

**BAULECHONG ADELBELUU (Representing his lineage),
Plaintiff**

v.

NGIRMEKUR TUCHERMEL, Defendant

Civil Action No. 391

Trial Division of the High Court

Palau District

June 25, 1973

Motion by plaintiff for relief from stipulated judgment. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the motion would be denied where it did not appear plaintiff would be any better off were the judgment vacated and a trial held.

1. Judgments—Relief From Judgment—Time for Motion

Where rule of civil procedure allowed relief from judgment for mistake, newly discovered evidence or fraud by a party if motion is made within one year, and allowed relief by motion based on any other reason to be made within a reasonable time, a reasonable time would, because of the one year limitation for the specific grounds, be considered to include a period of more than one year. (Rules Civil Procedure, Rule 18(e))

2. Judgments—Relief From Judgment—Misleading Statements

Motion for relief from stipulated judgment, made almost three and one-half years after entry of judgment, alleging that the judgment was entered as a result of misleading statements by the defendant, was within one year limitation for grounds based on fraud, mistake or newly discovered evidence, rather than the reasonable time limitation for motion made for any other reason, and motion would be denied where it did not appear movant would be any better off were the judgment vacated and a trial held. (Rules Civil Procedure, Rule 18(e))

Assessor: PABLO RINGANG, *Presiding Judge,*
District Court
Interpreter: AMADOR D. NGIRKELAU
Reporter: ELSIE T. CERISIER
Counsel for Plaintiff: ITELBANG LUII
Counsel for Defendant: ROMAN TMETUHL

TURNER, *Associate Justice*

Judgment was entered by this Court in this matter as a result of stipulation between counsel for the parties at the time of the pre-trial conference, August 13, 1969. Counsel for defendant at that time has died. Counsel for plaintiff at that time brings this motion in behalf of the plaintiff for relief from the stipulated Judgment.

[1] The motion is brought in accordance with Rule 18(e), Rules of Civil Procedure. The time limitation for relief from judgment for mistake, newly discovered evidence or fraud by a party is one year, while a motion based upon "any other reason," meaning to accomplish substantial justice, must be made within a "reasonable time." Because of the one year limitation for the first three grounds, we consider a "reasonable time" to include a period of more than one year.

The motion, with supporting affidavits, was filed January 9, 1973, nearly three and one-half years after entry of the judgment. In a normal situation such a period of delay would be considered to be too long, except that the rule does not define "reasonable time." The Trust Territory rule is taken from Rule 60(b), Federal Rules of Civil Procedure, and the United States courts have many times attempted to define the meaning of a "reasonable time." The only certain result of the court decisions is that the phrase depends upon the particular circumstances of each case.

Both the United States courts and this court has called provision of subparagraph 6, "any other reason justifying relief from the operation of the judgment" as the "grand reservoir of equitable power to do justice in a particular case." *Delemel v. Tulop*, 3 T.T.R. 469. *Pierre v. Bernuth Lembcke Co.*, 20 F.R.D. 116.

In the *Pierre* case the Federal court set aside a dismissal for want of prosecution three years later when it was shown the plaintiff at the time of the dismissal and until shortly before the motion to vacate had been confined to a mental hospital and thus under disability.

Mere lapse of time is not the criteria. In contrast to the *Pierre* case, a California decision held a motion to vacate a default judgment must be brought within the time allowed a defendant to answer a complaint. *Richert v. Benson Lumber*, 34 P.2d 840. The court said that a judgment, not void on its face but void in fact for failure to obtain personal jurisdiction over the defendant, could be set aside only within the one year period within which a defendant served by publication may answer.

In *Bowles v. Schmitt*, 170 F.2d 617, the court said a motion to vacate a judgment by confession (not unlike the stipulated judgment in the present case) should have been brought within three and one-half months after entry when the grounds were "mistake, misrepresentation or duress." The motion was brought two years after entry, and the court denied it as not being within a reasonable time. Three and one-half years was held not to be a "reasonable time" for a motion to vacate in *Coclin Tobacco Co. v. Brown & Williamson Tobacco Corp.*, 353 F.2d 727. Sixteen months was too long a delay in *Gilmore v. Hinman*, 191 F.2d 652.

The "circumstances of each case" which the courts consider depend frequently upon the grounds given for relief, whether or not they are meritorious. The motion in the present case states that this court entered its judgment at the pre-trial conference "as a result of the misleading statements made by the defendant." This ground, as stated, is within the provision of the third subparagraph of Rule 18(e), "Fraud, misrepresentation, or other misconduct of an adverse party." This ground for relief, however, must be submitted not more than one year after judgment.

Plaintiff's statement of the grounds for relief misstates the court's action in entering judgment. The judgment recites:—

“After a meeting and discussion between the parties and their counsel outside the court, agreement was reached upon facts necessary to support this judgment.

“Upon stipulation of counsel, the court makes the following findings of fact:”.

Judgment was then entered in “accordance with the foregoing facts.”

Granting that the one year limitation bars relief upon a motion brought pursuant to Rule 18(e) (3), may the court properly consider the motion as one for “any other reason justifying relief” under Rule 18(e) (6) and it also is concluded three and one-half years is a “reasonable time” in this case? Would the result be changed if the motion is granted and trial is held? The answers to these questions constitute the “circumstances” to be considered.

The plaintiff's motion with detailed supporting affidavits, together with testimony at the hearing on the motion, shows the very strong probability that the defendant during World War II was entrusted with some Japanese documents, which plaintiff claims, concerned lands involved in this action. Defendant denied he had been given any such documents.

But even if he had received them, and subsequently produced them, what, if any, effect would they have had upon the stipulated judgment? When asked in cross-examination “what difference” the documents would have made in the case, plaintiff's first witness said that she “didn't know.”

The plaintiff's other witness also told of seeing “documents” given to the defendant. When asked by the Assessor what was written on the paper, the witness didn't know. Also, the witness said she had not seen any red stamp or

seals on the papers, which, if they had been official Japanese land documents, would have been present.

[2] It is apparent that if the Court did grant the motion to vacate the judgment and held a trial, plaintiffs would be no better off than they are now, unless the testimony was changed. Plaintiffs would be unable to say what effect the Japanese papers given to defendant had upon the title to the land and, of course, defendant presumably would continue denying he had received any such papers. Without substantially more, such evidence would not meet plaintiff's burden of proving title to the land in question.

It is, therefore,

Ordered:—

Plaintiff's motion for relief from the stipulated judgment entered in the above entitled case August 13, 1969, is denied.