

Rengiil v. ROP, 7 ROP Intrm. 181 (1999)
**FRAULEIN M. RENGIL, FRANCES RENGIL,
FUMIO N.S. RENGIL, HARRY RENGIL, and
MARCKY RENGIL,
Appellants,**

v.

**REPUBLIC OF PALAU, BLACK MICRO CORP., BLACK CONSTRUCTION
CORPORATION, E.E. BLACK LIMITED (INC.), VSL PRESTRESSING (Guam),
INC., VSL PRESTRESSING (Aust) PTY LTD., VSL INTERNATIONAL AG,
BOUYGUES SA, BERGER/ADAM ENGINEERS, INC., LOUIS BERGER
INTERNATIONAL, INC., LOUIS BERGER GROUP, INC., DAMES &
MOORE, INC., and AMERICAN HOME ASSURANCE COMPANY,
Appellees.**

CIVIL APPEAL NO. 98-3 5
Civil Action No. 98-133

Supreme Court, Appellate Division
Republic of Palau

Argued: February 18, 1999
Decided: April 12, 1999

Counsel for Appellants: Carlos H. Salii

Counsel for Appellee Republic of Palau: Stephen O'Neil, Thelen Reid & Priest, LLP and Scott Campbell, Office of the Attorney General

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
ALEX R. MUNSON, Part-Time Associate Justice.

BEATTIE, Justice:

This appeal requires the Court to interpret Palau's wrongful death statute to determine whether it allows the filing of multiple civil actions for one death. We conclude that it does not.

I.

This appeal results from the death of James Kyoshi Rengiil in the collapse of the K B Bridge on September 26, 1996. On September 18, 1997, Ms. Robert, Mr. Rengiil's widow, filed a wrongful death action by way of a motion to intervene in the pending K-B Bridge Litigation. Ms. Robert brought the wrongful death action in her capacity as a closely related survivor of the decedent acting in a fiduciary capacity on behalf of the survivors of Mr. Rengiil. ¹ The Court

¹ The parties wrongly assert that Ms. Robert commenced the wrongful death action in her

granted the motion to intervene on October 22, 1997.

On April 22, 1998, Appellants filed a separate lawsuit also seeking damages due to the wrongful death of James Rengiil. Appellants are two of decedent's daughters, decedent's two younger brothers, and decedent's father. Appellants' complaint differed from Ms. Robert's complaint in that in addition to the defendants sued by Ms. Robert, **¶182** Appellants sued the Republic of Palau.² The Republic of Palau and several of the other defendants moved to dismiss the complaint. The Trial Division granted the motion to dismiss holding that once Ms. Robert initiated a wrongful death action, Appellants could not bring a second wrongful death action. Appellants assert that the Trial Division erred and that there is no reason to prohibit a second wrongful death action.

II.

It is generally recognized that no right of action for wrongful death exists at common law and that, therefore, a wrongful death action may be maintained only if authorized by statute. 22 Am.Jur.2d *Death* §1 (1988). Palau's Survival and Death Act of 1982³ (the "wrongful death statute") authorizes such actions subject to certain conditions including the following:

- (a) With respect to any death caused by actionable conduct, the decedent's personal representative, acting in a fiduciary capacity on behalf of the survivors of the decedent, may bring and maintain a death action against any person or the estate of any person legally responsible for the damages, including any insurer. The death action is subject to all defenses that might have been asserted against the decedent had he survived.
- (b) If no personal representative is appointed within six months after decedent's death, the death action may be brought and maintained by a closely related survivor action in a fiduciary capacity.
- (c) Any survivor having a potential conflict of interest with other survivors may be represented independently in the death action.

14 PNC § 3104(a)-(c) (1982).

In determining whether or not Appellants may bring a separate wrongful death action, the capacity as court-appointed personal representative. Although Ms. Robert was appointed as Rengiil's personal representative in the estate proceedings, Civil Action No. 40-97, Ms. Robert did not pursue the wrongful death action in this capacity.

² Appellants allege that their lawsuit also differs from Ms. Robert's because Ms. Robert's complaint "did not include the claims of the Appellants for financial support of the Appellants and the Rengiil Brothers claim." Ms. Robert's complaint, however, does include these claims. Ms. Robert's suit is brought on behalf of all of decedent's survivors and specifically prays for the present value of the financial support, services, and other financial contributions they would have received from the decedent had he not died.

³ 14 PNC § 3101 *et.seq.*

Rengiil v. ROP, 7 ROP Intrm. 181 (1999)

Court must analyze the language of the wrongful death statute. *ROP v. Palau Museum*, 6 ROP Intrm. 277, 278 (Tr. Div. 1995) (“The meaning of a statute must, in the first instance, be sought in the language in which the act is framed”). There is no language in the statute that authorizes the filing of multiple wrongful death actions. Rather, the language of this statute contemplates the filing of only one death action. Each of the subsections refers to “the death action.” The fact that the statute repeatedly refers to “the” death action manifests a legislative intent that there be only one action for wrongful death brought as to any one deceased. Additionally, United States 1183 courts interpreting similarly worded wrongful death statutes have prohibited the filing of multiple suits. *See, e.g.*, 22A Am. Jur. 2d *Death* §25 (1988) (“Wrongful death statutes have been regarded as giving a single, indivisible right to sue all the [responsible] parties, even if the particular statute, in effect, authorizes the action to be brought by one person on the failure of another to bring the action within a designated time”).

The Palau statute also provides that before any settlement becomes final in a wrongful death case, all of the survivors must be given notice of the proposed settlement and they and their legal representatives are given the opportunity to attend the hearing at which the settlement agreement is either confirmed or disapproved. 14 PNC § 3104(g). This provision also contemplates the filing of only one wrongful death action since this protection would be unnecessary if each of the survivors could bring a separate action.

Although Appellants were not entitled to file a second, separate wrongful death action, this does not mean they were left without a remedy. The wrongful death statute specifically provides that “[a]ny survivor having a potential conflict of interest with other survivors may be represented independently in the death action.” 14 PNC §3104(c).⁴ Appellants, in fact, were represented in the action - they were represented at the hearing confirming the settlement agreement. At that hearing, the trial judge specifically asked if there was any objection to the proposed settlement. That was Appellants’ opportunity to voice any objections they had to the manner in which Ms. Robert had prosecuted the action, as well as the amount of the settlement. Appellants not only remained silent at the hearing, but also accepted a portion of the settlement proceeds.⁵

Conclusion

For the foregoing reasons, the decision of the Trial Division is AFFIRMED.⁶

⁴ This Court need not decide whether 14 PNC § 3104(c) entitled Appellants to intervene in the pending action since Appellants did not appeal the denial of their motion to intervene. Appellants appeal only the dismissal of their separate wrongful death action.

⁵ On August 12, 1998, Renay Robert petitioned the Trial Division for approval of a settlement that the parties had reached in the first wrongful death lawsuit. Appellants did not file an objection to the petition nor did they object to the proposed settlement at the hearing. On October 6, 1998, the Trial Division held a hearing to approve the distribution of the settlement proceeds. Appellants, who were represented at this proceeding as well, accepted a portion of the settlement proceeds -- \$20,000 jointly and severally. The remainder of the settlement proceeds, \$228,403.27, was distributed to Renay Robert.

⁶ In view of our decision on the merits, there is no need to consider the Republic of

Rengiil v. ROP, 7 ROP Intrm. 181 (1999)

Palau's Motion to Dismiss.