Feichtinger v. Udui, 16 ROP 173 (2009)

SYLVESTER FEICHTINGER,
Appellant,

v.

KALEB UDUI, JR., in his official capacity as the receiver for Pacific Savings Bank, Ltd.,
Appellee.

CIVIL APPEAL NO. 08-046
Civil Action No. 07-270

Supreme Court, Appellate Division
Republic of Palau

Decided: May 28, 2009

Counsel for Appellant: Brien Sers Nicholas & J. Uduch Sengebau Senior

Counsel for Appellee: David Shadel

BEFORE: LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

This case involves a sum of $ 1,042,500.00 deposited by Appellant Sylvester Feichtinger (hereinafter, "Feichtinger" or "Appellant") in the Pacific Savings Bank, Ltd., and never recovered, due to the Bank's subsequent collapse.
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BACKGROUND

In his Complaint, Appellant names the Receiver of the Bank, six (6) officers of the bank, and five (5) "john does" as defendants.[1] The causes of action described in the Complaint are fraud, breach of fiduciary duty, and breach of the covenant of good faith and fair dealing stemming from misrepresentations as to the Bank's financial health, false inducements to deposit, and failure to comply with promises upon which Appellant relied. On February 19, 2008, Appellant and Kaleb Udui, Jr., in his capacity as the PSB receiver (hereinafter "PSB receiver"), stipulated to an entry of judgment of Seven Hundred Fifty Thousand Dollars

[1]Appellant's original Complaint, filed September 10, 2007, named the bank itself, and not the PSB receiver, as a defendant to the case. However, on November 26, 2007, the trial court ordered that Appellant amend his complaint to name the PSB receiver as a defendant. On November 30, 2007, Appellant filed an Amended Complaint which replaced the Bank with the PSB receiver.

($750,000) against the PSB receiver, in favor of Appellant. That same day, the Trial Division signed an order entering judgment, based upon the stipulation. On May 27, 2008, Appellant filed a motion for an order in aid of judgment, as well as interest and attorney fees. As part of his response, the PSB receiver filed a motion to vacate the February 19 Judgment on the ground that there was no subject matter jurisdiction for the claim. On July 31, 2009, the Trial Division issued an order granting the motion and vacating the judgment. The Order vacating the stipulated judgment is the focus of this appeal.

STANDARD OF REVIEW

A lower court's conclusions of law are reviewed *de novo*. *Esebei v. Sadang*, 13 ROP 79, 81 (2006).

DISCUSSION

A. Right to Appeal

Appellee argues that the Appeal must be dismissed on the grounds that Appellant has no right to appeal. In support of this assertion, Appellee cites foreign law interpreting foreign constitutions. The Court finds this argument unconvincing. Palauan courts have found that "an appeal as of right lies to any final order of the Trial Division." *Ueda v. Ngiwal State* , 7 ROP Intrm. 132, 133 (1998). Additionally, the Constitution explicitly gives the Appellate Division jurisdiction to review all decisions of the Trial Division. ROP Const. Art X, § 6. Accordingly, Appellee's argument that this appeal cannot be heard by the Appellate Division is without merit.

B. Final Judgment

Appellee argues that the Order currently at issue is not a final judgment, and that the appeal is improper for that reason. As discussed above, the Trial Division's decision dealt only with the stipulated judgment between Appellant and Appellee, the PSB receiver. The claims against the individual defendants remain unresolved. The Appellate Division has held that the final judgment rule is flexible enough to allow for immediate appeal of an order with a significant impact on real world events which cannot be easily undone after judgment. *ROP v. Black Micro Corp* , 7 ROP Intrm. 46, 47 p.175 (1998). Rule 54(b) allows the immediate appeal of certain orders if there is an "entry of final judgment as to one or more but fewer than all claims or parties." *Id.* at 48 (quoting ROP R. Civ. P. 54(b)).

In this case, the judgment was vacated on the grounds that Appellant's claims could not be litigated in court, but must be processed through the receiver, to be dealt with alongside all other claims. Although the trial court did not explicitly enter final judgment as to any claims or parties, the court found that it had no jurisdiction over the claims against PSB or the receiver, concluding that the stipulated judgment was vacated and all pending motions were moot. When there is no further judicial action required to determine the rights of parties, an order is final and appealable. *Nakatani v. Nishizono*, 1 ROP Intrm. 289, 290 (Tr. Div. 1985); *In the Matter of Kaleb Udui,* 3 ROP Intrm. 130, 131 (1992). *See also* 4 Am. Jur. 2d *Appellate Review* § 78 (2007) ("An

appeal of right ordinarily may be taken from a final judgment or order, meaning one which disposes of the entire matter in litigation as to one or more of the parties."). In this case, the trial court has decided that there can be no further judicial action with regard to the claims against Appellee.

