

**PALAU RED CROSS and SANTY
ASNUMA,
Appellants,**

v.

**MIRIAM CHIN,
Appellee.**

CIVIL APPEAL NO. 12-029
Civil Action No. 10-168

Supreme Court, Appellate Division
Republic of Palau

Decided: March 20, 2013

[1] **Appeal and Error:** Standard of Review

A lower court's discretionary decisions are reviewed for abuse of discretion. This Court will not find an abuse of discretion unless the trial court's decision was arbitrary, capricious, manifestly unreasonable, or because it stems from an improper motive.

[2] **Civil Procedure:** Failure to Respond

Under Republic of Palau Rule of Civil Procedure 8(d), any averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

[3] **Courts:** Authority

Rule 55 provides the trial court with authority to resolve a case without a trial upon a party's failure to timely respond to a complaint.

[4] Courts: Docket Management

The trial judge has wide latitude in setting his own calendar and managing his docket.

Counsel for Appellant: Moses Y. Uludong
 Counsel for Appellee: David W. Shipper, J.
 Uduch Sengebau Senior

BEFORE: ROSE MARY SKEBONG, Associate Justice Pro Tem; KATHERINE A. MARAMAN, Part Time Associate Justice; and RICHARD H. BENSON, Part Time Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

This case concerns the appeal by Appellants Palau Red Cross and Santy Asanuma of the Trial Division's Order of Default and entry of Default Judgment against them that resulted from Appellants' failure to timely respond to the complaint by Appellee Miriam Chin. For the following reasons, the decision of the Trial Division is **AFFIRMED**.¹

BACKGROUND

Appellee filed her complaint in the Trial Division on September 29, 2010, in which she sought relief including reinstatement and back pay for wrongful termination from her position as Executive Director by Appellant Palau Red Cross and

Santy Asanuma. Appellants sought and received an extension of time until October 26, 2010, to file their answer. Appellants did not file a timely answer, and on October 27, 2010, at 8:54 a.m., the Clerk of Courts entered a default against Appellants. Later that day, Appellants filed an answer. They did not, however, seek leave to file their answer late nor make any other motion for relief from the default at that time.

On November 17, 2010, Appellee filed a motion for default judgment, to which Appellants did not respond. On May 25, 2011, the Trial Division issued an Order in which it concluded that a default judgment was appropriate under the circumstances, but the court set a hearing for August 1, 2011, to take evidence regarding Appellee's damages before it would issue a final judgment.

On June 8, 2011, Appellants filed a motion seeking, for the first time since the entry of default in October 2010, relief from the order of default, admission of their answer, and leave to file a counterclaim. On July 6, 2011, the Trial Division recounted the above procedural history, emphasized Appellants' extreme lack of responsiveness in the matter, and denied Appellants' motion in its entirety.

On April 16, 2012, after taking evidence on Appellee's damages, the trial court credited Plaintiff's damages testimony and entered a default judgment in favor of Appellee, ordering (1) Appellee's reinstatement as Executive Director of Palau Red Cross within 14 days of the order; and (2) an award of damages equal to Appellee's compensation from August 28, 2010, the date her suspension began, to be paid within

¹ Although Appellant requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

30 days of the filing by Appellee updating her damages calculation. After receiving Appellee's updated calculation of damages, the Court issued a final judgment on May 23, 2012, directing Appellee's reinstatement in accordance with the April 16, 2012, order and awarding Appellee lost compensation in the amount of \$32,000.

On July 27, 2012, Appellants filed the instant appeal, their second appeal² of Civil Action 10-168. Appellee filed her Response on February 5, 2013. Although Appellants filed a Reply, it was untimely, and Appellants did not seek leave of Court to file their Reply late nor provide the Court with any cause to explain the late filing. See ROP R. App. P. 26, 31. Accordingly, the Court will not consider Appellants' Reply brief.

