

FOR PUBLICATION

Appeal No. 01-039-GA

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

JUAN T. LIZAMA,
Plaintiff-Appellant,

v.

**WILLIAM KINTZ, MARIANAS RENTAL
CORPORATION dba NATIONAL RENT-A-CAR,
TOKIO MARINE & FIRE INSURANCE CO., LTD.
and PACIFICA INSURANCE UNDERWRITERS, INC.,**
Defendants,

**MARIANAS RENTAL CORPORATION
dba NATIONAL RENT-A-CAR,**
Defendants-Appellees.

ORDER OF REMAND

Cite as: *Lizama v. Kintz*, 2002 MP 18

Civil Case No. 90-0609

For Juan T. Lizama
Plaintiff-Appellant:

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For Tokio Marine & Fire Insurance Co., Ltd
and Pacifica Insurance Underwriters, Inc.
Defendants-Appellees:

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BEFORE: John A. MANGLONA, Associate Justice; Richard H. BENSON, Justice Pro Tempore; Herbert D. SOLL, Justice Pro Tempore.

MANGLONA, Associate Justice:

PROCEDURAL HISTORY

¶1 On November 20, 2001, Plaintiff Juan T. Lizama [hereinafter Lizama] filed a notice of appeal, appealing from a summary judgment and memorandum decision issued over eleven years ago in the trial court on September 24, 1990.¹ On May 8, 2002, Lizama filed a motion in the trial court pursuant to Com. R. Civ. P. 60(b), seeking relief from the summary judgment decision issued in 1990.

¶2 On July 18, 2002, Lizama moved this Court for an order remanding this appeal to the trial court to allow it to grant the Rule 60(b) motion for Relief from Summary Judgment. Lizama attached to the motion the trial court's Decision and Order dated July 16, 2002, wherein the trial court stated "that it is inclined and will grant Plaintiff's motion for relief from summary judgment upon remand by the Supreme Court for the purpose of addressing the issue."

¶3 On July 19, 2002, Defendants Tokio Marine & Fire Insurance Co., Ltd. and Pacifica Insurance Underwriters, Inc. [hereinafter Defendants] filed, in this Court, a motion in opposition to Lizama's motion for remand. The stated basis of this motion is solely "the fact that defendants are concurrently filing in the Superior Court a motion for reconsideration of the trial court's" July 16 Decision and Order. Defendants attached a copy of their (trial court) motion for reconsideration to their motion opposing remand,

¹ Early in the action, the trial court granted summary judgment in favor of defendants Tokio Marine & Fire Insurance Co., Ltd. and Pacifica Insurance Underwriters, Inc. The rest of the action proceeded to trial; the trial court entered final judgment in October 2001. See Aff. of [Appellant's] Counsel in Support of Mot. for an Order on Remand at Ex. A (*Lizama v. Kintz*, Civ. No. 90-0609 (N.M.I. Super. Ct. July 16, 2002) ([Unpublished] Decision and Order)).

wherein they argue that the trial court should not and can not grant the relief Lizama seeks.

ANALYSIS

¶4 Commonwealth Rule of Civil Procedure 60(b) is a mechanism by which a party can obtain relief from a judgment, order or proceeding.² Although we have had brief occasion to discuss Rule 60(b), *Ferreira v. Borja*, 1999 MP 2, 5 N.M.I. 208; *Aldan-Pierce v. Mafnas*, 1999 MP 11 ¶16, 5 N.M.I. 247, 249 (Rule 60(b) should not “frustrate the important purposes of finality” of judicial decisions); *Montecillo v. Di-All Chemical Co.*, 1998 MP 15 ¶12, 5 N.M.I. 185, 187 (“Rule 60 is remedial in nature.”), we have not done so when the movant filed the motion in the trial court after the filing of a notice of appeal.³

¶5 In general, “[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.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 402, 74 L. Ed. 2d 225, 228 (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.

