IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Petitioner,

v.

SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Respondent,

JG SABLAN ROCK QUARRY, INC.,
Real Party in Interest.

SUPREME COURT NO. 2007-SCC-0023-PET

Cite as: 2008 MP 11

Decided June 23, 2008

Assistant Attorney General Howard P. Willens and Deputy Attorney General Gregory Baka, Attorney General's Office, for Petitioner.
Michael W. Dotts and Vincent De Leon Guerrero Torres, Saipan, Northern Mariana Islands, for Real Party in Interest.

BEFORE: JOHN A. MANGLONA, Associate Justice; ROBERT J. TORRES, JR, Justice Pro Tem; TIMOTHY H. BELLAS, Justice Pro Tem

PER CURIAM:

¶ 1 The Commonwealth petitions this Court to issue a writ of mandamus directing the trial court to enter judgment, through a separate document, reflecting its June 8, 2007 decision on the constitutionality of PL 15-21,[1] and to vacate the trial court's August 17, 2007 decision granting JG Sablan Rock Quarry, Inc. ("JGS") leave to file an amended answer and counterclaim. We hold that the Commonwealth has not satisfied the factors presented in *Tenorio v. Superior Court*, 1 N.M.I. 1, 9-10 (1989), and thus DENY the petition.

I

¶ 2 On September 8, 1995, the Marianas Public Land Authority ("MPLA") issued a permit ("1995 permit") to JGS to mine pozzolan and basalt on the island of Pagan for twenty years. On June 4, 2004, JGS paid a permit fee to the Commonwealth to renew its permit through 2004. JGS made similar payments to the Commonwealth in 2005 and 2006. According to the trial court, the 1995 permit, as amended on February 15, 1996, could be terminated for a violation of any of the terms or conditions of the permit after the Commonwealth gave a sixty-day notice to JGS. JGS could request a hearing on the alleged violations within this sixty-day time frame.

¶ 3 In February 2006, Governor Benigno R. Fitial ("governor") signed PL 15-2 that abolished the MPLA and created the Division of Public Lands and Natural Resources ("DPL") within the executive branch. PL 15-2 § 101. The governor created the Pagan Mining Task Force to develop the resources on Pagan. The duties of the task force were to solicit applicants for a permit to mine and extract pozzolan on Pagan.[2] On May 3, 2006, DPL Secretary John Del Rosario notified JGS that the 1995 permit was terminated and void.

¶ 4 An administrative hearing was held before Rosario on July 14, 2006. JGS objected to Rosario presiding over the hearing because Rosario entered the termination order JGS was appealing. Rosario overruled the objection. On August 1, 2006, Rosario reaffirmed his decision to terminate the 1995 permit on the grounds that JGS violated several provisions of the 1995 permit. On August 21, 2006, JGS initiated an administrative appeal in the trial court that is still

---

[1] This issue is moot because the trial court entered judgment on October 19, 2007.

[2] Howard P. Willens, as the governor's special legal counsel, was appointed a member of the task force and participated in its hearings.

pending. *JG Sablan Rock Quarry, Inc. v. Dep't of Public Lands*, Civ. No. 06-0424.[3] Accordingly, JGS's administrative appeal is not before this Court.

¶5 On August 3, 2006, after overriding the governor's veto, the legislature amended PL 15-2 to "assess fees for mining permits and to recognize, approve, validate and enforce all existing commercial mining permits where the annual mining permit fees have been paid as of February 22, 2006, and where the CNMI government has accepted the payment." PL 15-21, § 3.

¶6 The Commonwealth then filed a complaint seeking declaratory judgment that PL 15-21 was unconstitutional. It argued that four sections of PL 15-21 were invalid under the separation of powers doctrine and Article XI of the Commonwealth Constitution. Article XI mandates that the executive branch official responsible for the Commonwealth's public lands is bound as a trustee under traditional fiduciary standards. On June 8, 2007, the trial court held that two sections of PL 15-21 were unconstitutional. However, PL 15-21, § 4, which the Commonwealth relies on, was upheld as constitutional. Section 4 provides that:

> The DPL shall assess, manage and collect all mining permit fees for the use of CNMI public lands. If the DPL or any of its predecessors issued a Commercial Mining Permit, and received and accepted payment pursuant to said Permit, such Permit shall be held valid and enforceable for the period covered by said payment(s), and shall not be terminated or voided during said period except by the written consent of both the permitee [sic] and the DPL.

