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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

JOHNSON TORIBIONG, Appellant, v. ALAN SEID, Appellee.	CIVIL APPEAL NO. 14-031 Civil Action No. 12-031 **OPINION**

Decided: October 5th, 2015

Counsel for Appellant: Kevin N. Kirk
Counsel for Appellee: Pro Se

BEFORE: R. ASHBY PATE, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem; and KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable Arthur Ngiraklsong, Chief Justice, presiding.

PER CURIAM:

This appeal arises from the Trial Division's entry of partial summary judgment, ruling that the November 7, 2011, declaration of a state of emergency by the Appellant, former President Johnson Toribiong, was unconstitutional. Upon issuing partial summary judgment, the Trial Division subsequently certified its ruling for appeal pursuant to ROP

R. Civ. P. 54(b). Because we determine that doing so constituted legal error, we dismiss the appeal.[1]

BACKGROUND

On November 5, 2011, a fire occurred at the Aimeliik power plant, crippling the electricity services for much of Babeldaob and Koror. The power outages threatened the operation of Palau's water, sewage, environmental, health, education, police, transportation, and communication services and necessitated rationing. Two days later, on November 7, then-President Toribiong issued an emergency declaration, pursuant to Article VIII, § 14, "declar[ing] that a State of Emergency exists and determin[ing] that the President must immediately and temporarily assume . . . legislative powers." Appellant's App., Presidential Decl. 11-15, at ¶ 10, Nov. 7, 2011.[2] Pursuant to his newly assumed legislative powers, Toribiong enacted RPPL Nos. 8-34 and 8-35, before returning control of the facility to the Palau Public Utility Corporation and relinquishing his powers under Article VIII, § 14.

In February 2012, Alan Seid filed a complaint against the Republic of Palau and against Toribiong in his official capacity, claiming that Toribiong's emergency declaration, as well as the legislative actions he took thereunder, violated the

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[1] Pursuant to ROP R. App. P. 34(a), we determine that oral argument is unnecessary to resolve this matter.

[2] The emergency declaration erroneously referred to Article IX of the Constitution; an erratum issued the next day corrected the mistake.

Constitution. Seid's complaint also sought damages from Toribiong in his personal capacity for the alleged constitutional violations.

After reviewing two motions to dismiss filed by Toribiong and the Republic, the Trial Division concluded that the emergency declaration was unconstitutional and that dismissal was not appropriate. The Trial Division further noted that "[s]ince the trial on remedies may be significant, [it] believes it is best to get the final judgment on this partial Order before proceeding to the remaining issues." Order at 10, Aug. 12, 2014. Accordingly, the Trial Division entered judgment for Seid, ruling that the emergency declaration was unconstitutional, and certified that there was no just reason to delay the entry of a partial judgment on the issue of the declaration's constitutional validity for purposes of immediate appeal, pursuant to ROP R. Civ. P. 54(b). Toribiong filed a notice of appeal, challenging the Trial Division's orders denying both motions to dismiss[3] and entering partial judgment for Seid.

APPLICABLE LAW

"'We have long adhered to the premise that the proper time to consider appeals is after final judgment.'" *Ngirchechol v. Triple J Enters.*, 11 ROP 58, 60 (2004) (quoting *ROP v. Black Micro Corp.*, 7 ROP Intrm. 46, 47 (1998)) (brackets omitted). "'An order which does not finally settle the issues on trial is generally not appealable . . . .'" *Salii v.*

[3] Although Toribiong seeks to appeal a number of issues raised in Defendants' motions to dismiss, our review is limited to the issue certified for immediate appeal by the Trial Division under Rule 54(b). 10 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2660 (4th ed. 2014) ("[I]n the absence of a Rule 54(b) certificate, an appeal from a decision adjudicating a portion of the case must be dismissed . . . ."). In any event, the denial of a motion to dismiss, generally, does not constitute an appealable final order.

Etpison, 18 ROP 41, 43 (2011) (quoting *In the Matter of Kaleb Udui*, 3 ROP Intrm. 130, 131 (1992)) (alteration omitted).

We condition the right to appeal upon the entry of a final judgment because "'[p]iecemeal 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.'" *First Commercial Bank v. Wong*, 20 ROP 132, 136 (2013) (quoting *Black Micro Corp.*, 7 ROP Intrm. at 47).

Typically, a partial summary judgment ruling is not the type of judgment from which an appeal may be taken. *Salii*, 18 ROP at 43; *Airai State Pub. Lands Auth. v. Aimeliik State Gov't*, 11 ROP 39, 41 (2003). More specifically, a partial summary judgment declaring that a party's rights have been violated, but expressly reserving for future litigation a decision on the matter of appropriate relief, does not constitute a final judgment. *Salii*, 18 ROP at 42-43. Instead, a judgment "is final and appealable 'when there is no further judicial action required to determine the rights of the parties.'" *Baules v. Kuartel*, 19 ROP 44, 45 (2012) (quoting *Feichtinger v. Udui*, 16 ROP 173, 175 (2009)) (brackets omitted); *see* 4 Am. Jur. 2d *Appellate Review* § 78 (2007) ("[A] final judgment or order [is] . . . one which disposes of the entire matter in litigation as to one or more of the parties."). Absent an exception, appeals from interlocutory judgments and orders will be dismissed. *See Ngirchechol*, 11 ROP at 60.

