

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

ESTATE OF SOLEDAD T. OGUMORO,
Plaintiff-Appellee,

v.

KO HAN YOON,
Defendant-Third-Party Plaintiff-Appellant,

v.

JUNG YOUNG BOO and D.Y. CORPORATION
Third-Party Defendants-Appellees.

Supreme Court No. 2016-SCC-0022-CIV
Superior Court Nos. 99-0655-CV; 05-0065-CV

ORDER STAYING PROCEEDINGS

Cite as: 2017 MP 8
Decided September 19, 2017

Ambrosio T. Ogumoro and Isidro T. Ogumoro, Saipan, MP, for Plaintiff-Appellee Estate of Soledad T. Ogumoro

Joseph E. Horey, O' Connor Berman Dotts & Banes, Saipan, MP, for Defendant-Third-Party-Plaintiff-Appellant Ko Han Yoon

Thomas E. Clifford and Stephen J. Nutting, Saipan, MP, for Third-Party-Defendants-Appellees Jung Young Boo and D.Y. Corporation

BEFORE: JOHN A. MANGLONA, Associate Justice.

MANGLONA, J.:

¶ 1 Plaintiff-Appellee-Movant Estate of Soledad T. Ogumoro (“the Estate”) moves to extend the deadline for filing its Response Brief for an additional sixty days so the trial court will have time to consider motions the Estate has filed with that court. The Estate asserts it has reached a settlement with Defendant-Third-Party-Plaintiff-Appellant Ko Han Yoon (“Ko”), but needs the trial court’s approval to proceed.¹ Should the trial court approve the settlement and dismiss the claims and vacate the judgment between the Estate and Ko, the Estate asserts filing of its Response Brief will be unnecessary.²

¶ 2 We note the trial court has already scheduled a hearing on the Estate’s motions. To do so raises the potential of a jurisdictional conflict. We provided guidance on this issue in *Lizama v. Kintz*, 2002 MP 18, but now find it necessary to give further instructions to avoid future error by similarly situated litigants. For the reasons stated below, we hereby STAY the instant appeal for forty-five days pending the trial court’s indication of whether it is inclined to grant the Estate’s motion.³

I. FACTS AND PROCEDURAL HISTORY

¶ 3 The issues underlying this appeal involve unpaid rent on a leasehold between the Estate and Ko, and a dispute between Ko and Third-Party-Defendants-Appellees Jung Young Boo and D.Y. Corporation (“Jung and D.Y.”) as to the lawful ownership of the prime leasehold interest in a tract of real property. On June 2, 2016, the trial court issued its judgment. The court found in favor of the Estate, and against Ko, on all claims in the breach of lease case. The court also found in favor of Jung, and against Ko, in the quiet title action and breach of lease action.

¶ 4 Ko appealed the trial court’s judgment and findings of fact and conclusions of law, as well as the court’s orders denying Ko’s cross-motion for judgment on all claims and granting the Estate’s motion for judgment for unpaid rent. Ko timely filed his Opening Brief. The Estate was then granted a discretionary extension of time to file its Response Brief. Before the brief was due, the Estate filed the underlying motion for an additional extension of time, arguing the Estate

¹ There are two related cases in the trial court: Civil Action No. 03–0130 in the probate court and consolidated Civil Action Nos. 99–0655 and 05–0065. Only the judgment and orders in Civil Action Nos. 99–0655 and 05–0065 have been appealed.

² The claims asserted by and against Jung and D.Y. will be unaffected.

³ Defendant-Appellees Jung and D.Y. filed their Response Brief on August 8, 2017. The Estate’s Response Brief was initially due at the same time, but an extension was granted until September 5, 2017. The Estate’s Response Brief or motion for a remand, shall be due at or before the termination of the forty-five day stay we now order.

and Ko had, pending the approval of the trial court, reached a settlement which would make filing the Response Brief unnecessary.

¶ 5 The Estate and Ko have filed motions in the trial court: a motion to approve their settlement in Civil Action No. 03–0130, and a motion to vacate the judgment and dismiss the Estate’s second amended complaint against Ko and Ko’s counterclaims against the Estate in Civil Action No. 99–0655. Should the motions be granted, only the claims between Ko and Jung and D.Y. will remain for this Court to resolve on appeal. However, without action by this Court the trial court lacks jurisdiction to consider the motions.

II. DISCUSSION

¶ 6 A trial court and a court of appeals should not attempt to assert jurisdiction over a case simultaneously. *Smith v. Lujan*, 588 F.2d 1304, 1307 (9th Cir. 1979). “[T]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the [trial] court, of its control over those aspects of the case involved in the appeal.” *Lizama*, 2002 MP 18 ¶ 5 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam)). “Put simply, it is usually the situation that once a case has been appealed, the trial court’s work is finished until instructed to act by the appellate court.” *Id.*

¶ 7 Once a notice of appeal has been filed, a trial court generally does not have jurisdiction to rule on a motion, including a NMI Civil Procedure Rule 60(b)⁴ motion to vacate a judgment, unless the appellate court remands the case.⁵ See *Gould v. Mutual Life Ins. Co.*, 790 F.2d 769, 772 (9th Cir. 1986) (“Unless the appellate court remands to the district court, the latter is without jurisdiction to consider motions to vacate judgment.”). Instead, to seek Rule 60(b) relief during the pendency of an appeal, “the proper procedure is to ask the [trial] court [to indicate] whether it wishes to entertain the motion . . . and then move [the appellate] court, if appropriate, for remand of the case.” *Scott v. Younger*, 739 F.2d 1464, 1466 (9th Cir. 1984) (internal quotation marks omitted). “If [the trial court was] inclined to grant the motion, the [trial court] would issue a brief memorandum [or order] so indicating. Armed with this, [the movant] could then request the appellate court to remand the action so that [the trial court] could vacate judgment and proceed accordingly.” *Stinnet v. Weno*, 8 FSM Intrm. 142, 145 n.1 (Chk. 1997). The trial court may not rule on the motion until this Court

⁴ Because NMI Rule of Civil Procedure 60(b) is substantially similar to Federal Rule of Civil Procedure 60(b), reference to federal case law is instructive. See *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60 (“[W]hen our rules are patterned after the federal rules it is appropriate to look to federal interpretation for guidance.”).

