

Ngerketiit Lineage v. Ngirarsaol, 9 ROP 27 (2001)
NGERKETIIT LINEAGE,
Appellant,

v.

GEORGE NGIRARSAOL,
HILDE BROADBENT, JEFF
NGIRARSAOL, HEIDE EMERY,
GEORGINA PERSONOUS, LORA
DUARTE, and SABINO ANASTACIO,
Appellees.

CIVIL APPEAL NO. 01-10
Civil Action No. 98-383

Supreme Court, Appellate Division
Republic of Palau

Argued: October 31, 2001
Decided: November 20, 2001

[1] **Appeal and Error:** Standard of Review; **Civil Procedure:** Summary Judgment

A grant of summary judgment is reviewed *de novo*, with all evidence and inferences viewed in the light most favorable to the nonmoving party, to determine whether the trial court correctly found that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law.

[2] **Civil Procedure:** Res Judicata; **Judgments:** Finality

Res judicata, or claim preclusion, prevents the subsequent litigation by either party of any ground of recovery that was available in the prior action, whether or not it was actually litigated or determined.

[3] **Common Law**

The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Republic in applicable cases in the absence of written law or local customary law.

[4] **Civil Procedure:** Relief from Judgment; Res Judicata; **Judgment:** Relief from Judgment

Res judicata does not preclude a litigant from making a direct attack under Rule 60(b) upon the

judgment before the court which rendered it.

[5] **Civil Procedure:** Relief from Judgment; Res Judicata; **Judgment:** Relief from Judgment

An attack is not direct where it asserts grounds that were raised or should have been raised during the pendency of earlier cases.

[6] **Civil Procedure:** Relief from Judgment; **Judgment:** Relief from Judgment

Fraud upon the court, as distinguished from fraud on an adverse party, is limited to fraud which seriously affects the integrity of the normal process of adjudication.

[7] **Civil Procedure:** Relief from Judgment; **Judgment:** Relief from Judgment

The language of Rule 60(b) makes clear that a void judgment may be challenged by Rule 60(b) motion or by an independent action, not both.

[8] **Civil Procedure:** Relief from Judgment; **Judgment:** Relief from Judgment

128 An independent action for fraud may not be entertained if there was an opportunity to have the ground relied upon to set aside the judgment fully litigated in the original action.

[9] **Civil Procedure:** Relief from Judgment; **Judgment:** Relief from Judgment

Rule 60(b) is to be interpreted as a coherent whole and independent actions are reserved for those cases of injustice which, in certain circumstances, are deemed sufficiently gross to demand departure from the rigid adherence to the doctrine of *res judicata*.

[10] **Appeal and Error:** Costs

Costs and fees may be awarded for frivolous appeal where all the arguments presented have been previously raised and rejected.

Counsel for Appellant: Douglas F. Cushnie

Counsel for Anastacio: J. Roman Bedor, T.C.

Counsel for remaining Appellees: Kevin N. Kirk

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem.

CADRA, Judge:

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Ngerketiit Lineage (“Appellant” or “Ngerketiit”) appeals from the February 7, 2001 Decision and Order of the Trial Division, granting Defendants-Appellees Motion for Summary Judgment on the ground that Appellant’s “independent” action was barred by the doctrine of *res judicata*. Appellant also challenges the Trial Division’s declarations that: “George Ngirarsaol is owner in fee of Cadastral Lot Nos. 016 B 22 and 016 B 23; Ernest Ngirarsaol, Hilde N. Broadbent, Heide Emery, Georgina N. Personous, Lora N. Duarte are the owners of Lot No. 015 B 03; and Sabino Anastacio is the owner in fee of Cadastral Lot No. 015 B 02.” For the reasons stated below, we affirm.

