ROP v. Black Micro Corp., 7 ROP Intrm. 46 (1998)

REPUBLIC OF PALAU,
Plaintiff/Appellee,

v.

BLACK MICRO CORPORATION, et al.,
Defendants/Appellants.

CIVIL APPEAL NO. 51-97
Civil Action No. 132-97

Supreme Court, Appellate Division
Republic of Palau

Submitted on the Briefs.[1]
Decided: April 6, 1998

Counsel for Appellants E.E. Black Limited, Inc. and Black Construction Corporation: Dawn Jordan, Esq.

Counsel for Appellants Bouygues SA,
VSL International AG and VSL Prestressing: Robert Ted Parker, Esq.

Counsel for Appellee Republic of Palau: Scott Benbow, Esq.

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

BEATTIE, Justice:

A number of the defendants in this action have appealed from interlocutory orders of the Trial Division denying their motions to dismiss, in which they asserted that the court lacked personal jurisdiction over them. Because this Court has adopted a final judgment rule with only limited exceptions, none of which apply here, we dismiss these appeals.

I. BACKGROUND

On September 26, 1996, the Koror Babeldaob Bridge collapsed. Seven months later, the Republic of Palau filed this action seeking to recover damages from a number of defendants, each of whom allegedly bear some legal responsibility, direct or as insurers, for the bridge's collapse. Defendants E.E. Black Limited, Inc., and Black Construction Corporation moved to dismiss plaintiff's complaint for lack of personal jurisdiction. Defendants Bouygues SA, VSL International AG and VSL Prestressing (Aust) filed a similar motion. The motions were filed

[1] Because oral argument would not materially assist the Court in resolving this appeal, we are considering this appeal on the briefs alone. *See* ROP R. App. Pro. 34(a).

under ROP R. Civ. P. 12(b) in lieu of answering the complaint.

In orders entered on August 25, 1997, the Trial Division denied the motions, finding that the Republic had made a prima facie showing that the Court had personal jurisdiction over the objecting defendants. Although the orders were not a final disposition of the case, defendants petitioned the Trial Division for leave to appeal the court's decision immediately. The Trial Division granted the petitions, defendants filed notices of appeal, and the parties submitted briefs in the Appellate Division on the personal jurisdiction question. On January 15,1998, this Court issued an order asking the parties to submit briefs addressing the propriety of the Appellate Division's consideration of an appeal from an interlocutory Trial Division order. The parties have filed those briefs and the issue is now ripe for consideration.

⊥47 II. DISCUSSION

Article X, § 6 of the Palau Constitution grants the Appellate Division of the Supreme Court "jurisdiction to review all decisions of the trial division and all decisions of lower courts." The Constitution does not state when in the judicial process such decisions should be reviewed. However, we have long adhered to the premise that the proper time to consider appeals is after final judgment.[2] *See In re Ngirausui* , 6 ROP Intrm. 216 (1997); *Rengulbai v. Rengiil* , 6 ROP Intrm. 197 (1997); *Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117 (1995); *Becheserrak v. ROP*, 3 ROP Intrm. 279 (1993); *In re Kaleb Udui*, 3 ROP Intrm. 130 (1992); *EQPB v. Ngatpang State*, 1 ROP Intrm. 647 (1989); *Nakatani v. Shigematsu*, 1 ROP Intrm. 663A (1988).

There is nothing unusual about our adoption of the "final judgment" rule; it was the rule at common law and is the historic rule of the United States federal courts. 4 Am. Jur. 2d *Appellate Review* § 85 (1995); 9 James W. Moore, *Moore's Federal Practice* ¶ 110.07 (2d ed. 1991). Piecemeal appeals disrupt the trial process, extend the time required to litigate a case, and burden appellate courts. It is far better to consolidate all alleged trial court errors in one appeal. *See Spiegel v. Trustees of Tufts College* , 843 F.2d 38, 42 (1st Cir. 1988) ("[T]here is a long-settled and prudential policy against the scattershot disposition of litigation.").

Some of the appellants have argued that "blind, unyielding adherence to the final judgment rule" does not serve the needs of modern jurisprudence. We agree, and for that reason have recognized certain exceptions to the rule. Some interlocutory orders will have an impact, not only on the course of the litigation in which they are entered, but also on "real world" events. If the impact on real world events is of a nature that it cannot be easily undone after judgment, we have held that the final judgment rule has sufficient flexibility to allow for an immediate appeal of such an order. Thus, we have held that an order granting or denying a request for a preliminary injunction is immediately appealable. *See Olikong v. Salii* , 1 ROP Intrm. 406, 411 (1987).

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[2] To the extent that we have sometimes stated this rule in terms of "jurisdiction" to entertain interlocutory appeals, *see Dilubech Clan v. Ngeremlengui State*, 6 ROP Intrm. 196 (1997); *Rengulbai v. Rengiil*, 6 ROP Intrm. 197 (1997), we take this opportunity to clarify our jurisprudence and to further explain the prudential basis for our final judgment rule.

We have also recognized the collateral order exception to the final judgment rule. This exception allows an immediate appeal of an interlocutory order entered during trial that determines important rights of the parties but that is not related to the relevant cause of action. *See Cohen v. Beneficial Industrial Loan Corp.* , 65 S.Ct. 631 (1945); *Wolff v. Sugiyama* , 5 ROP Intrm. 10, 11 (1994) (permitting party to appeal from order directing him to pay sanctions by date before final judgment entered). The exception does not apply in this case. The denial of a motion to dismiss for lack of jurisdiction is not an immediately appealable collateral order. *See Van Cauwenberghe v. Biard* , 108 S. Ct. 1945, 1952 (1988) (*citing Catlin v. United States* , 65 S.Ct. 631, 635 (1945)); *see also Guerra v. Meese* , 786 F.2d 414, 418 (D.C. Cir. 1986) (trial court ruling that court has jurisdiction to hear case is not normally appealable until after final judgment); *In re Durensky* , 519 F.2d 1024, 1028 (5th Cir. 1975) (denial of motion to dismiss is interlocutory order that is not ⊥48 ordinarily appealable under final judgment rule).