STANDARD OF REVIEW

Appellants seek review of the Trial Division's findings with respect to the timing of Appellee's termination from employment with Palau Red Cross. The lower court's factual findings are reviewed using the clearly erroneous standard. *Nebre v. Uludong*, 15 ROP 15, 21 (2008) (citing

² On May 16, 2012, Appellants filed their first appeal from Civil Action 10-168 in a separate action, Civil Appeal No. 12-019. Four days after the deadline to file its opening brief, on July 10, 2012, Appellants sought an extension of time. This Court concluded Appellants did not show good cause for why they missed the deadline to file its opening brief nor for why they sought an extension of time after that deadline had passed. Accordingly, the Court dismissed that appeal in December 2012 for failure to file a timely opening brief. It now appears Appellants have filed a third appeal of Civil Action 10-168 in Civil Appeal No. 12-040. Appellants have yet to file their opening brief in that matter.

Dilubech Clan v. Ngeremlengui State Pub. Lands Auth., 9 ROP 162, 164 (2002)). We reverse "only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Ngirakesau v. Ongelakel Lineage*, Civ. App. Nos. 10-037, slip op. at 5-6 (Nov. 11, 2011) (citing *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004)).

Appellants also contend the Trial Division erred as a matter of law when it awarded Plaintiff relief in its Judgment that Appellants contend Appellee did not seek in her Complaint. A lower court's conclusions of law are reviewed de novo. See *Wong v. Obichang*, 16 ROP 209, 212 (2009); *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

[1] In addition, Appellants contend the Trial Division abused its discretion in the manner in which it managed the docket and the proceedings. The above standards of review do not apply to discretionary decisions, which we review for an abuse of discretion. *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008). This Court will not find an abuse of discretion unless the trial court's decision was arbitrary, capricious, manifestly unreasonable, or because it stems from an improper motive. *Western Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011).

ANALYSIS

Appellants assert three errors by the Trial Division: (1) the court erred in reaching its factual findings concerning Appellee's termination from employment with Palau Red Cross, (2) the court erred

when it awarded Appellee relief in its Judgment that was not originally pled nor added by amendment to her complaint, and (3) the court abused its discretion in its management of the docket and the proceedings.

I. Factual Findings.

As Appellants repeatedly point out, the trial court did not hold a trial on the merits of Appellee's claims. Appellants contend the Court's failure to do so led it to find facts that were either not true or were not supported by the record. In particular, Appellants contend the court erred when it concluded that Appellee was terminated from her employment with Palau Red Cross effective September 27, 2010, pursuant to a telephone conversation between Appellee and Appellant Asanuma.

As noted, Appellants did not file a timely answer to Appellee's complaint in the underlying matter. Although they filed an answer on October 27, 2010, after the court had entered a default, Appellants' untimely answer was never accepted by the court.

[2] Under Republic of Palau Rule of Civil Procedure 8(d), any "[a]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Because Appellants did not deny Appellee's allegations in her complaint through a responsive pleading, they are deemed admitted.

In paragraph 7 of her complaint, Appellee alleged her employment with Palau Red Cross was terminated during a telephone conversation with Appellant

Asanuma, chairperson of the Palau Red Cross Board of Directors, on September 27, 2010. Because this allegation was pled and was not denied, it was properly accepted by the trial court as true. Accordingly, the Court does not find any error in the trial court's adoption of the factual allegations contained in Appellee's complaint. Appellants' allegations to the contrary contained in an untimely answer are of no effect, and they may not argue their version of the facts for the first time on appeal.³ See "*R*" *Best Produce, Inc. v. DiSapio*, 540 F3d 115, 118 (2d Cir. 2008) ("[T]he entry of a default judgment means that the allegations in the complaint are deemed admitted.").

II. Relief Granted in the Judgment.

Appellants also contend the trial court erred when it granted Appellee relief she did not seek in her complaint and did not amend her complaint to add. Specifically, Appellants contend Appellee sought only back pay for August and September 2010 in her complaint, for a total of \$1,500, and that it was error for the trial court to award back pay in excess of \$18,000 and attorneys' fees of \$11,000.⁴ Appellants do not cite to any authority in support of their contention.

