*Melekeok State Gov't v. Basilius*, 9 ROP 136 (2002)

**MELEKEOK STATE GOVERNMENT and MELEKEOK STATE PUBLIC LANDS AUTHORITY,**
**Appellants,**

**v.**

**POLYCARP BASILIUS and MIBUK DELMAU,**
**Appellees.**

CIVIL APPEAL NO. 01-59
Civil Action No. 99-270

Supreme Court, Appellate Division
Republic of Palau

Decided: June 28, 2002[1]

[1] **Appeal and Error:** Standard of Review

A trial court's denial of a Rule 60(b) motion is reviewed for an abuse of discretion.

[2] **Appeal and Error:** Standard of Review

In reviewing the trial court's denial of a Rule 60(b) motion, the Appellate Division need not consider the merits of the underlying judgment, only whether the trail court abused its discretion in finding that Appellants failed to demonstrate excusable neglect.

[3] **Civil Procedure:** Relief from Judgment; **Judgment:** Relief from Judgment

Absent some compelling reason, mere failure to obtain counsel does not constitute excusable neglect.

Counsel for Appellants: Dale Trigg

Counsel for Appellees: Kevin Kirk

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN, Associate Justice, presiding.

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[1]The parties waived oral argument, and the Court agrees that oral argument would not materially advance the resolution of this appeal. *See Irikl Clan v. Renguul,* 8 ROP Intrm. 156 (2000).

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PER CURIAM:

Melekeok Public Lands Authority and Melekeok State Government ("Appellants") brought suit against Polycarp Basilius and Mibuk Delmau ("Appellees") for, among other things, ejectment. One year after the trial court's grant of summary judgment in favor of Appellees, Appellants filed a motion for relief from judgment pursuant to ROP R. Civ. Pro. 60(b)(1). The trial court denied relief and Appellants appeal from that order. For the reasons set forth below, we affirm.

## PROCEDURAL BACKGROUND

In 1999, James Dixon, prior counsel for the Palau Public Lands Authority ("PPLA") filed a complaint in the Trial Division on behalf of Appellants, proffering claims to quiet title, for ejectment, for trespass and for nuisance on the grounds that the property at issue belonged to the Government and not Delmau. Appellees filed a joint answer presenting, among other things, nine affirmative defenses. In June 2000, the trial court issued a notice of possible dismissal, advising Appellants that the action might be ⊥137 dismissed within thirty days of the notice for failure to prosecute. Soon thereafter, Appellants, now represented by Douglas Juergens, requested a status conference. In July 2000, a status conference was held and, on that same day, a scheduling order was issued, setting September 18, 2000, as a deadline for pre-trial motions and October 20, 2000, as the date for oral argument on any such motions.

On the deadline date set for pre-trial motions, Appellees jointly filed a motion for summary judgment supported by a memorandum, two affidavits and various other attachments. Appellants neither filed an opposition nor sought an extension of time to file one. On October 20, 2000, the trial court issued an order granting summary judgment in favor of the Appellees. The trial court noted Appellants' failure to respond, but also observed that "the decision to grant summary judgment cannot be based upon default or non-response of the opponent." Addressing the merits, the court found, as a matter of undisputed fact, that Appellees' claim to the property was supported by an unappealed determination of ownership and concluded: "Unappealed Determinations of Ownership preclude the Plaintiffs from collaterally attacking the validity of the Determinations where, as here, there is no showing of a violation of due process." That same day, a judgment was entered and no appeal was taken from that judgment. On October 19, 2001, one day short of the one-year statutory deadline, Appellants, now represented by Dale Trigg, filed a motion for relief from judgment pursuant to ROP R. Civ. Pro. 60(b)(1). Appellees opposed and Appellants filed a reply brief. In November 2001, the Trial Division denied the motion, holding that "reopening this case would clearly prejudice the non-moving party by forcing Defendant Basilius, a subsequent purchaser of the property, to continue to defend an action filed years after the certificate of title was issued to his predecessor in interest." The court further found that Appellants could not "plausibly claim to have demonstrated a possibility of success on the merits."

Last, the court held that:

Plaintiff's own culpability must be considered. Plaintiff's explanation of their

> failure to file an opposition to Defendant's motion was that they were between counsel at the time their response brief was due . . . . But this explanation is unpersuasive . . . . The Palau Public Lands Authority and the state authorities have chosen the expensive practice of hiring off-island lawyers on relatively short contracts rather than having a local firm on retainer, or employing a full-time member of the Palau bar as counsel. Land issues cannot be placed on hold during the hiatus between the hiring of these off-island contract attorneys, nor should the cost in time caused by this practice be shifted from the Authorities. The lapse here was not due to excusable neglect but rather is a predictable consequence of an affirmative policy decision.

On November 26, 2001, PPLA appealed from the order denying their Rule 60(b) motion. ⊥138

## DISCUSSION

**[1]** Appellants relied on ROP R. Civ. Pro. 60(b)(1), which permits a court to set aside a judgment on the basis of "mistake, inadvertence, surprise or excusable neglect." We review the trial court's denial of a Rule 60(b) motion for an abuse of discretion. *Ngerketiit Lineage v. Ngirarsaol*, 8 ROP Intrm. 126, 127 (2000).

**[2, 3]** In reviewing the trial court's denial of a Rule 60(b) motion, this Court need not consider the merits of the underlying judgment, only whether the trial court abused its discretion in finding that Appellants failed to demonstrate excusable neglect. *See Greenwood Explorations, Ltd. v. Merit Gas & Oil Corp., Inc.*, 837 F.2d 423, 427 (10th Cir. 1988) (noting that "a Rule 60(b) motion is not to be used as a substitute for appeal."). The trial court properly cited *Gibbons v. Cushnie*, 8 ROP Intrm. 3, 4 (1999) for the principle that "absent some compelling reason, mere failure to obtain counsel does not constitute excusable neglect." That principle is particularly apt where, as here, Appellants were plaintiffs below and were fully aware that Appellees would be filing a motion, having participated in the scheduling conference where the deadline for filing motions was set.[2] Appellants have presented no support for the contention that their notifying the Court that their counsel was leaving the island somehow relieved them of their obligations to file a timely response to the motion for summary judgment or even to request an extension of time to oppose the motion.

## CONCLUSION

For the foregoing reasons, the Trial Division's denial of Appellant's Rule 60(b) motion is affirmed.

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[2]It is also noteworthy, as discussed above, that the judgment against Appellants was entered after a full consideration of the merits, and not merely because of their failure to respond. Thus, the notion that "Rule 60(b) is remedial in nature and therefore must be applied liberally," *Ngeliei v. Rengulbai* , 3 ROP Intrm. 4, 9 (1991), which we have said should be kept in mind while "analyzing whether to set aside a default judgment," *Tmilchol v. Ngirchomlei*, 7 ROP Intrm. 66, 67 (1998), is not applicable here.