

FOR PUBLICATION

Appeal No. 01-009-GA

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

NORMAN CHAN,

Plaintiff-Appellee,

v.

**SUNNY KING MAN CHAN,
MATSUMOTO PROPERTIES, LTD., and
JADE GARDEN, INC.,**

Defendants-Appellants,

v.

JUAN E. AQUINO,

Intervenor-Plaintiff-Appellee.

OPINION

Cite as: *Chan v. Chan*, 2003 MP 5

Civil Action No. 97-1039-CV

Submitted without hearing on June 3, 2002

Decided April 21, 2003

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice; JOHN A. MANGLONA, Associate Justice; F. PHILIP CARBULLIDO, Justice *Pro Tempore*.¹

CARBULLIDO, J.:

¶1 Appellants Sunny King Man Chan, Matsumoto Properties, Ltd., and Jade Garden, Inc. (hereinafter collectively referred to as “Sunny”) appeal two orders of the trial court entered on April 12, 2000 and December 26, 2000. While this Court has jurisdiction over final judgments of the Superior Court, the order on appeal does not come before the Court in the form of a final judgment. The trial court certified one order for appeal under Rule 54(b) of the Commonwealth Rules of Civil Procedure. The second order, a denial of Sunny’s summary judgment motion, was certified by the trial court for interlocutory review. As a preliminary matter, this Court must determine whether it is vested with the authority to review the issues raised by the instant appeal. We find that this Court is without jurisdiction to consider either of the two orders and we therefore dismiss this appeal.

ISSUES PRESENTED AND STANDARD OF REVIEW

¶2 The issue addressed is whether this Court has jurisdiction over the orders appealed from. This presents a question of law and review is *de novo*. *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280, 281 (1995).

FACTUAL AND PROCEDURAL BACKGROUND

¶3 In 1984, Plaintiff-Appellee Norman Chan (“Norman”), Intervenor Juan A. Aquino (“Aquino”), and a third party, Thomas Chan, entered into an oral agreement to open and operate a restaurant known as Jade Garden. Shortly after the opening of Jade Garden, third-party Thomas Chan withdrew from the agreement. Thus, only Norman and Aquino remained as parties to the oral agreement. While Norman acknowledges that Aquino possessed some

¹ The Honorable F. Philip Carbullido, Chief Justice of the Supreme Court of Guam, is sitting by designation.

ownership interest in Jade Garden, he contends that no specific division was ever discussed. A dispute later arose from this agreement over the amount of Aquino's interest in the restaurant.

¶4 In 1985, Norman incorporated Jade Garden. At the time of incorporation, ten thousand shares of stock in the restaurant were issued, with Norman holding 7,500 shares and his girlfriend holding the remaining 2,500 shares. Aquino was not listed as a shareholder, director, or officer of the corporation, nor was he informed that Jade Garden had been incorporated.

¶5 Later, in 1992, Norman sold a majority share of stock in Jade Garden to Defendants-Appellants Sunny King Man Chan and Matsumoto Properties, Ltd. Pursuant to the Stock Purchase Agreement, Sunny obtained 51% of the stock in Jade Garden in return for performing extensive renovations to the restaurant. The Purchase Agreement identified Norman as the sole shareholder of Jade Garden.

¶6 Between 1985 and 1997, Aquino received no share of the profits from the operation of Jade Garden. It was not until 1997 that Aquino received any money from operation of Jade Garden. At that time, Norman executed an assignment of *his* dividends from the restaurant to Aquino. These \$1,500 payments were made monthly for a period of four to five months, and then ceased.

¶7 In October 1997, Norman filed suit against Sunny for breach of fiduciary duty, wrongful and fraudulent use of corporate assets, wrongful and inequitable distribution of dividends, and negligence. In 1998, Aquino intervened in the suit, seeking to enforce the 1984 oral agreement and claiming his 50% interest in Jade Garden. The trial court permitted Aquino to proceed with his Complaint in Intervention. In a Decision and Order filed on December 26, 2000, the trial court found Aquino to be a one-third shareholder in Jade Garden. *Chan v. Chan*, Civ. No. 97-1039 (N.M.I. Super. Ct. Dec. 26, 2000) (Order and Decision Following Trial on Intervenor's

Complaint of Intervention) (hereinafter “Decision and Order”). The trial court then certified this Decision and Order to be a final judgment pursuant to Rule 54(b) of the Commonwealth Rules of Civil Procedure. It is this decision that Sunny now appeals.

