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FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, EX RE. PAMELA BROWN, ATTORNEY GENERAL,
Plaintiffs-Appellees,

v.

ROSARIO DLG. KUMAGAI,
Defendant-Appellant,

MARIANAS PUBLIC LANDS AUTHORITY, and VICTORIA SABLAN NICHOLAS,
Defendants.

Supreme Court Appeal No. 05-0031-GA
Superior Court Civil Action No. 05-332E

OPINION

Cite as: Commonwealth v. Kumagai, *2006 MP 20*

Argued and submitted February 22, 2006
Rota, Northern Mariana Islands

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BEFORE: JOHN A. MANGLONA, Associate Justice, JESUS C. BORJA, Justice *Pro Tempore,* and ROBERT J. TORRES, Justice *Pro Tempore*.

MANGLONA, ASSOCIATE JUSTICE:

¶1 Appellant Rosario Dlg. Kumagai appeals from the trial court's denial of her motion for reconsideration seeking sanctions against Appellee Commonwealth of the Northern Marianas Islands. The Commonwealth filed a motion to dismiss the appeal arguing that this Court lacks appellate jurisdiction. We hold that because the Superior Court's denial of the motion for reconsideration adjudicated fewer than all of the claims in the underlying action, in the absence of said court's express direction for the entry of judgment pursuant to Com. R. Civ. P. 54(b), there is no appellate jurisdiction in this case. Further, we take this opportunity to make manifest that an appeal may only be taken from a judgment which is set forth on a separate document issued from the Superior Court. For judicial economy and efficiency and so that parties and the courts are clear as to when a case is fully adjudicated below, henceforth we will require strict adherence to the separate document rule which requires a formal separate entry of judgment or order prior to this Court's obtaining jurisdiction on appeal. Accordingly, the Commonwealth's Motion to Dismiss is GRANTED.

I.

¶2 The Commonwealth of the Northern Mariana Islands, *ex rel*, Pamela Brown, Attorney General filed a complaint for declaratory relief against Appellant Rosario Dlg. Kumagai, Victoria S. Nicholas and the Marianas Public Lands Authority ("MPLA") asserting that the land compensation payments earmarked for Kumugai and Nicholas

were not authorized by Public Law 13-17, as amended by Public Law 14-29. The complaint sought to enjoin payment of those funds and further alleged MPLA was in breach of its fiduciary duties in compensating Kumagai and Nicholas for their land.

¶3 Kumagai and Nicholas filed a motion to dismiss, or in the alternative a motion for summary judgment, arguing that there were no factual disputes in the case. They initially asked the trial court to make a *sua sponte* ruling without giving the Commonwealth notice and opportunity to be heard. That request was followed by an *Ex Parte* Motion to Shorten Time for a hearing on the motion to dismiss. The trial court granted the Motion to Shorten Time due to Kumagai's serious illness and the special circumstances of the case.

¶4 After the hearing, the trial court dismissed the Commonwealth's complaint against Kumagai and ordered the MPLA to pay Kumagai for her land. The trial court dismissed the complaint against Kumagai because it found that the Attorney General agreed to and signed a settlement agreement which concerned the land compensation in a separate suit between Kumagai, the Commonwealth, and Commonwealth Health Center (CHC). Specifically, Attorney General Pamela Brown signed the settlement agreement which said, "the parties have conducted an investigation into the facts and the law underlying the claims asserted in the Action and have concluded that a settlement of such claims according to the terms set forth below is in their respective interests." *Commonwealth v. MPLA*, Civ. No. 05-0302E (N.M.I. Super. Ct. Sept. 27, 2005) (Order Striking Plaintiff's Amended Complaint; Granting in Part and Denying in Part Defendant's Motions to Dismiss), p.5. The agreement provided that Kumagai would instruct MPLA to disburse in part her land compensation funds to CHC for unpaid

medical bills. *Id*. This agreement was "approved as to form and legal capacity" by Attorney General Pamela Brown. As the funds were going through the channels for disbursement, the Attorney General allegedly entered into a written agreement with Commonwealth Development Authority to stop payment.