⁵ Although the parties’ exhibit lacks clarity as to what motion they intended to file in the trial court, we assume the Joint Motion to Vacate Judgment and Dismiss Complaint and Counterclaim was filed pursuant to NMI Civil Procedure Rule 60(b).

grants permission for the trial court to do so.⁶ *Torres v. Fitial*, 2008 MP 15 ¶ 11. Thus, once the appellate court has jurisdiction, a trial court may, upon a party's request, indicate whether it is inclined to entertain or grant a motion to vacate without leave of the appellate court, but may not act on it. *Davis v. Yageo Corp.*, 481 F.3d 661, 685 (9th Cir. 2007).

¶ 8 In *Lizama v. Kintz*, we considered whether the plaintiff followed the proper procedure when, after filing a notice of appeal, the plaintiff “filed a motion in the trial court pursuant to [NMI Civil Procedure Rule] 60(b), seeking relief from the summary judgment decision” that had been issued prior to the appeal. 2002 MP 18 ¶ 1. We determined the proper procedure is for the movant to move for relief in the trial court, and once the trial court indicates that it is inclined to grant the motion, only then should the movant ask this Court for a remand to the trial court for leave to adjudicate the motion to vacate or file further motions in the courts below. *Id.* ¶¶ 6–8. We remanded the case to the trial court after finding the movant had followed the proper procedure and that the trial court was better suited to hear the motion for relief from summary judgment, as it was “intimately familiar” with the facts of the case. *Id.* ¶¶ 8–10.

¶ 9 *Hartford Fire Ins. Co. v. Karavan Enters., Inc.* provides further clarity. 659 F. Supp. 1077 (N.D. Cal. 1987). In *Hartford*, defendant appealed the district court's order for summary judgment, and filed a Federal Civil Procedure Rule 60(b) motion in the district court. *Id.* at 1078–79. The Ninth Circuit entered a temporary stay of appellate proceedings to permit defendant to move the district court for an order indicating it was willing to hear the motion for relief from summary judgment. *Id.* at 1078. The district court subsequently denied the motion, noting it did not believe the motion was meritorious. *Id.* at 1081. The district court noted that had it indicated a willingness to entertain or grant the motion, defendant would have then needed to request the Ninth Circuit remand the case for further proceedings in the district court. *Id.* at 1079.

¶ 10 Here, the Estate moved to extend time for filing its Response Brief because it is waiting for the trial court to indicate that it is inclined to vacate the judgment (and dismiss its complaint and Ko's counterclaims). The Estate is also waiting for the trial court to approve the settlement. Because we have not remanded the case, the trial court, at this juncture, does not have jurisdiction to rule on the civil action pending below.⁷

¶ 11 Accordingly, where a party has filed a motion under NMI Civil Procedure Rule 60(b) in the trial court and the time to file its brief with this Court is

⁶ While a party may ask this Court for an extension of time so the trial court may hear the motion and indicate its inclination, we held in *Office of the Attorney Gen. v. Senido* that we are warranted in denying a motion to extend time where a party is simply deciding whether to proceed with its appeal. 2004 MP 6 ¶ 13–14.

⁷ The parties recognize the need to comply with procedure, indicating that “since this matter is pending on appeal to the Supreme Court, [the Superior Court] presently lacks jurisdiction.” Ambrosio T. Ogumoro Decl. Ex. A.

forthcoming, the proper procedure is to request a stay in this Court until the trial court indicates that it is inclined to grant the motion. Only then should the movant petition this Court for a remand. Until the trial court indicates that it is inclined to grant the motion and we remand, this Court retains jurisdiction. While the Estate has not requested a stay, in the interest of judicial efficiency we grant a forty-five day stay pursuant to our inherent authority. NMI CONST. art. IV, § 3; NMI SUP. CT. R. 2.

III. CONCLUSION

¶ 12 For the foregoing reasons, we find it is appropriate to stay the proceedings until the trial court indicates whether it is inclined to grant the motion.⁸ If the trial court indicates it is inclined to grant the Estate's motion, the Estate must then file a motion in this Court asking to remand the appeal to allow the trial court to vacate part of the judgment. At that point, the appeal between Ko and Jung and D.Y. will resume. If the trial court indicates it is not inclined to grant the Estate's motion, the Estate shall inform this Court within three days of the entry of the trial court's order.

¶ 13 The proceedings are hereby STAYED for forty-five days from the date of this order. On or before the termination of the stay, the Estate must either file a motion in this Court to remand the matter to allow the trial court to vacate the relevant portion of its judgment, or must file its Response Brief.

SO ORDERED this 19th day of September, 2017.

/s/

JOHN A. MANGLONA
Associate Justice

⁸ We note the Estate's motion for an additional extension of time was filed on September 1, and its Response Brief was due September 5. This Court had not ruled on the Estate's motion by September 5, and the Estate failed to file its Response Brief or a NMI Supreme Court Rule 31-1(b) motion to file a late brief.