

Pac. Sav. Bank v. Officers Mgmt. Corp., 15 ROP 117 (2008)
PACIFIC SAVINGS BANK, LTD.,
Appellant,

v.

OFFICERS MANAGEMENT CORP. and
DEBBIE RENGIL,
Appellees.

CIVIL APPEAL NO. 07-058
Civil Action No. 07-281

Supreme Court, Appellate Division
Republic of Palau

Decided: August 4, 2008¹

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Counsel for Appellant: David F. Shadel Counsel for Appellees: Mariano Carlos BEFORE:
KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; C.
QUAY POLLOI, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable ARTHUR NGIIItAKLSONG, Chief Justice,
presiding.

PER CURIAM:

Appellant Pacific Savings Bank, Ltd. (“PSB”) appeals from the trial court’s order of dismissal issued on November 26, 2007. The trial court dismissed the matter after finding that under 26 PNC § 1113, Appellant/Plaintiff lacked standing to pursue its claims in court. Specifically, the trial court found that PSB “has no capacity to sue or be sued on its own.” On appeal, Appellant argues that the trial court erred in issuing its *sua sponte* order of dismissal because the order is wrong on the facts and the law, is not based on any evidence, equates to an abuse of discretion, and violates Civil Rules 7, 17(a) and due process. We shall dismiss this appeal because, due to Appellant’s filing of a new lawsuit in the Trial Division that alleges the same claims but holds a corrected caption listing the PSB Receiver as the Plaintiff instead of PSB, the issues in this appeal are moot.

BACKGROUND

On September 26, 2007, Appellant filed a complaint in the trial division to enforce payment from Appellees on a debt. Appellees filed its answer and counterclaim on November 5, 2007, and thereafter filed a motion to dismiss. Appellant filed briefs in response to Appellees’ counterclaim and motion. On November 26, 2007, however, the trial court issued an order

¹ The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

Pac. Sav. Bank v. Officers Mgmt. Corp., 15 ROP 117 (2008) dismissing the case with prejudice on the basis that it lacked subject matter jurisdiction. The trial court found that Appellant/Plaintiff lacked standing to pursue its claims in court.

Under 26 PNC § 1113(e), the powers of the officers and administrators of the bank are suspended during receivership. Moreover, the shareholders' rights are extinguished with the exception of receiving dividends. 26 PNC § 1113(1). The statute gives power to the receiver to act on the bank's behalf, including initiating and defending litigation. 26 PNC § 1113(b)(6) provides that the "receiver may execute any instrument in the name of the bank, and initiate or defend and conduct in its name any action or legal proceeding." The bank, therefore, has no capacity to sue or be sued on its own. As such, the "bank" lacks standing to sustain this action.

Nov. 26, 2007 Order at 1-2. Appellant filed a timely appeal.

STANDARD OF REVIEW

This Court reviews the trial court's findings of fact for clear error. *Ongidobel v. L119 ROP*, 9 ROP 63, 65 (2002). The trial court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

In its response brief, Appellees argue that this appeal should be dismissed because the issues raised by Appellant are moot. This Court agrees with Appellees.

"Unnecessary decisions by a court are to be avoided." 20 Am. Jur. 2d *Courts* § 46 (2005). "A case is 'moot' when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* "In other words, '[a] case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.'" *De La Teja v. U.S.*, 321 F.3d 1357, 1362 (11th Cir. 2003) (quoting *Ethredge v. Hail*, 996 F.2d 1173, 1175 (11th Cir. 1993)).

In its appeal, Appellant argues that the trial court erred in issuing its *sua sponte* order of dismissal because it "is wrong on the facts and the law; it is not based upon any evidence and is directly contrary to the only evidence in the record; it is an abuse of discretion; and it violates Civil Rules 7 and 17(a) and due process." As relief, Appellant requests that this Court issue an "order vacating the trial court's *sua sponte* Order" and acknowledge "the ratification and/or joining Mr. Udui in his capacity as Receiver as a plaintiff herein." On November 27, 2007, however, Appellant/Plaintiff filed a new matter in the trial court that alleges the same claims that were raised in the trial matter underlying this appeal, but holds a corrected caption, listing the PSB Receiver as the Plaintiff (*Pac. Sav. Bank Ltd. v. Officers Mgmt. Corp.*, Civil Action No. 07-353). Thus, Appellant has basically already created the relief it seeks in this appeal; a case in the trial division where the PSB Receiver is listed as the Plaintiff.

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Appellant maintains that the filing of the second case in the trial division does not make this appeal moot. In support of this assertion, Appellant notes the following:

Appellant and appellees still have not made any settlement, nor is there any judgment in the second case. Also, the plaintiff in the first case is not the same as in the second case in which the Receiver and PSB by the Receiver are named plaintiffs. This Court can grant effective relief. Hence, the issues are still very much “live.”

Appellant, however, does not contest that the issues and claims raised in the two matters are the same. Moreover, the Appellant itself maintains that once this Court vacates the trial court’s order, the Appellant will then “move to dismiss either the first or second case.” Thus, the Appellant’s assertion that the two cases are different is disingenuous. Appellant would not likely dismiss one of the matters if they each raised separate legal issues or involved different claimants.

In addition, Appellant argues that if this Court finds this matter to be moot and dismisses this appeal, leaving the trial court’s order to dismiss intact, the Appellees/Defendants may then assert the doctrine of res judicata against Appellant/Plaintiff in the second lawsuit. **L120** Appellant argues that “[i]f in the second case, Appellees were to appeal and argue (successfully in that appeal) that the first case-in which the trial court dismissed with prejudice the claims of PSB – was res judicata as to the claims of PSB, then that could vitiate the claims of PSB (acting through its receiver) in the second case.” Appellant’s argument, however, is misplaced.

Appellant seems to be confused as to when the doctrine of res judicata is applicable.

Under the Restatement (Second) of Judgments, applicable in Palau pursuant to 1 PNC §§ 303, “[w]hen an issue of fact or law is *actually litigated and determined by a valid and final judgment*, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.”

Rechucher v. Lomisang, 13 ROP 143, 147 (2006) (quoting Restatement (Second) of Judgments § 27 (1982)) (emphasis added). Appellant may be concerned about the rule stating that, “[p]ursuant to Rule 41(b) [of the Rules of Civil Procedure], unless the trial court otherwise specifies, an involuntary dismissal ordinarily operates as an adjudication on the merits and bars prosecution of a subsequent action.” *Taro v. Sungino*, 11 ROP 112, 114 (2004). Rule 41(b)(3), however, carves out an exception to this rule for cases that are involuntarily dismissed due to lack of jurisdiction.

Unless the court in its order of dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, *other than a dismissal for lack of jurisdiction*, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

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ROP R. Civ. P. 41(b)(3) (emphasis added).

The issues and arguments that Appellant raises before this Court serve no purpose other than to seek an advisory opinion. The relief sought by Appellant has already been achieved by Appellant filing a new case in the Trial Division, which names the PSB Receiver as the Plaintiff. The parties lack a legally cognizable interest in the outcome of this appeal, and the Court cannot give any meaningful relief. Therefore, the issues before this Court are moot, and “[t]his Court does not address moot issues.” *Micronesia Yachts Co. v. Palau Foreign Inv. Bd.*, 7 ROP Intrm. 128, 131 (1998).

CONCLUSION

In light of the foregoing, this appeal is hereby dismissed.