¶5 The present complaint against Kumagai, Nicholas and MPLA then followed this previous action. Because the Attorney General had previously certified the settlement agreement, the court determined that the Commonwealth was making an improper claim against Kumagai and MPLA concerning the payment of the land compensation. Although the complaint against Kumagai was dismissed, the court denied Nicholas' motion to dismiss and did not address Kumagai's request for sanctions against the Commonwealth. Thus, the Commonwealth's case against Nicholas and MPLA continued.

¶6 Kumagai later filed a Motion for Reconsideration since the court's decision dismissing the complaint did not address Kumagai's request for sanctions against the Commonwealth and its attorneys. A hearing on the Motion was held with co-defendants Nicholas and MPLA joining Kumagai on the Motion. The trial court denied Kumagai's Motion for Reconsideration finding that while Kumagai did request sanctions, she did not do so in a separate writing, as required by Com. R. Civ. Proc 11(c)(1)(A). The court further declined to give sanctions *sua sponte* using its inherent powers. It is from this order that Kumagai appeals.

¶7 The Commonwealth filed a Motion to Dismiss this appeal arguing that Kumagai failed to obtain a certification of the order as a final judgment pursuant to Com. R. Civ. P. 54(b). Before oral arguments were held on the Motion to Dismiss, the trial court granted

summary judgment in favor of Nicholas. The matter remaining against MPLA was taken off the calendar, but the complaint was not dismissed.[1]

II.

A. Requirements for Appellate Jurisdiction

¶8 Article IV, Section 3 of the Commonwealth's Constitution provides that "[t]he Commonwealth supreme court shall hear appeals from final judgments and orders of the Commonwealth superior court. We have held that only final decisions and orders are appealable.[2] In *Commonwealth v. Crisostimo*, 2005 MP 18, we noted

> Article IV, Section 3 states: "The Commonwealth supreme court shall hear appeals from final judgments and orders of the Commonwealth superior court." (Emphasis added) In 1997, House Legislative Initiative 10-3 specifically added the word "final" into the section, further defining the jurisdiction of the Supreme Court. For this reason, our jurisdiction is constitutionally restrained from acting at certain times.

¶9 Our jurisdictional limitations are mandated not only by the Commonwealth Constitution but by statute. In *Commonwealth v. Hasinto*, 1 N.M.I. 377, 385, this Court held, "[w]e construe 1 CMC § 3102(a) to grant this Court appellate jurisdiction over Superior Court judgments and orders which are final. Since the statute does not expressly permit appeals from interlocutory orders, the orders denying the defendant's motions…are not immediately appealable." (emphasis in original)

¶10 In cases involving multiple parties or when there are multiple claims for relief, a decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all parties is not a final judgment. Commonwealth Rule of Civil Procedure 54(b), however, permits the court to "direct the entry of a final judgment as to one or more but

[1] We take judicial notice of Public Law 15-2, which abolished MPLA and created a new Department of Public Lands within the Executive Branch. PL 15-2 became effective on February 22, 2006.
[2] There are exceptions to this rule, such as the Collateral Order doctrine, which do not apply here.

fewer than all of the claims or parties only upon an express determination that there is no just reason for delay upon an express direction for the entry of judgment."[3] When there has been such a determination and direction, the judgment is likewise appealable as a final judgment. *See Ito v. Macro Energy*, 2 N.M.I. 459 (1992); *Teregeyo v. Lizama*, 5 N.M.I. 84 (1997); *Chan v. Chan*, 2003 MP 5.

¶11 This Court has frequently dismissed appeals for lack of jurisdiction, as issues were prematurely brought before this Court. Some cases were dismissed because they were appeals of interlocutory orders. *See, e.g., Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11; *Camacho v. DPW*, (Order Dismissing Appeal for Lack of Jurisdiction, December 20, 2005); *Commonwealth v. Blas*, (Order Dismissing Appeal for Lack of Jurisdiction, October 29, 2004)[4]; *Kaainoa v. Cabrera*, 2003 MP 18. Others were dismissed because of the failure to obtain Com. R. Civ. P. 54(b) certification. *Chan v. Chan*, 2003 MP 5. The present case not only presents a jurisdictional problem but also highlights the need to require strict adherence to the entry of a judgment or order prior to this Court's obtaining jurisdiction on appeal. We first consider whether there is jurisdiction based on the lack of certification by the trial court when it dismissed Kumagai's claim in the multiple party suit.

