Ngerketiit Lineage v. Ngerukebid Clan, 6 ROP Intrm. 273 (1997)

NGERKETIIT LINEAGE, et al.,
Appellants,

v.

NGERUKEBID CLAN, et al.,
Appellees.

CIVIL APPEAL NO. 9-96
Civil Action Nos. 121-97 & 108-94

Supreme Court, Appellate Division
Republic of Palau

Order
Decided: December 8, 1997

Counsel for Appellant Ngerketiit Lineage: Douglas F. Cushnie

Counsel for Appellee Alan Seid: Mark Doran

BEFORE: JEFFREY BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

Appellee Alan Seid has filed a "Motion to Proceed in Trial Division for Correction of Clerical Error" in which he asks this Court for permission to file a motion in the trial court pursuant to ROP Civ. Pro. R. 60(a) or, alternatively, ROP Civ. Pro. R. 60(b)(6). The motion is denied.

On November 24, 1993, Seid and Ngerketiit Lineage, Ngerukebid Clan and Eusebio Rechucher entered into a lease by which Seid was to lease part of the land at issue in this case from the three lessors for a period of 60 years. The lease provides that total rent of the premises would be $3,195,270, to be paid in increments of $30,000 and $70,000 within 180 days of the execution of the lease and in a final payment of $3,194,270. Although the three required payments add up to more than the total rent, no one appears to have noticed this at the time the lease was signed.

On November 14, 1995, the trial court held a hearing attended by counsel for each of the parties and asked them whether they had any objections to the immediate entry of a partial judgment in favor of Seid, recognizing the validity of the lease. No one objected and the court entered a judgment holding that the lease was "valid as against all parties to this action" and providing that "the lease ⊥274 remains subject to its own terms and conditions." On November 24, 1995, Seid deposited a final lease payment of $3,195,000 with the Clerk of Court. The Clerk

of Court is holding that payment until this case is resolved.

Seid contends that his payment of $3,195,000 was $99,730 more than what the lease required him to pay and he seeks to recover that alleged overpayment. Seid relies on Rule 60(a), which provides that a trial court may correct "clerical mistakes" in judgments, orders or other parts of the record. Appellant Ngerketiit Lineage objects to Seid's motion on the ground that Seid is seeking a substantive change in the terms of the lease, a type of alteration not countenanced by Rule 60(a).

Rule 60(a) states that while an appeal is pending, the trial court may correct clerical mistakes only by leave of the Appellate Division. However, Seid has not pointed to any clerical mistakes in the November 14, 1995 judgment. The errors Seid seeks to correct are in the lease, not the judgment. Seid and the other parties had an opportunity to review the terms of the lease before asking the court to recognize its validity. Seid cannot claim now that the court erred by not catching a mistake that all the parties had missed. *See Senda v. Mid-Pacific Construction Co.*, 6 FSM Intrm. 440, 444-45 (App. 1994) (where court deliberately intends to enter judgment in amount requested by plaintiff, that party cannot obtain relief under Rule 60(a) when it discovers later that amount it asked for was incorrect); *In re Galiardi*, 745 F.2d 335, 337 (5th Cir. 1984) (Rule 60(a) "does not grant a district court carte blanche to supplement by amendment an earlier order by what is subsequently claimed to be an oversight or omission.").

The parties asked the court for a judgment upholding the lease. That is exactly what the court gave them and intended to give them. *See Robi v. Five Platters, Inc.* , 918 F.2d 1439, 1444 (9th Cir. 1990) (Rule 60(a) may be used to make judgment reflect the actual intentions of the court's decision); *McNickle v. Bankers Life and Casualty Co.* , 888 F.2d 678, 682 (10th Cir. 1989) ("Rule 60(a) may not be used to change something that was deliberately done."); *Dura-Wood Treating Co. v. Century Forest Industries* , 694 F.2d 112, 114 (5th Cir. 1982) (court may employ Rule 60(a) to correct a mistake made by court concerning amount of attorney fees to be awarded). Even though there may be inconsistencies in the terms of the lease, the parties bargained for that document and the court does not have the authority pursuant to Rule 60(a) to change the lease to reflect one party's view of how it should read. *See United States v. Griffin* , 782 F.2d 1393, 1396 (7th Cir. 1986) (where parties have made a bargain, court should implement that bargain even if court believes there are mistakes in that bargain). In short, because the court ⊥275 made no clerical mistakes, Seid cannot obtain relief pursuant to Rule 60(a).

Accordingly, appellee Seid's motion is DENIED. We leave it to Seid to determine any other avenues by which he might be able to recover the alleged overpayment and express no opinion on Seid's proposed alternative theory for recovery in this motion, Rule 60(b). Such arguments are properly directed to the trial division, not the appellate division. *See Tmeutchl v. Ngerketiit Lineage*, 6 ROP Intrm. 29 (1996).