

Pac. Sav. Bank v. Llecholch, 15 ROP 124 (2008)
PACIFIC SAVINGS BANK, LTD.,
Appellant,

v.

MARGO LLECHOLCH and FRANCIS LLECHOLCH, Appellees.

CIVIL APPEAL NO. 07-060
Civil Action No. 07-333

Supreme Court, Appellate Division
Republic of Palau

Decided: August 5, 2008¹

Counsel for Appellant: David F. Shadel

Counsel for Appellees: Mark Doran

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem. L125

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, 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 incorrect on the facts and the law, is 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 October 31, 2007, Appellant filed a complaint in the trial division to enforce payment

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

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from Appellees on a debt. On November 26, 2007, before Appellees/Defendants filed their answer, the trial court issued an order 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. 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 appeal, Appellant argues that the trial court erred in issuing its *sua sponte* order of dismissal because it "is incorrect on the facts and the law, is an abuse of its discretion, and is a clear violation of Civil Rules 7 and 17(a) . . . and **1126** due process of law (Constitution IV §6)." 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 anew 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. Llecholch*, Civil Action No. 07-351). 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.

"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)).

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

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Appellant filing anew 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.” *Micronesian Yachts Co. v. Palau Foreign Inv. Bd.*, 7 ROP Intrm. 128, 131 (1998).

CONCLUSION

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