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[3] Commonwealth Rule of Civil Procedure 54(b) reads:

JUDGMENTS UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES

When 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 upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

[4] We note that the two orders cited in this section are not published opinions. We cite them here, not to rely on their authority, but rather to demonstrate the frequency of the dismissals based on lack of jurisdiction. This Court disposes of this procedural matter by both published opinion and order.

B. Failure to Obtain Com. R. Civ. P. 54(b) Certification

¶12 In relevant part, Rule 54(b) states: "When 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." Two inquiries must be made when determining whether Rule 54(b) certification is proper. First, the court must determine whether it is dealing with a "final judgment." *Curtiss-Wright v. General Electric Co.*, 446 U.S. 1, 7, 100 S.Ct. 1460, 1464, 64 L.Ed.2d 1 (quoting *Sears, Roebuck & Co., v. Mackey*, 351 U.S. 427 (1956)). Different tests have been developed to determine whether a judgment is final. Second, the court must perform a balancing test and consider whether the "costs and risks of multiple proceedings and the policy with respect to judicial efficiency are outweighed by the need for an 'early and separate judgment as to some claims or parties.'" *GHURA v. Pacific Superior Enterprises Corp.*, 2004 Guam 22 ¶ 20; *see also, Ito*, 2 N.M.I. at 466. In doing so, the court should determine that there is no just reason for delay and give an express direction for the entry of judgment. *See Curtiss-Wright*, 446, U.S. at 8, 100 S.Ct. 1460, 1465, 64 L.Ed.2d 1; *GHURA*, 2004 Guam 22 ¶20.

¶13 Pursuant to this rule, in an action against various defendants, wherein the lower court granted the motion of one defendant to dismiss for failure to state a claim as to such defendant but did not accompany the dismissal with a certificate expressly determining that there was no just reason for delay and expressly directing entry of judgment, a court

of appeals lacks jurisdiction to hear the appeal. *Boudeloche v. Tnemec Co., Inc*., 693 F.2d 546 (5th Cir.1982); s*ee also Penton v. Pompano Const. Co., Inc.,* 963 F.2d 321 (11th Cir. 1992) (court of appeals lacked jurisdiction absent final judgment terminating case as to all of claims and parties; while district court did finally dispose of claims against appellant, that judgment was not entered pursuant to rule permitting appeal, upon determination of "no just reason for delay," from judgment upon one or more but less than all claims in action).

¶14 The instant case clearly falls within Rule 54(b). It involves multiple parties as the Commonwealth brought suit against Kumagai, Nicholas, and MPLA together in one action. While the trial court granted Kumagai's Motion to Dismiss, the other parties involved in the case still had issues before the trial court at the time Appellant appealed. Both Kumagai and the Commonwealth agree that no Rule 54(b) determination was requested or issued by the trial court. Without such certification, the appeal was untimely filed and this Court had no jurisdiction to hear the case.

¶15 Kumagai argues, however, that even in the absence of a Rule 54(b) certification we have jurisdiction because after the notice of appeal and motion to dismiss the appeal were filed, the trial court granted summary judgment in favor of co-defendant Nicholas, thereby rendering the case fully adjudicated. The Commonwealth asserts that even if the case below was now fully adjudicated, the current appeal should still be dismissed for lack of jurisdiction.

¶16 We do not believe it is prudent or efficient to dismiss an appeal of a case which has been later fully adjudicated simply because the decision being appealed was not final

at the time the appeal was filed.[5] There may be situations in which jurisdiction will be perfected during the pendency of the appeal. However, this appeal is not such a case. Even Kumagai was not convinced that the case had been fully adjudicated in the lower court. At oral arguments, Kumagai's counsel admitted that there was still an unresolved issue between the Commonwealth and MPLA. We agree that whether MPLA breached its fiduciary duties has yet to be resolved in the case below. For this reason, we do not find that jurisdiction was perfected during the pendency of this appeal.[6]

C. Application of Separate Document Rule

¶17 The issues presented in this case exemplify a frequent challenge by this Court in exercising our appellate jurisdiction. In recent years, we have seen a large number of cases which contain jurisdictional issues stemming from lack of finality in the judgment. Parties frequently file an appeal with this Court before all issues are settled in the lower court. *See, e.g. supra* ¶ 11. Thus, a very important step in our Rules has been overlooked.

