 1507, 1509 (11th Cir. 1990)).

The inconsistent judgments have created a situation where the Estate has to pay ⊥131 Siksei for harvesting trees the first decision found to be owned by Siksei, but which the second decision found to be owned by Aimeliik State who had given permission to Tmetuchl to harvest the trees. As we previously stated, "the unfairness in this inconsistency is clear. In considering a Rule 60(b) motion, however, this unfairness must be balanced against our substantial interest in the finality of judgments." *Estate of Tmetuchl*, 13 ROP at 177.

The evidence presented to Justice Miller was more extensive than the evidence presented

to Justice Michelsen, including a detailed survey of the land and a personal tour of the area. Due to the detailed evidence presented, Justice Miller's factual finding is more persuasive than Justice Michelsen's factual finding. If Aimeliik owned the mahogany trees as Justice Miller concluded, then the Estate has been forced to pay a considerable sum of money it did not owe to Siksei. Conversely, for ten years Siksei has been unjustly enriched for trees he did not own. We conclude that the unfairness of these inconsistent judgments rises to the level of an extraordinary circumstance under Rule 60(b)(6).

As Siksei was not a party in the case between the Estate and Aimeliik, the decision in that case does not bind Siksei nor does it invalidate Justice Michelsen's decision. *See Odilang Clan v. Ngiramechelbang*, 9 ROP 267, 272 (Tr. Div. 2001) ("the party *against* whom the preclusive effect of a judgment is asserted must have been either a party or in privity with a party to the original action."). We are cognizant that had the Trial Division granted the Estate's Rule 60(b) motion it would not end the litigation and that a third trial about the ownership of mahogany trees that were harvested nearly twenty years ago is necessary. However, the unfairness of the inconsistent judgments outweigh any interest in the finality of judgments and warrants revisiting the ownership of the trees to settle this matter fairly. While the Trial Division's interest in the finality of judgments is admirable, under these extraordinary circumstances the Trial Division should have granted the Estate's Rule 60(b)(6) motion.

CONCLUSION

Due to the extraordinary circumstances of the inconsistent judgments, the Estate should have been granted relief from the final judgment. Accordingly, the Trial Division's denial of the Estate's Rule 60(b)(6) motion is vacated and the case is remanded for further proceedings consistent with this opinion.