Tmetbab Clan v. Gibbons, 5 ROP Intrm. 295 (Tr. Div. 1995)

TMETBAB CLAN by ADELBAI REKESEWAOL ELEDUI OMELIAKL,
Plaintiff,

v.

IBEDUL YUTAKA M. GIBBONS, et al.,
Defendants,

and related counter-claim, and third party complaints.

CIVIL ACTION NO. 206-90

Supreme Court, Trial Division
Republic of Palau

Decision and order
Decided: January 27, 1995

LARRY W. MILLER: Justice

Before the Court is Tmetbab Clan's motion to vacate a ruling of Justice O'Brien, the previous trial judge in this case. For the reasons set forth herein, the motion is granted.

In December 1989, the Land Claims Hearing Office issued a determination awarding the land *Tuker* to Tmetbab Clan. No appeal was filed from that determination. In May 1990, Jones Ngoriakl, purportedly representing Tmetbab Clan, [1] filed this action seeking, among other things, to eject Ibedul Yutaka Gibbons from the land. Gibbons subsequently filed a third-party complaint against Jones Ngoriakl, individually, and several others. On January 29, 1991, while the complaint and third-party complaint were still pending, Justice O'Brien issued an order vacating the LCHO's determination regarding *Tuker*. The basis for that order was Justice O'Brien's legal conclusion, reached in the course of other litigation, that the LCHO lacked jurisdiction over state public lands authorities and the fact that Koror State Public Lands Authority had been a ⊥296 claimant before the LCHO for *Tuker*. In February 1991, two notices of appeal were filed from Justice O'Brien's Order by several third-party defendants. No notice of appeal was filed by Tmetbab Clan. [2] When no appellants' briefs were filed, Gibbons moved for dismissal of the appeals. That motion was granted by the Appellate Division on July 25, 1991, which imposed monetary sanctions on appellants' counsel, John Tarkong and John Rechucher, and further stated:

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[1] One of the grounds presented in the Clan's current motion is an assertion that Ngoriakl did not have authority to commence this action. Because, as set forth below, the Court grants the motion on another ground, it is not necessary to address this assertion further at this time.

[2] Confusingly, John Tarkong, who filed one of the notices of appeal on behalf of third-party defendants, subsequently filed and then withdrew a motion to stay the appeal by Tmetbab Clan in which he incorrectly identified the Clan as an appellant. *See* Memorandum Supporting Dismissal, June 17, 1991, at 1-2 (noting that Tmetbab Clan was not an appellant).

> "Mr. Tarkong and Mr. Rechucher are ordered by this Court to notify their clients in writing that they may have a cause of action against Mr. Tarkong and Mr. Rechucher, respectively, based on counsels' failure to pursue this appeal in a timely manner in the event the appellate panel rules in favor of appellants in Civil Appeal No. 9-91." *Tmetbab Clan v. Gibbons* , Civil Appeal No. 11-91 (July 25, 1991).

Civil Appeal No. 9-91 was eventually decided in favor of the appellants there, the Appellate Division concluding, contrary to Justice O'Brien's ruling in those cases and here, that the LCHO did have jurisdiction over state lands authorities. *Koror State Public Lands Authority v. Diberdii Lineage*, 3 ROP Intrm. 314 (1993).

Against this factual and procedural background, Tmetbab Clan offers a series of arguments as to why Justice O'Brien's January 1991 Order should be vacated. Because the Court believes that one of these arguments, founded on ROP Civ. Pro. R. 54(b), provides the correct analysis and is sufficient to grant the Clan's motion, the Court declines to address the others.

Rule 54(b) provides as follows:

> (b) *Judgment Upon Multiple claims or Involving Multiple Parties* . When more than one claim for relief is presented in an action, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or ⊥297 other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Tmetbab Clan argues, and the Court agrees, that, according to this rule, the January 1991 Order "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties", which has not yet occurred here.

This conclusion is resisted by Gibbons and by KSPLA [3] on two principal grounds. [4] First,

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[3] Although KSPLA is not a party here, the Court permitted it to oppose the Clan's motion in light of the fact that it has been sued by the Clan in a related case. *See Tmetbab Clan v. KSPLA*, Civil Action No. 243-94. If KSPLA wishes to participate further in this action, or to be able to appeal this decision, it should file a formal motion to intervene.

[4] In response to arguments advanced by the Clan's former counsel, Gibbons also argued that he has been prejudiced by the Clan's delay in seeking relief. While such delay may be pertinent in determining the ultimate relief sought by the Clan in this action, the Court does not

they argue that the January 1991 Order was not merely interlocutory but a final order. Gibbons argues, for example, that

> "where there are various distinct causes of action, a decision disposing of one of these issues can constitute a final decision. Here, the Order was conclusive as to that particular issue as to *all* parties hereto." Further Response Regarding Plaintiff's Motion to Vacate, January 6, 1995, at 8 (emphasis in original).

