Nakatani v. Shigemitsu, 1 ROP Intrm. 663A (1988)

NORIYOSHI NAKATANI,
Appellee,

v.

SEIFUKU SHIGEMITSU, et al.
Appellants.

CIVIL APPEAL NO. 1-87
Civil Action No. 129-86

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: September 14, 1988

Counsel for Plaintiff/Appelleee: Johnson Toribiong

Counsel for Defendants/Appellants: John K. Rechucher

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

O'BRIEN, Associate Justice Pro Tem:

⊥663B Plaintiff/Appellee sued Defendants/Appellants to recover 120,000,000 yen, plus interest. Appellants had made, executed and delivered to Appellee four promissory notes totaling that amount, the entire transaction having taken place in Japan. Appellee sold the notes to a bank in Japan. When the bank presented the notes at maturity, they were dishonored for insufficient funds.

Appellants moved to dismiss on the grounds of forum non conveniens. The Trial Court treated the motion as one for summary judgment, pursuant to ROP R. Civ. Pro. 56, and denied it. Appellants renewed the motion, but it was again denied. They then requested leave to file an interlocutory appeal, which was granted. This appeal followed.

The issue before us is not the correctness of the Trial Court's decision, but whether we may entertain Appellant's interlocutory appeal. The result would seem to be governed by this Court's prior decision in Civil Appeal No. 21-87, *Olikong v. Salii*, 1 ROP Intrm ____ (App. Div. June 21, 1987), which held:

> The key to the determination of whether a judgment or order is final is the substance of the decision rather than its form or name. If the trial court has adjudicated the rights of the parties and no further judicial act is required, the

judgment or order may be appealed. *Id.* at p.9 of Slip Opinion.

That holding followed the precedent of *Trust Territory v. Konou* , 7 TTR 331 (App. Div. 1975), and is consonant with U.S. caselaw. 4 Am.Jur.2d, Appeal and Error, states:

⊥663C

> As a rule, merely interlocutory decisions are not appealable, the general policy of the law being to permit an appeal only from final decisions or judgments . . . . An appeal from a decision that is not final will ordinarily be dismissed for lack of appealability. *Id.*, Section 50.
>
> However, the test of finality is the substance of the decision rather than its form or name, so that a decision may be final and appealable although it is denominated interlocutory. *Id.*, Section 51.
>
> . . . the prevailing view is that the denial of a motion for summary judgment is an interlocutory decision only, and therefore not directly appealable, since such a denial is not an adjudication on the merits against the movant and he is not thereby foreclosed from the possibility of prevailing in the case when the facts are developed. *Id.*, Section 104.

In examining the situation before us, we find that the denial of the motion for summary judgment is not an adjudication on the merits against Appellants and that they are not thereby foreclosed from the possibility of prevailing in the case when the facts are developed at trial. Accordingly, the decision appealed from is not final, and thus, is not appealable.

The appeal is dismissed. This case is remanded to the Trial Court for further proceedings.