

*Carlos v. Whipps*, 5 ROP Intrm. 194 (1996)  
**MARIANO W. CARLOS,**  
**Appellant,**

v.

**SURANGEL WHIPPS,**  
**Appellee.**

CIVIL APPEAL NO. 10-95  
Civil Action No. 583-93

Supreme Court, Appellate Division  
Republic of Palau

Order

Decided: March 7, 1996

Counsel for Appellant: *Pro se*

Counsel for Appellee: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

PER CURIAM:

The Trial Division entered judgment for the appellee, Surangel Whipps. After appellant Mariano Carlos filed his notice of appeal, he filed in the Trial Division a motion for relief under ROP R. Civ. P. 60(b). The Trial Division refused to rule on the motion because it believed that it lacked jurisdiction to do so. Carlos has now moved this Court for relief under Rule 60(b) or for a remand to the trial court for a ruling on the merits of the motion.

This Court has never addressed the situation where a party wishes to seek relief from a judgment under Rule 60(b) while an appeal from the same judgment is pending. We now set forth the following guidelines.

First, we agree with the Trial Division that, while an appeal is pending and absent leave from this Court, it has no jurisdiction to consider or grant such relief. In such circumstances, therefore, a party should address a Rule 60(b) motion, in the first instance, to the Appellate Division.

On the other hand, we believe that the merits of such a motion should be addressed by the Trial Division rather than by this Court. Accordingly, such a motion should generally be brought before this Court by way of a request to remand the case to the **L195** Trial Division and to suspend the appeal while the Trial Division considers the motion on its merits.

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Finally, while a motion to remand may be opposed, the focus of any opposition should be on why such a remand would be inefficient or inequitable in the circumstances.

In the case before us now, although appellee has opposed the motion, he has not offered any reason to conclude that a remand will deserve the interests of justice. Appellee was defendant below and, so far as the record shows, will not be injured in any way by the delay occasioned by the Trial Division's consideration of the motion. On the other hand, a remand may lead to the more efficient use of this Court's resources. If the motion is granted, then the instant appeal will likely be moot. Even if the motion is denied, appellant will be able to present all of his arguments to this Court in a single appeal, rather than successive appeals from the initial judgment and then from the denial of the 60(b) motion.

Accordingly, we now grant the motion to remand and issue the following ORDERS:

1. The Trial Division shall set an appropriate briefing schedule and rule on the motion at its earliest convenience. <sup>1</sup> The Trial Division's decision shall be made a part of the Appellate Division file.

2. If the motion is denied, appellant may, within thirty days from the date of the Trial Division's decision, file with this Court a supplemental brief addressing any arguments pertinent to an appeal from that denial. Appellee may then file a supplemental response within thirty days thereafter.<sup>2</sup>

**1196** 3. If the motion is granted, then, absent prompt notification from appellant that he believes the instant appeal is not moot, the Court will dismiss this appeal. If appellee wishes to appeal from the new judgment entered by the Trial Division, he may commence a new appeal in the ordinary course.

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<sup>1</sup> To the extent relevant, the Trial Division shall treat the motion as if it had been filed within one year of the initial judgment.

<sup>2</sup> If additional testimony is taken in consideration of the motion, and appellant deems it necessary that such testimony be transcribed, he should file a request for transcript as promptly as possible within the 30 days following the Trial Division's decision. The deadlines for filing supplemental briefs will then run from the time the transcript is completed and served on the parties.