FOR PUBLICATION

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

BANK OF GUAM,
Plaintiff/Appellee,

v.

FIDEL MENDIOLA, JR. and D&J EQUIPMENT RENTAL,
Defendants/Appellants.

Supreme Court Appeal No. 06-0006-GA
Superior Court Civil Case Action No. 03-0636

ORDER DISMISSING APPEAL

Cite as: ***Bank of Guam v. Mendiola et al., 2007 MP 1***

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BEFORE: MIGUEL S. DEMAPAN. *Chief Justice*; JOHN A. MANGLONA, *Associate Justice*; and KENNETH L. GOVENDO, *Justice Pro Tempore*

DEMAPAN, Chief Justice:

I.

¶1 For purposes of this dismissal[1] we have truncated the case history to highlight only those issues pertinent to our decision.

¶2 This case originated from a dispute over the rightful ownership of three trucks. At the time this appeal was filed, a trial on the matter was calendared, but had yet to begin. There had, however, been numerous rulings on pre-trial motions. Defendants Fidel Mendiola, Jr. and D&J Equipment Rental ("Mendiola")[2] appeal four of these: 1) an order granting summary judgment against Mendiola on the counterclaims of intentional and negligent infliction of emotional distress for actions Plaintiff Bank of Guam ("Bank") took in attempting to retake the trucks; 2) an order denying Mendiola's motion for reconsideration of the intentional and negligent infliction of emotional distress claims; 3) an order granting Bank's motion in limine to exclude certain evidence; and 4) an order granting Bank's motion in limine to select jury venire from the entire Commonwealth voter registration list (instead of limiting potential jurors to Rota).

¶3 Bank filed a motion to dismiss this appeal for lack of jurisdiction because these orders are interlocutory and do not fit within the collateral order exception. Mendiola argues that the order granting partial summary judgment and the order denying his motion

[1] Although the parties have not briefed the issues raised on appeal, we find that the arguments set forth in the motion to dismiss and the opposition thereto are adequate to warrant dismissal of this matter. We further note that this dismissal does not address, and therefore does not prejudice, the substantive issues upon which appellants initially brought this appeal.

[2] The appellants are collectively referred to herein as "Mendiola" for ease of reading.

to reconsider are final judgments under Com. R. Civ. P. 54(b), which allows a trial court to issue partial final judgments in cases involving multiple parties or claims. Mendiola appears to concede the argument that pre-trial motions in limine do not fall under Rule 54(b), and chooses instead to focus simply on the partial summary judgment and the denial of reconsideration. Since the issue of whether an order is final for purposes of appeal is a purely legal determination, we review it de novo. *Chan v. Chan*, 2003 MP 5 ¶ 2.

II.

A. The Trial Court Did Not Find Its Orders Appealable Pursuant to Rule 54(b).

¶4 We have repeatedly stated that we have jurisdiction to review lower court orders only if we are specifically provided authority to do so. *See e.g. Commonwealth v. Kumagai*, 2006 MP 20 ¶ 9; *Commonwealth v. Crisostimo*, 2005 MP ¶¶ 10-12; *Commonwealth v. Hasinto*, 1 N.M.I. 377, 385 (1990). As a general rule, we possess appellate jurisdiction only over final orders.[3] A narrow exception to this rule is found in the collateral order doctrine, *Commonwealth v. Guerrero*, 3 N.M.I. 479, 481-82 (1993), and there may be other exceptions specifically provided by law. *Commonwealth v. Hasinto*, 1 N.M.I. 377, 384-85 (1990). Mendiola has conceded that the collateral order doctrine does not apply here, opting instead to rely on Com. R. Civ. P. 54(b). Thus, if appellate jurisdiction exists in the present case, it must be because the judgments appealed are partial final judgments.

¶5 A final judgment is one that "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Chan*, 2003 MP 5 ¶13 (citation omitted). Generally, a final judgment must adjudicate all the rights and liabilities of each party. *Kumagai*, 2006 MP 20 ¶ 10. However, Com. R. Civ. P 54(b) carves out an exception for

[3] Of course, our mandamus jurisdiction provides an alternate, albeit narrow, means of review.

partial final orders when multiple claims or multiple parties are involved. In such cases "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." Com. R. Civ. P. 54(b). Although Rule 54(b) is an exception to the final judgment doctrine, its language also serves to reinforce the general rule requiring final adjudication of all claims. "In the absence of [the trial court's compliance with this Rule], 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 . . . ." Com. R. Civ. P. 54(b). Thus, by its own language, Rule 54(b) requires strict adherence.

