FSM SUPREME COURT APPELLATE DIVISION

WILLIAM IRIARTE, LILLY-JEAN IRIARTE, and AMBROS & CO., Appellants, vs. INDIVIDUAL ASSURANCE CO., Appellee.	APPEAL CASE NO. P1-2009 Civil Action No. 2003-023

ORDER OF DISMISSAL

Argued: January 13, 2011
Decided: February 18, 2011

BEFORE:

Hon. Martin G. Yinug, Acting Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

For the Appellants: (the Iriartes)
Mary Berman, Esq.
P.O. Box 163
Kolonia, Pohnpei FM 96941

For the Appellant: (Ambros & Co.)
Stephen V. Finnen, Esq.
P.O. Box 1450
Kolonia, Pohnpei FM 96941

For the Appellee:
Fredrick L. Ramp, Esq.
Law Office of Fredrick L. Ramp
P.O. Box 1480
Kolonia, Pohnpei FM 96941

* * * *

HEADNOTES

Appellate Review – Decisions Reviewable

Even if no party has raised the issue, an appellate court is obligated to examine the basis for its jurisdiction. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 356, 358 n.1 (App. 2011).

Civil Procedure; Judgments

A trial court can enter a final judgment on less than all claims in a case only if the trial court makes an express determination that there is no just cause for delay and if it then also expressly directs

entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 356, 358 (App. 2011).

Appellate Review – Decisions Reviewable; Judgments

When, even though the trial court may have expressly directed entry of a judgment, it never made an express determination that there was no just cause for delay, the judgment is not an appealable final judgment since in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties will 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 all the parties' rights and liabilities. Thus, although a filing designated as a "Judgment" was entered, it was, under Rule 54(b), not a final decision and therefore not appealable. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 356, 358-59 (App. 2011).

Appellate Review – Decisions Reviewable

The well-established general rule is that only final judgment decisions may be appealed. The appellate court can also review certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, and it may also grant appellate review when the trial court has issued an order pursuant to Appellate Rule 5(a), and it can review those rare collateral orders that conclusively determine a disputed question resolving an important issue completely separate from the action's merits but that are effectively unreviewable on appeal from a final judgment. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 356, 359 (App. 2011).

Appellate Review – Decisions Reviewable

Since a timely notice of appeal from a final decision is a prerequisite to the FSM Supreme Court's jurisdiction over an appeal, when there was no final decision in the civil action below, the court is without jurisdiction to consider the appeal and the appeal will be dismissed without prejudice to the merits of any future appeal from a final judgment decision. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 356, 359 (App. 2011).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

This appeal is from the trial court's May 27, 2009 Findings of Fact and Conclusions of Law, Individual Assurance Co. v. Iriarte, 16 FSM Intrm. 423 (Pon. 2009), and Judgment in favor of Individual Assurance Co. ("IAC") against William Iriarte and Lilly-Jean Iriarte jointly and severally for $30,739.63; against William Iriarte, Lilly-Jean Iriarte, and Emmy Santos jointly and severally for $8,300; against William Iriarte, Lilly-Jean Iriarte, Emmy Santos, and Ambros & Company jointly and severally for $161,366.19; and against Emmy Santos and Ambros & Co. jointly and severally for $125,834.49, for a total of $326,240.31 due IAC. *Id.* at 429, 446-49. All defendants appealed. Santos later withdrew her appeal.

The appeals are dismissed without prejudice for lack of jurisdiction.[1] The court's reasons follow.

I. Procedural History

IAC's First Amended Complaint, filed May 21, 2004, alleged that, starting in 1999, and continuing until May of 2003, IAC's Pohnpei agents (initially the Iriartes later replaced by Santos) received premium checks totaling more than $400,000 that were payable to IAC. Instead of being forwarded to IAC's Kansas City office as they should have been, many of the checks were cashed in Pohnpei, usually by Santos who cashed the checks at a store operated by Ambros & Co. A substantial part of the cash was unaccounted for and IAC sued the Iriartes, Santos, and Ambros & Co. to recover it. Ambros & Co. filed an answer that included a cross-claim for contribution and indemnification against all other defendants. The Iriartes' June 28, 2004 Amended Answer to First Amended Complaint also included a cross-claim for "equitable indemnity and contribution" from the other defendants.

After trial, William and Lilly-Jean Iriarte and Emmy Santos were found liable to IAC for breach of contract, conversion, and breach of fiduciary duty. All three of them, along with Ambros & Co. were also found liable to IAC for conversion. IAC's claims for punitive damages, fraud, and attorney's fees were dismissed. The trial court, however, did not make any ruling on Ambros & Co.'s (or the Iriartes') contribution and indemnification cross-claims even though Ambros & Co. had, in its written closing argument, specifically asked the trial court to address its cross-claim.

Ambros & Co.'s opening brief lists, as one of fifteen issues it raises on appeal, the trial court's failure to rule on its cross-claim for contribution and indemnity against its co-defendants. The Iriartes did not mention their cross-claim in their opening brief.

II. No Final Judgment

A trial court can enter a final judgment on less than all claims in a case only if the trial court makes an "express determination that there is no just cause for delay" and if it then also expressly directs entry of judgment. FSM Civ. R. 54(b). "Both elements must be present to give a partial adjudication final judgment status. '[W]hen either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b),' the partial adjudication does not carry final judgment status." Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 628 (App. 2003) (quoting 10 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2660, at 147 (3d ed. 1998)); *see also* Smith v. Nimea, 16 FSM Intrm. 346, 348-49 (App. 2009) (when summary judgment entered on fewer than all claims and no Rule 54(b) determination and direction made, the partial summary judgment is not a final and appealable order); *cf.* Hartman v. Bank of Guam, 10 FSM Intrm. 89, 94 (App. 2001) (when, on August 12, 1998, the trial court entered a judgment on four claims pursuant to FSM Civil Rule 54(b) that stated that "there is no just reason for delay," and expressly directed entry of judgment as to the four claims, then that judgment was final and appealable as of August 12, 1998).

Although the trial court may have expressly directed entry of a judgment, Individual Assurance

---

[1] Even if no party has raised the issue, we are obligated to examine the basis for our jurisdiction. Kosrae v. George, 17 FSM Intrm. 5, 7 (App. 2010); Kosrae v. Benjamin, 17 FSM Intrm. 1, 3 (App. 2010); Alanso v. Pridgen, 15 FSM Intrm. 597, 598 n.1 (App. 2008); Berman v. College of Micronesia-FSM, 15 FSM Intrm. 582, 588 (App. 2008). At oral argument, one question from the bench asked whether the lack of a ruling on the cross-claim affected our jurisdiction. The answer was non-committal.

Co., 16 FSM Intrm. at 449 ("The defendants are liable to IAC for the reasons and in the amounts set forth above. The clerk shall enter judgment accordingly."), the trial court never made an express determination that there was no just cause for delay. It may have been an oversight or it may have been a failure to appreciate that the case fell within Rule 54(b). Either way, the May 27, 2009 Findings of Fact and Conclusions of Law and Judgment is not an appealable final judgment since

> [i]n the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the 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.

FSM Civ. R. 54(b). Thus, although a filing designated as a "Judgment" was entered on May 27, 2009, it was, under Rule 54(b), not a final decision and therefore not appealable.

The well-established general rule is that only final judgment decisions may be appealed. In re Extradition of Jano, 6 FSM Intrm. 23, 24 (App. 1993). We can review certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, and we may also grant appellate review when the trial court has issued an order pursuant to Appellate Rule 5(a), Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994), and we can review those rare collateral orders that conclusively determine a disputed question resolving an important issue completely separate from the action's merits but that are effectively unreviewable on appeal from a final judgment, FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 461 (App. 2004). None of those exceptions applies here.

Since a timely notice of appeal from a final decision is a prerequisite to our jurisdiction over an appeal, Berman v. College of Micronesia-FSM, 15 FSM Intrm. 582, 589 (App. 2008), and since there was no final decision in Civil Action No. 2003-023, we are without jurisdiction to consider this appeal. *See, e.g.*, Kosrae v. Melander, 6 FSM Intrm. 257, 259 (App. 1993) (appeal dismissed because it was from a decision granting partial summary judgment on one claim of a complaint containing four, so it could not be from final decision).

III. Conclusion

Accordingly, this appeal is dismissed without prejudice to the merits of any future appeal from a final judgment decision. Smith, 16 FSM Intrm. at 349; Heirs of George v. Heirs of Tosie, 15 FSM Intrm. 560, 562-63 (App. 2008).

* * * *