ROP R. Civ. P. 54(b) presents a limited exception to the prohibition on interlocutory appeals.[4] *Renguul v. Orak*, 9 ROP 86, 88 (2002). "The basic purpose of Rule 54(b) is to avoid the possible injustice of a delay in entering judgment on a distinctly separate claim or as to fewer than all the parties until the final adjudication of the entire case by making an immediate appeal available." *Ngirchechol*, 11 ROP at 60. The Rule 54(b) exception, however, "applies only where particular claims or the claims as to a particular party have been *fully* resolved and then only 'upon an express determination that there is no just reason for delay.'" *Renguul*, 9 ROP at 88 (quoting ROP R. Civ. P. 54(b) (emphasis added)). In the context of this rule, "[f]or a final judgment to be entered on any one claim in a multiclaim suit, all damages stemming from the claim must have been fixed." *Ngirchechol*, 11 ROP at 60. Similarly, where a claim for relief has been brought against one party in a multiparty suit, that claim is not fully resolved until the court determines the appropriate relief with respect to that party. *See* 10 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2656 (4th ed. 2014) ("[A] prerequisite for invoking Rule 54(b) is that . . . the rights *and liabilities* of at least one party must be finally decided." (emphasis added)).[5]

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[4] In relevant part, Rule 54(b) states:

> "When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

ROP R. Civ. P. 54(b).

[5] Federal Rule of Civil Procedure 54(b) is identical to Republic of Palau Rule of Civil Procedure 54(b).

STANDARD OF REVIEW

We review de novo the Trial Division's conclusion that the claims as to a particular party have been fully resolved such that a final judgment may be entered as to one or more but fewer than all the claims or parties in the case. *Id.* § 2655. We review for abuse of discretion the Trial Division's determination that no just cause for delay exists. *Id.*; *see Ngirchechol*, 11 ROP at 60.

DISCUSSION

In its August 12, 2014 order, the Trial Division expressly stated that it would enter partial summary judgment on the constitutional validity of the emergency declaration "*before* proceeding to the remaining issues," including determinations regarding appropriate relief, which it anticipated would occur following the instant appeal. Order at 10, Aug. 12, 2014 (emphasis added). Thus, it clearly reserved the final adjudication of the constitutional claims for future litigation. Accordingly, the trial court's grant of partial summary judgment is interlocutory and not a final judgment for purposes of appeal. Thus, this appeal may only be maintained if the Rule 54(b) exception applies. We determine that it does not.

Although the underlying case involves claims against multiple parties, no single claim has been fully resolved with respect to any party. The Trial Division purported to enter a final judgment and certify, pursuant to Rule 54(b), that its decision was subject to appeal, but it also expressly stated that that very claim was subject to future litigation.

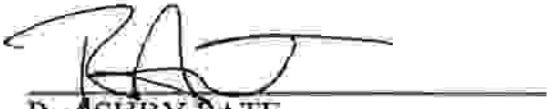
More particularly, the Trial Division appears to have concluded that Toribiong, in his personal capacity, had violated constitutional law; however, the Trial Division declined to proceed to a trial on damages and indicated it would do so only after this appeal. Like the judgment in *Renguul*, the partial summary judgment entered in this case does not fully resolve any claim but, instead, resolves only one issue within Seid's constitutional claim, i.e., liability but not damages. *See Renguul*, 9 ROP at 88; *see also Houston Indus., Inc. v. United States*, 78 F.3d 564, 567 (Fed. Cir. 1996) ("The resolution of individual issues within a claim does not satisfy the requirements of [Fed. R. Civ. P.] 54(b)." (citing *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 742-43 (1976))). Without the full resolution of this claim, the prerequisites for certifying an appeal under Rule 54(b) have not been met. Accordingly, we conclude that the Trial Division's certification of the partial summary judgment for immediate appeal was in error because the constitutional claim had not been fully resolved.[6]

[6] It is important to note that we find that the Trial Division's initial determination was a legal error and not an abuse of discretion. That is, in order for the Trial Division to exercise its discretion in finding no just reason for delay, the legal precondition of a fully resolved claim must have been present. Because we determine that it was not present as a matter of law, we explicitly do not reach the discretionary portion of the Trial Division's certification.

CONCLUSION

Because the partial summary judgment is not a final, appealable judgment and because no exception to the prohibition on interlocutory appeals applies, we dismiss the appeal.

SO ORDERED, this 5th day of October, 2015.



R. ASHBY PATE
Associate Justice

KATHERINE A. MARAMAN
Part-Time Associate Justice

C. QUAY POLLOI
Associate Justice Pro Tem