¶6 We most recently addressed Rule 54(b) in *Kumagai*, 2006 MP 20.[4] There, we noted that an express Rule 54(b) determination was necessary for appellate jurisdiction. *Id*. at ¶ 13. However, since both parties in *Kumagai* acknowledged that Rule 54(b) was not considered by the trial court, we were without occasion to fully address Mendiola's argument that a Rule 54(b) certification may be implied from the actions and language of the trial court. We now find that in the absence of express language, a lower court order is not appealable under Rule 54(b).

¶7 Mendiola has ignored Rule 54(b)'s strict language, and the overwhelming case law authority, in asking this Court to infer compliance with Rule 54(b) based on nothing more than standard pre-trial orders and the boilerplate language used in them. Mendiola incorrectly relies on this Court's language in *Ito v. Macro Energy, Inc*., 2 N.M.I. 459, 465 (1992), for the proposition that Rule 54(b) has no formalities and may be inferred from routine orders of the trial court. Such an interpretation is plainly wrong. In *Ito* we noted:

[4] In fairness to Mendiola, it should be noted that his appeal was filed prior to our decision in *Kumagai*.

> There is no procedure for obtaining a certificate prescribed in Rule 54(b). In most cases a party simply will file a motion requesting the court to make the determination and direction required by the rule. In an appropriate case, the [trial] court may consider the question sua sponte.

While it is true that Rule 54(b) does not require a specific procedure for obtaining certification from the trial court, in no way does it follow that the certification itself is optional. None of our decisions have so held. In *Ito* we were dealing with the propriety of a trial court's decision to certify. We did not address the necessity of obtaining certification before hearing a Rule 54(b) appeal. Nor do our other cases dealing with Rule 54(b) permit such a reading.

¶8 In *MPLC v. Guerrero*, 2 N.M.I. 302, 306 (1991), we allowed an appeal of a partial summary judgment, but specifically noted that Rule 54(b) was inapplicable because the case involved "only one substantive claim made by one party . . . ." We held in *Teregeyo v. Lizama*, 1997 MP 12 ¶¶ 12-15, that a lower court is not required to make a reasoned explanation of its Rule 54(b) determination that "no just cause for delay" exists to warrant postponing an appeal. However, our *Teregeyo* ruling implicitly acknowledged that a Rule 54(b) order must include an express determination by the trial court that there was in fact "no just cause for delay." In other words, the record must demonstrate that the trial court found Rule 54(b) applicable, although the court's reasoning need not be present. In *Chan*, 2003 MP 5, we were asked to find a Rule 54(b) certification improper. In doing so, we held that "[a] judgment that rules on the issue of liability, but does not resolve whether a plaintiff is entitled to relief expressly prayed for, is not final, and therefore cannot be certified for appeal under Rule 54(b)." *Id*. at ¶15. The trial court had expressly certified its order pursuant to Rule 54(b), and nothing in our opinion can be read to indicate that such an express certification was optional.

¶9 Nor can Mendiola's reasoning be supported by authority from the federal courts. Our Rule 54(b) is taken from the Federal Rules, and thus federal cases provide guidance in its interpretation. *See, e.g., Sullivan v. Tarope*, 2006 MP 11. A good starting point is the U.S. Supreme Court's decision in *Curtiss-Wright Corporation v. General Electric Co.*, 446 U.S. 1, 100 S.Ct. 1460, 64 L.Ed.2d 1 (1980). There, Chief Justice Burger states:

> Nearly a quarter century ago . . . this Court outlined the steps to be followed in making determinations under Rule 54(b). A district court must first determine that it is dealing with a "final judgment." It must be a "judgment" in the sense that it is a decision upon a cognizable claim for relief, and it must be "final" in the sense that it is "an ultimate disposition of an individual claim entered in the course of a multiple claims action."
>
> Once having found finality, the district court must go on to determine whether there is any reason for delay. Not all final judgments on individual claims should be immediately appealable, even if they are in some sense separable from the remaining unresolved claims. The function of the district court under the Rule is to act as a "dispatcher." It is left to the sound judicial discretion of the district court to determine the "appropriate time" when each final decision in a multiple claims action is ready for appeal. This discretion is to be exercised "in the interest of sound judicial administration."