¶6 Consequently, after a notice of appeal has been filed, a trial court may consider⁴ a Rule 60(b) motion, but it may not act upon it. *See Smith v. Lujan*, 588 F.2d 1304, 1307

² The first portion of Rule 60 is a mechanism to correct clerical mistakes in the record. Com. R. Civ. P. 60(a).

³ In both *Ferreira* and *Aldan-Pierce*, the Rule 60(b) motions were made in the trial court after the Supreme Court had disposed of the cases and remanded them to the trial court. *See Ferreira*, 1999 MP 2 ¶¶7-8, 5 N.M.I. at 209; *Aldan-Pierce*, 1999 MP 11 ¶¶9-10, 5 N.M.I. at 248.

⁴ We see no reason why a party could not also move the trial court to reconsider its inclination to grant a Rule 60(b) motion.

(9th Cir. 1979) (“[T]he district court had no jurisdiction to make the order appealed from. The district court could not dispose of the motion, after the notice of appeal had been filed, without a remand from this court.”).⁵

¶7 This does not, however, mean that a party is permanently precluded from obtaining relief pursuant to Rule 60(b). The proper procedure for a party seeking Rule 60(b) relief after the filing of a notice of appeal is for the party to file a Rule 60(b) motion in the trial court. If that court indicates that it is inclined to grant the motion, the movant should then move this court for a remand of the case so that the trial court may act on the Rule 60(b) motion. *Smith*, 588 F.2d at 1307; *Creamette Company v. Merlino*, 289 F.2d 569, 570 (9th Cir. 1961); *Greear v. Greear*, 288 F.2d 466 (9th Cir. 1961).

¶8 Applying the law to the facts of this case, the movant has followed the proper procedure. Lizama moved the trial court for relief pursuant to Rule 60(b). The trial court has indicated that it is inclined to grant the motion.⁶ Lizama has moved this court for a remand of the case to the trial court. All that remains is for us to determine whether we should remand the case to the trial court.

¶9 At this time, we see no reason not to remand to the trial court. Defendants have presented no legal arguments why a remand would be inappropriate. Rather, they stand on comity, asking us to postpone our decision because they have moved the trial court to reconsider its stated inclination.

⁵ It is “appropriate [for Commonwealth Courts] to consult interpretation of counterpart federal rules when interpreting commonwealth procedural rules,” *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 283 n.14, (1991), but the federal courts’ interpretation of counterpart federal rules is not binding on this Court. *See Lucky Dev. Co., Ltd. v. Tokai U.S.A., Inc.*, 2 N.M.I. 81, 86 (1991).

⁶ The trial court’s July 16, 2002, “Decision and Order” is nothing more than a signal to us that the court is inclined to grant the Rule 60(b) relief, should we remand the case.

¶10 The trial court is currently better suited to determine whether Rule 60(b) relief is appropriate for many reasons. First, it has had jurisdiction over this case for well over ten years, and is intimately familiar with the facts of the case. Briefs discussing the main issues on appeal have not been filed with us.⁷ Further, it is possible that factual determinations must be made in order to grant or deny the relief sought. This is a task for which the trial court is best suited. *Manglona v. Kaipat*, 3 N.M.I. 322, 336 (1992) (“The assessment of evidence is a trial function.”). Consequently, the Order below grants the trial court jurisdiction to grant or deny Lizama’s motion pursuant to Com. R. Civ. P. 60(b) and Defendants’ motion for reconsideration.

¶11 Accordingly, the motion to remand is granted and **IT IS HEREBY ORDERED that:** Appeal No. 01-039-GA is REMANDED to the trial court for the limited purpose of acting on the pending motion pursuant to Com. R. Civ. P. 60(b) and motion for reconsideration.

SO ORDERED THIS 23rd DAY OF AUGUST 2002.

/s/ John A. Manglona
JOHN A. MANGLONA, ASSOCIATE JUSTICE

/s/ Richard H. Benson
RICHARD H. BENSON, JUSTICE PRO TEMPORE

/s/ Herbert D. Soll
HERBERT D. SOLL, JUSTICE PRO TEMPORE

⁷ At the request of the parties, we have extended the time for filing briefs pending the resolution of the Rule 60(b) issue.