

FIRST COMMERCIAL BANK
Petitioner,

v.

NANCY WONG; and BERLINDA
NGIARAUNGIL,
Respondents.

SPECIAL PROCEEDING NO. 12-002
Civil Action No. 07-348

Supreme Court, Appellate Division
Republic of Palau

Decided: September 18, 2012

[1] Appeal and Error: Writs and Petitions

Although Rule 21 petitions are not appeals, we emphasize that the other Rules of Appellate Procedure, to the extent practicable and appropriate, should be followed with respect to any matter filed with the Appellate Division. For example, the Appellate Division will not grant a stay of Trial Division proceedings absent compliance with Rule 8; we will not hesitate to levy sanctions for frivolous petitions based on Rule 38; and we will enforce any applicable form and content requirements found in Rule 28. Labeling one's filing a "petition" instead of an "appeal" does not absolve a litigant of compliance with these Rules.

[2] Appeal and Error: Writs and Petitions

A writ of prohibition will be issued only in extraordinary circumstances. A petitioner must clearly establish that a lower court is about to exercise judicial power in an unauthorized manner and that the exercise of

such power result in an injury for which there is no other adequate remedy. We will not issue such writs simply to review and correct errors and irregularities of a lower court.

[3] Property: Attachment

A writ of attachment does not become a lien until it is served on legal authorities.

[4] Appeal and Error: Writs and Petitions

Unless a lower court has clearly overstepped its jurisdictional bounds, a writ of prohibition is improper.

Counsel for Petitioner: David Shadel
Counsel for Respondents: Mariano
Carlos and Jason Shaw

BEFORE: KATHLEEN M. SALII,
Associate Justice; LOURDES F.
MATERNE, Associate Justice; and
HONORA E. REMENGESAU RUDIMCH,
Associate Justice Pro Tem.

Special Proceeding arising from the Trial
Division, the Honorable ARTHUR
NGIRAKLSONG, Chief Justice, presiding.

PER CURIAM:

Before the Court is First Commercial Bank's ("Bank" or "Petitioner") Amended Emergency Motion to Stay the proceedings before the Trial Division and its Petition for a Writ of Prohibition.¹ For the following reasons, we will not enter a writ of

¹ Although Petitioner styles its filing as a Petition for a Writ of Prohibition or Mandamus, it is clear that the Bank is requesting a writ of prohibition and not mandamus.

prohibition or stay the proceedings before the Trial Division.

BACKGROUND

The pertinent facts are these: Nancy Wong sued First Commercial Bank in 2007. During the pendency of the law suit, the Bank closed its doors and began to wind down its business in Palau. Accordingly, on March 13, 2012, the Trial Division entered an order issuing a writ of attachment, attaching \$420,219.78, which corresponds to the potential amount of a judgment against the Bank. Unfortunately, the Bureau of Public Safety was not served with the Writ, so the funds were not attached at that time. In an affidavit, Wong attested that she was told by a representative of the bank that there are no more funds available. She filed an emergency motion hoping to effect the writ. On August 30, the Trial Division granted Wong's motion and ordered the Bank to deposit the amount with the Director of Public Safety, or explain by affidavit why it is unable to deposit the funds and to post a bond for the amount.

On September 7, 2012, Petitioner Bank filed a Petition for Writ of Prohibition or Mandamus with this Court. In its often unfocused supporting Memorandum, Petitioner appears to object to the Trial Division's August order for two reasons. First, the Bank protests that funds may not be attached if they are no longer within Palau. This point seems to concede that the hearsay attested to in Wong's affidavit is correct, and the funds have left the country. Second, the Bank protests that, because a writ of attachment may not be had, the Trial Division may not require the alternative posting of a bond.