BACKGROUND

This is the most recent incarnation of an ongoing dispute over ownership of portions of land within Ngerielb, located in Ngermid Hamlet, Koror State. A recitation of the underlying facts can be found in the following published opinions: *Kloteraol v. Ulengchong*, 2 ROP Intrm. 145 (1990); *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38 (1998), *reh’g denied*, 7 ROP Intrm. 64 (1998); *Ngerketiit Lineage v. Ngirarsaol*, 8 ROP Intrm. 50 (1999); *Ngerketiit Lineage v. Ngirarsaol*, 8 ROP Intrm. 126 (2000).

In a display of persistence, Ngerketiit filed this “independent” action seeking the same equitable relief as sought in the earlier actions: (1) a declaration that the 1987 determinations in favor of Appellees are void due to fraud; and (2) a declaration that the Trial and Appellate Division’s prior judgments entered on the matter are void since they, according to Ngerketiit, rely on a void Determination by the Land Commission. Ngerketiit moved for summary judgment, arguing, among other things, that Defendants: (1) acquired the aforementioned property through fraud by forging certain documents, and (2) Ngerketiit was never given notice as record owner of the properties. The Appellees filed separate cross motions for summary judgment on the grounds that the present litigation was barred by the doctrine of *res judicata*.

On February 7, 2001, the Trial Division granted the Defendants’ motion for **129** summary judgment and dismissed the action. The Trial Division held:

Plaintiff, in this lawsuit, recycles arguments which it made in Civil Action Nos. 121-94/108-94, in Civil Appeal No. 9-96, in which its petition for rehearing was denied, and in Civil Appeal No. 98-57, in which it sought relief from judgment pursuant to Rule 60(b)(4). Arguments that the court heard, considered, and made a ruling upon when it denied Ngerketiit Lineage’s Rule 60(b)(4) motion. This was later affirmed by the Appellate Division in *Ngerketiit Lineage v. Ngirarsaol*, 8 ROP Intrm. 126 (2000). This Court sees no compelling reason for granting Ngerketiit Lineage leave to bring this independent action in which it seeks to raise the exact same arguments it raised in Civil Action Nos. 121-94/108-94, with respect to the Land Commission hearings.

DISCUSSION

[1] A grant of summary judgment is reviewed *de novo*, with all evidence and inferences

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viewed in the light most favorable to the nonmoving party, to determine whether the trial court correctly found that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law. *See Dalton v. Borja*, 8 ROP Intrm. 302, 303 (2001); *Ngerketiit Lineage v. Tmetuchl*, 8 ROP Intrm. 122, 123 (2000); *see also Ngersikesol Lineage v. Ngiwal State Legislature*, 5 ROP Intrm. 284, 290 (Tr. Div. 1994). Because no issue of fact exists that could preclude summary judgment the Trial Division should be affirmed. *See Dalton v. Borja*, 8 ROP Intrm. at 304.

[2, 3] *Res judicata*, or claim preclusion, prevents the subsequent litigation by either party of any ground of recovery that was available in the prior action, whether or not it was actually litigated or determined. *See Renguul v. Airai State Pub. Lands Auth.*, 8 ROP Intrm. 282, 284 (2001) (doctrine of *res judicata* bars litigating an issue that has been previously determined between the same parties in an earlier proceeding); *Ngerketiit Lineage v. Tmetuchl*, 8 ROP Intrm. 122, 123 (2000); *see also Jim Bean Brands Co. v. Beamish & Crawford, Ltd.*, 937 F.2d 729, 736 (2d Cir. 1991); Restatement (Second) of Judgments § 24 (1982).¹

