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

MARIA DELA CRUZ CAMACHO, ANTONIO CH. CAMACHO, VICTORIA DELA CRUZ, and EUGENIA DELA CRUZ,
Plantiffs-Appellees,

v.

JOSE S. DEMAPAN,
Defendant-Appellant.

SUPREME COURT NO. CV-06-0013-GA
SUPERIOR COURT NO. 03-0502D

Cite as: 2010 MP 3

Decided March 16, 2010

Robert H. Meyers, Saipan, Northern Mariana Islands, for Plaintiffs-Appellees.
Antonio M. Atalig, Saipan, Northern Mariana Islands, for Defendant-Appellant.
BEFORE: RICHARD H. BENSON, Justice Pro Tem; F. PHILIP CARBULLIDO, Justice Pro Tem; ROBERT J. TORRES, Justice Pro Tem

CARBULLIDO, J.:

¶ 1 This is an appeal from an order granting partial summary judgment in a quiet title action in favor of Maria Dela Cruz Camacho, Antonio Ch. Camacho, Victoria Dela Cruz, and Eugenia Dela Cruz (collectively "plaintiffs"), and dismissing defendant Jose S. Demapan's counterclaims. The trial court found that the plaintiffs were "entitled to be declared owners of the property in dispute as a matter of law," but expressly reserved judgment on plaintiffs' separate claim for slander of title. *See Camacho v. Demapan*, Civ. No. 03-0502D (NMI Super. Ct. Jan. 10, 2006) (Order Granting in Part Plaintiffs' Motion for Summary Judgment and Granting Plaintiffs' Motion to Dismiss Defendant's Counterclaim at 22). The order granting partial summary judgment is not a final judgment disposing of all the issues in the case and the superior court did not determine and direct the entry of a final judgment pursuant to Rule 54(b) of the Commonwealth Rules of Civil Procedure. The orders challenged are also not appealable by statute and do not fall within any of the common law exceptions to the finality rule. Accordingly, we find that this Court is without jurisdiction to consider either of the trial court's rulings and DISMISS this appeal.

¶ 2 While we ultimately dismiss this appeal for lack of jurisdiction, we take the opportunity to make manifest that under the language of Rule 54(b), the previous orders issued in this case – including the orders complained of in this appeal – are "subject to revision at any time before the entry of judgment adjudicating all the claims." NMI R. Civ. P. 54(b). We emphasize this aspect of Rule 54(b) due to our concern that the record on appeal does not contain any instrument of conveyance – specifically transferring title to the plaintiffs – to three of the five tracts of land at dispute in this case, and neither party at oral argument could direct this Court to where in the record such deeds exist. The absence of such documentation is particularly troubling in a case where the entire controversy revolves around "better title" and where the lower court has disposed of the title issue at the summary judgment stage.

I

FACTUAL AND PROCEDURAL BACKGROUND

¶ 3 For the purpose of this appeal we summarize the pertinent history of this litigation largely as it is described in the superior court's order granting partial summary judgment in favor of the plaintiffs and dismissing defendant's counterclaims. This Court has not been supplied with a complete record as required by Rule 10(a) of the Commonwealth Rules of Appellate Procedure.[1]

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[1] At the time this appeal was taken Rule 10(a) of the Commonwealth Rules of Appellate Procedure governed the composition of the record on appeal. Rule 10(a) provides:

Where the trial court's findings of fact are not supported by the available record, we point out the discrepancies below.

¶ 4 This case originated as a dispute between the descendants of Ana Deleon Guerrero Demapan ("Ana") over title to five parcels of land located in Saipan on Capital Hill. Ana, now deceased, originally owned all the property at issue in this case. The five parcels at issue include:

Lot EA 835 (containing approximately 19,040 square meters);

Lot 313 (containing approximately 6,503 square meters);

Lot 312-RW (containing approximately 551 square meters);

Lot 312-R1 (containing approximately 8,965 square meters); and

Lot 312-1 (containing approximately 3,885 square meters).

Ana had three children: Eugenia Dela Cruz ("Eugenia"), Asuncion Demapan ("Asuncion"), and Gregorio Demapan ("Gregorio"). The present dispute arises from land transactions that took place between Ana, her children, and her children's family prior to and after Ana's death.[2]

¶ 5 The first transaction occurred approximately ten years before Ana died. In 1959, Ana sold Lot EA 835 to her son-in-law Cristin Dela Cruz ("Cristin") – Eugenia's husband – for three hundred dollars.[3] At Ana's direction, Cristin paid the purchase price directly to Ana's son Gregorio. Shortly after payment was made, on July 24, 1959, Ana executed a deed conveying Lot EA 835 to Cristin – endorsing the deed with her thumb print – in front of the clerk of court

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> The original papers *and exhibits* filed in the Superior Court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the Superior Court shall constitute the available record on appeal in all cases.

(emphasis added).

