Tmetuchl v. Ngerketiit Lineage, 6 ROP Intrm. 29 (1996)
MLIB TMETUCHL, et al.,
Appellants,

v.

NGERKETIIT LINEAGE, Rep.
by FRANCISCO ARMALUUK,
Appellee.

CIVIL APPEAL NO. 38-95
Civil Action Nos. 48-91, 49-91 & 202-91

Supreme Court, Appellate Division
Republic of Palau

Order
Decided: November 25, 1996

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: Douglas F. Cushnie

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

PER CURIAM:

Before the Court is appellants' motion for a limited remand to permit the trial court to consider their request for a vacating of judgment pursuant to ROP R. Civ. Pro. 60(b). For the following reasons, this Court declines to rule on this motion.

In *Carlos v. Whipps* , 5 ROP Intrm. 193 (1996), this Court suggested a procedure by which we would consider Rule 60(b) motions filed after a notice of appeal has been filed. Such post-appeal Rule 60(b) motions are especially problematic because a number of courts have ruled that a trial court loses all jurisdiction over a case once an appeal is taken. *See Kileen v. Travelers Ins. Co.*, 721 F.2d 87, 90 n.7 (3rd Cir. 1983); *Zig Zag Spring Co. v. Comfort Spring Co.*, 200 F.2d 901, 907-08 (3rd Cir. 1953); 7 J. Moore, *Moore's Federal Practice* , ¶ 60.30[2]. Consequently, *Carlos* ordered that such Rule 60(b) motions be directed to the appellate court, along with a motion to remand, to enable the trial court to consider the merits of the Rule 60(b) motion. Any opposition to the request ⊥30 for remand was to be based solely on whether a remand would be inefficient or inequitable under the circumstances. Since *Carlos* was decided, this Court has had the opportunity to consider a number of post-appeal Rule 60(b) motions and to re-evaluate our procedures. Accordingly, our experience to date has convinced us that the interests of judicial economy and efficiency will be better served if we replace the *Carlos* post-appeal Rule 60(b) procedure with the method outlined below.

Tmetuchl v. Ngerketiit Lineage, 6 ROP Intrm. 29 (1996)

The majority of United States federal courts take the approach that a post-appeal Rule 60(b) motion may be filed in the trial court without leave from the court of appeals. The trial court has jurisdiction to deny the motion because such a ruling is in aid of the appeal, but the trial court has no jurisdiction to grant the motion. If the trial court is inclined to grant the motion, it must indicate that to the court of appeals, which may then remand the action. [1] 7 J. Moore, *Moore's Federal Practice*, ¶ 60.30[2].[2]

This procedure is preferable to the one adopted in *Carlos* for at least two reasons. First, due to its familiarity with the case, the trial court is in a better position than the appellate court to determine whether its judgment should be vacated. In effect, this procedure eliminates the appellate court's obligation to speculate about the trial court's position; this will reduce the occurrence of needless remands and will insure that a remand is granted only when it is necessary. Second, this method will cut down on unnecessary delays by allowing the appellate proceeding to continue unaffected until the trial court signals the need for a remand. [3] Noting the clear advantages of this procedure, this Court will no ⊥31 longer follow the *Carlos* approach on this issue and hereby adopts the approach taken by the majority of United States federal courts as outlined above.

It is accordingly ORDERED:

1. Appellants' present motion to remand is MOOT. Appellants may re-file their Rule 60(b) motion in the trial court.

2. This Court's Order of June 20, 1996, granting the Appellant an indefinite extension of time in which to file an opening brief, is hereby VACATED. Appellants have 30 days from the issuance of this Order to file their opening appellate brief in this matter.

---

[1] Typically, the trial court will issue a brief memorandum expressing its intention to consider the Rule 60(b) motion. On the basis of that memorandum, the petitioner will then file a motion to remand in the appellate court.

[2] *See Brown v. United States*, 976 F.2d 1104, 1110-11 (7th Cir. 1992); *Reuber v. United States*, 750 F.2d 1039, 1051 n.16 (D.C. Cir. 1984); *United States v. 397.51 Acres of Land*, 692 F.2d 688, 692-93 (10th Cir. 1982); *Com. of Puerto Rico v. S.S. Zoe Colocotroni*, 601 F.2d 39, 40-41 (1st Cir. 1979); *Pioneer Insurance Co. v. Gelt*, 558 F.2d 1303, 1312 (8th Cir. 1977); *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 930-32 (5th Cir. 1976).

[3] If a Rule 60(b) motion is denied by the trial court, that denial may be the subject of a separate appeal; this Court may choose to consolidate the Rule 60(b) appeal with the appeal on the merits, if it is still pending. If a Rule 60(b) motion is granted, the pending appeal is terminated, and either party may appeal the new judgment.