Id. at 7-8, 100 S.Ct at 1464-65. (citations omitted). The U.S. Supreme Court makes clear that Rule 54(b) requires an active process on the part of the trial court, requiring it to answer two specific questions: 1) is the judgment final as to a particular claim; and 2) is the judgment one that warrants exception from the normal appeal process by certifying it as immediately appealable? In *Kumagai*, we clarified this second prong by requiring that "the court . . . perform a balancing test and consider whether the 'costs and risks of multiple proceedings and the policy with respect to judicial efficiency are outweighed by the need for an "early and separate judgment as to some claims or parties."'" *Kumagai*, 2006 MP 20 ¶ 12 (citations omitted). Additionally, it stands to reason that the answers to those questions must appear in the record. It would be impossible for the trial court to fulfill its

"dispatcher" role if this Court was left to divine the trial court's 54(b) determination without the benefit of express language to that effect.

¶10 Indeed, the trial court must be the one to determine the applicability of Rule 54(b). The Ninth Circuit has recently noted that the trial court is the proper venue for addressing whether a party's rights might be affected in the absence of an immediate appeal. *American States Insurance Co. v. Dastar Corp.*, 318 F.3d 881, 889 (2003) (reasoning that whether a trial court's partial summary judgment justifies immediate appeal because it might permanently effect a litigant's rights "is precisely a decision that should be made by the district court and is contemplated by Rule 54(b)"). The Court went on to state that a partial summary judgment is not equivalent to a Rule 54(b) certification, *Id*. at 888, and "[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 . . . ." *Id.* at 889.

¶11 It is obvious that the trial court must first determine whether Rule 54(b) is applicable before an appellate court may consider it. The only remaining question is: what is the threshold for "express determination" under the rule? The standard applied by the federal circuits is high. "Indeed, only one [circuit] has held that a court of appeals may exercise jurisdiction if a district court failed to state expressly that there was 'no just cause for delay.'" *Berckeley Investment Group, LTD. v. Colkitt*, 259 F.3d 135, 142 (2001). In *Kelly v. Lee's Old Fashioned Hamburgers, Inc.*, 908 F.2d 1218, 1219-20 (1990), the Fifth Circuit held:

> Where neither the order appealed from nor related portions of the record reflect an intent by the district judge to enter a partial final judgment, we refuse to consider the order appealable as a final judgment. . . .

> Where, on the other hand, language in the order either independently or together with related parts of the record reflects the trial judge's clear intent to enter a partial final judgment under Rule 54(b), we consider the order appealable.

(citations omitted). The *Kelly* Court found that the trial court, with "unmistakable clarity," had sufficiently expressed that its decision was intended to be a partial final judgment under Rule 54(b) because: "[1] the record contains a minute entry directing the prevailing defendant to 'prepare and submit 54(b) judgment to the Court.' [2] The order appealed from is captioned 'F.R.C.P 54(b) JUDGMENT' and [3] further directs 'that there be final judgment entered pursuant to Federal Rule of Civil Procedure 54(b) . . . .'" *Id*. at 1221.

¶12 In a subsequent Fifth Circuit case, the Court ensured its standard, although lower than other circuits, remained sufficiently strong to preserve the district court's role as a dispatcher. Referring to its holding in *Kelly*, the Court states, "[t]he intent [that the judgment be final in accordance with Rule 54(b)] must be *unmistakable*; the intent must appear from the order or from documents referenced in the order; we can look nowhere else to find such intent, nor can we speculate on the thought process of the district judge." *Briargrove Shopping Center Joint Venture v. Pilgrim Enterprises, Inc.*, 170 F.3d 536, 539 (1999) (italics in original). This reasoning led the Court to find that the mere labeling of an order as a "Final Judgment" was insufficient to make it a final appealable judgment under Rule 54(b). *Id*. at 540. The title "Final Judgment," taken alone, "does not indicate any intent by the district court that the order should be *immediately* appealable." *Id*. (italics in original).

