Estate of Tmetuchl v. Aimeliik State, 13 ROP 176 (2006)

ESTATE OF ROMAN TMETUCHL,
Appellant,

v.

AIMELIIK STATE,
Appellee.

CIVIL ACTION NO. 05-024
Civil Action Nos. 00-113 and 99-226

Supreme Court, Appellate Division
Republic of Palau

Argued: September 1, 2006
Decided: September 5, 2006

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: Raynold Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

BACKGROUND

In 1996, Masaziro Siksei brought suit against Roman Tmetuchl to recover the value of mahogany trees that Tmetuchl had harvested on land owned by Siksei in Aimeliik. At trial, Tmetuchl asserted that the trees were not taken from Siksei's land, but rather from land owned by Aimeliik State, which had given him permission to harvest them. The trial court awarded Siksei $65,000 in compensation for the trees. *Siksei v. Tmetuchl*, Civil Action No. 68-96 (Order dated June 26, 1997). The Appellate Division subsequently affirmed the judgment against Tmetuchl. *Tmetuchl v. Siksei* , 7 ROP Intrm. 102 (1998). Following Tmetuchl's death, Siksei went to court and had this prior judgment converted into a claim against Tmetuchl's Estate. The Estate has since been making incremental payments on the judgment.

⊥177 In 1999, Tmetuchl's Estate brought suit seeking indemnification against Aimeliik State for mistakenly authorizing Tmetuchl to cut down Siksei's trees. As Tmetuchl had before, Aimeliik defended on the basis that the trees were taken from state land, not land owned by Siksei. In this second lawsuit, however, the trial court concluded that, contrary to the prior trial

court decision, the trees harvested by Tmetuchl were taken from government land rather than land owned by Siksei. *Estate of Roman Tmetuchl v. Aimeliik State*, Civil Action No. 99-226 (Decision dated Feb. 26, 2005).

Following this second decision, the Estate filed a motion to vacate the prior judgment in favor of Siksei under Rule 60(b)(6) of the ROP Rules of Civil Procedure. The Estate urged that it would be inequitable, in light of the recent outcome in favor of Aimeliik, to allow the prior judgment against the Estate to remain in place. The trial court disagreed, holding that (1) a Rule 60(b) motion would be properly filed in the earlier litigation between Tmetuchl and Siksei because that is the judgment that the Estate sought to overturn and (2) any unfairness the inconsistent judgments posed to Tmetuchl would be outweighed by the unfairness that would arise to Siksei, who was not party to the later litigation, if the court were to set aside the judgment against Tmetuchl.

The Estate now appeals the trial court's denial of its Rule 60(b)(6) motion. For the following reasons, we affirm.

ANALYSIS

A trial court's denial of a motion to set aside a judgment pursuant to Rule 60(b) is reviewed for abuse of discretion. *Tmilchol v. Ngirchomlei*, 7 ROP Intrm. 66, 68 (1998). Under this standard, a trial court's decision will not be overturned unless that decision was "clearly wrong." *Id.*

Rule 60(b) allows a party to move the trial court to set aside a judgment due to a number of factors, including mistake, inadvertence, excusable neglect, newly discovered evidence, and fraud. ROP R. Civ. P. 60(b). Here, Appellant seeks relief under Rule 60(b)(6), which covers "any other reason justifying relief from the operations of the judgment." The Appellate Division has previously held that this catch-all provision "affords relief from a final judgment only under extraordinary circumstances." *Irruul v. Gerbing*, 8 ROP Intrm. 153, 154 (2000) (citing *High v. Zant*, 916 F.2d 1507, 1509 (11th Cir. 1990)).

This case presents a unique and difficult situation. At present, the inconsistent judgments place the Estate in the unfortunate position of facing liability for harvesting the trees based upon the permission granted by Aimeliik State – permission which the court found to be invalid in imposing liability upon Tmetuchl in the first trial, but which the second court found to have been validly given in denying the Estate's suit for indemnification against Aimeliik State in the second lawsuit. We have been unable to find any similar case involving inconsistent judgments by separate trial courts involving the same factual dispute. Nevertheless, the unfairness in this inconsistency is clear. In considering a Rule 60(b) motion, however, this unfairness must be balanced against our substantial interest in the finality of judgments. *See, e.g.*, *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1144 (2d Cir. 1994) (Rule 60(b) "preserves a balance between serving the ends of justice and ensuring that litigation reaches an end within a finite period of time.").