¶18 We first look at the Commonwealth Rules of Appellate Procedure, which determine our own appellate jurisdiction. Commonwealth Rule of Appellate Procedure 3 states: "[a]n appeal permitted by law as of right from the Superior Court to this Court

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[5] Generally, we find that "practical, not technical considerations are to govern the application of principles of finality." *Gillespie v. U.S. Steel Corp*., 379 U.S. 148, 152, 85 S.Ct. 308, 310, 13 L.Ed.2d 199 (1964). In *Sandididge v. Salem Offshore Drilling Co*., 764 F.2d 252 (5th Cir. 1985), it is noted that the majority of Circuit Courts of Appeal would hold that jurisdiction was perfected if the case was fully adjudicated below. Because not all the issues in the instant case are fully adjudicated we need not address this issue more fully at the present time.

[6] We would have been inclined to find jurisdiction over this matter had the Commonwealth dismissed the claim against MPLA. At the hearing before this Court, Kumagai and the Commonwealth both agreed that there was an outstanding claim by the Commonwealth against MPLA for breach of fiduciary duty. The Commonwealth admitted on the record that it would withdraw this claim; however, none of the parties supplemented the record with a dismissal of the complaint against the MPLA. Therefore, we must find that this issue is still unresolved.

shall be taken by filing a notice of appeal with the clerk of the Superior Court within the time allowed by Rule 4." Rule 4(a)(1) provides:

> In a civil case in which an appeal is permitted by law as of right from the Superior Court to this Court the notice of appeal required by Rule 3 shall be filed with the clerk of the Superior Court within 30 days after the date of **entry of the judgment or order** appealed from. **The filing of the judgment with the clerk of the Superior Court constitutes entry of judgment.** (emphasis added).

Rule 4(b) provides:

> In a criminal case the notice of appeal by defendant shall be filed in the Superior Court within 30 days **after the entry of (i) judgment or order** appealed from or (ii) a notice of appeal by the Government. **A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry** and on the day thereof…..When an appeal by the government is authorized by statute, the notice of appeal shall be filed in the Superior Court within 30 days after the entry of (i) the judgment or order appealed from or (ii) a notice of appeal by any defendant. **A judgment or order is entered within the meaning of this subdivision when it is filed with the clerk of the Superior Court.** (emphasis added).

From these rules, it is apparent that an "entry of judgment or order" is different from the announcement of a decision, sentence or order. An entry of judgment or order has been singled and differentiated from announced orders, decisions and sentences in the rules and must therefore itself be in a different form. It is further clear that an entry of judgment or order, filed with the clerk of the Superior Court is required before an appeal is permitted. Noticeably this Court has rarely seen an "entry of judgment" or "entry of order" separate from an order, decision or sentence from the Superior Court.

¶19 Commonwealth Rule of Civil Procedure 54(a) defines judgment as "a decree and any order from which an appeal lies." While that definition is less than helpful, Rule 54(a) goes on to state: "A judgment shall not contain a recital of pleadings, the report of a

master, or the record of prior proceedings." From this definition, we find that an "entry of judgment or order" is different from an announced order, decision or sentence by way of form.

¶20 Within the Commonwealth Rules of Civil Procedure, there are several instances in which entries of judgments or orders are distinct from announced orders, decisions, or sentences. Rule 54(e), entitled "ENTRY OF JUDGMENTS AND ORDERS" requires that "[i]n all cases, the notation of judgments and orders in the civil docket by the clerk will be made at the earliest practicable time." Rule 77(d), entitled "NOTICE OF ORDERS OR JUDGMENTS" reads: "Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail…Lack of notice of the entry by the clerk does not affect the time to appeal…except as permitted in Rule 4(a) of the Commonwealth Rules of Appellate Procedure." Rule 58, entitled "SETTLEMENT OF JUDGMENTS AND ORDERS BY THE COURT," explains that "No judgment need be signed by the judge, but an initialed approval on the draft of judgment will be sufficient evidence of direction to enter it and authorization to the clerk to note the judgment forthwith in the civil docket."

