IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

JAMES CAMACHO BOWIE AND LINDA MANAHANE BOWIE,
Plaintiff-Appellants,

v.

APEX CONSTRUCTION, INC., NORTHERN MARIANA HOUSING CORP., AND COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
Defendant-Appellees.

Supreme Court No. 2019-SCC-0009-CIV

ORDER DENYING APPELLEE'S MOTION TO DISMISS

Cite as: 2020 MP 5

Decided April 14, 2020

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE PERRY B. INOS
JUSTICE PRO TEMPORE JOSEPH N. CAMACHO

Superior Court Civil Action No. 13-0092
Presiding Judge Roberto C. Naraja, Presiding

PER CURIAM:

¶ 1 We determine whether this Court has jurisdiction over an appeal in a multi-party and multi-claim case. Defendant-Appellee the Commonwealth of the Northern Mariana Islands ("Commonwealth") seeks to dismiss the instant appeal for lack of jurisdiction, claiming it is untimely since a 2014 order dismissed it from the case.[1] Because the order did not dispose of all claims as to all parties as NMI Rule of Civil Procedure 54(b) ("Rule 54(b)") requires,[2] and no exception applies, the appeal is timely and we have jurisdiction. Therefore, we DENY the motion to dismiss.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Plaintiffs-Appellants James C. Bowie and Linda M. Bowie ("Bowies") sued Apex Construction, Inc. ("Apex"), Northern Marianas Housing Corporation ("NMHC"), and the Commonwealth for personal injury damages Mr. Bowie sustained falling on a ramp in front of his home. The Bowies allege that the ramp, constructed by Apex pursuant to design standards prepared by NMHC, was defective. The amended complaint alleges five causes of action: (1) personal injury against all defendants; (2) breach of contract against Apex; (3) breach of contract against NMHC; (4) Consumer Protection Act claim against Apex; and (5) per se public nuisance claim under the Building Safety Code against all defendants. NMHC counterclaimed against the Bowies.

¶ 3 NMHC and the Commonwealth filed motions to dismiss all causes of action against them for failure to state a claim under NMI Rule of Civil Procedure 12(b)(6). NMHC alternatively moved for summary judgment pursuant to NMI Rule of Civil Procedure 56. In its order dated December 9, 2014 ("2014 Order"),[3] the court dismissed causes of action 1 and 5 as to the Commonwealth but maintained them against NMHC. The court also denied NMHC's summary

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[1] Supreme Court Rule 4(a)(1) requires that a notice of appeal be filed within 30 days of the judgment or order appealed from.

[2] Rule 54(b) states:

> When an action presents more than one claim for relief— whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

[3] The title of the order is "Order Granting Commonwealth of the Northern Mariana Islands's Motion to Dismiss; Order Denying Northern Marianas Housing Corporation's Motion to Dismiss; and Order Denying Northern Marianas Housing Corporation's Motion for Summary Judgment." The order was issued by another judge who retired before all claims were adjudicated.

judgment motion. Thus, no claim remained against the Commonwealth.

¶ 4 On July 1, 2019, the court entered a Final Judgment disposing of all the parties' claims. The court entered judgment in favor of the Bowies against Apex for $356,098.22 but denied their claims against NMHC and the Commonwealth.[4] Finally, the court denied NMHC's counterclaim.

¶ 5 The Bowies filed a Notice of Appeal on July 30, 2019, within 30 days of the Final Judgment, appealing the judgment in favor of NMHC and the Commonwealth.[5] The Commonwealth now moves to dismiss.

II. JURISDICTION

¶ 6 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3. As discussed *infra*, the 2019 Final Judgment is the appealable final judgment.

III. STANDARD OF REVIEW

¶ 7 The sole issue at this stage in the appeal is whether the 2014 Order was a final judgment appealable under Rule 54(b). The interpretation of Rule 54(b) is a question of law subject to de novo review. *See Ishimatsu v. Royal Crown Ins. Corp.*, 2012 MP 17 ¶ 27.

