E-FILED
CNMI SUPREME COURT
E-filed: Aug 13 2024 09:57AM
Clerk Review: Aug 13 2024 09:58AM
Filing ID: 74026455
Case No.: ADM-2024
Judy Aldan

IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

MARCIANO TAKASI AND CYNTHIA DLG. TAKASI,
Plaintiffs-Appellees,

v.

IKUO YOSHIZAWA, PROPERTY MANAGEMENT, INC., RAINBOW GROUP CORPORATION, KWANG LEE, AND DOES 1-10,
Defendants-Appellants.

Supreme Court No. 2021-SCC-0021-CIV

ORDER GRANTING MOTION TO DISMISS

Cite as: 2022 MP 1

Decided February 12, 2022

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS

Superior Court Civil Action No. 20-0348-CV
Associate Judge Kenneth L. Govendo, Presiding

CASTRO, CJ.:

¶ 1 Defendants-Appellants Ikuo Yoshizawa, Property Management, Inc., Rainbow Group Corporation, Kwang Suk Lee, and Does 1-10 ("Yoshizawa and Lee") appeal from an order denying their motion for summary judgment. Plaintiffs-Appellees Marciano Takasi and Cynthia DLG. Takasi ("the Takasis") move to dismiss the appeal for a lack of jurisdiction. For the following reasons, we GRANT the motion to dismiss.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The Takasis sued Yoshizawa and Lee for quiet title to Lot 023 T 16, which is located on the island of Tinian. Yoshizawa and Lee moved for summary judgment based on the assertion that the Takasis had filed their lawsuit too late and were thus barred by the statutes of limitations. The trial court denied the motion without entering a separate judgment. Yoshizawa and Lee filed this appeal. The Takasis filed a motion to dismiss, arguing that we lack jurisdiction because there was no separate, final judgment and that a denial of a motion for summary judgment is an unappealable, interlocutory order.

II. JURISDICTION

¶ 3 We have jurisdiction over all final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3. We have consistently treated a denial of a motion for summary judgment as an interlocutory order. *See, e.g., Villagomez v. Marianas Ins. Co.*, 2006 MP 21 ¶ 6. Generally, we lack jurisdiction over appeals of interlocutory orders, as they are not final. *Id.*; *Chan v. Chan*, 2003 MP 05 ¶ 18; *Ito v. Macro Energy Inc.*, 2 NMI 459, 464 (1992); *R.R. Donnelley & Sons Co. v. FTC*, 931 F.2d 430, 431 (7th Cir. 1991); *Matterhorn, Inc. v. NCR Corp.*, 727 F.2d 629, 632 (7th Cir. 1984). For us to have jurisdiction over a non-final decision, a party must demonstrate an "express authorization for a different procedure," because an appeal from an interlocutory order is "exceptional in character." *Villagomez v. Marianas Ins. Co.*, 2006 MP 21 ¶ 8 (citing *Commonwealth v. Hasinto*, 1 NMI 377, 385 (1990)).

III. DISCUSSION

¶ 4 Yoshizawa and Lee assert that the collateral order exception—in which we have jurisdiction over appeals of interlocutory orders in limited circumstances—applies to this case. *Commonwealth v. Guerrero*, 3 NMI 479, 481–82 (1993). They must meet three conditions for this narrow exception; the ruling being appealed from must (1) conclusively determine the disputed question, (2) resolve an issue separate from the merits of the underlying action, and (3) be "effectively unreviewable" on appeal from a final judgment. *Id.* at 482. The parties agree that this appeal is of an interlocutory order, and thus, Yoshizawa and Lee would need to satisfy all three conditions for us to have jurisdiction. We find they have not.

¶ 5 First, for a ruling to conclusively determine the disputed question, it must leave nothing to determine on the question in further proceedings. Here, the parties disagree about what the disputed question is. Yoshizawa and Lee assert

