# IN THE
# SUPREME COURT OF THE REPUBLIC OF PALAU
# APPELLATE DIVISION

**GEORGE KEBEKOL, RECHEBEI OLIKONG KATOSANG, FRANCISCO GIBBONS, and ELBUCHEL SADANG,**
*Appellants*,
**v.**
**SANTOS IKLUK, IBEDUL YUTAKA GIBBONS, and JOHN and JANE DOES 1 to 5,**
*Appellees.*

Cite as: 2020 Palau 24
Civil Appeal No. 20-016
Appeal from Civil Action No. 20-039

Decided: August 5, 2020

Counsel for Appellants ……...…… Vameline Singeo
Counsel for Appellees ……...……. James E. Hollman

BEFORE: DANIEL R. FOLEY, Associate Justice
DENNIS K. YAMASE, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Gregory Dolin, Associate Justice, presiding by designation.

## ORDER GRANTING APPELLEES' MOTION TO DISMISS[1]

PER CURIAM:

[¶ 1] Before the Court is Appellants' appeal of the Opinion and Order Denying Motion to Recuse entered on June 11, 2020, and the Order Granting Filing a Late Answer entered on June 11, 2020.

[1] This Order has been reformatted for publication, and typographical errors not affecting the disposition have been corrected.

## BACKGROUND

[¶ 2] On June 2, 2020, Appellants filed a motion requesting an extension of time. The Trial Division granted the motion, noting that it found Appellants' counsel's arguments to be erroneous but nevertheless made in good faith. It further noted the delay in filing caused no prejudice to the opposing side. Counsel had argued that she had not consented to electronic service of process in this case, but the Trial Division found that, under ROP R. Civ. P. 5(g), counsel agreed to be served electronically in all cases and that case-by-case consent is no longer required.

[¶ 3] The same day, Appellants filed a motion to recuse Justice Dolin, who is sitting by designation, as every Justice in the Trial Division has a conflict in the case. The Trial Division denied the motion for three reasons. First, the Trial Division analyzed the Fourteenth Amendment and found that the Constitution does not require Justice Dolin's recusal, as the structure of the Supreme Court was not altered by the Amendment. Second, the Trial Division found that the Separation Rules also did not require recusal because there was no prohibition on appointing Appellate Justices to hear Trial Division matters. Finally, the Trial Division found the Rule of Necessity applied to the current situation.

[¶ 4] Appellants moved for Rule 54(b) certification of the aforementioned orders. First, Appellants argued that the Trial Division's ruling was "inconsistent with the language of ROP R. Civ. P. 5(g)." Second, Appellants again alleged that the separation of the Appellate Division from the Trial Division prevents a sitting Appellate Justice from hearing Trial Division matters. In denying certification for the two claims, the Trial Division found the Appellants' petition lacked sufficient particularity required by ROP R. Civ. P. 7(b) and failed on the merits. To the latter point, the Trial Division posited that the court had not resolved any claims by any parties. Thus, the court did not enter a final judgment.

[¶ 5] On July 15, 2020, Appellees moved to dismiss the appeal. They argue that there was no final judgment and no collateral order doctrine exception that would give the Appellate Division a basis for hearing the claim now, as opposed to after the trial has ended. In response, Appellants argue that the collateral order doctrine does apply to the current situation.

## DISCUSSION

[¶ 6] Without Rule 54(b) certification, Appellants may rely on the collateral order doctrine as an exception to the final judgement rule. *Koror State Legis. v. KSPLA*, 2019 Palau 38 ¶ 3. For the collateral order doctrine to apply, "an order must, at a minimum, satisfy three conditions: It must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." *Heirs of Drairoro v. Yangilmau*, 10 ROP 116, 118 (2003) (internal quotation marks omitted). Appellants argue that the order[2] appealed meets all three of the requirements. We disagree. Specifically, the order is not "effectively unreviewable on appeal."

[¶ 7] Appellants attempt to analogize the present case to cases involving qualified immunity. Under U.S. law, public officials may have "an entitlement not to stand trial or face the other burdens of litigation," which "is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985). This is what made the denial of summary judgment in *Mitchell* "effectively unreviewable on appeal from a final judgment." The analogy is not apt, considering that Appellants will have to litigate these claims regardless. Appellants do not allege any right that would be lost if the matter is fully litigated to final judgment.

[¶ 8] While there is no case directly on point in Palau, the Court is persuaded by Appellees' comparisons to *Edaruchei Clan of Ngerdelolk v. Edaruchei Clan of Ngerkeyukl*, 4 ROP Intrm. 63, 64 (1993). In that case, the Court specifically adopted the U.S. rule that "an order denying a motion to disqualify counsel is not subject to interlocutory appeal." *Id*. The ruling cites to the U.S. Supreme Court case *Firestone Tire & Rubber Co. v. Risjord*, 101 S. Ct. 669 (1981). This case also handles an attorney's disqualification, but circuit courts have expanded the holding to include barring interlocutory appeals of orders in which a trial court judge denies a motion for recusal.

[2] Appellants' briefs focus only on the Order Denying the Motion to Recuse. Thus, our analysis is limited to that issue.

Appellants fail to address the relevant U.S. case law.[3] *See Mischler v. Bevin*, 887 F.3d 271 (6th Cir. 2018); *Scarrella v. Midwest Fed. Sav. & Loan*, 536 F.2d 1207, 1210 (8th Cir. 1976); *Dubnoff v. Goldstein*, 385 F.2d 717, 721 (2d Cir. 1967). In fact, nearly every circuit in the United States has adopted some version of the principle that an order denying recusal of a trial judge is not an immediately appealable order.

[¶ 9] For the foregoing reasons, we conclude the orders are neither final nor subject to the collateral order doctrine, and, accordingly, we decline to address the merits of those orders. Such an appeal must await a final judgment. The appeal is hereby **DISMISSED**.

[3] Some U.S. courts have held that such orders may be reviewable on writ of mandamus under extraordinary circumstances. *See, e.g.*, *Scarrella v. Midwest Fed. Sav. & Loan*, 536 F.2d 1207, 1210 (8th Cir. 1976). As Appellants did not make that argument here, we decline to address it.