

Bemar v. Dalton, 7 ROP Intrm. 161 (1999)
RITA BEMAR, et al.,
Appellants,

v.

MARGARITA DALTON et al.,
Appellees.

CIVIL APPEAL NO. 1-97
Civil Action No. 354-93

Supreme Court, Appellate Division
Republic of Palau

Argued: December 7, 1998
Decided: February 26, 1999

Counsel for Appellants: David J. Kirschenheiter, Micronesian Legal Services Corp.

Counsel for Appellee Margarita Dalton: Mark Doran

Counsel for Appellees Heirs of Drairoro: Mariano W. Carlos

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice.

MILLER, Justice:

This is an appeal from the Trial Division's denial of Appellants' motion to intervene in Civil Action No. 354-93, *Dalton v. Heirs of Drairoro et al.* Appellants, who claim a use right to the property at issue in the *Dalton* case, moved to intervene approximately one week into trial, claiming that they had gotten no notice of the action, had just learned of the suit, and discovered that the outcome might affect their rights. The Trial Division denied the motion, finding the motion untimely and observing that service by publication in the *Dalton* case had been sufficient.

ROP R. Civ. Pro. 24 permits a person with an interest in a pending case to intervene in that case "upon timely application." The question of the timeliness of a motion to intervene is vested in the sound discretion of the trial court, and is to be overturned only if it constitutes an "abuse of discretion." *N.A.A.C.P. v. New York*, 412 U.S. 345, 366 (1968); *Arkansas Electrical Consumers v. Middle South Energy, Inc.*, 772 F.2d 401 (8th Cir. 1985) (trial court's decision denying intervention is not to be lightly overturned). In exercising its discretion, the trial court should weigh a number of factors, including: (i) the period during which the movant knew or should have known of his interest in the case prior to making his motion; (ii) the degree of prejudice to existing parties from granting the intervention; (iii) the degree of prejudice to the movant if intervention is denied; (iv) the presence of unusual circumstances affecting a

Bemar v. Dalton, 7 ROP Intrm. 161 (1999)

determination of timeliness; (v) the reason for and length of the delay in moving to intervene; (vi) the stage of the proceedings; (vii) the purpose for which intervention is sought; and (viii) the necessity of intervention as a means of protecting the movant's rights.

We cannot say that the Trial Division abused its discretion in finding that the weight of these factors favored denying intervention. The advanced stage of the proceedings -- discovery had long been completed and trial had already begun -- and the fact that other parties in the case were asserting the same use **1162** right claimed by the Appellants here ¹ weigh strongly against intervention. Thus, the Trial Division's decision denying intervention is affirmed.

¹ By separate opinion issued today, we have affirmed the Trial Division's decision in the *Dalton* case that the 1962 Land Settlement Agreement and Indenture creates a use right in the lands of Echang on behalf of the persons residing there in 1962 and their descendants. That opinion leaves for another day the question of who is entitled to exercise that right.