³ Appellants argue at length that Appellee was terminated on October 21, 2010, based on a written letter of termination from Appellants. As already established, Defendants failed to provide a timely answer to Appellee's complaint, and the allegations in the complaint are deemed admitted by rule. Appellants cannot now challenge the facts in the complaint, and Appellants' assertions of error stemming from their allegation that Appellee was fired on October 21, 2010, are unavailing.

⁴ Of note, the Judgment issued on May 23, 2012, included an award of \$32,000 in lost compensation and did not include an award of attorneys' fees.

Appellants' argument is plainly without merit. As Appellee points out, she sought damages in her complaint in an amount to be determined by the court, reasonable attorneys' fees and costs, and "such other and further relief that this Honorable Court may deem just and appropriate." The fact that Appellee averred she was entitled, at the time of the filing of the complaint, to back pay for August and September 2010 does not limit her request for appropriate damages, nor does it require any specific amendment of her complaint.

In accordance with ROP Rule of Civil Procedure 55(b)(2) governing relief provided in the context of a default judgment, the trial court ordered a hearing⁵ and took further evidence on Appellee's damages by affidavit. Based on its assessment of that evidence, not on any specific figure pled in the complaint, the trial court set the amount of damages that resulted from Appellee's claim of wrongful termination at \$32,000. Accordingly, the Court finds no legal error in the trial court's assessment of Appellee's damages.

III. Abuse of Discretion.

Finally, Appellants contend the trial court abused its discretion to manage its case docket and the attendant proceedings because it did not hold any trial or hearings during the one year and five months that this case was pending in the Trial Division.

⁵ Appellee subsequently requested that the trial court make its findings as to Appellee's damages based on affidavits alone, rather than by holding a hearing. After Appellants failed to object, the trial court granted Appellee's request, cancelled the hearing, and resolved the damages issues on the parties' affidavits.

Appellants contend the trial court's mismanagement of the case deprived them of their procedural rights. Again, Appellants advance their assertion of error without the support of any legal authority.

[3] It is plain from the procedural history of this matter that a trial was not called for. The trial court issued a default based on Appellants' failure to timely respond to Appellee's complaint, and Rule 55 provides the trial court with authority to resolve the case without a trial under those circumstances.

[4] With respect to the other case management deadlines set by the trial court, this Court has stated:

[T]he trial judge has wide latitude in setting his own calendar and managing his docket. *BMC*, 3 ROP Intrm. at 338 (citing *Will v. Calvert Fire Ins. Co.*, 98 S. Ct. 2552 (1978)). As a general matter, then, "this Court will not intervene in a trial judge's management of a particular case or of his caseload as a whole, absent a statement or clear showing that he intends to abdicate his judicial responsibilities." *BMC*, 3 ROP Intrm. at 338.

First Commercial Bank v. Mikel, 15 ROP 1, 2-3 (2007) (citing *BMC Corp. v. Ngiraklsong*, 3 ROP Intrm. 336, 338 (1993) ("A busy trial judge, confronted with competing demands on his time and with inevitable scheduling difficulties, is entrusted with wide latitude in setting his own calendar.")).

“A discretionary act or ruling under review is presumptively correct, and the burden is on the party seeking reversal to demonstrate an abuse of discretion.” *Ngoriakl*, 16 ROP at 107 (internal quotation marks omitted).

Appellants argue the trial court “s[a]t on a simple case like this for over a year and then issue[d] and implement[ed] its judgments and order without hearings or trial.” As we already explained, a trial was unnecessary in this matter, and the trial court vacated the damages hearing only after Appellants failed to object to Appellee’s motion requesting the trial court to do so. In light of the wide latitude given to trial judges to manage their busy schedule, Appellants’ vague allegations of an abuse of discretion based on scant references to the timing of resolution of certain motions are insufficient to meet their burden to demonstrate an abuse of discretion. Appellants were given ample time and every opportunity to be heard in this matter. This Court will not confuse Appellants’ clear lack of diligence in this matter with an effort on the part of the trial court to deprive them of the process to which they are entitled. On this record, the Court concludes the trial court did not abuse its discretion.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is **AFFIRMED**.