PL 15-21, § 4. The trial court held that Section 4 did not invalidate Rosario's termination of JGS's 1995 permit or encroach on the executive branch's authority to execute laws, but instead held that Section 4 simply changed the standards for maintaining a valid permit.[4]

¶ 7 On June 18, 2007, prior to the trial court's entry of judgment in a separate document confirming summary judgment, JGS moved for leave to amend its answer to state a counterclaim. JGS sought declaratory judgment that it had a valid permit under PL 15-21, § 4. In support of its

---

[3] JGS challenged Rosario's decision to terminate the permit on both procedural and substantive grounds. The Commonwealth filed a motion for partial summary judgment on the procedural issues, and filed a second motion for partial summary judgment on the remaining substantive claims JGS raised. On October 3, 2007, the trial court granted the Commonwealth's motion for partial summary judgment. The trial court has yet to render a decision on the second motion for partial summary judgment.

[4] The trial court expressed concern about PL 15-21 § 4 when it stated it could not:

> [H]elp but question the wisdom of releasing a permit-holder from all of the terms of its permit, saving the fee requirement. Indeed, it appears under this Court's necessary interpretation of [Section 4] ─ that a permit-holder is given free reign to do as it pleases so long as it keeps current with its permits fees ─ would allow the permit holder to do as it pleases without consequences. This hands-off approach to regulating the use of Commonwealth lands surely invites abuse and possibly disastrous consequences.

Petitioner's Excerpts of Record, Ex. 3 at 18 n.2.

motion, JGS cited Com. R. Civ. P. 15, which generally favors amendments to pleadings. The trial court granted JGS's motion to amend, and shortly thereafter, JGS filed its amended answer with a counterclaim for declaratory judgment. On August 27, 2007, the Commonwealth filed the instant petition for a writ of mandamus requesting this Court to direct the trial court to enter judgment, through a separate document, reflecting its June 8, 2007 decision. The writ also requested that this Court vacate the trial court's August 17, 2007 decision granting JGS leave to file an amended answer and counterclaim.

¶ 8 The Commonwealth moved the trial court under Com. R. Civ. P. 12 to dismiss the counterclaim, however, both parties agreed to stay all trial court proceedings. On October 19, 2007, four months after issuing its decision, the trial court entered its judgment in a separate document that the Commonwealth sought pursuant to the instant petition. The trial court did not mention how it would reconcile the entry of judgment, which allows appeals before this Court, with its decision to allow JGS to file its counterclaim based on PL 15-21, § 4. On October 23, 2007, the Commonwealth filed a notice of appeal from the trial court's decision upholding the constitutionality of PL 15-21, § 4.

II

¶ 9 "When a party is aggrieved by an action of the trial court, there are two paths to seeking appellate review ─ appeals and extraordinary writs." *Office of the Att'y Gen. v. Superior Court*, 1999 MP 14 ¶ 8. In a typical appeal, the appellate court is asked to "evaluate the actions of a particular judge after a final judgment has been entered. The appellate court therefore receives the case after the trial court has resolved all claims presented, after the parties have had a chance to raise every argument, and after the facts have been fully developed." *Id.* On the other hand, mandamus is "an original proceeding and differs from the normal appellate process in all of the foregoing respects." *Id.* ¶ 9. "The relief requested under a writ is an order against the trial court as an entity, even though only one judge's ruling is being challenged." *Id.* Thus, "[a] Writ of Mandamus is an extraordinary writ, reserved for the most dire of instances when no other relief is available." *Bank of Saipan v. Martens*, 2007 MP 5 ¶ 16; *see Office of the Att'y General*, 1999 MP 14 ¶ 9 ("[T]his Court's exercise of its supervisory jurisdiction to issue a writ is reserved for extraordinary situations."). "It is by no means a procedural right, and shall not be used to second guess the trial court every step of the way." *NMI Scholarship Bd. v. Superior Court*, 2007 MP 10 ¶ 4. "There are dangers to an unprincipled use of peremptory writs, as for example, the possibility that its use would be an impermissible alternative to the normal appellate process." *Tenorio*, 1 NMI at 8.

