

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

NORMAN CHAN)	Civil Action No. 97-1039B
Plaintiff,)	
vs.)	
SUNNY KING MAN CHAN)	ORDER GRANTING MOTION
MATSUMOTO PROPERTIES, LTD.)	FOR ENTRY OF JUDGMENT
JADE GARDEN, INC.)	
Defendants,)	
JUAN E. AQUINO,)	
Intervenor/Plaintiff)	
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I. INTRODUCTION

¶1 This matter came before the court for hearing on February 15, 2001 on Defendants' motion for entry of judgment pursuant to Com.R.Civ.P. 54(b). Intervenor/Plaintiff Juan A. Aquino opposes the motion on grounds that Defendants have failed to establish any reason to delay the resolution of this matter any further by way of an interlocutory appeal. Intervenor responds that entry of judgment and certification of issues for appeal prior to the entry of a final judgment are not extraordinary remedies requiring some exceptional showing. For the reasons set forth below, the court GRANTS the motion and enters judgment on Intervenor's complaint pursuant to Com.R.Civ. P. 54(b). [p. 2]

FOR PUBLICATION

II. FACTS

- ¶2 On October 14, 1997, Plaintiff filed his complaint against Defendants alleging, among other things, various acts of misconduct and breaches of fiduciary duty against the minority shareholders and the defendant corporation. Defendants answered the complaint on November 17, 1997, and filed counterclaims against Plaintiff for restitution for unauthorized loans and advances, and for damages resulting from various acts of misconduct and breaches of fiduciary duty against Jade Garden. Intervenor subsequently filed his complaint on August 5, 1998, asserting an entitlement to an interest in Jade Garden. In his complaint in intervention, moreover, Aquino also asserted a claim for an accounting and distribution of the profits.
- ¶3 Prior to trial in this matter, Defendants filed their motion for summary judgment seeking dismissal of the complaint and judgment on their counterclaims for restitution and damages. Defendants also filed a second motion for summary judgment against Aquino, claiming that Aquino's complaint for specific performance of the oral agreement was barred by the Commonwealth's statute of limitations and laches.
- ¶4 Following denial of the motions, Plaintiff and Defendants entered into a settlement agreement effectively disposing of the mutual allegations of misconduct and breaches of fiduciary duty against Jade Garden. *See* Def. Mot. for Entry of Judgment, Ex. 1. The settlement agreement, however, was contingent upon this court's determination that Intervenor had no right, title or interest in Jade Garden. To obviate the need for trial, the parties agreed to bifurcate the proceedings in order to determine the merits of Aquino's claim.
- ¶5 Following a trial on Aquino's claims, on December 26, 2000, the court issued its Decision and Order ruling that Aquino was entitled to a one-third interest in Jade Garden. Defendants now seek an order from the court directing entry of judgment on Intervenor's claims in order to permit them to appeal the court's ruling. [p. 3]

III. QUESTION PRESENTED

¶6 Whether judgment should be entered in favor of Intervenor pursuant to Com.R.Civ.P. 54(b) in order to permit Defendants to pursue and appeal of this court's Order and Decision of December 26, 2000.

III. ANALYSIS

¶7 In material part, Rule 54 provides:

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, 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.

¶8 To qualify for Rule 54(b) certification, the case must include either multiple claims, multiple parties, or both, and the proponent must demonstrate that either one or more, but fewer than all of the claims have been decided, or that all of the rights of at least one party have been adjudicated. *See Ito v. Macro Energy, Inc.*, 2 N.M.I.459, 463 (1992), *citing* 10 C. Wright, A. Miller, & M. Kane, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2655 (1983). If the order is in fact interlocutory and does not actually adjudicate one or more, but less than all, of the claims in the action or the rights and liabilities of one or more parties, an appeal from the order will be dismissed, even though the trial court has decided to treat the order as final. *Ito*, 2 N.M.I. at 463.

¶9 Clearly, this case involves multiple parties. The question that remains with regard to Rule 54(b) certification, however, is whether the court's December 26 Order and Decision decided one or more but fewer than all the claims, or whether the rights and liabilities of at least one party have been adjudicated.

