

First Commercial Bank v. Mikel, 15 ROP 1 (2007)

FIRST COMMERCIAL BANK, PACIFIC SAVINGS BANK, WESTERN CAROLINE TRADING COMPANY, BANK OF GUAM, SUSAN NGIRASUI, BANK OF PALAU, IVAN RUDIMCH, and PALAU CONSTRUCTION BANK, Petitioners,

v.

PETER PAULIS MIKEL, NELSON TABELUAL, JOSHUA KOSHIBA, ELGA ETIOBECH, WENDY ARURANG, NGEREBLUNT ARURANG, IDESON SUMANG, HARRY NGIRMIDOL, ESTRELITA YOBECH BAULES, AUGUSTINE MESEBLUU, TRINIDAD TEMAEL, SHELLALYNN SHIPRIT, JOANNE OBAK DINGILIUS, MATHEW MESENGEI, RUTH NARUO, DICHEL NARUO, PERRY TIMARONG, DEREK MONGAMI, MARIA STELLA S. SENAJON, KAYLEEN MARIO, AVYSON KURT, BARKLEY BANDARY, DUANE HIDEO, SHELLA LEONARD, ALONZO HIDEO, FRED TAITAGUE, BENDICTA KEBEKOL, ESTATE OF EDOBO TEMENGIL, MARCELLA DECHERONG, KENNY OSIHK, and DINAH FLORENCIO, Respondents.

SPECIAL PROCEEDING NO. 07-004

Supreme Court
Appellate Division Republic of Palau

Decided: October 30, 2007

12

Counsel for Petitioners: David Shadel

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ROSEMARY SKEBONG, Associate Justice Pro Tem.

PER CURIAM:

Before the Court is a Petition for Writ of Mandamus brought under Rule 21 of the Rules of Appellate Procedure. Petitioners are plaintiffs in twenty-five separate and unrelated civil actions currently pending in the Trial Division. All such civil actions are debt collection cases with pending motions of varying nature. The motions in these cases have been pending from anywhere from one month to one year.

Petitioners filed this petition on October 9, 2007, seeking a writ of mandamus to compel Associate Justice Lourdes F. Materne to rule on the motions or have the cases assigned to another Associate Justice. Specifically, Petitioners pray that this Court command the trial judge to “promptly act upon each of the pending motions and stipulations in the above-identified cases ... to issue writs of execution forthwith, to issue promptly orders for hearings to be held within five weeks on pending motions, and to grant them any and all other just and proper relief.” Pet. for Writ of Mandamus at 7-8. As discussed below, the petition fails to state facts sufficient to establish clear entitlement to relief under Rule 21.

DISCUSSION

Rule 21 of the Rules of Appellate Procedure provides the mechanism for petitioning this

First Commercial Bank v. Mikel, 15 ROP 1 (2007)

Court to issue a writ of mandamus concerning a proceeding in the Trial Division. Rule 21 (a) requires that the petition “state the facts necessary to understand the issues presented by the application; the issues presented and the relief sought; the reasons why the relief should issue; and copies of any order or opinion or parts of the record which maybe essential to understand the matters in the petition.”

Further, Rule 21 (b) states that “if the Appellate Division is of the opinion that the writ should not be granted, it shall deny the petition.” Otherwise, the rule provides that the Court shall order the respondents to answer and may set a briefing schedule, hear oral argument, and invite or order the trial judge to address the petition. Because this petition seeks relief that would be an inappropriate invasion of the discretion of the trial judge, no answers, briefings, or oral arguments are necessary. In short, the petition should be denied because the Appellate Division does not and cannot, in the ordinary course, order a trial judge to “hurry up and rule.”

A writ of mandamus is an extraordinary writ reserved for extraordinary situations. *BMC v. Ngiraklsong*, 3 ROP Intrm. 336,338 (1993). The burden is on the petitioner to show the right to the issuance of the writ is clear and indisputable. *Ngirmerdl v. Armaluuk*, 11 ROP 122, 123 (2004). For mandamus to lie against a trial court, the petitioner must demonstrate a clear abuse of discretion. *BMC*, 3 ROP Intrm. at 338 (citing *Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 109 S. Ct. 1814, 1822 (1989)).

Moreover, the trial judge has wide latitude in setting his own calendar and managing his docket. *BMC*, 3 ROP Intrm. at 338 (citing *Will v. Calvert Fire Ins. Co.*, 98 S. Ct. 2552 (1978)). As a general matter, then, “this Court will not intervene in a trial judge’s management of 13 a particular case or of his caseload as a whole, absent a statement or clear showing that he intends to abdicate his judicial responsibilities.” *BMC*, 3 ROP Intrm. at 338. No such showing has been made in this case.

The Petition does not claim any statement or other showing on the part of the trial judge to abdicate her responsibilities. Rather, the Petition simply claims that litigation before the Associate Justice does not proceed as quickly as the petitioners expect. The twenty-five different cases are mentioned in twenty-five individually numbered paragraphs which simply state the case, the motion pending, the date the motion was filed, and that the judge “has failed to act thereon.” These paragraphs are followed by nearly a dozen numbered paragraphs describing cases where the motions have been ruled on, but which apparently were not done with satisfactory promptness. These statements do not appear to seek relief of any kind.

The petition lacks a statement of any facts which would indicate shirking of the trial court's judicial obligations. In fact, the 12 “extra” paragraphs bear evidence that the Court does eventually rule on these motions. If anything, they support an inference of the judge’s intent to rule rather than an intent to abandon her responsibilities. The only issue presented here is delay, and for this an extraordinary remedy such as mandamus is not available. *See BMC* 3 ROP Intrm. at 338; 52 Am. Jur. *2d Mandamus* § 301 (2000) (“[A] complainant is not entitled to mandamus to compel a judge to render a prompt decision.”) Mandamus is an inappropriate solution to a problem that is best described as congestion of the court’s docket.

First Commercial Bank v. Mikel, 15 ROP 1 (2007)

CONCLUSION

Given the burden placed on Petitioners to state facts demonstrating indisputable entitlement to relief, the wide latitude given to trial judges to manage their dockets, and the absence of any facts in the petition suggesting an abuse of that discretion, the Court finds that Petitioners are not entitled to a writ of mandamus. Accordingly, the petition is denied.