For this reason, the Order of July 31, 2008 is a final judgment for the purposes of appeal.

C. Merits

Appellant disagrees with the trial court's determination that claims for funds lost in a bank collapse must go through the appointed receiver, rather than through the courts. He asserts that the trial court misinterpreted the relevant statutes, RPPL Nos. 6-3 and 7-41, codified at 26 PNC §§ 1111-1116. In support of his argument, Appellant cites RPPL No. 6-3, § 69(d) (codified at 26 PNC § 1116(d)), which states "any court proceeding arising out of or in connection with a bank insolvency or a bank in receivership against a bank administrator, receiver, or the Commission in relation to a bank licensed under this Act shall be brought before the Supreme Court." Appellant argues that this provision guarantees the right to bring suits dealing with bank insolvency to the Supreme Court. The trial court rejected this argument, referencing 26 PNC § 1116(c), which states that all claims arising out of a bank insolvency or bank in receivership for any banks licensed under Chapter 26 should be settled in accordance with Chapter 26. The court noted that Chapter 26 contains instructions for the payment of claims according to specific priorities, and with all similarly situated creditors being treated equally. Order at 2 (citing 26 PNC §§ 1113-1114). Accordingly, the court found that 26 PNC § 1116(d) does not give creditors of a bank in receivership the right to individually bring their claims to court.

Appellee defends the trial court's ruling on the merits. Appellee references the intention behind the statutory receivership scheme: preventing a flood of litigation in the Supreme Court by individual creditors, each seeking priority. If Appellant's argument was correct, in that 26 PNC § 1116(d) gives him the right to sue, all PSB creditors would be able to bypass the receivership and file directly in court. Allowing this suit to go forward would create confusion amongst all the PSB creditors. p.176 Appellee states, in defending the trial court decision, that because Appellant is not entitled to bring his claim to court, the court lacks subject matter jurisdiction over the claim.

The trial court was correct that Appellant's claims with regard to his lost deposits do not belong in court. The receivership was created to coordinate the claims of all PSB creditors and efficiently achieve "maximum satisfaction of the bank's liabilities to depositors and creditors," according to mandatory priorities in the payment of claims. RPPL No. 7-41, §§ 67(a), 68(a); *see also* 26 PNC §1114(a). Court involvement in depositors' attempts to recover funds from the receivership would undermine the receivership; it would diffuse, rather than consolidate, depositor claims; it would challenge the authority of the receivership; and it would prevent finality and efficiency in the resolution of claims.

Additionally, court involvement in depositor claims is clearly not intended by the statutory scheme creating receiverships. RPPL 7-41 explicitly prohibits appeals of the acts of a

receiver of the commission with one narrow exception. RPPL 7-41 § 70(c). [2] The same section requires that all claims "arising out of or in connection with the insolvency of a bank or a bank in receivership against a bank receiver or the Commission in relation to a bank licensed under this Act shall be finally settled in accordance with the provisions of the Act." *Id.* This language does not allow for parallel judicial action on claims within the receiver's purview, or judicial review of claims that are "finally settled" by the receiver.

The language from 26 PNC § 1116(d) upon which Appellant relies does not, read in the larger context of the statutory scheme, allow a depositor to bring his claim to court. A more contextually consistent reading of § 1116(d) would be that any court case which is allowed under the statutory scheme should be heard by the Supreme Court, as opposed to any lower courts. Allowable claims would include suits initiated by the receiver against former officers or directors of the Bank and actions necessary to accomplish the goals of the receivership. RPPL No. 7-41 § 67(a)(8)-(9). The trial court was correct in its determination that depositor claims do not belong in court.

