

IN THE SUPREME COURT OF GUAM  
TERRITORY OF GUAM

**FARGO PACIFIC INC.,**  
Plaintiff,

vs.

**JOSE S. IMAMURA, DOES I-V,  
HEIGHTS ENTERPRISES dba  
HEIGHTS TERMITE AND PEST  
CONTROL, a general partnership,  
and HEIGHTS ENTERPRISES**  
Defendants.

Supreme Court Case No. CVA96-015  
Superior Court No. CV615-94  
Filed: December 4, 1996  
Cite as: 1996 Guam 8

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**OPINION**

**PER CURIAM**

[1] On November 12, 1996, this Court dismissed the above-entitled appeal sua sponte pursuant to Rule 28(a) of the Guam Rules of Appellate Procedure.<sup>1</sup> The appeal of the October 23, 1996 order denying a Rule 60(b) motion was dismissed because the record revealed that the

Appellants had filed a notice of appeal from a default judgment on June 12, 1996 with the Appellate Division of the District Court. As the Appellate Division retained jurisdiction pursuant to its Order of August 5, 1996, this Court determined it had no jurisdiction to hear the appeal.

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<sup>1</sup>The Chief Justice recused himself from hearing this matter because he presided over the case below as a Superior Court Judge.

[2] Appellants moved this court to reconsider the dismissal<sup>2</sup> on the basis that the appeal of the denial of the Rule 60(b) motion was a separately appealable order. Appellants also contends that a separate appeal to this court is authorized by the language contained in 48 U.S.C. ' 1424-3(d) that the Supreme Court has jurisdiction over "all appeals the decisions of the local courts not previously taken". Appellants' position is that an appeal of the underlying default judgment can proceed in the Appellate Division but the appeal from denial of the motion to set aside the default judgment can be heard by this court.

[3] The Ninth Circuit has indicated that upon a remand for purposes of consideration of a Rule 60(b) motion, the trial court may rule on

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<sup>2</sup>Appellants' motion is treated as a petition for rehearing under Rule 31 of the Guam Rules of Appellate Procedure. It is noted that Appellants incorrectly cite Rule 24 for the proposition that "only the Chief Justice is authorized to unilaterally dismiss an appeal for lack of jurisdiction." Proper and accurate citation should be to the Rules as modified and approved by the Supreme Court, En Banc on July 15, 1996; copies of which were furnished to all law firms on or about July 29, 1996.

the motion and the appeal from such ruling could be consolidated with the original appeal. *Greear v. Greear*, 288 F.2d 466 (9th Cir. 1961). An appellate court retains jurisdiction after a limited remand for a trial court's determination of post-trial motions. See, e.g., *Hunziker v. Schedidemantle*, 518 F.2d 829 (3rd Cir. 1975).

[4] On August 5, 1996, the Appellate Division issued its order remanding the case to the Superior Court for the limited purpose of providing the Superior Court the jurisdiction to resolve the pending Rule 60(b) Motion to Vacate Judgment. It is clear that the Appellate Division retained jurisdiction over an appeal from a ruling on the Rule 60(b) motion.

[5] The interests of judicial economy, sound judicial administration, and comity toward the Appellate Division are served by dismissal of this appeal for want of jurisdiction.

[6] The petition for rehearing is denied.

So Ordered: December 4, 1996.

**MONESSA G. LUJAN**  
Associate Justice  
Supreme Court of Guam

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