

TRUST TERRITORY OF THE PACIFIC ISLANDS,  
Plaintiff-Appellee

v.

SILVENIOS KONOU, et al., Defendant-Appellants  
Civil Appeals No. 108, 110 & 118 (Consolidated)

Appellate Division of the High Court

Marshall Islands District

July 24, 1975

Action for restoration of possession of land. The Appellate Division of the High Court, Williams, Associate Justice, held that summary judgment was improperly granted below where there were issues of fact to be resolved.

1. Appeal and Error—Final Judgment

Orders regarding preliminary injunctions do not finally dispose of the issues of a case and by their nature provide interlocutory relief and thus do not constitute a final judgment or order and are not appealable.

2. Judgments—Summary Judgment—Issues

When considering a motion for summary judgment the court cannot try issues of fact, but can only determine if there are genuine issues of fact to be resolved.

3. Judgments—Summary Judgment—Particular Cases

Where there were genuine issues of fact in action for restoration of possession of land, as to whether there was a valid, binding oral lease, and as to the availability of the defense of the Statute of Limitations, summary judgment for plaintiff was improper.

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*Counsel for Appellant:*

JAMES LICKE

*Counsel for Appellee:*

PHILLIP JOHNSON

Before BURNETT, *Chief Justice*; HEFNER, *Associate Justice*; WILLIAMS, *Associate Justice*

WILLIAMS, *Associate Justice*

This opinion considers three appeals: Appeal No. 108, Appeal No. 110 and Appeal No. 118, all of which arose out of Marshalls Civil Action No. 21-73. They were consolidated for the purpose of argument and briefs, since they arose out of the same case.

The Government, plaintiff-appellee, filed a complaint for "judgment restoring plaintiff possession of" the northern one-third of Lokojabreth Wato, Dalap Island, Majuro Atoll, Marshall Islands District. The complaint alleges *Iroi*j Aiseia David executed a lease agreement for said lands to the government on February 9, 1964, for a term of ninety-nine (99) years from February 9, 1944, until February 9, 2043. The lease recited, and plaintiff claims, that *Iroi*j Aiseia David was authorized in accordance with Marshallese custom to act for the owners and empowered to receive compensation for the lease.

Defendants-appellants' pleadings deny plaintiff has any interest in the property described in the complaint and they counterclaim for possession of additional properties alleged to be owned by defendants and occupied by plaintiff. In defendants' counterclaims, they allege the lands in question have been occupied by plaintiff and its predecessors since 1944, unlawfully and without consent of defendants. They further allege that *Iroi*j Aiseia David had no authority according to the Marshallese custom, or otherwise, to sign the lease of February 9, 1964, on their behalf, and that the lease was not binding on them and should be declared null and void, as far as their lands are concerned.

Plaintiff then moved for a judgment on the pleadings on the grounds defendants' claims are barred by the Statute of Limitations, 6 TTC § 302 (20 years for the recovery of land or interest therein) and 6 TTC § 305 (6 years for an action on contract).

The Trial Court treated plaintiff's motion for judgment on the pleadings as a motion for summary judgment and entered a judgment in favor of plaintiff. After a lengthy discussion of the contentions of the parties, the basis of the Court's decision is set forth on page 22 of the Court's opinion as follows:

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Interpretation of a lease is a matter of law for the court. *Enos v. Foster*, 317 P.2 670 (Calif.). The record convinces the court that there is a valid, binding oral lease, the terms of which are evidenced by the 1964 lease, between the plaintiff-government and the defendant-property owners. That plaintiff is therefore entitled to judgment on the merits, as a matter of law, is shown by the record which discloses no substantial issue of disputed fact. Even if there were no landlord-tenant relationship between the parties, the court would be compelled to enter judgment for the plaintiff because defendants' claim to possession is barred by 6 TTC § 302 which prohibits commencement of an action after twenty years for the recovery of "land or any interest therein."

It matters not which theory is advanced by the government, the result must be the same. The plaintiff is entitled to judgment on the pleadings prayed.

The defendants then filed an appeal from the Trial Court's Order granting plaintiff a summary judgment. This appeal is the designated Civil Appeal No. 118.

When the original complaint was filed, plaintiff also requested a preliminary injunction restraining the defendants from using or occupying the lands in question. After a hearing, the request for a preliminary injunction was granted and defendants filed an appeal. This appeal has been designated Civil Appeal No. 108.

At the time defendants filed their amended answer and counterclaim, they also requested a preliminary injunction restraining plaintiff from continuing construction of school buildings on one (1) parcel of land in question. After a hearing, defendants' request was denied and they filed an appeal. This appeal has been designated as Civil Appeal No. 110.

First, we will discuss the issues raised by Civil Appeal No. 108 and No. 110, since they both concern preliminary injunctions.

The plaintiff argues that orders granting or denying preliminary injunctions are not final orders or judgments and are not directly appealable.

Under the common law, only final judgments or orders were appealable. *Phinney v. Houston Oil Field Material Company*, 252 F.2d 357, 360, (1958); 42 Am.Jur.2d, Injunctions, Sec. 346, p. 1151. This court has also ruled on previous occasions that appeals will be only from final orders or judgments. *American Foreign Insurance Association v. Nam Trading Company*, 5 T.T.R. 350 (App. Div. 1971); *Jose Cruz v. Trust Territory of the Pacific Islands*, 4 T.T.R. 491 (App. Div. 1968).

[1] A final judgment or order is generally recognized as one which ends the action. *Farmers Equipment Co. v. Clinger*, 222 P.2d 1077, 1080 (1950); *North Point Consolidated Irr. Co. v. Utah and Salt Lake Canal Co.*, 46 P. 824 (1896). Since orders regarding preliminary injunctions do not finally dispose of the issues of a case, and by their nature are issued *pendente lite* to provide interlocutory relief, they do not constitute a final judgment or order and we find they are not appealable. Therefore, Civil Appeal No. 108, concerning the granting of a preliminary injunction to plaintiff, and Civil Appeal No. 110, concerning the denial of defendants' request for a preliminary injunction, are hereby Dismissed.

