Klongt v. Paradise Air Corp., 7 ROP Intrm. 159 (1999)

CLARET KLONGT,
Plaintiff,

v.

PARADISE AIR CORPORATION, et al.,
Defendants.

CIVIL APPEAL NO. 99-01
Civil Action No. 98-3 77

Supreme Court, Appellate Division
Republic of Palau

Decided: February 18, 1999

Counsel for Plaintiff: Richard Brungard, Esq.
Counsel for Defendant: No appearance

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice, R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

After we issued a writ of mandamus to the trial division, the respondent justice filed a Petition for Rehearing, which is now before us. The matter arose when the respondent justice denied plaintiff's motion for pre-judgment attachment on the grounds that, under his reading of 14 PNC § 2101, unless a case is a "collection" case, a judgment against defendant must exist before the court was able to consider a motion for attachment. Plaintiff sought mandamus in the appellate division, and we held that the statute did not require the existence of a judgment in order to consider a motion for attachment. Accordingly, we issued mandamus to the trial division, directing it to consider the plaintiff's motion.

We will grant a petition for rehearing only where the Court's original decision obviously and demonstrably contains an error of fact or law that renders the result questionable. *Espangel v. Tirso* , 3 ROP Intrm. 282, 283 (1993). The respondent justice ("petitioner") asserts several errors.

First, the petitioner asserts that mandamus was not warranted in this case because it was not shown that plaintiff had no available remedy other than mandamus for petitioner's refusal to consider the motion for attachment. We believe the record showed that no other remedy was available. This is not a case where the court was simply postponing consideration of a motion due to workload or scheduling efficiencies, as in *BMC v. Ngiraklsong*, 3 ROP Intrm. 336 (1993) ("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.") Rather, the trial judge here refused to consider the motion on its merits due to a mistaken belief that he was not empowered to consider the motion. Under these circumstances, it is clear that the plaintiff's motion would never have been considered by the trial judge absent a writ of mandamus. Thus, the propriety of mandamus was clear. 52 Am. Jur. 2d *Mandamus*, § 309.

The petitioner also asserts that it was error to grant mandamus because we, in reality, treated the matter as an interlocutory appeal by deciding the merits of the motion for attachment. The petitioner misapprehends our decision. We did not even address, let alone decide, the merits of the motion for attachment. We merely directed the trial division to do so. "The writ of mandate shall ⊥160 issue and the matter is remanded to the Trial Division with instructions to consider the motion as provided by 14 PNC § 2101." *Klongt v. Paradise Air Corporation* , slip Op. at 3 (January 22, 1999).

The petitioner also argues that it was error to grant mandamus because plaintiff did not demonstrate that her right to a writ of attachment was clear and undisputable. [1] Petitioner's concern is that the effect of our decision is that henceforth any plaintiff will be able to obtain a pre-judgment writ of attachment simply by demonstrating that the defendant is about to leave Palau.

For the reasons stated in our original opinion, the record demonstrated plaintiff's clear and undisputable right to have her motion considered. There was no need for plaintiff to show that she had a right to attachment--that is, that she would prevail on the merits of her motion for attachment--in order to demonstrate that she had a right to have her motion considered by the trial division. Because there was no need for plaintiff to demonstrate the likelihood that her motion for attachment would be granted, we did not address the question whether the record demonstrated the "special cause" which 14 PNC § 2101 requires for the issuance of a writ of attachment, nor did we suggest that the mere imminent departure of the defendant would be sufficient to establish "special cause". We merely held that the trial division was mistaken in its belief that 14 PNC § 2101 precluded it from considering the motion on its merits.

Finally, petitioner argues that attachment is permissible only in certain classes of cases and that this case is not within the class in which attachment is permitted. Although many jurisdictions have attachment statutes which limit the remedy to certain classes of cases, *see* 6 Am. Jur. 2d *Attachment and Garnishment* , § 40 (1963), the Palau statute contains no language which suggests that the remedy is limited to only a certain class of cases. Petitioner points out that most attachment proceedings relate to collection cases, fraud, or cases where the amount of the claim is ascertainable with certainty. While "special cause" may be easier to demonstrate in those types of cases, there is no basis in the plain language of 14 PNC § 2101 for concluding that the legislature has limited writs of attachment to certain types of cases, thus making attachment unavailable in other cases even if "special cause" can be demonstrated. If that were the intent of the legislature, it could have mentioned the classes of cases for which attachment is available, as is done in jurisdictions where attachment is limited to certain classes of cases. *See Id.* at p. 591-

[1] It is settled that a writ of mandamus will be granted only where the right to a writ is clear and undisputable. *BMC v. Ngiraklsong*, 3 ROP Intrm. at 338 (1993).

92 ("In what actions the remedies are available is a question for the legislature . . . . The present-day tendency is to broaden the scope of actions in which attachment . . . is available so as to permit such a remedy in all actions, although this is not the case in all jurisdictions.")

Accordingly, for the foregoing reasons, the Petition for Rehearing is DENIED.