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

JOSE P. MAFNAS, Personally and as President of the Seventh Commonwealth Senate, Plaintiff, v. ELOY INOS, in his capacity as Director of the Department of Finance, JOSEPH INOS, JESUS R. SABLAN, EDWARD U. MARATITA, FRANCISCO M. BORJA, and HENRY DLG. SAN NICOLAS, in their capacity as Members-Elect of the Seventh Commonwealth Senate, FELIPE Q. ATALIG and ABRAHAM TAISACAN, Defendants.	CIVIL ACTION NO. 90-31 ORDER

The plaintiff has filed a "Motion for Stay of Judgment and for Injunction pending Petition, or, in the alternative for a temporary stay." The authority cited for such a motion Is Rule 62 subparagraphs (c), (d), and (e). Com.R.Civ.Pro.[1]

The court file reflects no notice of appeal has been filed. Therefore, Rule 62(c), (d), and (e) are not applicable.

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[1] The Commonwealth rules of procedure are essentially the same as the federal rules and therefore U.S. cases interpreting those rules are instructive.

FOR PUBLICATION

A motion for stay under the provisions of Rule 62(c), which has reference to an appeal from a final judgment granting or denying an injunction, presupposes the existence of a valid appeal. Century Laminating, Ltd., V. Montgomery, 595 F.2d 563 (CA 10, 1979), cert. gr. 444 U.S. 897, cert. dismd. 444 U.S. 987.

A Rule 62(c) injunction preserving the status quo during the pendency of plaintiff's "possible appeal" does not lie since the rule applies only where an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction. When the party applying for Rule 62(c) relief has not filed a notice of appeal pursuant to the appellate rules, it cannot be said an appeal has been taken In the case. Corpus Christi Peoples' Baptist Church, Inc. V. Texas Dept. of Human Resources 481 F.Supp. 1101 (1979, SD Tex.), 28 FR.Serv.2d 1028, affd without op. (CA5 Tex.), 621 F.2d 438 and (disapproved on other grounds New Jersey-Philadelphia Presbytery of Bible Presbyterian Church v. New Jersey State Bd. of Higher Education (CA3 NJ) 654 F.2d 868).

A stay Is an extraordinary form of reprieve and is only granted upon showing that an appeal has been filed and is pending. The sole purpose of a stay is to preserve the status quo pending appeal. Reed V. Rhodes, 472 F.S. 603 (1979, ND Ohio).

The memorandum of plaintiff states that he "is filing a Petition for Writ of Mandamus to the Supreme Court of the

Commonwealth of the Northern Mariana Islands." Plaintiff's counsel is candid. He states no notice of appeal will be filed and Lntends to apply for a writ of mandamus solely to obtain expedited review by the Supreme Court.

No authority is cited for the proposition that a petitioner who will be applying for an extraordinary writ such as mandamus Is entitled to a stay of judgment. This is not surprising because of the nature and limitations on the use of a writ of mandamus.

Mandamus is only appropriate in extraordinary circumstances; extraordlnary circumstances may be present:

(a) Where the trial court's order Is made without jurisdiction.

(b) Where the trial court's order Is characteristic of erroneous practice likely to reoccur.

(c) Where the order under attack exemplifies novel and important questions in need of guidelines for future resolution of similar cases. General Motors Corp. v. Lord, 488 F.2d 1096 (CA8, 1973).

Clearly, none of the above circumstances are presented here. The plaintiff concedes jurisdiction lies within the Superior Court and, In fact, invoked the court's jurisdiction Ln filing his case in the Superior Court. The plaintiff further does not assert any "characteristic erroneous practice" of this court nor does anyone assert that there Is a need for guidelines for the future resolution of similar cases. Once

again, the plaintiff expressly intends to use the application for a writ of mandamus solely as a substitute for an appeal.

Extraordinary writs may go In "aid of appellate jurisdiction" that exists on some other basis. Parr v. U.S., 76 S.Ct. 912, 917, 351 U.S. 513, 420, 100 L.Ed.2d 1377 (1956). The statutory requirement that the writ issue In aid of the court's jurisdiction establishes two conditions that must be met before any writ may issue:

1. The case must be one that may lie within the prospective jurisdiction, future jurisdiction of the court of appeals, or that has come within its jurisdiction In the past; and
2. that the writ procedure is not being used as a mere substitute for an appeal.

Federal Practice and Procedure, Interlocutory Review, § 3932, p.185.

This second condition has been embraced by the United States Supreme Court. See Will v. U. S., 88 S.Ct. 269, 389 U.S. 90, 19 L.Ed.2d 305 (1967); Fong Foo v. U. S., 369 U.S. 141, 82 S.Ct. 671 (1962); Parr v. U. S., 351 U.S. 513, 520-521, 76 S.Ct. 912, 917, 100 L.Ed. 1377 (1956).

The most common traditional statement is that the extraordinary writs are available to an appellate court to prevent a trial court from acting beyond its jurisdiction, or to compel it to take action that it lacks power to withhold. Will v. U.S., 88 S.Ct. 269, 389 U.S. 90, 19 L.Ed.2d 305 (1967).

While the courts have never confined themselves to an arbitrary and technical definition of "jurisdiction," it is clear that only exceptional circumstances amounting to a judicial "usurpation of power" will justify the invocation of this extraordinary remedy. Will at 273 citing Debeers Consol. Mines, Ltd. V. U. S., 325 U.S. 212, 217 (1945). Extraordinary writs are not used to reach errors in rulings on matters within a trial court's jurisdiction; Will at 178. Mandamus does not run the gauntlet of reversible error and Its office is not to control the decision of the trial court, but rather to merely confine the lower court to its sphere of discretionary power. Id.

A lower court may be required by mandamus to exercise its judicial functions and perform its judicial duties, but not to do so In any particular way or manner, or to reach a designated conclusion or make a particular decision, or to reverse or change a conclusion reached or decision made by It on a question within its jurisdiction. C.J.C. Mandamus, § 71.

The rule is elementary that the function of a writ of mandamus Is not to compel adjudication In a particular way by a lower tribunal. It may not be used as a substitute for an appeal to dictate the manner of the lower court's action. Interstate Commerce Commission V. U.S. ex rel Campbell, 289 U.S. 385, 53 S.Ct. 607 (1933); In Re Rice, 155 U.S. 396, 15 S.Ct. 149; Zerilli V. Thornton, 428 F.2d 476.

In light of the above substantial and uniform authority, it Is clear this court cannot treat plaintiff's

proposed application for a wrlt of mandamus as tantamount to an appeal. Consequently, neither Rule 62 nor any other statute or rule gives this court the authorlty to grant the relief requested by the plaintiff.

Plaintiff's motion for a stay Is hereby DENIED.

Dated at Salpan, MP, this 24th day of January, 1990.

Robert A. Hefner, Presiding Judge