

*Pac. Sav. Bank v. Ketund Corp.*, 15 ROP 121 (2008)  
**PACIFIC SAVINGS BANK, LTD.,**  
**Appellant,**

v.

**KETUND CORPORATION,**  
**Appellee.**

CIVIL APPEAL NO. 07-059  
Civil Action No. 07-224

Supreme Court, Appellate Division  
Republic of Palau

Decided: August 5, 2008<sup>1</sup>

Counsel for Appellant: David F. Shadel

Counsel for Appellee: Mariano Carlos

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice, presiding.

PER CURIAM:

Appellant Pacific Savings Bank, Ltd. (“PSB”) appeals from the trial court’s order of dismissal issued on November 26, 2007. The trial court dismissed the matter after finding that under 26 PNC § 1113, Appellant/Plaintiff lacked standing to pursue its claims in court. Specifically, the trial court found that PSB “has no capacity to sue or be sued on its own. On appeal, Appellant argues that the trial court erred in issuing its *sua sponte* order of dismissal because the order is wrong on the facts and the law, is not based on any evidence, equates to an abuse of discretion, and violates Civil Rules 7, 17(a) and due process. We shall dismiss this appeal because, due to Appellant’s filing of a new lawsuit in the Trial Division that alleges the same claims but holds a corrected caption listing the PSB Receiver as the Plaintiff instead of PSB, the issues in this appeal are moot.

## **BACKGROUND**

On July 20, 2007, Appellant filed a complaint in the Trial Division to enforce payment

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<sup>1</sup> The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

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¶122 from Appellee on a debt. Appellee filed a motion to dismiss on August 10, 2007. Thereafter, Appellant filed an amended complaint. Again, in response, Appellee filed a motion to dismiss. Appellant then filed a motion for summary judgment on October 29, 2007. These matters were fully briefed, however on November 26, 2007, the trial court issued an order dismissing the case with prejudice on the basis that it lacked subject matter jurisdiction. The trial court found that Appellant/Plaintiff lacked standing to pursue its claims in court.

Under 26 PNC § 1113(e), the powers of the officers and administrators of the bank are suspended during receivership. Moreover, the shareholders' rights are extinguished with the exception of receiving dividends. 26 PNC § 1113(1). The statute gives power to the receiver to act on the bank's behalf, including initiating and defending litigation. 26 PNC § 1113(b)(6) provides that the "receiver may execute any instrument in the name of the bank, and initiate or defend and conduct in its name any action or legal proceeding." The bank, therefore, has no capacity to sue or be sued on its own. As such, the "bank" lacks standing to sustain this action.

Nov. 26, 2007 Order at 1-2. Appellant filed a timely appeal.

### STANDARD OF REVIEW

This Court reviews the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). The trial court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

### DISCUSSION

In its response brief, Appellee argues that this appeal should be dismissed because the issues raised by Appellant are moot. This Court agrees with Appellee.

"Unnecessary decisions by a court are to be avoided." 20 Am. Jur. 2d *Courts* § 46 (2005). "A case is 'moot' when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* "In other words, '[a] case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.'" *De La Teja v. U.S.*, 321 F.3d 1357, 1362 (11th Cir. 2003) (quoting *Ethredge v. Hail*, 996 F.2d 1173, 1175 (11th Cir. 1993)).

In its appeal, Appellant argues that the trial court erred in issuing its *sua sponte* order of dismissal because it "is incorrect on the facts and the law, is an abuse of its discretion; and is a clear violation of Civil Rules 7 and 17(a) . . . and due process of law (Constitution IV § 6)." As relief, Appellant requests that this Court issue "an order vacating the trial court's *sua sponte* Order" and acknowledge "the ratification and/or joining Mr. Udui in his capacity as Receiver as a plaintiff herein." On November 27, 2007, however, Appellant/Plaintiff filed anew matter in the trial court that alleges the same claims that were raised in the trial matter underlying this appeal, but holds a corrected caption, listing the PSB Receiver as the Plaintiff (*Pac. Sav. Bank* ¶123

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*Ltd. v. Ketund Corp.*, Civil Action No. 07-354). Thus, Appellant has basically already created the relief it seeks in this appeal; a case in the trial division where the PSB Receiver is listed as the Plaintiff.

Appellant maintains that the filing of the second case in the trial division does not make this appeal moot. In support of this assertion, Appellant notes the following:

Appellant and appellee still have not made any settlement, nor is there any final judgment in the second case. Also, the plaintiff in the first case is not the same as in the second case in which the Receiver and PSB by the Receiver are named plaintiffs. This Court can grant effective relief. Hence, the issues are still very much “live.”

Appellant, however, does not contest that the issues and claims raised in the two matters are the same. Moreover, the Appellant itself maintains that once this Court vacates the trial court’s order, the Appellant “then would move to dismiss the first case without prejudice and to enforce what hopefully will become a final judgment in the second case.” Thus, the Appellant’s assertion that the two cases are different is disingenuous. Appellant would not likely dismiss one of the matters if they each raised separate legal issues or involved different claimants.

In addition, Appellant argues that if this Court finds this matter to be moot and dismisses this appeal, leaving the trial court’s order to dismiss intact, the Appellee/Defendant may then assert the doctrine of *res judicata* against Appellant/Plaintiff in the second lawsuit. Appellant argues that “[i]f in the second case, Ketund were to appeal and argue (successfully in that appeal) that the first case – in which the trial court dismissed with prejudice the claims of PSB – was *res judicata* as to the claims of PSB, then that could vitiate the claims of PSB (acting through its Receiver) in the second case.” Appellant’s argument, however, is misplaced.

Appellant seems to be confused as to when the doctrine of *res judicata* is applicable.

Under the Restatement (Second) of Judgments, applicable in Palau pursuant to 1 PNC §§ 303, “[w]hen an issue of fact or law is *actually litigated and determined by a valid and final judgment*, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.”

*Rechucher v. Lomisang*, 13 ROP 143, 147 (2006) (quoting Restatement (Second) of Judgments § 27 (1982)) (emphasis added). Appellant may be concerned about the rule stating that, “[p]ursuant to Rule 41(b) [of the Rules of Civil Procedure], unless the trial court otherwise specifies, an involuntary dismissal ordinarily operates as an adjudication on the merits and bars prosecution of a subsequent action.” *Taro v. Sungino*, 11 ROP 112, 114 (2004). Rule 41(b)(3), however, carves out an exception to this rule for cases that are involuntarily dismissed due to lack of jurisdiction.

Unless the court in its order of **1124** dismissal otherwise specifies, a dismissal under this

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subdivision (b) and any dismissal not provided for in this rule, *other than a dismissal for lack of jurisdiction*, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

ROP R. Civ. P. 41(b)(3) (emphasis added).

The issues and arguments that Appellant raises before this Court serve no purpose other than to seek an advisory opinion. The relief sought by Appellant has already been achieved by Appellant filing a new case in the trial division, which names the PSB Receiver as the Plaintiff. The parties lack a legally cognizable interest in the outcome of this appeal, and the Court cannot give any meaningful relief. Therefore, the issues before this Court are moot, and “[t]his Court does not address moot issues.” *Micronesian Yachts Co. v. Palau Foreign Inv. Bd.*, 7 ROP Intrm. 128, 131 (1998).

### **CONCLUSION**

In light of the foregoing, this appeal is hereby dismissed.