⊥178 Before balancing the competing interests of fairness and finality, we must first consider whether the present Rule 60(b) motion is procedurally proper. We conclude that it was not. Generally, a motion for relief under Rule 60(b) must be brought "in the court and in the action in which the judgment was rendered."[1] 12 *Moore's Federal Practice* ¶ 60.60 (3d ed. 1998) (quoting Fed. R. Civ. P. 60(b), advisory committee note of 1946). *See also Ngerketiit Lineage v. Ngirarsaol*, 8 ROP Intrm. 50, 51 (1999). That the prior decision has been affirmed on appeal does not alter this procedure. *Id.* ¶ 60.67[3]. In the present case, the fact that Siksei was not a party (or in privity with a party) to the present litigation renders this approach even more appropriate. For the court to set aside the prior judgment in a case in which Siksei is not a party, would require a third trial to be held on this matter. [2] The Estate can avoid the possibility of endless litigation by filing its Rule 60(b) motion in the initial litigation, to which Siksei was a party and the result of which the Estate seeks to set aside.

Appellant argues that the trial court erred when it proceeded to deny the Rule 60(b) motion after having concluded that the motion would more appropriately have been filed in the initial action. It maintains that the trial court was instead obligated "to decline to rule on the motion and to require the Estate to proceed in the earlier case where the original judgment was rendered." We do not see the difference. The present ruling in no way limits the ability of Appellant to file a motion to set aside judgment in the original trial court. Not having been decided on the merits, the present denial of Appellant's motion will not have a preclusive effect on a future motion in a different court. *Cf. Locklin v. Switzer Bros., Inc.* , 335 F.2d 331, 334-35 (7th Cir. 1964) (holding that a trial court's denial of a Rule 60(b) motion, affirmed on appeal, is *res judicata* as to independent action to set aside judgment raising "substantially most" of the ⊥179 same issues).

The inconsistent judgments as to the ownership of the mahogany trees present real unfairness to the Estate. Without getting into the merits of the judgments, the Estate is at present

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[1] In certain circumstances, relief from judgment may be sought in a separate action. *See* ROP R. Civ. P. 60(b) ("This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court."). This provision does not, however, create a new right of action; rather, it preserves "whatever power . . . courts had prior to the adoption of Rule 60 to relieve a party of a judgment by means of an independent action according to traditional principles of equity." 12 *Moore's Federal Practice*, *supra*, at ¶ 60.80. The right to such equitable relief has generally been held to be more limited than the right to relief under Rule 60(b). Many U.S. Courts, for example, allow independent actions in equity for relief from judgment due to extrinsic, but not intrinsic, fraud. *See, e.g.*, *Travelers Indemnity Co. v. Gore*, 761 F.2d 1549, 1550 (9th Cir. 1985) ("Perjury is an intrinsic fraud which will not support relief from judgment through an independent action").

[2] The Court might also note that, while Appellant cannot be held responsible for the inconsistent judgments, this situation could have been avoided had Tmetuchl filed a third party complaint against Aimeliik State in the original lawsuit, seeking indemnification if he was found liable to Siksei. While Tmetuchl had no legal obligation to join Aimeliik State, *see* 3 *Moore's Federal Practice* ¶ 14.03[3] (3d ed. 1998) ("[I]f a defending party fails to use impleader . . . that defendant party remains free to sue the third-party separately to assert a right of indemnity or contribution."), had he done so all aspects of this dispute could have been resolved in the initial litigation, avoiding the possibility of inconsistent judgments.

in a position of having to continue to pay a judgment that a trial judge has concluded "appears to be mistaken." Slip op. at 6. Nevertheless, because this motion is more properly brought in the trial court that issued the initial judgment that the Estate wishes to set aside, the Trial Division's denial of the present motion is not clearly erroneous.

CONCLUSION

For the reasons set forth above, we affirm the Trial Division's denial of Appellant's Rule 60(b) motion to set aside judgment.