

Renguul v. Ngiwal State, 11 ROP 184 (2004)

**GABRIEL RENGUUL and
KELAU RENGUUL,
Appellants,**

v.

**NGIWAL STATE,
Appellee.**

CIVIL APPEAL NO. 03-009
Civil Action No. 158-86

Supreme Court, Appellate Division
Republic of Palau

Argued: April 7, 2004

Decided: July 2, 2004

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Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: Johnson Toribiong

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MICHELSEN, Justice:

In this case, Appellants asked the Trial Division to reconsider a decision made several years earlier by a different Trial Division judge denying a motion in aid of judgment. Citing the doctrine of “law of the case,” the Court refused to revisit the decision. Finding no abuse of discretion, we affirm.

BACKGROUND

In 1995, the Trial Division entered a stipulated judgment in favor of Plaintiff-Appellants for the taking of private land by Defendant-Appellee Ngiwal State. Because the judgment remained unsatisfied after three years, Plaintiffs filed a motion seeking enforcement. Justice Beattie, who had entered the judgment by stipulation, denied the motion, holding that the Court did not have the authority to enforce a monetary judgment against a state.

Still waiting for payment four years after that denial, Plaintiffs filed an identical motion for an Order in Aid of Judgment, asking the successor Trial Division judge to enforce the

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judgment. Defendants argued that the “law of the case” doctrine prohibited the Trial Division from re-examining the issue. The Trial Division agreed, finding that it could only re-examine the earlier decision if there “has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute, or that the prior holding was clearly erroneous and would create a manifest injustice if followed.” On appeal, Plaintiffs claim the doctrine of “law of the case” should not have been applied because they have a new legal theory for enforcement and the Trial Division should have considered whether the previous 1186 decision was clearly erroneous.

ANALYSIS

This Court adopted doctrine of the law of the case in *Tmeleu Clan v. Daniel*, 2 ROP Intrm. 131 (1990). See also *Liquidation Comm. v. Orientex Palau, Inc.*, 8 ROP Intrm. 321, 321 n.1 (2001); *Tmetbab Clan v. Gibbons*, 5 ROP Intrm. 295, 297-99 (Tr. Div. 1995). Pursuant to the doctrine, “a court is generally precluded from reconsidering an issue previously decided by the same court, or by a higher court in the identical case.” *Milgard Tempering, Inc. v. Selas Corp.*, 902 F.2d 703, 715 (9th Cir. 1990). The doctrine is designed to promote judicial efficiency by promoting the finality of litigation, discouraging judge shopping, and assuring that lower courts will follow the rulings of higher courts. *Burger King Corp. v. Pilgrim’s Pride Corp.*, 15 F.3d 166, 169 (11th Cir. 1994). The doctrine applies to decisions made in the same case both by a judge of the same level, see *Tmeleu Clan*, 2 ROP Intrm. at 134, and to decisions of an appellate division, see *Kumangai v. Isechal*, 3 ROP Intrm. 43, 45 (1991). Application of the doctrine is discretionary. *Guerrero v. Gates*, 357 F.3d 911, 916 n.4 (9th Cir. 2004). A judge can choose to re-examine an issue where there are new facts, evidence, pleading, or legal theory, see *Tmeleu Clan*, 2 ROP Intrm. at 135, or where the initial decision is “clearly erroneous and would work a manifest injustice,” *Christianson v. Colt Ind. Operating Corp.*, 108 S. Ct. 2166, 2178 (1988). We review a decision based on the doctrine for abuse of discretion. *Rebel Oil Co. v. Atlantic Richfield Co.*, 146 F.3d 1088, 1093 (9th Cir. 1998).

Appellants first argue that the Trial Division erred in applying the doctrine because they claim a constitutional right to payment. They acknowledge that they raised this argument in the prior motion for aid in judgment, which makes it precisely the type of claim the doctrine of the law of the case was intended to cover. See *Christianson*, 108 S. Ct. at 2177 (noting that the doctrine “promotes the finality and efficiency of the judicial process by protecting against the agitation of settled issues”). The Trial Division did not abuse its discretion in refusing to entertain the very argument the Court had previously rejected in the same case.

Plaintiffs next argue that ROP R. Civ. P. 69 gives them a right to enforcement of the judgment, a legal theory that they did not present when making the initial motion for enforcement. Plaintiffs’ admission that the argument is a legal theory that was available to them at the time of the first motion militates against allowing this argument now. Although the law of the case doctrine should not be applied if there is a relevant change in the controlling law, there is no exception for a party’s failure to make an available argument, whether as a result of a strategic calculation or from inadvertence.

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Lastly, Plaintiffs argue that the Trial Division erred in failing to consider whether the previous decision was clearly erroneous and resulted in a manifest injustice.

Courts must rarely invoke the “clear error” exception, [lest] the exception swallow the rule. With this principle in mind, the exception can be restated this way: in a close case, a court must defer to the legal conclusion of a coordinate court in the same case; only when the legal error is beyond the scope of reasonable debate should the **1187** court disregard the prior ruling.

Jenkins Brick Co. v. Bremer, 321 F.3d 1366, 1370-71 (11th Cir. 2003). Despite Plaintiffs’ assertions to the contrary, we read the Trial Division’s order as showing that it did, in fact, consider the manifest injustice exception. The Trial Division wrote that “[i]t has also been said that the law of the case doctrine does not prevent a court from overturning a prior ruling that is clearly erroneous and would work a manifest injustice.” Consequently, in denying Plaintiffs’ motion based on the law of the case, the Trial Division determined that the prior decision was not clearly erroneous or did not result in a manifest injustice. This ruling was within its discretion.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is affirmed.