¶21 Read together, these requirements are similar to Commonwealth Rule of Appellate Procedure 36:

> ENTRY OF JUDGMENT
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> The filing of a judgment by the clerk constitutes entry of judgment. The Clerk of this Court shall immediately prepare, sign, and enter the judgment following receipts of the opinion of the Court…If a judgment is rendered without opinion, the Clerk shall prepare, sign and enter the judgment following instructions from the Court. The Clerk shall immediately serve all parties a copy of judgment and opinion, if any, or of the judgment if no opinion was written.

The entry of judgment by the Supreme Court clerk is a separate document from the opinion. It is prepared by the Clerk, who either follows the opinion or direction of the Court. We find this to be the type of "entry of judgment by the clerk" contemplated in Rule 4(a)(1) as well. This is the type of entry of judgment required from which an appeal lies.

¶22 While our rules do not explicitly state the obvious,[7] we find that an entry of judgment or order issued as a separate document is a necessary adjunct that must be filed with the Superior Court clerk, which would then be entered on the docket. A thorough evaluation and collective reading of our Rules of Appellate Procedure, Rules of Civil Procedure and Rules of Practice make evident that without such an entry of judgment or order, this Court has no jurisdiction to hear most cases, as our jurisdiction, with certain exceptions, is limited to judgments which are final. Consequently in the future we will require strict compliance with the separate document rule which requires a formal separate entry of judgment or order for this Court to obtain jurisdiction on appeal. Adherence to this rule will increase judicial efficiency and economy. Obviously, if Kumagai had sought the entry of a judgment or order before proceeding with the appeal,

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[7] Indeed, the Federal Rules of Civil Procedure have an explicit statement of the separate document requirement. Federal Rule of Civil Procedure 58 reads:

ENTRY OF JUDGMENT

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it**. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth.** Entry of judgment shall not be delayed for the taxing of costs. Attorneys shall submit forms of judgment except upon direction of the court. (emphasis added).

Curiously Com. R. Civ. Proc. 58 is simply a regurgitation of the Com. Rules of Practice 14 (e) and (f) and there are no committee notes or references to explain the reasons why it was necessary to replicate Rule of Practice 14 (e) and (f).

the trial court would have had the opportunity to initially evaluate whether Rule 54(b) certification was appropriate which would be a prudent use of judicial resources. Moreover, requiring entry of a judgment or order as a separate document is neither onerous nor burdensome to the Superior Court or the parties. Further, the application of such a bright line requirement provides the parties with conclusive notification that the case has ended and an appeal may be taken, ensures that a decision addressed on appeal is really the trial court's final resolution of the matter and protects litigants from uncertainty as to when a notice of appeal must be filed within the time permitted.

¶23 While our decision to dismiss this case for lack of jurisdiction is based on the failure of Kumagai to obtain a Rule 54(b) certification, our holding that a separate document of entry of judgment or order must be issued by the trial court shall apply prospectively. Commonwealth Rule of Practice 14(d) is instructive on the procedure the trial court shall follow in this regard. No judgment or order will be noted in the civil docket until the clerk has received from the court a specific direction to enter it, except orders grantable by the clerk under Commonwealth Rules of Practice 14(a) and judgments which the clerk is authorized by the Commonwealth Rules of Civil Procedure to enter without the direction of the court. Com. R. of Practice 14(d) (3).

III.

¶24 Given the absence of a Rule 54(b) certification for a final judgment as to one of the parties in this matter, we cannot exercise jurisdiction. Furthermore, in future appeals we will require a separate document which formally directs entry of judgment or order in a case before appellate jurisdiction is ripe. For these reasons, Appellee's Motion to Dismiss is GRANTED.

SO ORDERED this 1st day of September, 2006.

_____/S/ JOHN A. MANGLONA_____
JOHN A. MANGLONA, Associate Justice

__/S/ JESUS C. BORJA_____
JESUS C. BORJA, Justice *Pro Tempore*

_____/S/ ROBERT J. TORRES_____
ROBERT J. TORRES, Justice *Pro Tempore*