IV. DISCUSSION

¶ 8 The Commonwealth argues the Court lacks jurisdiction because the Bowies did not timely appeal the 2014 Order and their appeal is, therefore, more than four years too late. The Commonwealth contends that the 2014 Order was appealable under the practical finality doctrine of *Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964), which we recognized in *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 14. The Commonwealth additionally urges us to follow a Wisconsin case, *Admiral Ins. Co., v. Paper Converting Machine Co.*, 811 N.W.2d 351, 357 (Wis. 2012), and a Nebraska case, *Deprez v. Continental Western Insurance Co.*, 584 N.W.2d 805, 808 (Neb. 1998), which hold orders that dispose of litigation as to fewer than all parties to be final and appealable. We review de novo whether the practical finality doctrine provides an exception to Rule 54(b) here. *See Ishimatsu*, 2012 MP 17 ¶ 27.

¶ 9 Rule 54(b) requires a final judgment resolving the claims of all the parties. *See Commonwealth v. Kumagai*, 2006 MP 20 ¶¶ 10–16; *Commonwealth Dev. Auth. v. Camacho*, 2010 MP 19 ¶ 10 ("A final order is one that . . . adjudicates all of the rights and liabilities of all of the parties.") We have followed "strict adherence" to the rule. *Camacho v. Demapan*, 2010 MP 3 ¶ 31. The Bowies sued three parties: the Commonwealth, Apex, and NMHC. The 2014 Order dismissed

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[4] With respect to the Commonwealth, the Final Judgment states the following: "As to Plaintiffs' claim against the CNMI, judgment is entered in favor of the CNMI."

[5] The Notice of Appeal states that it appeals the "[f]inal judgment in favor of NMHC and CNMI, including orders granting NMHC's Motion for Summary Judgment and CNMI's Motion to Dismiss [i.e., the 2014 Order]."

only the claims against the Commonwealth. The court did not reduce to final judgment the remaining parties' claims until a separate Final Judgment was entered in 2019. Accordingly, the 2014 Order was not appealable under Rule 54(b) because that order did not adjudicate all the claims and all the parties' rights and liabilities.

A. Gillespie *Practical Finality Doctrine*

¶ 10 The Commonwealth urges us to find the 2014 Order was nonetheless appealable under the practical finality doctrine of *Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964). *Gillespie* involved a preliminary order in a wrongful death suit. 379 U.S. at 149–50. The decedent's mother sued on behalf of herself and the decedent's siblings under federal and state statutes. *Id*. The court struck the state statutory claims and the siblings' claims in an order. *Id*. at 150–51. The plaintiff appealed, and the defendant moved to dismiss because the order was not a final judgment. *Id*. On certiorari, the U.S. Supreme Court held that justice and equitable considerations required permitting an appeal in that circumstance, emphasizing that "the requirement of finality is to be given a 'practical rather than a technical construction.'" *Id*. at 152 (quoting *Cohen v. Beneficial Industrial Loan Corp*., 337 U.S. 541, 546 (1949)).

¶ 11 We acknowledged the *Gillespie* doctrine in *Pacific Amusement, Inc. v. Villanueva*, but held that it was not applicable there, noting that it is a narrow exception limited to "unsettled issues of national importance" requiring "immediate review." 2005 MP 11 ¶ 17. The trial court in *Villanueva* ordered a party to provide an itemized accounting of a request for fees and costs. *Id*. ¶ 5. We found no jurisdiction to hear an appeal of that order. *Id*. ¶ 21. We held that an otherwise non-final order can be appealed under the *Gillespie* doctrine only if: (1) the decision is a marginally final order; (2) the order disposes of an unsettled issue of national significance; and (3) the finality issue is not presented to the appellate court until argument on the merits (thereby ensuring that policies of judicial economy would not be served by remanding the case with an important unresolved issue). *Id*. ¶ 16 (citing *Way v. Cnty of Ventura*, 348 F.3d 808, 811 (9th Cir. 2003)).