that the disputed question is the applicability of the statutes of limitations; as the court found that the statutes of limitations do not bar the lawsuit, the court conclusively determined the dispute. The Takasis state that the disputed question is broader than the single issue Yoshizawa and Lee present, as the court determined two additional issues: (1) whether there are genuine issues of material fact remaining and (2) whether Yoshizawa and Lee were entitled to judgment as a matter of law. NMI. R. CIV. P. 56. If the disputed question were only the applicability of the statutes of limitations, then Yoshizawa and Lee would have met this part of the test, as the trial court concluded that "a claim to determine land ownership, such as in a quiet title action, is not barred by the statute of limitations." *Takasi v. Yoshizawa*, Civ. No. 20–0348–CV (NMI Super. Ct. Jun. 21, 2021) (Order Denying Defendants' Motion for Summary Judgment & Order Denying Plaintiffs' Motion to Strike 8). However, we find this was merely one part of the ruling, as the court also determined that genuine issues of material fact remain disputed. One such issue of fact involves whether the second lease was fraudulent, and another is whether fraudulent means were used to hide encumbrances on the land; these are unresolved material issues of fact supporting the court's decision to deny the motion for summary judgment.[1] The question of fraud is also relevant to whether the statutes of limitations apply, as an aggrieved party may be permitted to file notwithstanding a statute of limitations if fraudulent concealment by the other party is shown. 7 CMC § 2509. Thus, Yoshizawa and Lee have not demonstrated that their appeal meets this first condition.

¶ 6 Second, the ruling being appealed from must resolve an issue separate from the merits. This, likewise, does not favor Yoshizawa and Lee's claim that we have jurisdiction. They assert that using a statute of limitations defense is separate from the Takasis' suit about their land. The question of whether a statute of limitations applies depends on the type of relief the Takasis are seeking; at present, the parties disagree on the nature of the underlying case. The Takasis also claim that there was fraud, which would affect the statute of limitations question and the central issues involving the lease. To determine the applicability of the statutes of limitations, we would need to examine and come to conclusions about the merits of the claims—tasks that the Superior Court best performs. Thus, Yoshizawa and Lee have not shown how this issue is separate from the merits.

¶ 7 Third, for an issue to be "effectively unreviewable" on appeal from a final

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[1] *See, e.g., Holverson v. Lundberg*, 879 N.W.2d 718, 723 (N.D. 2016) (finding that "[c]laims about fraudulent inducement, misrepresentations, and the parties' intentions generally involve factual questions that are inappropriate for summary judgment."); *Friedman v. Meyers*, 482 F.2d 435, 439 (2d Cir. 1973) (stating that summary judgment is inappropriate when based on inferences surrounding questions of a party's motive, intent, subjective feelings, or reactions, such as claims of fraud); *cf. Hinton Travel Inn, Inc. v. Wichita Wayne, Ltd. Liab. Co.*, No. 11-291-C, 2012 U.S. Dist. LEXIS 94327, at *12 (W.D. Okla. July 9, 2012) (finding that the plaintiffs were entitled to summary judgment when the defendants waived their fraud counterclaim after knowingly continuing the agreement with their alleged defrauders).

judgment, the issue must be one that cannot be addressed through reversal or other means upon later appeal. *Commonwealth v. Guerrero*, 3 NMI 479, 482 (1993). There must be an element of timing, where "if the aggrieved party is forced to wait until the entire case is fully adjudicated," it would be too late for us to correct any injury done. *Camacho v. Demapan*, 2010 MP 3 ¶ 28. The mere fact that the aggrieved party must take part in litigation is not a qualifying injury. *Will v. Hallock*, 546 U.S. 345, 350–51 (2006) (recognizing that "a right to avoid trial" is a generalization "too easy to be sound" and would leave this third requirement of the doctrine "in tatters" if applied). Yoshizawa and Lee assert that they have lost their statute of limitations argument, but this is not an unreviewable issue in this case. Upon a final judgment, if Yoshizawa and Lee lose the case below, they may include the statutes of limitation argument in their appeal at that time. They are not at risk of suffering from irreparable harm if we do not hear this appeal now; thus, they have not demonstrated how this issue is effectively unappealable after the case in the trial court has finished. *See, e.g., United States v. Bird*, 359 F.3d 1185, 1188 (9th Cir. 2004) (stating that an order is "effectively unreviewable if it involves an important right which would be lost, probably irreparably, if review had to await final judgment" (internal quotations and citations omitted)); *AdTrader, Inc. v. Google LLC*, 7 F.4th 803, 809 (9th Cir. 2021) (stating that an order is effectively unreviewable on appeal when "the legal and practical value of the asserted right will be destroyed if not vindicated before judgment" (internal quotations and citations omitted)).

IV. CONCLUSION

¶ 8 For the foregoing reasons, we lack jurisdiction. Yoshizawa and Lee have not demonstrated that we have jurisdiction over their appeal of an interlocutory order. Therefore, for good cause shown, the motion to dismiss is GRANTED.

SO ORDERED this 12th day of February, 2022.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

COUNSEL

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