Rule 11 of the Rules of Appellate Procedure places the duty on the appellant to supply the record on appeal. NMI R. App. P. 11. In this case, the plaintiffs' amended complaint appears in the record, which refers to certain exhibits, but the exhibits (as originally numbered by the plaintiffs) do not accompany the complaint as it appears in the record. Furthermore, it is impossible for this Court to tell whether copies of the exhibits originally filed – which may have been reintroduced and relabeled in subsequent proceedings – exist elsewhere in the record.

On January 13, 2010, the Northern Mariana Islands Supreme Court Rules replaced the Commonwealth Rules of Appellate Procedure. Rule 10 of the current Supreme Court Rules governs the record on appeal and contains the same substantive requirements as Rule 10(a) of the former Rules of Appellate Procedure.

[2] While we do not attribute any legal significance to the following fact other than providing context to a somewhat complicated factual background, it is undisputed that Ana's daughter Asuncion took the vow of poverty as a nun in the early 1950s and has provided a declaration in this case stating that she cannot own land in her own name pursuant to the tenets of her religion.

[3] In 1975, Cristin sold a portion of Lot EA 835 (1,570 of the original 19,040 square meters) to Manuel Sablan. Sablan is not affiliated with this case.

and one other witness. A copy of the deed conveying Lot EA 835 from Ana to Cristin appears in the record on appeal. Appellant's Excerpt of Record ("ER") at 54.

¶ 6 Ana died intestate on July 9, 1969, leaving her three children as heirs. At the time of Ana's death, Cristin held fee simple title to Lot EA 835 and Ana's children (Eugenia, Gregorio, and Asuncion) inherited equal undivided one-third interests in their mother's estate under the law of the Trust Territory.[4] Nothing in the record reflects that either Eugenia or Cristin held outright title to Lot 313 or any of the 312 parcels prior to September 1983. Yet, between Ana's death in 1969 and 1983 – when Gregorio and Asuncion allegedly conveyed their interests in Lots 312 and 313 to Eugenia – multiple conveyances took place that purportedly transferred fee simple title from Cristin to third parties to land that, at the time, Gregorio and Asuncion retained an equal and undivided one-third interest. The relevant conveyances are outlined below.

¶ 7 On August 14, 1973, Cristin sold Lot 312-1 (containing approximately 1,396 square meters) to Francisco Cabrera for $1,500. ER at 61. The deed recites that Cristin "does hereby covenant that said land is his separate property and does fully warrant the title to said land will defend the same against the lawful claims of all persons whomsoever." *Id*.

¶ 8 On February 11, 1974, Cristin conveyed Lot 312-2 (containing approximately 838 square meters) through a deed of gift to his daughter, Victoria Dela Cruz. The deed memorializing this conveyance appears in the record on appeal, ER at 72, and the deed represents that, at the time, Cristin was the "sole and legal owner" of Lot 312-2. *Id.*

¶ 9 On April 5, 1974, Cristin sold Lot 312-3 (containing approximately 1,301 square meters) to Rosalia Palting for $7,000. ER at 55. The deed represents that, at the time, Cristin was the "sole and legal owner" of Lot 312-3. *Id.*

¶ 10 In its order granting partial summary judgment, the superior court found that on April 18, 1983, Eugenia and Cristin also conveyed Lot 312-2 (containing approximately 838 square meters) through a deed of gift to their other daughter Maria Camacho, who is a named plaintiff in this action. This Court could not locate the deed memorializing this conveyance in the record on appeal. The record does indicate, however, that on April 18, 1983, Cristin and Eugenia conveyed part of Lot 313 (as opposed to Lot 312-2) to their daughter Maria and her husband Antonio Camacho.[5]

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[4] Intestate succession in the Commonwealth is currently governed by 8 CMC §§ 2901-2927. However, under 8 CMC § 2102 "[t]he property of persons who die before February 15, 1984, shall pass according to title 13 of the Trust Territory Code and other applicable law." Since Ana died before 1984 the distribution of her property is governed by the Trust Territory Code.

[5] The record contains a commitment for title insurance entered into between Maria and Antonio Camacho with First American Title & Escrow Corporation on March 16, 1990. ER at 46. Paragraph 3 of

¶ 11 On June 22, 1983, Eugenia and Cristin consolidated Lot EA 835 and Lot 313, creating Lot 313 New. Nothing in the record indicates that Eugenia and Cristin held outright title to the original Lot 313 at the time this consolidation was made.[6]

¶ 12 Three months later, on September 19, 1983, Cristin and Eugenia executed a quitclaim deed, conveying Lot 313-New 2, part of Lot 313 (containing approximately 929 square meters), and an easement over Lot 313-RW, to Gregorio Demapan.[7] The deed memorializing this conveyance appears in the record on appeal. ER at 161. The same deed conveying Lot 313-New 2 to Gregorio also states that the deed is executed "for and in consideration of the conveyance to Grantor, Eugenia D. Dela Cruz, by the Grantee [Gregorio Demapan] to that certain tract or parcel of real property situated in I Denni, Saipan, Mariana Islands, known as Lots 312-R/W, 312-R1 and 312-1, . . . containing an area of [approximately] 13,401 square meters." ER at 161. The deed, executed by Cristin and Eugenia, does not contain the signature of Gregorio and it is