We next consider Civil Appeal No. 118, wherein defendant appeals from the Trial Court's Order granting plaintiff a summary judgment.

It is necessary to first discuss the procedure followed by the Trial Court before reaching the substantive issues. Plaintiff filed a motion for judgment on the pleadings as permitted by Rules 8(a) and 19(c) of the Rules of Civil Procedure of the High Court and Rule 12(c) of the Federal Rules of Civil Procedure. The Trial Court properly recognized, if matters outside of the pleadings are considered on a motion under Rule 12(c) of the Federal Rules of Civil Procedure, the motion should be treated as a motion for summary judgment and disposed of as provided in Rule

56 of the Federal Rules of Civil Procedure. Defendants argue if the Court was going to treat plaintiff's motion under Rule 56 of the Federal Rules of Civil Procedure and review matters outside the pleadings, they should have been given notice and a reasonable opportunity to present additional material relative to the motion. With this contention, we agree. Rule 12(c) of the Federal Rules of Civil Procedure specifically provides, if a motion is treated as one for summary judgment under Rule 56 that: ". . . all parties should be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

Therefore, we believe the Trial Court's failure to notify the parties of its intent to proceed under Rule 56 of the Federal Rules of Civil Procedure constitutes error.

Defendants also assign error to the Trial Court's finding that plaintiff had a valid oral lease and that defendants' claims were barred by the Statute of Limitations.

First, regarding the lease, the original complaint of plaintiff alleges a leasehold interest in the lands in question for a term commencing February 9, 1944, until February 9, 2043, by virtue of the written lease agreement dated February 9, 1964. Defendants emphatically deny the existence of the lease agreement and contend the occupancy of the land by plaintiff has been without their consent.

[2, 3] In considering a motion for summary judgment, the court cannot try issues of fact, but can only determine if there are genuine issues of fact to be resolved. Summary judgment is not a substitute for a trial. *Walgren v. Howes*, 482 F.2d 95, 98 (1973). An examination of the pleadings, affidavits, interrogatories and other documents in the file clearly shows material controverted issues concerning the existence of a lease agreement whether written or oral.

In arriving at its conclusion there was a valid binding oral lease, it was necessary for the Trial Court to resolve

these issues in favor of plaintiff, and it is improper to resolve such contested issues on consideration of a summary judgment. *Briggs v. Kerrigan*, 431 F.2d 967 (1970).

Second, the Trial Court, in holding a summary judgment may be entered upon a showing of a bar of limitations relied on *Guerrero Family Inc. v. Micronesian Line, Inc.*, 5 T.T.R. 87 (App. Div. 1970). We believe the Court's reliance on *Guerrero* is misplaced. In the *Guerrero* case a genuine factual controversy concerning the availability of the defense of limitations was not raised and the Court could properly enter a summary judgment.

However, we believe this case raises serious disputed issues concerning the availability of the Statute of Limitations as a bar to defendants' claims. As the Trial Court recognized, the arguments of the defendants are somewhat inconsistent. On the one hand they argue plaintiff has not obtained any rights by virtue of plaintiff's and its predecessors' continued occupancy of the lands in question since 1944. On the other hand defendants argue this continual occupancy was without consent and that plaintiff has wrongfully withheld possession from the defendants.

The position of the plaintiff is equally inconsistent. On the one hand, plaintiff argues entitlement to occupancy of the property by virtue of a written lease agreement. Yet, plaintiff also argues it has acquired rights in the land by its continued occupancy for over 20 years.

A summary judgment is not appropriate when the whole record establishes facts which give rise to contradictory inferences, one of which supports the party opposing the motion, *United States v. Lange*, 466 F.2d 1021 (1972). We believe, after a review of the pleadings, interrogatories and affidavits on file that there exist disputed facts regarding

the applicability of the Statute of Limitations and it was improper to resolve these issues by summary judgment.

Therefore, the decision of the Trial Court entering a summary judgment is hereby reversed and the matter is remanded to the Trial Court for further proceedings.

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JOAQUIN R. LIZAMA, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 46

Appellate Division of the High Court

Mariana Islands District

September 15, 1975

Appeal from burglary conviction. The Appellate Division of the High Court, Hefner, Associate Justice, held that evidence of prior criminal conduct was, under certain circumstances, admissible to show intent in the crime charged.

**1. Appeal and Error—Notice and Filing of Appeal—Failure to File Brief**

Where notice of appeal was filed in May, written brief was due in November and in November appellant moved for extension of time in which to file brief, court could dismiss the appeal for failure to prosecute, because appellant had had more than sufficient time in which to file his brief; but since it was a criminal proceeding, the court, keeping in mind its responsibility to safeguard the rights of the accused, would consider the appeal on the basis of the points raised in the notice of appeal and on the basis of its own independent review of the record.

**2. Appeal and Error—Findings and Conclusions—Supporting Evidence**

Where appellant in a criminal case claims there was insufficient evidence to support a finding of guilt, question on appeal is whether, considering primarily evidence favorable to the decision of the lower court, there was any reasonable evidence to support that decision.

**3. Criminal Law—Evidence—Prior Commission of Crime**

Though inadmissible to show commission of crime charged, evidence of prior criminal conduct which establishes a common plan, design or scheme embracing a series of crimes, including the crime charged, so related to each other that proof of one tends to prove the other, may be admitted to show intent in the crime charged, the court weighing the character of the evidence, the surrounding circumstances and the