[4-6] At oral argument, Ngerketiit, through counsel, conceded that the issues it raises in this case had been raised in prior litigation, but argued that the doctrine of *res judicata* should not have been applied because Ngerketiit had a right to collaterally attack an allegedly void judgment through (1) a ROP R. 130 Civ. Pro. 60(b) motion, and (2) the filing of an independent action. ROP R. Civ. Pro. 60(b) provides, in pertinent part, that “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from final judgment [if] the judgment is void.” Rule 60(b) also provides that relief from final judgment may be obtained by way of an independent action to set aside a judgment for fraud upon the court.² *Res judicata* does not apply to direct attacks on judgments and “does not preclude a litigant from making a direct attack under Rule 60(b) upon the judgment before the court which rendered it.” *Weldon v. United States*, 70 F.3d 1, 5 (2d Cir. 1995). Ngerketiit’s attack in this case, however, was in no way direct because the very grounds on which Ngerketiit claims fraud upon the court³ were

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The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Republic in applicable cases, in the absence of written law . . . or local customary law . . .

1 PNC § 303; *see also Renguul*, 8 ROP Intrm. at 284 (2001).

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This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court . . . [T]he procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules *or* by an independent action.

ROP R. Civ. Pro. 60(b) (emphasis added).

³The Court notes, without further elaboration, Appellant’s mischaracterization of “fraud upon the court.” Indeed, “fraud upon the court” as distinguished from fraud on an adverse party, is limited to fraud which seriously affects the integrity of the normal process of adjudication. *See Gleason v. Jandrucko*, 860 F.2d 556, 559 (2d Cir. 1988).

raised or should have been raised during the pendency of the earlier cases. *See id.* at 5.

[7-9] Furthermore, it is undisputed that Ngerketiit already unsuccessfully moved under Rule 60(b) for relief from judgment; the Court explained that it “cannot impose upon other parties to this litigation more rounds of this contest because, years later, the Lineage now believes it has developed an improved strategy.” *Ngerukebid Clan v. Ngerketiit Lineage*, Civil Action Nos. 121-94/108-94 (Order dated September 16, 1998). The denial of Ngerketiit’s Rule 60(b) motion was affirmed on appeal. Ngerketiit now brings the same claims under the guise of an independent action. The language of the Rule is clear, however, that a void judgment may be challenged by Rule 60(b) motion or by independent action, not both. Moreover, “an independent action for fraud may not be entertained if there was an opportunity to have the ground now relied upon to set aside the judgment fully litigated in the original action.” *Leber-Krebs, Inc. v. Capitol Records*, 779 F.2d 895, 899 (2d Cir. 1985) (internal quotations omitted). Rule 60(b) is to be interpreted as a “coherent whole” and independent actions are reserved for those cases of injustices which, in certain instances, are deemed sufficiently gross to demand departure from the rigid adherence to the doctrine of *res judicata*. *See United States v. Beggerly*, 118 S. Ct. 1862, 1867 (1998); *see also Gleason*, 860 F.2d at 558-59. Therefore, Appellant has failed to circumvent the doctrine of *res judicata*. At some point you can no longer flog a dead horse. Appellant has no further venues for challenging the Land Commission’s Determination of Ownership or any of the Court’s decisions that have arisen therefrom.

[10] Appellees have separately moved under ROP R. App. Pro. 38 for an award of costs and attorney’s fees for this appeal. ROP R. App. Pro. 38 provides that should the Appellate Division determine an appeal **131** frivolous, it may award just damages to the appellee. As the discussion makes clear, Appellant was not allowed to follow its unsuccessful Rule 60(b) motion with an independent action, and if it were, all of the arguments it wished to present have been previously raised and rejected,⁴ rendering this an exercise in futility. Thus, Appellees’ motion is granted. Appellees’ counsel are hereby given ten (10) days from the date on this order to submit an accounting of their costs and fees.

CONCLUSION

For the foregoing reasons, the judgment of the Trial Division granting Appellees’ motion for summary judgment on the basis of *res judicata* is AFFIRMED.

⁴As the Trial Division accurately stated in awarding costs and attorney’s fees to Defendants: “Plaintiff, with at least one strong member of its lineage testifying and with the same attorney involved, has previously raised the same issues, against the same defendants herein, and which issues have been ruled upon in earlier cases.”