

Eluil Clan v. Arbedul, 2 ROP Intrm. 98 (1990)
ELUIL CLAN, Represented by RIKRIK SPIS and RDIALUL TORWAL,
Appellant,

v.

ESPANGEL ESEBEI ARBEDUL,
Appellee.

CIVIL APPEAL NO. 5-89
Civil Action No. 125-80

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: July 13, 1990

Counsel for Appellant: J. Roman Bedor, T.C.

Counsel for Appellee: John K. Rechucher

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

PER CURIAM:

Appellee moves for the second time to dismiss this appeal pursuant to ROP R. App. Pro. 3 (a) and 31(c), on the ground that Appellant has taken no action since the filing of the notice of appeal.

Appellant filed a notice of appeal on April 21, 1989. A designation of record was also made on the same date. The Clerk of Courts served Appellant a first notice of the estimated cost of the trial transcript on April 24, 1989, and the second notice on April 26, 1989. Appellant was advised that the work on the trial transcript would only begin upon full payment of the **199** estimated cost.

On September 21, 1989, Appellee filed his first motion to dismiss. He argued that since Appellant had not paid the estimated cost of transcript it was waived, and that since Appellant failed to file a brief within 45 days from the date notice of appeal was filed, the appeal should be dismissed based on the above rules.

On November 17, 1989, a few days before the Appellee's motion was to be heard, a representative of the Appellant filed a motion to continue the hearing on Appellee's motion to dismiss "for another two weeks" to allow Appellant to seek a resolution to this case through Palauan Custom and in any event, find a new counsel. Mr. Roman Bedor had been discharged as

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Appellant's counsel.

Justice Sutton and Associate Justice Pro Tem O'Brien granted Appellant's motion for continuance ex parte on the same date.

Appellee's motion to dismiss was set for a hearing on March 12, 1990. On March 9, 1990, Mr. Roman Bedor, filed his appearance for Appellant and an opposition, with supporting memorandum of points and authority, to the Appellee's motion.

Appellant, since filing its notice of appeal on April 21, 1989, has not paid the estimated cost of transcript and has not filed Appellant's brief. In Appellant's motion for continuance filed on November 17, 1989, Appellant represented to the Court that counsel would be obtained and a proper response would be filed to the Appellee's motion in two weeks. No further motion for continuance has been filed and Appellant has failed to show ¶100 that he made any good faith effort to resolve this case through Palauan custom.

Under the circumstances of this case, we find that Appellant has not demonstrated good cause for failing to file its brief within 45 days from the date notice of appeal was filed. (See *Tehekii Clan v. Paulus*, 1 ROP Intrm. 514 (App. Div. Aug. 8, 1988); and *Silmai v. The Pension Fund Board of Trustees*, 1 ROP Intrm. 631 (App. Div. May 25, 1989)).

The first motion to dismiss should have been enough to give Appellant warning that the appeal must be diligently prosecuted. