

NAKAMURA, *Associate Justice*

On October 17, 1978, the Trial Division of the High Court entered judgment in favor of the defendant. Plaintiff filed a timely appeal to the Appellate Division.

Unfortunately, it appears to the Court that the court reporter who took the trial proceedings cannot prepare the transcript. Therefore,

IT IS ORDERED that the above-captioned civil action be and it hereby is REMANDED to the Trial Division of the High Court for a new trial.

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NICOLASA BABAUTA CAMACHO, Plaintiff-Appellee

v.

JUAN PUA NAOG, et al., Defendants-Appellants

Civil Appeal Nos. 199 & 227

Appellate Division of the High Court

Northern Mariana Islands District

November 10, 1982

Motion for reconsideration of Appellate Division's earlier opinion concluding that Trial Court lacked jurisdiction to rule on motion for relief from judgment filed after a timely notice of appeal to the Appellate Division. The Appellate Division of the High Court, Gianotti, Associate Justice, held that the Trial Division has jurisdiction to decide a motion for relief from judgment filed after a timely noticed appeal to the Appellate Division, and may adjudicate the motion without applying to the Appellate Division for a remand, and therefore the Appellate Division's prior decision was vacated.

**1. Courts—Jurisdiction—Filing Notice of Appeal**

A trial court generally loses jurisdiction to act on the merits of a case after a notice of appeal is timely filed.

**2. Civil Procedure—Motion for Relief From Judgment**

A motion for relief from judgment is not a vehicle for relitigating the merits. (Rules Civil Proc. 48(a))

**3. Civil Procedure—Motion for Relief From Judgment**

In a civil case, a motion for relief from judgment does not affect the finality of the judgment appealed from. (Rules Civil Proc. 48(a))

**4. Civil Procedure—Motion for Relief From Judgment**

The Trial Division has jurisdiction to decide a motion for relief from judgment filed after a timely noticed appeal to the Appellate Division, and may adjudicate the motion without applying to the Appellate Division for a remand. (Rules Civil Proc. 48(a))

**5. Criminal Law—Appeals**

Unlike the disposition of civil motion for relief from judgment, the modification of a criminal sentence affects the finality of the judgment under pending review.

**6. Criminal Law—Appeals**

In contrast to a civil appeal, a criminal appeal necessarily and wholly removes the cause from the trial court's jurisdiction.

**7. Civil Procedure—Motion for Relief From Judgment**

A motion for relief from judgment is not a substitute for appeal, and provides for extraordinary relief only upon an adequate and clear showing of exceptional circumstances.

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Before GIANOTTI, *Associate Judge*, LAURETA, *Designated Judge*

GIANOTTI, *Associate Judge*

Appellants have moved for reconsideration of this Court's June 7, 1982, opinion. In that opinion this Court affirmed the Trial Division's conclusion that it lacked jurisdiction after the timely noticing of this appeal to rule on appellants' motion for relief from judgment under Trust Territory Rule of Civil Procedure 48(a) (1) and (2). Our reexamination of this issue convinces us that this Court's prior decision was erroneous. We vacate that decision so that the Trial Division may rule on appellants' motion.

[1, 2] It is well-settled that a trial court generally loses jurisdiction to act on the merits of a case after a notice of appeal is timely filed. *E.g.*, *Trust Territory v. Palacios*, 7 T.T.R. 406, 410 (H.C. App. Div. 1976) (per curiam). However, a motion for relief from judgment is not a vehicle for relitigating the merits. *Howard v. Burlington Northern Inc.*, 75 F.R.D. 644, 648 (D. Or. 1977), *aff'd*, 588 F.2d 842 (9th Cir. 1978). In the absence of High Court precedent, we turn for guidance to authority construing Federal Rule of Civil Procedure 60(b), which is nearly identical to Rule 48(a).

In *Standard Oil of Calif. v. United States*, 429 U.S. 17, 97 S. Ct. 31, 50 L. Ed. 2d 21 (1976) (per curiam), the United States Supreme Court held that the district court could consider a Rule 60(b) motion filed after the affirmance of the original judgment. It emphasized that the district court could hear the motion without first obtaining a remand or leave from the Supreme Court. *Id.* It sanctioned this expeditious procedure both to promote judicial economy and to eliminate the unnecessary delay and expense which inherently attend an appellate-leave requirement. *Id.* at 19, 97 S. Ct. at 32.

