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

HIROSHI ISHIMATSU, BERNARDO A. HIPONIA, and SERAFIN ESPERANCILLA,
Plaintiffs/Appellees,

v.

ROYAL CROWN INSURANCE CORPORATION,
Defendant/Appellant.

Appeal No. 06-0004-GA
Superior Court Case No. 02-0065

FOR PUBLICATION

ORDER

Cite as: ***Ishimatsu, Hiponia and Esperancilla v. Royal Crown Ins. Corp., 2006 MP 9***

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

PER CURIAM.

¶1 Plaintiffs-Appellees Bernardo A. Hiponia and Serafin Esperancilla ("Appellees") move to dismiss this appeal by Royal Crown Insurance Corporation ("Royal Crown") on the basis that Royal Crown failed to appeal within 30 days of the date of the judgment under Rule 4 of the Commonwealth Rules of Appellate Procedure. Royal Crown filed a memorandum opposing Appellees' motion on February 10, 2006.[1] We dismiss this appeal on other grounds.

I.

¶2 The trial court entered judgment on March 9, 2005 in favor of Appellees. On April 30, 2005, Royal Crown sought a remittitur or new trial. Royal Crown's motion was granted in part and the trial court, by its "Omnibus Order in Response to Various Post Trial Motions" ("Omnibus Order"), ordered Appellees to accept either a remittitur or a new trial within 30 days. The amounts which would constitute the new judgment if Appellees accepted the remittitur were listed in the Omnibus Order, but there was no judgment directly entered. Instead, the Omnibus Order further stated, "[f]ailure to make the election within the time period will be treated as acceptance of remitted damages."

[1] In Appeal Number 05-0026-GA, the parties addressed the timing and jurisdictional issues as part of Royal Crown's motion to vacate the certification of record and briefing schedule or, alternatively, dismiss without prejudice for lack of jurisdiction (including the Declaration of Counsel and Memorandum filed January 27, 2006 and the "Non-opposition" to the motion to dismiss Appeal Number 05-0026-GA filed by Appellees). This Court granted Royal Crown's motion without prejudice to addressing all timing and jurisdictional issues as part of the present motion.

¶3 On September 26, 2005, Appellees accepted the remittitur and judgment. *See* Memorandum in Support of Motion to Dismiss Due to Untimely Notice of Appeal and Lack of Jurisdiction (filed on February 3, 2006). It is not clear from the papers presented whether Appellees accepted the remittitur by express consent or by operation of the trial court's order. In addition, it is not clear from the papers submitted whether Appellees notified the trial court or Royal Crown of their acquiescence and requested a final judgment. There is an attached email, however, which suggests that the trial court characterized the Omnibus Order as a modification of a prior final judgment. On October 26, 2005, Royal Crown filed a notice of appeal. The trial court then issued a further order on January 16, 2006 which entered judgment against co-plaintiff Hiroshi Ishimatsu and stated "[t]he Omnibus Order issued by the court on all post trial orders is a final judgment."[2]

¶4 On January 27, 2006, Royal Crown moved to either vacate the certification of record and briefing schedule or dismiss its own appeal without prejudice. Royal Crown reasoned that the Omnibus Order was not final and therefore it had prematurely filed its notice of appeal. It argued that because the Omnibus Order provided for a remittitur or a new trial, there was no final judgment to appeal from. It then filed a new appeal under Appeal Number 06-0004-GA. On February 3, 2006, Appellees moved under Appeal Number 06-0004-GA to dismiss Royal Crown's second notice of appeal on the basis that it was not timely. We dismissed the first appeal under appeal number 05-0026-GA without prejudice to the second filing. All arguments by both parties were preserved by

[2] Ishimatsu's claims were dismissed because of failure to file an opposition to Appellant's motion for summary judgment.

our order and are considered in the present motion to dismiss Appeal Number 06-0004-GA.

II.

¶5 The Commonwealth Rules of Appellate Procedure provide that in a civil case where an appeal is permitted as of right, "the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." Com. R. App. P., Rule 4(a)(1). The Rules further provide that the time for appeal runs from the entry of an order denying a new trial or granting or denying a motion which seeks:

> to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) to alter or amend the judgment; or (iv) for a new trial…

Rule 4(a)(4)(ii).

The issue is which order, if any, issued by the trial court was a final appealable order from which Royal Crown was required to file its notice of appeal within 30 days.