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the commitment states: "FEE SIMPLE interest in the land described in this Commitment is owned at the Commitment Date, by Maria Margarita Dela Cruz Camacho and Antonio Ch Camacho." ER at 49. Paragraph 4 of the commitment provides:

> 4. The land referred to in this Commitment is described as follows:
>
> LOT 313 New-313, (Part of original Lot 313, TD 9), containing an area of 929 square meters, more or less, as more particularly described on Drawing/Cadastral Plat No. 2096/83, the original of which was recorded 23 JUN 83 as Document No. 17541 at Land Registry, Saipan.
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> Deed of Gift between Cristin Sablan Dela Cruz and Eugenia Demapan Dela Cruz, GRANTORS, and Maria Margarita Dela Cruz Camacho and Antonio Ch Camacho, GRANTEE, for the metes and bounds description for the property described within. Executed 18 APR 83 and recorded 26 OCT 83 as Document No. 83-117 at Commonwealth Recorders, Saipan.

We make no representation as to whether this commitment, standing alone, is sufficient to establish better title in Maria and Antonio Camacho as a matter of law for the purposes of summary judgment in the present quiet title action.

[6] In its order granting partial summary judgment, the superior court states that "On June 16, 1983, Gregorio and Asuncion quitclaimed their interest [sic] Lot 313, containing 6502 acres, which they acknowledged as their share of their mother's inheritance, to Eugenia." *Camacho v. Demapan*, Civ. No. 03-0502D (NMI Super. Ct. Jan. 10, 2006) (Order Granting in Part Plaintiffs' Motion for Summary Judgment and Granting Plaintiffs' Motion to Dismiss Defendant's Counterclaim at 3).

The above statement is not supported by the record. The referenced conveyance took place in November 1983, as outlined in the main text, not June, and the conveyance was for approximately 6,502 square meters – not acres.

[7] In the order granting partial summary judgment, the superior court states that this conveyance took place on September 9, 1983. This is a typographical error.

unclear when – if at all – Gregorio filed the deed with the recorder's office.[8] The record on appeal does not contain a deed – if one exists – executed by Gregorio transferring his one-third interest in Lots 312-RW, 312-R1, and 312-1 to Eugenia or her husband Cristin.

¶ 13 On November 4, 1983, Gregorio and Asuncion quitclaimed their interests in original Lot 313, containing 6,502 square meters, to their sister Eugenia.[9] The quitclaim deed recites that Lot 313 is part of Ana Deleon Guerrero's estate, that Eugenia, Asuncion, and Gregorio are the only heirs to that estate, and that through the deed, Gregorio and Asuncion intend to convey their interests in Lot 313 to Eugenia. A copy of the deed conveying Asuncion's and Gregorio's interests in Lot 313 to their sister Eugenia appears in the record on appeal. ER at 90-93.

¶ 14 Five years later, on October 20, 1988, Eugenia and Cristin executed a quitclaim deed conveying Lot 313-New 11, part of Lot 313 New, and an easement over Lot 313-RW to their niece Ana S. Demapan. ER at 163. Like the September 19, 1983 deed, in which Cristin and Eugenia quitclaimed Lot 313-New 2 to Gregorio in consideration of Gregorio's conveyance of his interest in portions of Lot 312, the October 1988 deed was made in consideration of Ana S. Demapan quitclaiming her interest in Lots 312-RW, 312-R1, and 312-1 (containing approximately 13,401 square meters) to Cristin and Eugenia. *Id.*[10]

¶ 15 On November 14, 1991, the probate court issued its decree of final distribution of Ana's estate. The decree lists Lots 312-RW (551 square meters), 312-R1 (8,965 square meters), 312-1 (3,885 square meters), and 313 (6,502 square meters) as the only assets of the estate. Throughout the proceedings, the decedent was referred to as Ana Deleon Guerrero rather than Ana Deleon Guerrero Demapan. The probate court found that Eugenia, Asuncion, and Gregorio were their mother's only heirs. The probate court distributed the properties "in equal undivided shares to the heirs of the decedent . . . subject to any and all prior conveyances by the heirs." ER at 153-54. Gregorio and Asuncion objected to this distribution. They claimed that the conveyance of their interest in Lot 313 to their sister Eugenia on November 4, 1983 was made in response to

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[8] The superior court treats the September 19 deed – conveying Lot 313-New 2 from Eugenia and Cristin to Gregorio – as evidence of a valid conveyance of Gregorio's interest in Lots 312-RW, 312-R1, and 312-1 to Eugenia and Cristin. Since we lack jurisdiction over this appeal, we do not decide whether the superior court's conclusion is correct.

[9] In the order granting partial summary judgment, the superior court states that this conveyance took place on June 16, 1983. This statement is inaccurate; the quitclaim deed conveying Gregorio's and Asuncion's interests in Lot 313 to Eugenia is dated "November 4, 1983." ER at 91.

