

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

<p>BILLY NARUO ELBELAU, <i>Appellant,</i> v. LORENZO MELAITAU and INGLORD SAITO, <i>Appellees.</i></p>
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Cite as: 2020 Palau 19
Civil Appeal No. 20-008
Appeal from Civil Action No. 18-063

Decided: October 7, 2020

Counsel for Appellant	J. Uduch Sengebau Senior
Counsel for Appellees	Johnson Toribiong

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes Materne, presiding.

ORDER DISMISSING APPEAL

PER CURIAM:

[¶ 1] On April 9, 2018, Lorenzo Melaitau and Inglord Saito (Plaintiffs-Appellees) filed a verified complaint seeking 1) a declaration that they are joint owners of land known as Cadastral Lot No. 045 P 09; 2) a declaration that Billy Naruo Elbelau (Defendant-Appellant) has unlawfully built structures on and continues to occupy the lot; 3) an order ejecting the Defendant-Appellant from the lot and an enjoining him against reentering the same; 4) compensatory and punitive damages for prior occupation of the lot; and 5) award of costs and attorney fees.

[¶ 2] On January 4, 2019, Plaintiffs moved for a partial summary judgment on Issues 1, 2, and 3 identified above. Plaintiffs' motion did not include a

request for summary judgment on the issue of damages or costs and fees. The Trial Division granted Plaintiffs' motion in part, entering an order on January 23, 2020, declaring that Melaitau and Inglord are joint owners of the land in question and that "Defendant has entered and built structures on Plaintiff's [*sic*] land." The Trial Division neither ordered Defendant's ejectment nor issued an injunction against continued trespass. Thus, as of January 24, 2020, and to the present day, the issues of damages and injunctive relief remain pending before the Trial Division. Nonetheless, on February 24, 2020, Defendant Elbelau noticed an appeal from the Trial Division's order granting partial summary judgment.

[¶ 3] "[T]his Court has 'long adhered to the premise that the proper time to consider appeals is after final judgment.'" *Koror State Legis. v. KSPLA*, 2019 Palau 38 ¶ 3 (quoting *KSPLA v. Ngarameketii/Rubekul Kldeu*, 22 ROP 1, 2 (2014)). Furthermore, "[f]or a final judgment to be entered on any one claim in a multi-claim suit, all damages stemming from that claim must have been fixed." *Ngirchchol v. Triple J Enters.*, 11 ROP 58, 60 (2004). Because the issue of damages remains outstanding, the appeal is not ripe.

[¶ 4] Indeed, the question of whether *any* relief will be afforded to the Plaintiffs remains open. The Trial Division has not ordered the Defendant to vacate the land nor enjoined him from continued occupation of it. And although it is a general "rule that equity will, by injunction, repress a continuing trespass," *Shih Bin-Fang v. Mobel*, 2020 Palau 7, ¶ 40 (quoting *Key v. Stringer*, 52 S.E.2d 305, 306 (Ga. 1949)), at the end of the day "[i]njunctions are governed by Rule 65 of the ROP Rules of Civil Procedure . . . [[and] 'a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief.'" *Whipps v. Idesmang*, 2017 Palau 24 ¶ 10 (quoting *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006)). We have no way of knowing what equitable defenses (if any) Defendant will advance to counter Plaintiffs' prayer for injunctive relief, nor whether any of such defenses will be meritorious, nor how the trial court will weigh the competing factors. It may well be that the Trial Division will deny injunctive or monetary relief to Plaintiffs, which may in turn convince Defendant that an appeal is unnecessary. *Cf. Ngirchchol*, 11 ROP at 61. This case is a perfect illustration of our long-ago observation that "[p]iecemeal appeals disrupt the

trial process, extend the time required to litigate a case, and burden appellate courts.” *ROP v. Black Micro Corp.*, 7 ROP Intrm. 46, 47 (1998).

[¶ 5] We also take this opportunity to remind Counsel that premature appeals have been plaguing this Court for quite some time. This year alone, we have dismissed five separate appeals (not including the present one) as not yet ripe for adjudication. Furthermore, less than a year ago, we issued a published opinion once again setting forth the standards that a party must meet in order to bring an appeal before our Court. *See Koror State Legis. v. KSPLA*, 2019 Palau 38. Yet, premature appeals continue to be filed with some regularity. Such filings “cause[] this court to expend valuable time and resources that c[an] be[] better spent addressing meritorious arguments advanced by rule-abiding litigants.” *Mann v. Boatright*, 477 F.3d 1140, 1150 (10th Cir. 2007). Counsel are warned that the Court’s patience is wearing thin and that in the future the Court will not hesitate to impose both monetary and professional sanctions on attorneys who bring obviously premature, and therefore frivolous, appeals. *See Baules v. Kuartel*, 19 ROP 44, 47 (2012) (“[A]n appeal is frivolous if the result is obvious, or the arguments of error are wholly without merit.”).

[¶ 6] Because the order appealed from is neither a final judgment nor an appealable collateral order, *see Heirs of Drairoro v. Yangilmau*, 10 ROP 116, 118 (2003), the appeal is **DISMISSED**.