¶6 Royal Crown argues that the Omnibus Order was not a final judgment but rather an interlocutory order. Appellees argue that the Omnibus Order was a final judgment because the trial court stated in its order of January 16, 2006 that the Omnibus Order was a final judgment. As this motion is brought before the Supreme Court, Appellees' argument begs the question, which is, whether an order providing for a remittitur or a new trial can be a final judgment before the plaintiff makes its choice and before a final judgment is issued.

¶7 It is settled law that generally we have no jurisdiction to review interlocutory appeals. *See Chan v. Man Chan*, 6 N.M.I. 542 (2003). Motions for remittitur or a new trial are made pursuant to Rules 50 and 59 of the Commonwealth Rules of Civil

Procedure.[3] Federal case law holds that a decision that offers remittitur or a new trial pursuant to Rules 50 and 59 is an interlocutory order which is not appealable. *Anderson v. Roberson*, 249 F.3d 539, 542 (6th Cir. 2001); *Boris v. Choicepoint Services, Inc.*, 249 F.Supp.2d 851, 864 (W.D. Kentucky 2003). This is because the choice between a reduction of the judgment and a new trial remains open until the plaintiff elects one of the options provided by the court. *Anderson*, 249 F.3d at 542. Furthermore, there is no appealable order until the lower court either enters a final order based on plaintiff's acceptance of the remittitur or proceeds to judgment after a new trial.[4] *Id.*

¶8 Examining the present decisions from the trial court, it is clear that the Omnibus Order is interlocutory. The Omnibus Order gives Appellees the choice as to whether they will accept remitted damages or will elect to have a new trial. There is no language in the order that would have served to make the judgment a "springing judgment," *i.e.*, that a judgment would have automatically been entered for the remitted amount at the close of the 30-day period. Further, the Omnibus Order does not meet the requirements of Rule 4(a)(4) because there is no indication of whether the judgment is actually altered or not -- there is only a choice provided as to whether to accept the new judgment or proceed to trial. Therefore, the Omnibus Order is interlocutory and not appealable separately.

¶9 Looking at the remaining trial court Order of January 16, 2006 ("January 16th Order"), it is not possible to discern whether the trial court was at that time actually

[3] The relevant portions of our Rules 50 and 59 exactly mirror the corresponding Federal Rules of Civil Procedure. It is therefore appropriate to look to federal interpretations of our local laws as they have been substantially patterned after the federal rules. *Tenorio v. Superior Court of Com. of Northern Mariana Islands*, 1 N.M.I. 12, 16 (N.Mariana Islands 1990).

[4] While there have been CNMI cases where a remittitur order was appealed, we have no precedent regarding the timing of the appeal after issuance of a remittitur order as there have been no objections by the parties. *See Santos v. STS Enterprises, Inc.*, 2005 MP 4 (2005).

entering a final judgment based on the acceptance of the remittitur, as argued by Royal Crown, or whether it was merely reiterating the fact that the Omnibus Order was final on the date it was issued. Clearly, the trial court was retaining jurisdiction over the matter by issuing the January 16th Order, and this suggests that there was no final order yet issued regarding the final judgment. While the January 16th Order might appear to make a finding that the Omnibus Order represented the final judgment, we have found that the Omnibus Order was not a final judgment, nor did it become one automatically after 30 days passed from its issuance. Examining the January 16th Order itself, the trial court quashed a writ of execution and dealt with monies deposited into the Court previously, but it did not state the final judgment amounts. Therefore, the January 16th Order does not constitute the final appealable order as regards the final judgment.

III.

¶10 For these reasons, the Appellees' motion to dismiss is GRANTED on other grounds without prejudice to a further notice of appeal when the appropriate final judgment is entered by the trial court.

SO ORDERED this 10th day of April, 2006.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice

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SUPREME COURT APPEAL NO. 06-0004-GA
SUPERIOR COURT CIVIL CASE NO. 02-0065

JUDGMENT

¶ 1 THIS CAUSE came on to be heard from the Commonwealth Superior Court and was duly argued and submitted.

¶ 2 Pursuant to Rule 36, Commonwealth Rules of Appellate Procedure, judgement is hereby ENTERED.

¶ 3 Accordingly, this appeal is DISMISSED without prejudice to a further notice of appeal when the appropriate final judgement is entered by the trial court.

¶ 4 Entered this 10th day of April, 2006.

/s/
Cris M. Kaipat, Clerk of Court