Some of the appellants argue that the Trial Division's orders here at issue are appealable under Rule 54(b) of the Palau Rules of Civil Procedure. Under that rule, certain orders are immediately appealable if properly certified for appeal. By its terms, however, Rule 54(b) applies only where there is "entry of final judgment as to one or more but fewer than all claims or parties." Clearly, no final judgment was entered as to any claim or party in the instant case.

Finally, the Rules of Appellate Procedure open another avenue to a party seeking relief from an interlocutory order of the Trial Division: the party may petition for an extraordinary writ. See ROP R. App. P. 21. Appellants did not pursue this form of relief. Some of the appellants have argued that, because no Palau statute specifically addresses the procedure for bringing an interlocutory appeal, Palau has decided to follow 28 U.S.C. §1292, a United States statute which permits United States federal appellate courts to consider interlocutory appeals in certain, specified circumstances. Under that statute, and particularly under 28 U.S.C. § 1292(b), [3] United State appellate courts sometimes consider appeals from interlocutory orders concerning personal jurisdiction. See 9 James W. Moore, *Moore's Federal Practice* ¶ 110.22[2] (2d ed. 1991). Notwithstanding the contention of appellants, United States statutes do not apply to appeals in Palau,[4] and we have not yet recognized any exception to the final judgment rule similar to

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[3] Section 1292(b) provides:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order . . . .

[4] Appellants Bouygues SA, VSL International AG and VSL Prestressing (Aust) cite *Nakatani v. Nishizono*, 1 ROP Intrm. 289 (Tr. Div. 1985), in support of their contention that § 1292 applies to appeals in Palau. In that case, the trial judge noted in dicta that "28 U.S.C. 1292(b) makes the filing of a petition for leave to file an interlocutory appeal mandatory." 1 ROP Intrm. at 290. The Appellate Division has never applied § 1292 to any appeal in this Court and has never suggested that § 1292 applies to appeals in Palau.

§1292(b).

There are policy arguments that militate in favor of allowing interlocutory appeals of orders denying a motion to dismiss, in that such appeals have the potential to save litigants the time and expense of lengthy litigation. On the other hand, there are strong arguments favoring a reluctance to depart from the final judgment rule where, as here, a party's rights may be effectively vindicated following final judgment. [5] Arguments in ⊥49 support of adherence to the final judgment rule are that it is an important factor in maintaining a smoothly functioning judicial system and avoids the expense and delays of a succession of separate appeals. As one commentator notes:

> Of course, there are excellent reasons for ruling that appeal cannot be taken from denial of motions to dismiss for want of personal jurisdiction. Such motions are common, and would be more common if they brought the opportunity for further delay by appeal. Trial courts are more likely to be right than wrong in passing on such motions. There even is a plausible argument that little harm is done in many cases in which an appellate court would disagree with a trial court assertion of jurisdiction--often the result of trial will persuade the defendant not to appeal the final judgment for review of the jurisdiction question, and something may be salvaged from the efforts to prepare the first trial even if there is appeal and reversal.

15A Charles A. Wright, et al., *Federal Practice and Procedure* § 3914.6, at 530 (2d ed. 1992).

In any event, even if we were to adopt a §1292(b) type of exception to the final judgment rule, it is doubtful that we would review the trial court's orders in this case. First, the trial court did not make a finding that its orders involved a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation. [6] Second, the Plaintiffs asserted jurisdiction on several theories, including direct minimum contacts, and contacts through agency and alter ego. Although the trial court concluded that plaintiff had made a prima facie showing of jurisdiction, its orders did not articulate the basis, either factual or legal, for that conclusion. Thus, even if we were to follow §1292(b), the open ended and unfocused state of the record before us does not

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[5] It has been held, at least by the United States Supreme Court, that the defense of personal jurisdiction does not provide an immunity from suit. Rather, "[i]n the context of due process restrictions on the exercise of personal jurisdiction, this Court has recognized that the individual interest protected is in 'not being subject to the binding judgments of a forum with which [the defendant] has established no meaningful contacts, ties or relations'" *Van Cauwenberghe*, 108 S.Ct. at 1952 (quoting *Burger King v. Rudzewicz*, 105 S.Ct.2174,21812182 (1985)). Appellants' objections to jurisdiction will be preserved while they defend on the merits, and, if it is held on appeal from an adverse final judgment that the Trial Division lacked jurisdiction, the judgment will be vacated as to them.

[6] This is not surprising. The trial court had no reason to structure its orders to fit the requirements of §1292(b), a statute that has no applicability in Palau. Nothing herein is meant to approve of or disapprove of the trial court's orders, either on the merits or otherwise.

present "a controlling question of law" and would not permit review of the orders under §1292(b). *See Consultants & Designers v. Butler Service Group* , 720 F.2d 1553, 1564(11th Cir. 1983); *see International Society for Krishna Consciousness, Inc. v. Air Canada* , 727 F.2d 253, 256 (2nd Cir. 1984).

The Trial Division's orders therefore do not fall into any exception to the final judgment rule that this Court has recognized to date and does not present a compelling case for the creation of an additional exception.

⊥50 The appeals are therefore DISMISSED.