¶10 Defendants maintain that as a result of the court's ruling, all of the issues in Intervenor's complaint were resolved. Defendants further argue that there is no just reason to delay entry of judgment because the appeal may ultimately dispose of all the issues in the case. [p. 4] Defendants essentially contend that if the Commonwealth Supreme Court rules that Aquino

has no entitlement to an interest in Jade Garden, that the settlement agreement will be valid and dispose of all remaining issues. Defendants further contend that under Rule 54(b) is proper whenever an appeal will aid in the expeditious decision of a case.

¶11 Aquino, however, argues that the court's ruling did not dispose of his claims, since the court's decision did not address his request for an accounting and his potential claim for damages against Defendants for mismanagement. Intervenor also claims that it would be a waste of time and money to continue to delay the matter and prevent him from resolving his claims.

¶12 In response to Aquino's contention that some potential claim for damages still remains, Defendants point out that if either Defendant Norman Chan or Sunny Chan wrongfully took money from Jade Garden, it is Jade Garden, and not its shareholders who will be able to recover. Thus, Defendants maintain, Aquino effectively has no potential claim. As to Aquino's claim against Plaintiff for dividends, Defendants concede that Aquino may be entitled to recover all dividends declared and paid to Plaintiff which rightfully belong to Aquino. Defendants argue, however, that these claims are separate and distinct from Aquino's interest in the company, and that a partial summary judgment may be appealed when the claim resolved is separate and distinct from those yet remaining for resolution. *See MPLC v. Guerrero*, 2 N.M.I. 301, 307 (1991). *See also Hudson River Sloop Clearwater, Inc. v. Dep't of Navy*, 891 F.2d 414 (2d Cir. 1989) (when the certified claims are based upon factual and legal questions that are distinct from those questions remaining before the trial court, the certified claims may be considered separate claims under Rule 54(b)).

¶13 A certification under Rule 54(b) as to one or more but fewer than all claims is not to be made routinely or as an accommodation to counsel. *Great American Trading Corp. v. I.C.P. Cocoa, Inc.*, 629 F.2d 1282, 1286 (7th Cir. 1980); *Page v. Preisser*, 585 F.2d 336, [p. 5] 339 (8th Cir. 1978); *Panichella v. Pennsylvania R.R. Co.*, 252 F.2d 452, 455 (3d Cir. 1958). Accordingly, the trial court addresses two distinct issues in deciding whether to grant Rule 54(b) certification. First, the court must decide whether it is dealing with the ultimate disposition of an individual claim entered in the course of a multiple-claim action, or the

disposition of the rights and liabilities of at least one party in the course of a multiple-party action. *Ito*, 2 N.M.I. at 463. In either case, and in order to be certified for appeal, an order adjudicating fewer than all claims or rights and liabilities of fewer than all the parties must possess the degree of finality required to meet the appealability requirements of final judgment: that is, a judgment which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *See Kahn v. Chase Manhattan Bank, N.A.*, 91 F.3d 385 (2d Cir. 1996). If the threshold question is answered in the affirmative, the court next exercises its discretion in determining whether the matter is ready for appeal, taking into account judicial administrative interests and the equities involved. *Id.*

¶14 Regardless of Aquino’s claim for an accounting or any other potential claims he may have against the other parties, the court finds that his principal interest in this action is as a Jade Garden investor. The court finds, therefore, that all of his rights were effectively determined by the court’s Decision and Order of December 26, 2000. Because his only real interest in this action is as a Jade Garden investor, Rule 54(b) certification is therefore permissible.

¶15 The court further determines that there is no just reason to delay entering a final judgment on Aquino’s claim. Plaintiff’s complaint and Defendants’ counterclaims are distinct, separate, and cognizable claims. Therefore, there is no danger that the appellate court would review the same legal and factual issues more than once. Moreover, the court finds that certifying a judgment in favor of Aquino will thereby enable the parties to file an [p. 6] immediate appeal, which, in turn, would promote judicial economy and avoid further litigation as well as expense to the parties in light of the conditional settlement agreement.

¶16 THEREFORE, IT IS ORDERED that:

1. There being no just reason for delay, the December 26, 2000 Order is hereby certified as a judgment for immediate appeal under Com. R. Civ. P. 54(b);
2. Concurrent with this Order, the court shall enter judgment forthwith in accordance with the court’ Order and Decision of December 26, 2000.

3. Further proceedings in this case shall be stayed pending the conclusion of the appellate proceedings.

SO ORDERED this 20 day of April, 2001.

BY THE COURT:

/s/
TIMOTHY H. BELLAS, Associate Judge