[10] Ana S. Demapan is Gregorio's daughter and the defendant's sister. No deed exists in the record reflecting that Ana S. ever received any interest in the 312 parcels from her father (Gregorio) or her aunt (Asuncion). In other words, there is nothing in the record suggesting that Ana S. Demapan had any interest in the 312 parcels to convey to Eugenia at the time the October 1988 deed was executed, in which Eugenia quitclaimed part of Lot 313 in consideration of Ana's relinquishment of her interest in the 312 parcels.

Eugenia's representation that she needed the property as collateral for a loan and that the property would be transferred back to them at a later date. Gregorio and Asuncion also claimed that the sale of Lot EA 835 from Ana to Cristin in 1959 was invalid. The probate court declined to adjudicate Gregorio's and Asuncion's claims, noting that it was not the proper forum to raise claims of fraud and misrepresentation. Gregorio and Asuncion did not appeal the probate court's decision, and neither filed actions to quiet title in the disputed properties. After the time to appeal the probate order expired, Gregorio and Asuncion executed and delivered two quitclaim deeds to Gregorio's son – the defendant in this case – Jose S. Demapan. ER at 28-31. The deeds purported to convey all of Gregorio's and Asuncion's interests in Lots 312-RW, 312-R1, 312-1, 313, and EA 835. *Id.*

¶ 16 In October 2003, Eugenia and her two daughters Maria and Victoria – along with Maria's husband Antonio Camacho – filed a complaint against Jose to quiet title in all five lots that were part of Ana's estate. The complaint also alleged slander of title.[11] In response to the suit Jose raised various affirmative defenses, including failure to state a claim, fraud, and contract validity issues (i.e., lack of consideration and reliance on the parol evidence rule) presumably related to the alleged conveyance from Gregorio and Asuncion of their interests in Lots 312 and 313 to Eugenia in 1983. He also counterclaimed. Jose's first counterclaim, entitled "Misrepresentation in the Execution of Quitclaim Deeds of 1983," alleged that Eugenia had perpetrated fraud against Gregorio and Asuncion in 1983 by convincing them that their conveyance of Lot 313 would be used as collateral for a loan and that their interests in the property would be re-conveyed at a later date. The second counterclaim alleged that the 1959 sale of Lot EA 835 from Ana to Cristin was contrary to Chamorro custom and that the thumbprint appearing on the 1959 deed did not belong to Ana (i.e., that the deed was fraudulent). Finally, the third counterclaim, entitled "Sale, Buy or Lease of Properties without Other Heirs Consent," alleged that the transactions involving Lots 312-RW, 312-R1, and 312-1 were void because they were not performed with the consent of all heirs. As such, the defendant asked that the trial court declare that all prior conveyances be set aside and that all assets be distributed equally.

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[11] Slander of title is a common law intentional tort. The Restatement (Second) of Torts § 624 defines slander of title as "the publication of a false statement disparaging another's property rights in land, chattels or intangible things, that the publisher should recognize as likely to result in pecuniary harm to the other through the conduct of their persons in respect to the other's interests in the property." The Restatement also makes clear that slander of title is distinct from personal defamation (i.e., libel or slander), and should be treated differently. *See* Restatement (Second) of Torts § 624 cmt. a (1977).

We assume without deciding that since slander of title alleges injury to a property interest, the statute of limitations provision contained in 7 CMC § 2502 applies to such actions.

¶ 17 The parties thereafter engaged in a procedural battle that included amendments to complaints, amendments to counterclaims, late filings, entries of default, multiple motions to dismiss, motions for sanctions, and a motion by the plaintiffs for summary judgment.

¶ 18 The trial court issued its order dismissing defendant's counterclaim and granting in part plaintiffs' motion for summary judgment on January 10, 2006. The trial court dismissed the defendant's counterclaims on multiple grounds. It found that Jose did not have standing to assert that Eugenia defrauded Gregorio and Asuncion regarding the 1983 quitclaim deeds, holding that a claim for fraud is personal to the alleged defrauded parties. For the same reason, the court held that Jose did not have standing to assert a claim of fraud for the 1959 sale of Lot EA 835 to Cristin. The court held that even if Jose did have standing to litigate his counterclaims for fraud, the counterclaims would be barred by the two-year statute of limitations for torts. With respect to the defendant's argument that the conveyances of Lots 312-RW, 312-R1, and 312-1 were void because they were not conveyed with the consent of all heirs, the trial court held that Jose had not stated a claim on upon which relief could be granted.