KSPLA argues similarly that because the Clan's complaint "was completely predicated on the LCHO Determination", the vacation of that determination meant that "the Clan's claims had been finally adjudicated." KSPLA's Brief Re: Validity of January 29, 1991 Order, January 6, 1995, at 12-13.

⊥298 These arguments are defeated by the plain language of Rule 54(b). It matters not that one issue has been finally determined as to *all* parties or that *all* claims have been adjudicated as to one party. [5] Rule 54(b) allows revision of orders unless a judgment has been entered "adjudicating *all* the claims and the rights and liabilities of *all* the parties" (emphasis added). That was not the case here since, if nothing else, the third-party complaint was still pending. *See generally* 6 MOORE'S FEDERAL PRACTICE ¶ 54.36. Indeed, in the aftermath of the January 1991 Order, Gibbons resisted attempts to stay proceedings pending appeal and indicated his "desire[] to proceed with [several previously-filed] motions and with his third-party complaint" by arguing precisely that the Order was "not a final judgment". Gibbons's Memorandum Regarding Jurisdiction After Appeal, March 13, 1991, at 2; *see especially id.* at 6 ("The Court's Ruling and Order, from which certain parties have appealed, has nothing to do with the remaining merits or issues involved in this lawsuit, viz., a third party complaint seeking damages and declaratory relief."). [6]

Gibbons also argues that the Court is barred from vacating the January 1991 Order by the doctrine of "law of the case". As stated in *Tellei v. Daniel*, 2 ROP Intrm. 131, 135 (1990), "where there are no new facts, evidence, pleading or legal theory, the second trial judge should not overrule or reconsider a decision of the first trial judge." While the circumstances of this case do not fit precisely into the categories cited by the Appellate Division, the Court believes that "law of the case" should also not be a bar to reconsideration where there has been an intervening change in or clarification of the law. *E.g., In re Multi-Piece Rim Products Liability Litigation*, 653 F.2d 671, 678 (D.C. Cir. 1981) (doctrine permits "reexamination in the light of changes in governing law ... or the manifest erroneousness of a prior ruling"). As the ⊥299 Appellate

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believe it is a ground for denial of the present motion.

[5] In the circumstances, Justice O'Brien could perhaps have made an "express direction for the entry of judgment" if he had made "an express determination that there [was] no just reason for delay". No such determination or direction was made, however.

[6] Reasoning backwards, KSPLA argues that since the Clan appealed the Order, and since interlocutory orders are not generally appealable, the Clan should not be permitted to argue now that the Order was interlocutory. The Court agrees that a party who files an appeal and then loses it should not be permitted a second bite at the apple by invoking Rule 54(b). The flaw in KSPLA's argument, however, is that, although the record is somewhat confusing, *see* n.2 *supra*, the Clan did *not* file an appeal.

Division explained, the purpose of the doctrine is to "prevent undue controversies between courts of co-ordinate jurisdiction" and to "promote an orderly administration of justice and to preserve the orderly functioning of the judicial system". *Tellei*, 2 ROP Intrm. at 135. As to the first, it is appropriate to be concerned where a trial court judge usurps the appellate court's role to review or reverse the decision of one of his colleagues. That is not a concern here where this Court would merely be following the dictates of an Appellate Division decision directly on point. As to the second, if the Court is right that the January 1991 Order was interlocutory, then Tmetbab Clan will, when final judgment is finally entered, have a right to appeal it and obtain its reversal.[7] It surely does not promote the orderly administration of justice to proceed in this case on the basis of an incorrect trial decision and to require all parties (and the Appellate Division) to go through an appeal whose result is a foregone conclusion. *See Champaign-Urbana News Agency v. J. L. Cummins News Co.*, 632 F.2d 680, 683 (7th Cir. 1980) ("The only sensible thing for a trial court to do is to set itself right as soon as possible when convinced that the law of the case is erroneous. There is no need to await reversal.").

In sum, therefore, the Court believes that it can, and in the circumstances should, grant Tmetbab Clan the relief it seeks.[8] Accordingly, the January 29, 1991 Order vacating the Determination of Ownership awarding *Tuker* to Tmetbab Clan is hereby vacated, and the Determination of Ownership reinstated. All parties to this case, and to Civil Action Nos. 238-94 and 243-94, are directed to appear for a status conference on March 3, 1995 at 9:00 a.m.

⊥300 SO ORDERED.

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[7] That the earlier appeals were dismissed for failure to prosecute does not, in the Court's view, amount to a ruling that the January 1991 Order was not interlocutory. The Appellate Division was not called upon to, and did not address, the issue whether those appeals could have been dismissed on the alternative ground that they were premature.

[8] As noted earlier, *see* n.6 *supra*, and especially given the language of the appellate dismissal, *see* p.2 *supra*, the result of this motion might well have been different had it been brought by one of the parties who filed and abandoned their appeal. At the same time, the Court is unaware of any way in which it can vacate a previous order without benefitting all interested parties. Unless and until the January 1991 Order becomes pertinent to an issue affecting one of the former appellants, the Court will not attempt to resolve this conundrum.