¶ 12 As in *Villanueva*, we do not find *Gillespie* applicable in the instant case. The 2014 Order was not "marginally final." The litigation was still active, involving the same issues and causes of action, but with one of the defendants dismissed. It also did not dispose of an "unsettled issue of national significance." It simply held that the Commonwealth had statutory immunity from the Bowies' suit under the Building Safety Code, 2 CMC § 7122(f). The Bowies relied on Rule 54(b) in waiting to appeal a final judgment. The court first dismissed the claims against the Commonwealth, and it would be premature to appeal before the court had resolved their claims against the remaining defendants. When *Gillespie* is invoked, even when applicable, it is to protect an otherwise premature appeal, not to cut off a timely appeal. That is, *Gillespie* may permit an otherwise premature appeal of fewer than all the claims or parties to go forward when immediate review is required, though even then, "it should be applied 'only

sparingly.'" *SEIU, Local 102 v. County of San Diego*, 60 F.3d 1346, 1349 (9th Cir. 1994). *Gillespie* will not bar an appeal from a final judgment that a litigant would prefer be reviewed piecemeal.

¶ 13 The other cases the Commonwealth urges us to follow do not comport with Rule 54(b). *Admiral Insurance Co.* is not relevant because it applies a Wisconsin statute which defines finality differently than the NMI Rules of Civil Procedure. Wisconsin Statute § 808.03(1) states that "[a] final judgment or final order is a judgment, order or disposition that disposes of the entire matter in litigation as to *one or more* of the parties . . . ." (emphasis added). This contrasts with Rule 54(b), which requires resolution of *all* parties and claims for finality. *See supra* note 2. Similarly, in *Deprez*, the Nebraska Supreme Court applied a rule that it has followed in a number of cases that "[a]n order which effects a dismissal with respect to one of multiple defendants in an action is a final, appealable order as to the defendant dismissed." 584 N.W.2d at 808. The Nebraska Supreme Court itself acknowledged that this was not the majority rule in its decision in *Green v. Terrytown*, 188 Neb. 840, 841 (Neb. 1972). Our NMI Rule 54(b) mirrors Federal Rule of Civil Procedure 54(b); Nebraska has no such rule. *See generally* Robert L. Banta, *Appealability Problems in Nebraska; Advantages of Federal Rule 54(b)*, 53 NEB. L. REV. 73 (1974). These jurisdictions do not have our finality rule and these cases are not germane.

B. Certification of No Just Reason for Delay

¶ 14 Apart from the practical finality doctrine and caselaw from jurisdictions that do not follow Rule 54(b), there is an exception carved out in Rule 54(b) itself. "The [trial] court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court *expressly determines* that there is no just reason for delay." NMI R. CIV. P. 54(b) (emphasis added).

¶ 15 NMI Rule 54(b) mirrors Federal Rule of Civil Procedure 54(b).[6] Federal courts can certify a judgment as to fewer than all the parties as appealable under 54(b) but must explicitly state so in the order. *See Kumagai*, 2006 MP 20 ¶ 13. Still, federal appellate courts may refuse to accept such a certification if the reasoning lacks adequate explanation why there is "no just reason for delay." *See, e.g.*, *Clos v. Corr. Corp. of Am.*, 597 F.3d 925, 928 (8th Cir. 2010); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332 (Fed. Cir. 2017); *Elliott v. Archdiocese of N.Y.*, 682 F.3d 213, 220–21 (3d Cir. 2012). The same is true of most state courts. *See, e.g.*, *Copper Hills Custom Homes, LLC v. Countrywide Bank, FSB*, 428 P.3d 1133, 1139 (Utah 2018).

¶ 16 Here, the 2014 Order does not state that it is appealable or final and does not discuss Rule 54(b). As there was no certification by the court, the 2014 Order is not appealable under the NMI Rule 54(b) "no just reason for delay" exception.

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[6] "When a rule of this Court is 'patterned' after a federal rule, it is appropriate to look to how the federal courts have interpreted that rule for guidance." *Commonwealth v. Jing Xin Xiao*, 2013 MP 12 ¶ 47 n.5.

V. CONCLUSION

¶ 17 The 2014 Order did not adjudicate all claims of all parties and so was not appealable under Rule 54(b). The *Gillespie* "practical finality" exception does not apply, and the court did not certify the 2014 Order as final on the ground of "no just reason for delay." The July 1, 2019 Final Judgment is the final appealable order, and the July 30, 2019 Notice of Appeal was within 30 days of the entry of judgment. The appeal is timely and we accordingly have jurisdiction. The Motion to Dismiss is DENIED.

SO ORDERED this 14th day of April, 2020.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
PERRY B. INOS
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice Pro Tempore

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