¶13 In the present case, we are given no indication that the trial court even considered Rule 54(b), much less that the court intended its orders to be appealable pursuant thereto. We find that in the absence of express language to that effect, a lower court order is not

appealable under Rule 54(b). Further, in light of the announcement of the separate document rule in *Kumagai*, it is now necessary for such express language to appear on the face of the separate document constituting the entry of judgment. Thus, we hold 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 pursuant to Com. R. Civ. P. 54(b). In the current case, there is clearly no such language, and as a result, this Court does not have jurisdiction to hear this appeal.

B. Sanctions

¶14 In its motion to dismiss this appeal, the Bank suggests that this Court sanction Mendiola for his abuse of the appellate process. Although we do not take such actions lightly, Mendiola's conduct here might warrant such disciplinary action. Mendiola's argument has no basis in law. Had Mendiola endeavored to cite relevant authority, surely he would have realized this. Instead, he chose to make general and unfounded legal assertions. Such improprieties force this Court to waste valuable resources in an effort to determine whether unsubstantiated claims have any legal basis. This delays justice for both the parties in the present case, as well as those in other cases pending before the Court.

¶15 Mendiola cites two N.M.I. cases dealing with Rule 54(b), but one of them is offered in support of a wholly different legal point, and neither of them support Mendiola's argument that a Rule 54(b) holding may be inferred simply from a trial court's dismissal of certain claims within a multi-claim proceeding. Mendiola also cited a single Ninth Circuit case for the proposition that "dismissals with prejudice generally constitute final orders,

while dismissals without prejudice generally do not." *Wakefield v. Thompson*, 177 F.3d 1160, 1162 (1999). However, that case dealt with the dismissal of a single party's claim. It does not even mention Rule 54(b), and is irrelevant for the issue being decided.

¶16 Not only has Mendiola failed to cite authority in support of his position, neither has he cited countervailing authority and asked this Court to distinguish the present case. He simply asks this Court to rule in his favor. In addition to his Rule 54(b) arguments, Mendiola states, "[i]f the dismissal with prejudice of Appellants [sic] [intentional and negligent infliction of emotional distress] claims are not resolved before trial, it may constitute res judicata, not to mention a lack of judicial efficiency and economy." Mendiola's claim that res judicata might preclude resolution of these issues is unfounded. The dismissal of this appeal for lack of a final judgment means that Mendiola has every right to raise it again once a final judgment has been issued. As for judicial economy, the small savings would hardly justify circumventing constitutional, statutory, and case law authority. If Mendiola is truly concerned with judicial economy, he is well advised to stop filing frivolous appeals.

¶17 In addition to the two orders in question, which are clearly not Rule 54(b) final orders, Mendiola's appeal of two pre-trial motions in limine is equally without merit. This must have also been apparent to Mendiola since he does not even discuss them in his opposition to the Bank's motion to dismiss. This indicates that Mendiola appealed first and asked questions later. Such conduct is an abuse of the appellate process. It should also be noted that Mendiola's co-counsel has recently been admonished for a similarly unfounded appeal in *Camacho v. CNMI Department of Public Works*, App.No. 05-0003-GA (Order Dismissing Appeal).

III.

¶18 For the foregoing reasons, we **GRANT** Bank of Guam's Motion to Dismiss this appeal on the ground that we lack jurisdiction to hear interlocutory orders. Further, based on the lack of legal authority for Mendiola's position and lack of effort in mounting a sustainable legal argument, this Court will order both appellants' counsel to show cause why they should not be sanctioned.[5]

SO ORDERED this 30th day of January, 2007.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN
Chief Justice

/s/ John A. Manglona
JOHN A. MANGLONA
Associate Justice

/s/ Kenneth L. Govendo
KENNETH L. GOVENDO
Justice *Pro Tempore*

[5] This Court will, in a separate forthcoming document, issue an order to show cause why counsel for both appellants should not be sanctioned.