ANALYSIS

[1] We begin with a note regarding the unusual procedural posture of this case. This is not an appeal from a final judgment, nor does the Bank argue that it is an interlocutory or collateral order subject to our appellate jurisdiction. Instead, it is filed as a Special Proceeding pursuant to ROP R. App. P. 21. Rule 21 allows litigants to file petitions for writs of mandamus and prohibition with this Court. It also provides an outline of briefing and filing procedures to be followed when such petitions are filed. ROP R. App. P. 21(b), (d). Although such petitions are not appeals, we emphasize that the other Rules of Appellate Procedure, to the extent practicable and appropriate, should be followed with respect to any matter filed with the Appellate Division. For example, the Appellate Division will not grant a stay of Trial Division proceedings absent compliance with Rule 8; we will not hesitate to levy sanctions for frivolous petitions based on Rule 38; and we will enforce any applicable form and content requirements found in Rule 28. Labeling one's filing a "petition" instead of an "appeal" does not absolve a litigant of compliance with these Rules. This is simple common sense and is consistent with the letter and spirit of the Rules of Appellate Procedure.

[2] A writ of prohibition will be issued only in extraordinary circumstances. "[A] petitioner must clearly establish that a lower court is about to exercise judicial power in an unauthorized manner and that the exercise of such power result in an injury for which there is no other adequate remedy." *Kruger v. Mokoll*, 5 ROP Intrm. 121, 121-22 (1995) (emphasis in original). If an appeal

will serve to return to remedy any potential injury to the Petitioner, we will not issue a writ of prohibition. *Id.* We will not issue such writs simply “to review and correct errors and irregularities of a lower court.” *Ngetpak Clan v. Keptot*, 9 ROP 99, 99 (2002). Although Petitioner cites non-Palau cases involving the issuance of such writs in cases involving a clear lack of jurisdiction of the lower court, *see, e.g., Whitney v. Fresno Cnty. Sup. Ct.*, 250 P. 666 (Cal. 1926), we have made clear that a Petitioner must show an irreparable injury in order to attain such a writ. *See id.*; *Kruger*, 5 ROP Intrm. at 121-22.

[3] With respect to the merits of the Petition, we first address the legality of the writ of attachment. Petitioner protests that the Trial Division’s August Order “suggests that [the Bank] violated some obligation owing under the March Order.” We are at a loss as to how this suggestion created an irreparable injury that justifies the issuance of a writ of prohibition. While Petitioner is correct that a writ of attachment does not become a lien until it is served on legal authorities, the August order issuing a writ remedied the mistake made in March. The writ was served. If the funds are still in Palau, then there is a valid writ of attachment. *See* 6 Am. Jur. *Attachment & Garnishment* §§ 284 (attachment not effective until it is levied), 289 (no authority to execute a writ outside the jurisdiction). Although Petitioner suggests that the money is no longer in Palau, this is not a fact that has been supported by admissible evidence submitted to the Trial Division—this deficiency was noted by Petitioner itself before the Trial Division in its objection to Wong’s August motion. Because it is

entirely unclear whether any or all of the funds to be attached are still in Palau, it would be woefully premature for this Court to prohibit the Trial Division from seeking out the funds.

[4] Next, we turn to the remainder of the court’s order, specifically its requirement that, if the funds are not available to be attached, the Bank instead post a bond in lieu of attachment. Petitioner argues that there is no legal basis for the court to issue such a requirement and that the Trial Division should be prohibited from issuing such an order. This argument fails for two reasons. First, Petitioner has made no showing that furnishing such a bond would cause the type of irreparable injury entitling it to a writ of prohibition. *See Kruger*, 5 ROP Intrm. at 121-22. Petitioner, in its lengthy Memorandum in support of its Petition, fails to articulate *any* injury it would suffer by furnishing a bond pending the completion of the litigation. Second, it is far from “clearly established” that there is no legal basis for the Trial Division’s bond requirement. *Id.* Petitioner fails to cite any Palauan authority for its conclusion that the requirement for a bond in lieu of attachment is improper. The remedy crafted by the Trial Division appears designed to further the statutory purpose of 14 PNC § 2101 to ensure that there will be “sufficient [funds] to satisfy the demand set forth” in a future judgment against the Bank, if any. Unless a lower court has clearly overstepped its jurisdictional bounds, a writ of prohibition is improper. *See Kruger*, 5 ROP Intrm. at 121-22; *Ngetpak Clan*, 9 ROP at 99.

CONCLUSION

For the foregoing reasons, the
Petition is **DENIED**. The request for a stay
is **DISMISSED** as moot.