¶8 Also on appeal is the trial court’s April 12, 2000 denial of Sunny’s motion for summary judgments with respect to the suit between Norman and Sunny. Sunny sought summary judgment on four issues: (1) that Norman is indebted to Jade Garden in the amount of \$168,048.66; (2) that Sunny is not indebted to Jade Garden for any amount; (3) that Norman owes Jade Garden \$660 for damages that resulted from the unlawful filing, by Norman, of two labor applications with the Department of Labor and Immigration; and (4) that Sunny was not liable for his activities while managing Jade Garden because they were protected by the business judgment rule. The trial court denied summary judgment on each issue, *Chan v. Chan*, Civ. No. 97-1039 (N.M.I. Super. Ct. April 12, 2000) ([Unpublished] Order Denying Defendants’ Motion for Summary Judgment), and Sunny appeals.

ANALYSIS

A. Jurisdiction - Intervenor’s Complaint

¶9 Sunny asserts that this Court has jurisdiction to review the lower court’s Decision and Order under Rule 54(b) of the Commonwealth Rules of Civil Procedure. Aquino challenges the trial court’s Rule 54(b) certification, on the ground that judicial efficiency favors delaying Sunny’s appeal and allowing the trial court to proceed on the claims between Sunny and Norman; then one appeal can be made on all issues. Aquino does not raise the more fundamental requirement of finality necessary for a Rule 54(b) certification.

¶10 Pursuant to Rule 54(b), a lower court may certify that a decision is a final judgment, and thereby reviewable by the Supreme Court,

[w]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, 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). Certification as a final judgment under Rule 54(b) requires a party to initially establish: (1) “that the case include either multiple claims, multiple parties, or both”; and (2) “that either one or more but fewer than all the claims have been decided or that all the rights and liabilities of at least one party have been adjudicated.” *Ito v. Macro Energy, Inc.*, 2 N.M.I. 459, 463 (1992).

¶11 There is no question that the instant litigation involves both multiple claims and multiple parties, thereby satisfying the first prong of Rule 54(b). The question that remains, however, is whether the trial court’s decision was a “final decision,” and specifically, whether it was “an ultimate disposition of an individual claim entered in the course of a multiple claims action. . . .” *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436, 76 S. Ct. 895, 900, 100 L. Ed. 1297, 1306 (1956).

¶12 Rule 54(b) does not relax the finality required for a decision to be appealed. *See id.* at 435, 76 S. Ct. at 899, 100 L. Ed. at 1306. It simply allows an individual claim that has been finally decided, to move forward to appeal without waiting for a final decision to be rendered on all the claims in a case. *Id.* Thus, the standard for determining finality of a claim under Rule 54(b) is the same standard used in determining finality for a claim in an ordinary appeal, i.e., 1 CMC § 3102(a). *See id.* In other words, the issue is whether the trial court’s disposition of Aquino’s claim would “count as a ‘final decision’ in a hypothetical independent case.” *Horn v. Transcon Lines, Inc.*, 898 F.2d 589, 593 (7th Cir.1990).

¶13 A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Tanki v. S.N.E. Saipan Co.*, 4 N.M.I. 69, 70 (1993) (citation omitted). Here, the trial court entered judgment in favor of Aquino, finding him to be a one-third shareholder in Jade Garden. The judgment further ordered Norman to transfer 3,300 of his shares to Aquino and pay Aquino’s attorney fees. However, the decision did not set the amount of the award for attorney fees and did not discuss other relief requested by Aquino, which he may have been entitled to receive. The failure of the trial court judgment to finally dispose of issues related to the relief and damages requested by Aquino may effect the finality of its decision.²

¶14 The record before this Court does not contain a copy of Aquino’s Complaint in Intervention, and therefore we cannot determine precisely what relief was prayed for by Aquino. However, the trial court’s Order Granting Motion for Entry of Judgment does refer to several items of requested relief, such as an accounting of corporate funds, potential damages for corporate mismanagement, and the recovery of past dividends declared. Appellee’s Supp. Excerpts of Record, p. 14 (Order Granting Motion for Entry of Judgment). Each of these items of relief arises from Aquino’s ownership interest in Jade Garden. Thus, the trial court’s judgment appears to have fully determined the issue of liability but only partially ruled on issues of relief and damages.

¶15 In finding that a Rule 54(b) certification was permissible, the lower court stated:

Regardless of Aquino’s claim for an accounting or any other potential claims he may have against the other parties, the court finds that his principal interest in this action is as a Jade Garden investor. The court finds, therefore, that all of his

² With respect to Aquino’s award of attorney fees, the record before this Court does not indicate whether the exact amount of the attorney fees was determined prior to the filing of the appeal. However, this does not render the judgment non-final. *Tanki v. S.N.E. Saipan Co.*, 4 N.M.I. 69, 70 (1993); *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202-03, 108 S. Ct. 1717, 1722, 100 L. Ed. 2d 178, 185 (1988). An attorney fees determination generally does not prevent finality because “its resolution will not alter the order or moot or revise decisions embodied in the order.” *Id.* at 199-200, 108 S. Ct. at 1720, 100 L. Ed. 2d at 183.

rights were effectively determined by the court's Decision and Order of December 26, 2000. Because his only real interest in this action is as a Jade Garden investor, Rule 54(b) certification is therefore permissible.