¶ 10 In reviewing a petition for mandamus, we must look carefully to the five factors laid out in *Tenorio*, 1 N.M.I. at 9-10. *Office of the Att'y General*, 1999 MP 14 ¶ 10. The five factors are: (1) the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired; (2) petitioners will be damaged or prejudiced in a way not correctable on appeal; (3) the lower court's order is clearly erroneous as a matter of law; (4) the lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and (5) the lower court's order raises new and important problems, or issues of law of first impression. *Commonwealth v Pua*, 2006 MP 19 ¶ 19. "Not all five factors need be satisfied to justify the issuance of mandamus." *NMI Scholarship Bd.*, 2007 MP 10 ¶ 4. "Rather, *Tenorio* provides a balancing test; the factors are cumulative and require this Court to determine the degree to which each is implicated." *Malite v. Superior Court*, 2007 MP 3 ¶ 9.

¶ 11 Under the first two *Tenorio* factors, the Commonwealth argues that the trial court's failure to issue a separate entry of judgment or order, as required by the separate document rule set forth in *Commonwealth v. Kumagai*, 2006 MP 20, prevented the Commonwealth from a prompt appeal of the trial court's decision that is not correctable on appeal. "We previously noted the first two *Tenorio* factors are similar and may be considered together." *Shaffer v. Commonwealth*, 2007 MP 15 ¶ 9. We agree with JGS that the Commonwealth still has adequate means of relief available. The Commonwealth's motion under Com. R. Civ. P. 12 is pending in the trial court and, if granted, provides adequate relief. If the Commonwealth's motion is denied, the trial court will decide JGS's counterclaim, at which point, the Commonwealth can directly appeal the entire litigation. Consequently, the Commonwealth still may appeal once all issues are resolved. Litigating JGS's counterclaim in the trial court will resolve all issues regarding PL 15-21 and prevent litigation on the same matter from returning to the trial court in piecemeal fashion. "[S]uch harm cannot support mandamus. Otherwise, mandamus would no longer be an extraordinary remedy and we will have effectively abandoned our long standing practice of avoiding piecemeal appeals." *Liu v. Superior Court*, 2006 MP 5 ¶ 9. Because the Commonwealth fails to show that litigating the counterclaim and proceeding on appeal will result in a special harm that cannot be corrected on appeal, the first two *Tenorio* factors are not satisfied.

¶ 12 The Commonwealth additionally contends that mandamus relief is appropriate under the third *Tenorio* factor because the trial court was clearly erroneous in allowing JGS to amend its pleadings before entering judgment through a separate document. However, JGS asserts that the trial court did not clearly err in doing so because Com. R. Civ. P. 15(a), the Commonwealth equivalent to Fed. R. Civ. P. 15(a), permits liberal amendments to pleadings. Granting or

denying motions for leave to amend are reviewed for an abuse of discretion. *Park v. City of Chicago*, 297 F.3d 606, 612 (7th Cir. 2002).

¶ 13 At one end of the spectrum, it is well-settled in the federal courts that "[o]nce judgment is entered, the filing of an amended complaint is not permissible until judgment is set aside or vacated pursuant to Fed. R. Civ. P. 59(e) or 60(b)." *Seymour v. Thornton*, 79 F.3d 980, 987 (10th Cir. 1996) (quotations omitted).[5] At the other end of the spectrum, before judgment is entered, "the Federal Rules of Civil Procedure are to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits and to dispense with technical procedural problems." *Woods v. Indiana Univ-Purdue Univ. at Indianapolis*, 996 F.2d 880, 883 (7th Cir. 1993).

¶ 14 Under Fed. R. Civ. P. 15(a), a party seeking to amend a complaint after the filing of a responsive pleading must have the adverse party's consent or must move the trial court for leave to file the amended complaint. Fed. R. Civ. P. 15(a). Leave to file "shall be given freely when justice so requires," *id.*, granting the trial court substantial discretion to allow amendments. Nevertheless, there is a limit to this discretion. Although leave to file a second amended complaint should be granted liberally, a trial court may deny leave for several reasons including "'undue delay, bad faith[,] or dilatory motive[,] . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment.'" *Park v. City of Chicago*, 297 F.3d 606, 612 (7th Cir. 2002) (quoting *Ferguson v. Roberts*, 11 F.3d 696, 706 (7th Cir. 1993)).