[3, 4] This reasoning is equally persuasive where, as here, a timely noticed appeal is pending. Moreover, as the Supreme Court noted, a trial court is in a particularly advantageous position to pass upon the equitable issues presented in a motion for relief from judgment. *Id.* In a civil case, the motion does not affect the finality of the judgment appealed from. *Browder v. Director of Dept. of Corrections*, 434 U.S. 257, 263 n.7, 98 S. Ct. 556, 560 n.7, 54 L. Ed. 2d 251, *reh. denied*, 434 U.S. 1089, 98 S. Ct. 1286, 55 L. Ed. 2d 795 (1978). Therefore, we find no sound basis for concluding either that the trial court lacks jurisdiction to decide the motion or that the trial court must seek appellate leave. We accordingly hold that the Trial Division has ju-

jurisdiction to decide a Rule 48(a) motion filed after a timely noticed appeal. The Trial Division may adjudicate the motion without applying to this Court for a remand.

[5, 6] Our ruling here does not conflict with *Kaneshima v. Trust Territory*, 5 T.T.R. 99 (H.C. App. Div. 1970). That case involved distinguishable facts and policies. In *Kaneshima* we concluded that the filing of a notice of appeal in a criminal case eliminates the Trial Division's jurisdiction to consider a motion for reduction of sentence. We further stated that the Trial Division may regain jurisdiction only by applying to the Appellate Division for a remand. *Id.* at 101. These holdings are consistent with federal precedent. *United States v. Burns*, 446 F.2d 896, 897 (9th Cir. 1971) (per curiam); *United States v. Feliciano-Grafals*, 309 F. Supp. 1292, 1293 (D.P.R. 1970) (reduction of sentence upon remand by the appellate court). Unlike the disposition of civil motion for relief from judgment, the modification of a criminal sentence affects the finality of the judgment under pending review. *United States v. Ellenbogen*, 390 F.2d 537, 542 (2d Cir. 1968), *cert. denied*, 393 U.S. 918, 89 S. Ct. 241, 21 L. Ed. 2d 206 (1968), *reh. denied*, 399 U.S. 917, 90 S. Ct. 2187, 26 L. Ed. 2d 576 (1970). Thus, in contrast to a civil appeal, a criminal appeal necessarily and wholly removes the cause from the trial court's jurisdiction. *Id.*

[7] We vacate this Court's opinion of June 7, 1982, so that the Trial Division may rule on appellants' motion under Rule 48(a)(1) and (2). In addition to assessing appellants' entitlement to relief under the substantive standards of Rule 48(a)(1) and (2), the Trial Division must determine whether appellants filed their motion within a reasonable time after the rendition of judgment. Trust Territory Rule of Civil Procedure 48(a). In making this determination, the Trial Division should consider the interest in finality, appellants' reasons for delay, appellants' practical

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ability to learn earlier of the facts or grounds upon which they now seek relief, and possible prejudice to appellee. *Ashford v. Stewart*, 657 F.2d 1053, 1055 (9th Cir. 1981) (per curiam). A motion for relief from judgment is not a substitute for appeal, and provides for extraordinary relief only upon an adequate and clear showing of exceptional circumstances. *Horace v. St. Louis Southwestern Railway Co.*, 489 F.2d 632, 633 (8th Cir. 1974).

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TRUST TERRITORY OF THE PACIFIC ISLANDS,  
Plaintiff-Appellee

v.

CLARA T. CAMACHO, Defendant-Appellant

v.

MARCELLA F. RABULIMAN and FRANCISCA F. METTAO,  
Defendant-Intervenors

Civil Appeal No. 312

CLARA TAMAN CAMACHO, Plaintiff-Appellant

v.

MARCELLA F. RABULIMAN, et al., Defendant-Appellees

Civil Appeal No. 314

Appellate Division of the High Court

Northern Mariana Islands District

November 23, 1982

Appeal from trial court judgment in consolidated cases involving dispute over ownership of land. The Appellate Division of the High Court, Gianotti, Associate Justice, held that six-year statute of limitations barred land trustee, for heirs of landowner who signed a land exchange agreement, from contesting validity of agreement, and twenty-year statute of limitations barred heirs in another action from bringing suit to be declared owners of either the land exchanged or the land received in the exchange agreement, and trial court judgment was therefore affirmed.

**1. Appeal and Error—Scope of Review—Weight of Evidence**

The Appellate Division will not reweigh the evidence as to factual matters which have been tried and decided in the trial court.