Appellee's Supp. Excerpts of Record, p. 15 (Order Granting Motion for Entry of Judgment).

The trial court's reasoning is not supported by precedent. 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). *See Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 742-44, 96 S. Ct. 1202, 1205-06, 47 L. Ed. 2d 435, 440-41 (1976); *see also Acha v. Beame*, 570 F.2d 57, 62 (2d Cir. 1978); *Horn*, 898 F.2d at 594-95. Here, the lower court's order granting Rule 54(b) certification reveals that Aquino expressly requested several forms of relief in his complaint, and that the Decision and Order failed to resolve those requests. Contrary to the trial court's conclusion, Aquino's claim cannot be viewed as final.

¶16 Because the trial court's Decision and Order does not address issues such as the amount of Aquino's damages and other forms of sought relief, it does not finally dispose of Aquino's claim. Therefore, Rule 54(b) certification was inappropriate and this Court cannot exercise jurisdiction over the matter as a "final judgment."

B. Jurisdiction - Denial of Summary Judgment

¶17 Also on appeal is the lower court's April 12, 2000 Order Denying Defendants' Motion for Summary Judgment. Sunny states that this Court's jurisdiction arises from "the parties' stipulation and the trial court's order granting the motion that the issue be certified for interlocutory appeal" Appellant's Opening Brief, p. 3. We note that the record before us is void of any such stipulation or certification. However, Sunny also relies on 1 CMC § 3102(a) and Commonwealth Rule of Appellate Procedure 4 for appellate jurisdiction. We will review the Court's appellate authority pursuant to these sections.

¶18 Title 1, Section 3102(a) of the Commonwealth Code vests the Supreme Court with jurisdiction over “judgments and orders of the Superior Court” 1 CMC § 3102(a). This provision has been interpreted by the Supreme Court as granting jurisdiction only over Superior Court judgments and orders which are *final*. *Commonwealth v. Hasinto*, 1 N.M.I. 377, 381-85 (1990). Because the denial of a motion for summary judgment is not a final order, *Ito*, 2 N.M.I. at 464, this Court does not have jurisdiction pursuant to 1 CMC § 3102(a). Moreover, an attempt by the Superior Court to certify an order denying summary judgment as a final judgment pursuant to Rule 54(b) would be improper. *Ito*, 2 N.M.I. at 465-67.

¶19 The trial court may have certified its denial of summary judgment for interlocutory appeal. However, as stated above, the Supreme Court’s appellate jurisdiction is limited to *final* judgments and orders. Certification by the trial court cannot expand the Supreme Court’s jurisdiction beyond what is set forth by statute. “[A]ppeals from interlocutory orders are exceptional in character and are wholly dependent upon *statute*; therefore, the fundamental rule . . . requiring finality of decision as a basis for appeal must be followed unless an *express authorization* for a different procedure can be found.” *Hasinto*, 1 N.M.I. at 385 (quotation omitted, emphasis added). Sunny failed to direct this Court to any statute or rule which would permit the trial court to certify a judgment for interlocutory review. More importantly, Sunny does not cite to any statute which would allow the Supreme Court to hear an interlocutory appeal. Since no express authorization exists permitting the Supreme Court to hear an interlocutory appeal, this Court has no choice but to decline review of the denial of a summary judgment even if it is certified for appeal by the trial court.

¶20 Likewise, Commonwealth Rule of Appellate Procedure 4 does not provide the Supreme Court with any grounds for exercising jurisdiction over an interlocutory appeal. Rule 4 speaks

only to the timely filing of appeals. Therefore, neither 1 CMC § 3102(a) nor Rule 4 provide this Court with jurisdiction to review Sunny's appeal of the order denying his motion for summary judgment. Because the Supreme Court has no jurisdiction to review an interlocutory appeal, this Court has no jurisdiction to review the lower court's April 12, 2000 Order.

CONCLUSION

¶21 Based on the foregoing, we find that this Court is without jurisdiction to review any of the orders raised on appeal. The trial court's Decision and Order did not finally dispose of Aquino's claim, and therefore, could not be certified as a final judgment under Rule 54(b). With respect to the lower court's April 12, 2000, Order Denying Defendant' Motion for Summary Judgment, this Court is without jurisdiction to conduct an interlocutory review. Therefore, the entire appeal is **DISMISSED** for lack of jurisdiction.

SO ORDERED THIS 21ST DAY OF APRIL 2003.

/s/
MIGUEL S. DEMAPAN, CHIEF JUSTICE

/s/
JOHN A. MANGLONA, ASSOCIATE JUSTICE

/s/
F. PHILIP CARBULLIDO, JUSTICE *PRO TEMPORE*