¶ 15 While delay alone is not a sufficient basis for denying a motion to amend, delay combined with burden to the judicial system may warrant denial of a motion to amend absent prejudice to the opposing party. *Perrian v. O'Grady*, 958 F.2d 192, 194-95 (7th Cir. 1992); *Park*, 297 F.3d at 613 ("Delay, standing alone, may prove an insufficient ground to warrant denial of leave to amend the complaint; rather, 'the degree of prejudice to the opposing party is a significant factor in determining whether the lateness of the request ought to bar filing.'") (quoting *Doherty v. Davy Songer, Inc.*, 195 F.3d 919, 927 (7th Cir. 1999)). Burden to the judicial system occurs when "substantive amendments shortly before trial serve to defeat the public's interest in speedy resolution of legal disputes." *Id.* at 195.

---

[5] The rule is the same in other circuits. *See, e.g., Ciralsky v. CIA*, 355 F.3d 661, 673 (D.C. Cir. 2004); *Ahmed v. Dragovich*, 297 F.3d 201, 208 (3d Cir. 2002); *Morse v. McWhorter*, 290 F.3d 795, 799 (6th Cir. 2002); *Vielma v. Eureka Co.*, 218 F.3d 458, 468 (5th Cir. 2000); *Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996); *Garner v. Kinnear Mfg. Co.*, 37 F.3d 263, 270 (7th Cir. 1994); *Acevedo-Villalobos v. Hernandez*, 22 F.3d 384, 389 (1st Cir. 1994); *Nat'l Petrochemical Co. v. M/T Stolt Sheaf*, 930 F.2d 240, 245 (2d Cir. 1991).

¶ 16 Thus, courts operating under Rule 15(a) may refuse to allow amendment when the moving party unreasonably delays in asking for amendment and hinders judicial economy. *Loyola Fed. Sav. & Loan Ass'n v. Fickling*, 783 F. Supp. 620, 623 (M.D. Ga. 1992); *CL-Alexanders Laing & Cruickshank v. Goldfeld*, 739 F. Supp. 158, 166 (S.D.N.Y. 1990). In *Loyola Federal Savings and Loan Association*, 783 F. Supp. at 623, the plaintiff waited more than a year after the close of discovery and more than nine months after filing its summary judgment motion to seek leave to amend. When a movant's delay hinders judicial economy and prejudices his opponent, the burden shifts to the movant to show good cause to allow the amendment. *Best Canvas Prod. & Supplies v. Ploof Truck Lines Inc.*, 713 F.2d 618, 623 (11th Cir. 1983).

¶ 17 In *Loyola*, the burden fell upon the plaintiff because allowing amendment would hinder judicial economy and prejudice the defendant. 783 F. Supp. at 623. The defendant would have to go through the expense and trouble of reopening discovery to investigate defenses. *Id.* Additionally, no meritorious explanation was given for the delay. In denying the motions to amend, the trial court stressed that the movants' alleged facts forming the bases of the motions were surely known after the completion of discovery and before the filing of the motions for summary judgment. *Id.* Without good cause, motions to amend are routinely denied when filed well after the completion of discovery and would require the reopening of discovery. *Id.*; *Minor v. Northville Pub. Schools*, 605 F. Supp. 1185, 1202 (E.D. Mich. 1985); *see also Mullinax v. McNabb-Wadsworth Truck Co.*, 117 F.R.D. 694 (N.D. Ga. 1987).

¶ 18 In *Freeman v. Continental Gin Company*, 381 F.2d 459 (5th Cir. 1967), a seller sued a buyer for the purchase price under a contract of sale. The trial court granted summary judgment for the seller on the ground that the contract was clear and unambiguous on its face, and that the buyer's parol evidence, which was offered to support its contention that seller violated the contract, was inadmissible. Although the case was substantially disposed of, a formal judgment was not entered. Nine months after the grant of summary judgment and approximately eighteen months after the filing of the original answer, defendant attempted to amend to charge plaintiff with fraud. The trial court denied leave to amend. On appeal, the Fifth Circuit affirmed the trial court's decision, stating:

> A busy district court need not allow itself to be imposed upon by the presentation of theories seriatim. Liberality in amendment is important to assure a party a fair opportunity to present his claims and defenses, but equal attention should be given to the proposition that there must be an end finally to a particular litigation. . . . Much of the value of summary judgment procedure in the cases in which it is appropriate . . . would be dissipated if a party were free to rely on one theory in an attempt to defeat a motion for summary judgment and then, should that theory prove unsound, come back long thereafter and fight on the basis of some other theory.

Id. at 469–70.

