

*Pac. Sav. Bank, Ltd. v. Tarkong* 16 ROP 69 (2008)  
**PACIFIC SAVINGS BANK, LTD., Appellant,**

**v.**

**JEFFREY TARKONG,**  
**Appellee.**

CIVIL APPEAL NO. 08-007  
Civil Action No. 04-392

Supreme Court, Appellate Division  
Republic of Palau

Decided: November 19, 2008<sup>1</sup>

Counsel for Appellant: David F. Shadel  
Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

Appellant Pacific Savings Bank, Ltd. (“PSB”) appeals from the trial court’s order of dismissal issued on January 9, 2008. The trial court dismissed the matter after finding that under p.70 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, equates to an abuse of discretion, violates Civil Rules 7, 17(a) and due process. We affirm the trial court’s decision. The trial court did not err in dismissing the case *sua sponte* without offering Appellant an opportunity to be heard because the court lacked jurisdiction to hear the matter.

### **BACKGROUND**

On December 9, 2004, Appellant filed a complaint in the trial division to enforce payment from Appellee on a debt. A default judgment was entered against Appellee in June, 2005 and an order in aid of judgment in January, 2006.

Prior to this time, in November 2006, PSB closed its doors and a series of civil and

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

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criminal proceedings were instituted regarding alleged mismanagement and other issues. On November 7, 2006, Mr. Kaleb Udui, Jr. was appointed Receiver of the defunct bank. PSB did not file a motion to substitute, as it did in other matters, requesting that the Court substitute “Pacific Savings Bank, by and through its Receiver, Kaleb Udui” as the plaintiff in the matter.<sup>2</sup> Thus, on January 9, 2008, 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(l). 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.

(January 9, 2008 Order 1-2.) Appellant filed a timely appeal.

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### 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

Because the issues raised in this appeal are identical to those raised in *PSB v. Ichikawa*, Civ. App. No. 08-016, we incorporate by reference the discussion in *Ichikawa* and adopt fully the conclusions of the Court in that matter.

### CONCLUSION

In light of the foregoing, we **AFFIRM** the trial court’s decision.

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<sup>2</sup>As noted in Appellant’s filings in this appeal, PSB filed motions to substitute in *PSB v. Ueki*, Civil Action No. 07-171, and *PSB v. Aguon*, Civil Action No. 07-249. The motions in both of these cases were filed before the Court issued orders of dismissal based on lack of subject matter jurisdiction. Consequently, the Court ultimately set aside its orders of dismissal in those cases and granted PSB’s motions to substitute.