While the trial court reached the correct result, the court's description of the claim's flaws as "exhaustion of administrative remedies" and "subject matter jurisdiction" is inaccurate. The requirement that administrative remedies be exhausted is a corollary to the ripeness doctrine. 2 Am. Jur. 2d *Administrative Law* §474 (2004). It prevents judicial review of an issue until less formal means of resolution have been tried; this requirement promotes the resolution of cases through less formal and more economical processes and preserves judicial resources and agency autonomy. *Id.*; *Sims v. Apfel* , 120 S.Ct. 2080, 2083-5 (2000). Here, filing a claim with the receiver is not a prerequisite to judicial resolution of a creditor's claims; it is the mandatory alternative to judicial involvement and the only means to recover deposits and make other claims. *See* RPPL 7-41 §70(c); Op. at 2. p.177 Judicial consideration of a creditor's claims are no more appropriate after going through the receivership procedures than before. *Id.*

It is also inaccurate to say that the court lacks subject matter jurisdiction over the claim. Under the Palau Constitution, the judiciary has plenary jurisdiction, encompassing "all matters in law and equity." PALAU CONST., Article X, § 5. Additionally, while some courts in Palau are limited by subject matter or geography, the Supreme Court has jurisdiction over everything within the judicial power. *Id.* Article X, Section 1 further supports the argument that the Supreme Court has no subject matter jurisdiction limitations: "All courts *except the Supreme Court* may be divided geographically and functionally as provided by law, or judicial rules not inconsistent with law." *Id.* at § 1 (emphasis added). *See also Espangel v. Diaz* , 3 ROP Intrm. 240, 242 (1992); *Gibbons vs. ROP,* 1 ROP Intrm. 634 (1989) (noting that the "jurisdictional language of the Palau Constitution expresses the intent of the framers that this Court exercise jurisdiction over any and all matters which traditionally require judicial resolution").

As noted above, the statutory receivership scheme is intended to avoid judicial resolution of depositor's claims in the case of a bank collapse. This scheme does not have the effect of limiting the court's jurisdiction. Unlike in the United States, where judicial power is defined, in

[2]Appellant's claim does not fit within that exception, which allows a bank's shareholders to appeal the appointment of a receiver.

part, by the laws passed by Congress, in Palau there is no constitutional authority for the OEK to expand or contract the judicial power. *See* U.S. CONST., Article III, § 2. Although the Supreme Court has the jurisdiction to decide the case, there are many good reasons why it should not: to promote efficiency, judicial economy, the autonomy of the receivership, and, most importantly, to not undermine the OEK's statutory scheme.

> It is true that this Court is the ultimate interpreter of the Constitution...with the duty to say what the law is. Nevertheless, where a coordinate branch of government acts pursuant to a textually demonstrable constitutional commitment of authority, this Court will not intervene absent evidence or allegation of a constitutional violation.

Obeketang v. Sato , 13 ROP 192, 198-9 (2006) (internal quotations and citations omitted); *see also* PALAU CONST., Article IX, § 5, ¶¶ 5 & 10 (noting that the OEK has the authority to regulate banking and provide uniform rules on the subject of bankruptcy). There are no allegations of constitutional violations or need for constitutional interpretation in this claim; it is a suit for recovery of funds lost in a bank collapse. Accordingly, it is inappropriate for the judiciary to become involved.

There is another reason why courts should stay removed from the haggling of claims handled by a receiver: a judgment against the bank's funds, if granted, would be subject to the same statutory rules as all other outstanding debts and obligations which must be paid out of the receivership funds. *See* RPPL §68 (a); 26 PNC §1114(a) (listing the order of priorities in which p.178 the bank's debts must be paid); *See also* 65 Am. Jur. 2d *Receivers* § 272 (despite a judgment in a specific amount against a receivership, the payment and "the adjustment of the equities between persons having claims on the property...of the receiver" are under the control of the receiver and the bodies and rules that govern it); 65 Am. Jur. 2d *Receivers* § 402 (noting that judgment against a receivership merely determines and establishes a claim but does not authorize the property to be taken from the receiver's possession and applied to satisfaction of the judgment, in the absence of a statute to that effect). To the extent that "the amount available for payment of...claims...is insufficient to provide payment in full, such claims shall abate in equal proportion," so, even with a specific money judgment, a claimant would be unlikely to receive the full amount ordered. 26 PNC §1114(b). *See also* RPPL 7-41 § 67(a)(4)("A receiver may...stop or limit the payment of any obligation.")

CONCLUSION

For the foregoing reasons, the Trial Division's Order of July 31, 2008 is **AFFIRMED**, in that it vacated the Stipulated Judgment between Feichtinger and PSB and determined that such suits were nonjusticiable by the Court. The case is **REMANDED** to the trial court for resolution of the remaining tort claims against the individual defendants.