¶ 19 Here, in light of the foregoing discussion and the strong presumption of the Commonwealth Rules of Civil Procedure that cases should be adjudicated on the merits as opposed to technical or inadvertent missteps in pleading, the trial court did not clearly err in allowing JGS to amend its answer to include a counterclaim for deficiency judgment. JGS did not unreasonably delay its motion to amend its answer because it was not until after the trial court ruled in its favor that JGS knew it had a deficiency judgment counterclaim. JGS's motion does not hinder judicial economy or prejudice the Commonwealth because, unlike the cases cited above, no motions are pending and no trial date has been set. Thus, the trial court did not abuse its discretion and its broad authority in allowing amendments under Rule 15(a). The trial court did not clearly err under the third *Tenorio* factor by allowing JGS to amend its pleadings before entering judgment through a separate document.

¶ 20 Furthermore, the Commonwealth's argument that the trial court erred in not following the separate document rule laid out in *Kumagai* overstates our ruling in the case. The rationale behind the *Kumagai* ruling it to provide the parties with "conclusive notification that the case has ended and an appeal may be taken, ensures that a decision addressed on appeal is really the trial court's final resolution of the matter, and protects litigants from uncertainty as to when a notice of appeal must be filed within the time permitted." *Kumagai* ¶ 22. We did not require a specific period in which a judgment must be entered. However, in the future we are not averse to enunciating a specific time frame to file a separate document, as in the Federal Rules of Civil Procedure.[6] The Commonwealth made no motion to the trial court requesting entry of a separate document before this writ. The entry of judgment on October 19, 2007 is sufficient to moot the separate document rule issue. The Commonwealth had notice of commencement of the appeal period before oral arguments in the counterclaim, as they acted on the judgment when they filed their October 23, 2007 appeal.

¶ 21 The fourth *Tenorio* factor is also not met. This factor allows mandamus relief if the trial court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules. The Commonwealth cites this Court's observation that we have "rarely seen an 'entry of judgment' or

---

[6] If a separate document is required, but no separate document is issued, federal courts follow Fed. R. Civ. P. 58, which provides that courts must deem the judgment's date of entry as 150 days after its entry in the civil docket. *Stephanie-Cardona LLC v. Smith's Food & Drug Centers, Inc.*, 476 F.3d 701, 704 (9th Cir. 2007). Before the 2002 amendments to Rule 58 took effect, the majority view was that the period for appeal did not begin if the trial court docketed the order but failed to set it forth on a separate document. *Id.* at 704 n.2. In 2002, the 150-day rule was added to ensure that parties would not have indefinite time to appeal or to bring a postjudgment motion when a trial court fails to set forth a judgment or order on a separate document in violation of Rule 58(a)(1). *Id.* (quotation omitted).

'entry of order' separate from an order, decision or sentence from the trial court." *Kumagai* ¶ 18. The Commonwealth's reliance on this *Kumagai* language has been invalidated, as the separate document rule is no longer at issue in this petition. The entry of the separate judgment on October 19, 2007 led to the later appeal filed by the Commonwealth. Since the Commonwealth also fails to raise the issue of granting the motion to amend in the context of the fourth *Tenorio* factor, there is no evidence of oft-repeated error or persistent disregard of rules in this case as required by *Tenorio.* If either issue were to appear in another case in the future, perhaps an argument could be made for a persistent disregard of applicable rules.

¶ 22 Finally, the separate document rule does not raise new and important problems or present an issue of law of first impression as required by the fifth *Tenorio* factor. This Court enunciated the separate document rule in *Kumagai,* and there is no need to further examine the issue here, particularly because the matter is moot. It would be imprudent to further elaborate on the *Kumagai* ruling in this limited writ where the separate document rule no longer applies. As discussed above, petitioner has offered no explanation as to how the fifth *Tenorio* factor is met with regard to allowing JGS leave to amend its answer. At this time we find that the fifth *Tenorio* factor is not satisfied, and we will not address it.

¶ 23 This Court finds that the petitioner has not met any of the requirements set forth in that case. The Commonwealth, as the party seeking mandamus, has not established its "clear and undisputed" right to issuance of the writ. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 US 271, 289 (1988).

III

¶ 24 For the foregoing reasons, we hold that the *Tenorio* analysis, taken as a whole, does not support the issuance of a writ of mandamus. Accordingly, the Commonwealth's petition is DENIED**.**

Concurred:
Manglona, J., Torres, J.P.T., Bellas, J.P.T.