¶ 19 In ruling on the plaintiffs' motion for summary judgment, the trial court held that the plaintiffs had presented sufficient evidence to be declared owners of the property at issue as a matter of law and further found that the defendant had not sufficiently pled fraud or misrepresentation warranting a trial. The trial court implicitly held that no genuine issue of material fact existed concerning whether Gregorio and Asuncion had transferred their interests in their mother's estate to Eugenia. In reaching this conclusion the court characterized the September 19, 1983 deed (conveying Lot 313-New 2 from Eugenia and Cristin to Gregorio) as a valid conveyance of Gregorio's interest in Lots 312-RW, 312-R1, and 312-1 to Eugenia and Cristin. This conclusion was made notwithstanding the following facts: (a) the deed was executed by Eugenia and Cristin; (b) Gregorio's signature does not appear on the deed; and (c) no separate deed exists conveying Gregorio's interest in the 312 lots to Eugenia or her husband.[12]

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[12] Although we do not reach the merits of this case, this Court is deeply concerned with an order that purports to adjudicate ownership of property in a case where deeds to three of the five parcels of land in dispute do not appear in the record. Put a slightly different way, we express concern for any order that finds as a matter of law that no genuine issues of material fact exist in cases where certain material facts cannot be found in the record. We further note that in the federal courts "a [trial court] judge always has [the] power to modify or to overturn an interlocutory order or decision while it remains interlocutory." *Credit Suisse First Boston Corp. v. Grunwald*, 400 F.3d 1119, 1124 (9th Cir. 2005) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)); *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1473 ("Interlocutory orders and judgments are not within the provisions of 60(b), but are left within the plenary power of the Court that rendered them to afford such relief from them as justice requires.") (quoting 7 Moore's Federal Practice, para. 60.20, p. 60-170). Under Rule 54(b), interlocutory orders may be reviewed by the trial court, on motion or sua sponte, independent of the standards governing Rules 59(e) and 60(b), at any time prior to the entry of a final judgment.

The court also found the November 4, 1983 quitclaim deed conveying Gregorio's and Asuncion's interests in Lot 313 to Eugenia clear on its face, and that the deed did not exhibit any intent of the grantors to withhold a future interest in the property. In its order the superior court expressly reserved judgment on the plaintiffs' slander of title claim. The court did not certify the order as final and appealable under Northern Mariana Island Rule of Civil Procedure 54(b).

¶ 20 After the dismissal of his counterclaims and the superior court's grant of partial summary judgment on the issue of better title in favor of the plaintiffs, Jose filed the present appeal. Although the plaintiffs-appellees did not challenge our jurisdiction in their briefing, during oral argument both parties conceded that we lack jurisdiction to entertain the present appeal under this Court's holdings in *Bank of Guam v. Mendiola*, 2007 MP 1 (addressing whether Rule 54(b) certification may be implied from the actions and language of the trial court, and holding that in the absence of an express invocation of Rule 54(b), a lower court's order which does not dispose of all the claims at issue in a case is not appealable under the rule), and *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 1 (reaffirming the rule that an order which adjudicates fewer than all the claims at issue in the case cannot be immediately appealed in the absence of the superior court's issuance of Rule 54(b) certification, and further holding that appeals may only be taken from a judgment set forth on a separate document issued from the superior court).

II
JURISDICTION

¶ 21 Whether this Court has jurisdiction to entertain an appeal is a threshold issue that "must always be resolved before the merits of an appeal are examined or addressed." *Pac. Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 7 (quoting *Williamson v. UNUM Life Ins. Co. of Am.*, 160 F.3d 1247, 1250 (9th Cir. 1998)). Even where neither party has called our jurisdiction into question, this Court has the authority and the obligation to review the justiciability of an appeal sua sponte. *Mafnas v. Super. Ct.*, 1 NMI 277, 282 (1990) ("this Court has the authority and the obligation to determine its appellate jurisdiction."); *Mariana Pub. Land Corp. v. Guerrero*, 2 NMI 301, 306 (1991) ("We review initially the appealability of an order granting partial summary judgment sua sponte, since the case below has not been entirely disposed of.").

¶ 22 Although we recently held that Article IV, section 3 of the Commonwealth Constitution endows this Court with broad jurisdictional powers,[13] the CNMI Supreme Court is nonetheless a court of limited jurisdiction. Indeed, "[w]e have repeatedly stated that we have jurisdiction to

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[13] *See Kabir v. Barcinas*, 2009 MP 19 ¶ 23 (Slip Opinion, Dec. 31, 2009) (holding that the CNMI Supreme Court possesses jurisdiction to accept and answer certified questions from the Ninth Circuit).

review lower court orders only if we are specifically provided authority to do so." *Bank of Guam v. Mendiola*, 2007 MP 1 ¶ 4 (citing *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 9). Article IV, section 3 of the Commonwealth Constitution provides that "[t]he Commonwealth supreme court shall hear appeals from *final* judgments and orders of the Commonwealth superior court." NMI Const. art. IV, § 3 (emphasis added). Given the jurisdictional limitation contained in Article IV, section 3, we have interpreted 1 CMC § 3102 – which statutorily vests the CNMI Supreme Court with "appellate jurisdiction over judgments and orders of the Superior Court" – as granting this Court with jurisdiction only "over Superior Court judgments and orders which are *final*." *Kumagai*, 2006 MP 20 ¶ 9 (emphasis added) (quoting *Commonwealth v. Hasinto*, 1 NMI 377, 381-85 (1990)).

