

BMC Corp. v. Ngiraklsong, 3 ROP Intrm. 336 (1993)
BMC CORPORATION, a Palauan Corporation
Petitioner,

v.

THE HONORABLE ARTHUR NGIRAKLSONG, CHIEF JUSTICE
OF THE PALAU SUPREME COURT
Respondent.

SPECIAL PROCEEDING NO. 3-93

Supreme Court, Appellate Division
Republic of Palau

Order denying petition for writ of mandamus
Decided: October 21, 1993

Counsel for Petitioner: Martin Wolff

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
JANET H. WEEKS, Part-Time Associate Justice.

PER CURIAM:

Petitioner BMC Corporation (“BMC”) filed a petition on August 23, 1993, seeking a writ of mandamus to compel Chief Justice Ngiraklsong to hold immediate hearings on three pending motions, filed in the trial division on April 6, April 19, and August 12, 1993. The petitioner claims that the judge has abused his discretion by not ruling on the motions. This Court finds that there has been no abuse of discretion and denies the petition.

FACTS

BMC is the successor in interest to Seibu Development Corporation and various other concerns, all of which have been **L337** involved in a series of eight consolidated cases, three of which were commenced in 1985. The litigation involves the airport in Airai State. In 1990, the trial court placed the airport in the custody of the Republic of Palau (“ROP”), pending the appointment of a trustee. No trustee has been appointed to date.

On April 6, 1993, Seibu filed a Motion for Order to Show Cause Re Contempt against ROP. On April 19, 1993, Seibu filed a Motion for Order to Show Cause against ROP to show why the ROP lien should not be expunged, why the ROP management should not be terminated, why ROP has not completed repairs, and why the ROP lien has not been satisfied. The April 6 and 19 motions, along with over a dozen discovery motions, were set for hearing on August 9, 1993.

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At the August 9 hearing, BMC indicated that all parties agreed to stipulate that all pending motions and matters be put in abeyance for 30 days, provided that ROP agree to put together a settlement negotiation team. The court ruled on all of the discovery motions but continued what it termed the “substantive motions” until the upcoming status conference, which was set for September 8, 1993. The court expressed its reluctance to rule on these motions in the absence of a trustee. The court entered a written Order Continuing Seibu’s Motions on August 10, 1993. The order provided, in relevant part: “The Court, [sic] continued the Motion and argument of Counsel.”

The Petition for Writ of Mandamus is directed at the two motions continued at the August 9 hearing, plus an August 12, 1993, **L338** Motion to Hold ROP in Contempt for Failure to Provide an Accounting.

At the status conference on September 8, subsequent to the filing of the writ of mandamus, the case was continued until October 13, 1993.

DISCUSSION

A writ of mandamus is an extraordinary writ and is reserved for extraordinary situations. The party seeking mandamus has the burden of showing that the right to have the writ issued is clear and undisputable. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 108 S.Ct. 1133, 1143 (1988). For mandamus to lie against a trial court, the petitioner must demonstrate a clear abuse of discretion. *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 109 S.Ct. 1814, 1822 (1989). A busy trial judge, confronted with competing demands on his time and with inevitable scheduling difficulties, is entrusted with wide latitude in setting his own calendar. *Will v. Calvert Fire Ins. Co.*, 98 S.Ct. 2552 (1978).

BMC has not met its burden of showing a clear and undisputable abuse of discretion by the judge in this case. In the ordinary course, this Court will not intervene in a trial judge’s management of a particular case or of his caseload as a whole, absent a statement or clear showing that he intends to abdicate his judicial responsibilities. No such showing has been made here. Moreover, in this case, this Court takes judicial notice of the following additional facts: Since April of 1992, the Supreme Court has lost **L339** three judges, requiring Judge Ngiraklsong to handle some of the caseload that normally would be handled by other judges; one of these vacancies continues to this date; and the respondent judge, who is also the Chief Justice of the Supreme Court, bears the additional responsibilities of administering the Palau Judiciary. Under these circumstances, Petitioner has not met the burden of proving an abuse of discretion.

The Court is compelled to admonish counsel for not disclosing all facts material to this Court’s determination. The Petition herein states that the trial court “entered an order continuing the hearing indefinitely.” Petition for Writ of Mandamus at 3. While it is true that the court’s written order sets no date for the continuance, the tape recording of the August 9 hearing clearly shows that the motions were being continued until the upcoming status conference one month later. The same recording reveals that the court did not want to rule on what it categorized as the “substantive motions” until a trustee had been appointed. BMC should have disclosed these

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facts in its Petition.

CONCLUSION

Given the wide discretion given to trial court judges to set their calendars, the lengthy and complex nature of the litigation at issue, the heavy workload of the judge in this case, and his stated reason for continuing the motions, we hold that there has been no abuse of discretion in this case.

¶340 Petitioner's request for a writ of mandamus directing the trial court to rule on its motions is denied.