¶ 23 A judgment or order is not final unless it "ends the litigation on the merits and leaves nothing for the [trial] court to do but execute the judgment." *Chan v. Chan*, 2003 MP 5 ¶ 13 (quoting *Tanki v. S.N.E. Saipan Co*., 4 NMI 69, 70 (1993)). In *Kumagai*, we held that in cases involving multiple parties or when there are multiple claims for relief, a decision which adjudicates fewer than all the claims at issue in the case or which fails to determine the rights and liabilities of fewer than all the parties is not a final judgment within the meaning of Article IV, section 3 of the Commonwealth Constitution or 1 CMC § 3102. *Kumagai*, 2006 MP 20 ¶ 10. Put another way, under Commonwealth law, in the absence of an applicable statutory or common law exception, an appeal must generally await the entry of a final judgment (i.e., a judgment that fully disposes of all claims asserted in an action.) *Id*. at ¶ 8; *see also*, *Quinn v. City of Boston*, 325 F.3d 18, 26 (1st Cir. 2003) (discussing the finality requirement in the federal context).

A. Rule 54(b)

¶ 24 In actions involving multiple claims or multiple parties, Commonwealth Rule of Civil Procedure 54(b) allows the Commonwealth Superior Court to direct the entry of final judgment as to fewer than all of the claims or parties;[14] but to do so, the court must make an express determination that there is no just reason for delay upon an express determination for the entry of judgment. *Kumagai*, 2006 MP 20 ¶ 10; *see also*, *Curtiss-Wright Corp. v. Gen. Elec. Co*., 446 U.S. 1, 8 (1980) (interpreting Fed. R. Civ. P. 54(b)). Rule 54(b) provides:

> JUDGMENT UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES.

[14] While Rule 54(b) of the Commonwealth Rules of Civil Procedure has been characterized as an exception to the final judgment rule, this Court has made clear, and takes the time to do so again here, that "Rule 54(b) does not relax the finality required for a decision to be appealed . . . . It simply allows an individual claim that has been finally decided, to move forward to appeal without waiting for a final decision to be rendered on all the claims in a case." *Chan*, 2003 MP 5 ¶ 12.

> 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*. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

NMI R. Civ. P. 54(b) (emphasis added).

¶ 25 By its own language, Rule 54(b) mandates strict adherence; that is, if the superior court deems it appropriate to issue a final appealable order on an issue that adjudicates less than all the claims in a multi-claim case, the court must make an "express determination that there is no just reason for delay" and expressly direct the entry of final judgment. *See Kumagai*, 2006 MP 20 ¶ 12 (setting forth the two-part test the trial court must apply in determining whether certification is proper under Rule 54(b)). In *Kumagai*, 2006 MP 20 ¶ 1, we held that Rule 54(b) certifications – like all final judgments – must be set forth on a separate document issued from the superior court as a prerequisite to appeal, and in *Bank of Guam*, 2007 MP 1 ¶ 6, we held that Rule 54(b) certification may not be implied from the actions and language of the trial court; the court must specifically invoke Rule 54(b) and must make an express determination that there is no just reason for delay and an express direction for the entry of judgment. Given our strict interpretation of the rule, in *Bank of Guam* we held that before this Court may exercise appellate jurisdiction over a Rule 54(b) partial final judgment, "the separate entry of judgment must expressly state that the trial court has considered Rule 54(b) and it finds that: 1) the judgment is final as to the parties and/or the issue(s) involved; and 2) the judgment is one that warrants immediate appealability." 2007 MP 1 ¶ 13.

¶ 26 In this case, the superior court granted a motion for partial summary judgment in favor of the plaintiffs on the issue of title and dismissed the defendant's counterclaims. The order also reserved ruling on the plaintiffs' slander of title claim. Since partial summary judgments are by definition interlocutory in that they fail to adjudicate all the claims involved in a case, in the absence of Rule 54(b) certification this Court will generally lack jurisdiction to review such orders on the merits. *Mariana Pub. Land Corp. v. Guerrero*, 2 NMI 301, 306 (1991) ("Generally, the granting of a partial summary judgment is interlocutory in nature and is not appealable."); *see also*, *Liberty Mutual Ins. Co. v. Wetzel*, 424 U.S. 737, 744 (1976) (stating that partial summary judgments "are by their terms interlocutory . . . and[,] where assessment of damages or awarding

of other relief remains to be resolved[,] have never been considered to be 'final' [for the purposes of federal appellate review]"). It is undisputed that the superior court did not "direct the entry of a final judgment as to one or more but fewer than all of the claims . . . upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment" under Rule 54(b). Indeed, it does not appear that either party requested that the trial court do so, and this Court has refused to treat the entry of partial summary judgment as the equivalent to a Rule 54(b) certification in the past. *Bank of Guam*, 2007 MP 1 ¶10 ("[i]nterpreting a judgment as a Rule 54(b) determination without the required findings [i.e., an express entry of a partial final judgment and an express finding that there is no just reason for delay] would effectively read out those requirements") (quoting *Am. States Ins. Co. v. Dastar Corp.*, 318 F.3d 881, 889 (9th Cir. 2003)) (internal quotations omitted and brackets in original). Since the partial summary judgment presently before the Court was not certified pursuant to the procedures set forth in Rule 54(b) the remaining question is whether the trial court's order falls within one of the common law exceptions to the finality rule.

B. Common Law Exceptions to the Finality Rule

¶ 27 Even in the absence of Rule 54(b) certification, an interlocutory order may be appealable if: (a) the appealability of the order is not dependent on finality because it is made appealable by statute,[15] or (b) it falls within one of the common law exceptions to the finality rule. *Cf. Huckeby v. Frozen Food Express*, 555 F.2d 542, 546-49 (5th Cir. 1977) (providing a comprehensive discussion of the exceptions to the final judgment rule in the federal context). This Court has expressly adopted two common law exceptions to the final judgment rule – both of which derive from federal jurisprudence – and has left open the possibility that other federal exceptions may be adopted in the future. *See, e.g., Commonwealth v. Hasinto*, 1 NMI 377, 385 n.6 (1990) (adopting the "collateral order" exception to the final judgment rule as set forth by the U.S. Supreme Court in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949)); *Pac. Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 14 (adopting the "practical finality" exception to the final judgment rule as set forth by the U.S. Supreme Court in *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148 (1964)); *Kumagai*, 2006 MP 20 ¶ 16 n.5 (acknowledging, but not specifically adopting, what has become known as the "*Jetco*" exception to the final judgment rule – based on the Fifth Circuit's holding in *Jetco Elec. Indus., Inc. v. Gardiner*, 473 F.2d 1228 (5th Cir. 1973), which stands for the proposition that in the absence of Rule 54(b) certification appellate jurisdiction may nonetheless

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[15] *See In re Estate of Pilar De Castro*, 2009 MP 3 (finding jurisdiction to review an appeal under 8 CMC § 2206 notwithstanding the absence of Rule 54(b) certification); *see also Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 13 (holding that the Court may hear appeals from non-final orders when expressly allowed by statute).

be perfected if the trial court takes subsequent action that fully adjudicates the case below). In this case, defendant's appeal is not authorized by statute, and for the reasons discussed below, neither of the common law exceptions to the final judgment rule expressly adopted by this Court, nor the federal exception most directly applicable (but which has not been adopted by this Court) provide an exception to the finality requirement that would allow us to examine the merits of the present appeal.

1. The Collateral Order Doctrine

¶ 28 In *Commonwealth v. Hasinto*, 1 NMI 377, 385 n.6 (1990), this Court recognized the "collateral order" exception to the final judgment rule. As first articulated by the U.S. Supreme Court in *Cohen v. Beneficial Industries Loan Corp*., 337 U.S. 541 (1949), the collateral order doctrine provides a narrow exception for decisions that "finally determine claims . . . separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id*. at 546. To come within the collateral order exception, the order sought to be appealed from must: (1) have conclusively determined a disputed question; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment. *Pac. Amusement, Inc*., 2005 MP 11 ¶ 19. The crucial factor in this doctrine, as emphasized by the U.S. Supreme Court in *Cohen*, is that the order appealed from must be effectively unreviewable if the aggrieved party is forced to wait until the entire case is fully adjudicated. In this case, the order satisfies the first factor of the collateral order doctrine in that the partial summary judgment determined the issue of property ownership. The order, however, fails to meet either of the remaining factors. Rather than being completely separable from the main cause of action, the question of "better title" *is* the main cause of action. Finally, and most importantly for the purposes of whether the collateral order exception applies, the order sought to be appealed will be reviewable as part of the trial court's final judgment. In other words, the collateral order doctrine does not apply in this case because the defendant can obtain appellate review of the trial court's ruling on the title issue as well as the order dismissing his counterclaims once the entire case is concluded.

2. The *Gillespie* Doctrine

¶ 29 This Court has also stated in dictum that the "pragmatic approach" to finality – as articulated by the U.S. Supreme Court in *Gillespie v. U.S. Steel Corp*., 379 U.S. 148 (1964) – applies in the Commonwealth. *Pac. Amusement, Inc*., 2005 MP 11 ¶ 14 (stating that "[l]ike a number of other jurisdictions, we adopt the *Gillespie* doctrine," but ultimately holding that the

doctrine did not apply in that particular case). Like the "collateral order" exception, the *Gillespie* doctrine is founded on the principle that where a trial court's order affects the substantive rights of the parties at an early stage of the litigation and could effectively cut one of the parties out of the litigation, that the order should be immediately reviewable.

¶ 30 In *Gillespie*, a parent brought a wrongful death action on behalf of herself and the decedent's dependent brothers and sisters after her son was killed while working on the defendant's ship. 379 U.S. at 149-50. The action was brought in federal court and the plaintiff sought relief under the Jones Act[16] and a state wrongful death statute. The trial court held, in a preliminary order, that the decedent's siblings were not entitled to recover under the federal statute and the mother and siblings appealed. *Id*. at 150. In holding that the trial court's order eliminating recovery by the siblings was a final appealable order, the Court stated that "the requirement of finality is to be given a 'practical rather than a technical construction.'" *Id*. at 152 (quoting *Cohen*, 337 U.S. at 546). The Court further held that in determining whether an order is final for the purposes of appeal, the courts should look to whether the ruling is "fundamental to the further conduct of the case," and should balance the danger of denying one of the parties justice with the inconvenience of piecemeal litigation. *Id*. at 152-53.

¶ 31 In this case, we cannot hold that the danger of denying the defendant justice – if such a danger exists at all – outweighs our strong policy prohibiting piecemeal litigation. The defendant should have waited until the entry of final judgment, or in the alternative, requested the trial court to certify the order pursuant to Rule 54(b). Ultimately, we find that the application of the *Gillespie* doctrine in this case would contradict this Court's previous rulings requiring strict adherence to Rule 54(b) and would come dangerously close to swallowing the rule altogether.

3. The *Forgay* Doctrine

¶ 32 The third federally recognized exception to the traditional final judgment rule – and the one most applicable in the present case – is typified by the U.S. Supreme Court's decision in *Forgay v. Conrad*, 47 U.S. (6 How.) 201 (1847). In that case, the Court carved out an exception to the final judgment rule for certain types of interlocutory orders involving real property. Specifically, the *Forgay* doctrine authorizes interlocutory appellate review whenever an order directs immediate delivery of real property, which would subject the losing party to irreparable harm if review is delayed until the conclusion of the case. *Id*. at 204. Although the *Forgay* doctrine authorizes immediate appeal from certain orders involving real property, we hold that it is not applicable in this case. *Forgay* involved a bankruptcy proceeding in which the trial court

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[16] At the time, the Jones Act subjected employers to liability for negligence that caused a seaman's injury or death. 46 U.S.C. § 688.

set aside certain deeds as fraudulent, ordered the immediate delivery of property to the complainant, and directed certain other property to be sold and the proceeds distributed among the bankrupt's creditors. *Id*. at 202-03. Forgay, the holder of one of the deeds that had been declared null and void by the trial court, appealed the court's ruling prior to the distribution of the bankrupt's assets. *Id*. at 203. Finding the trial court's order immediately appealable, the Supreme Court stressed that if Forgay's appeal were delayed, he would be "subjected to irreparable injury" – the assets would already have been sold and the proceeds distributed among the creditors. *Id*. at 203-04. The Court set forth the following rule:

> when the decree decides the right to the property in contest, and directs it to be delivered . . . or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal . . . .

Id. at 204.

¶ 33 In this case, the superior court granted partial summary judgment in favor of the plaintiffs on their quiet title claim – finding that the "[p]laintiffs are entitled to be declared owners of the property in dispute as a matter of law." Unlike the order in *Forgay*, the superior court's order in this case did not require the immediate delivery or sale of the property in dispute. Indeed, the superior court's order maintained the status quo between the parties; that is, the order did not require the title of the disputed property to change hands. In the absence of an order requiring immediate delivery or sale of the disputed property – which was the basis for the Court's holding in *Forgay* – we cannot say that the defendant is in danger of suffering "irreparable injury" sufficient to authorize an exception to the final judgment rule. As the U.S. Supreme Court stated in *Barnard v. Gibson*, 48 U.S. 650, (1849), "[i]n several important particulars, this decree falls below the rule of decision in *Forgay v. Conrad*." *Id*. at 657 (distinguishing an interlocutory order in a patent infringement case, in which the trial court found the plaintiffs to be rightful owners of the disputed patent and enjoining the defendants from further infringement, from the Court's holding in *Forgay*).

¶ 34 Although the above three exceptions differ from each other in several respects and arise in different contexts, they are united by a common theme: each applies only where there is "an order, otherwise nonappealable, determining substantial rights of the parties which will be irreparably lost if review is delayed until final judgment." *Huckeby*, 555 F.2d at 547 (quoting *United States v. Wood*, 295 F.2d 772, 778 (5th Cir. 1961)); *see also Sears Roebuck & Co. v. Mackey*, 351 U.S. 427, 441 (1956) (Frankfurter, J., concurring)). For the reasons outlined above, we do not find that the defendant will suffer irreparable injury should immediate appellate review be withheld.

III

CONCLUSION

¶ 35 Based on the foregoing, we find that this Court is without jurisdiction to review any of the orders raised on appeal. The order granting partial summary judgment and dismissing the defendant's counterclaims did not dispose of all the claims at issue in the case and the trial court did not certify its ruling pursuant to Rule 54(b) of the Commonwealth Rules of Civil Procedure. Therefore the appeal is hereby DISMISSED.

SO ORDERED this 16th day of March 2010.

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F. PHILIP CARBULLIDO,
Justice Pro Tem

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RICHARD H. BENSON,
Justice Pro Tem

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ROBERT J. TORRES,
Justice Pro Tem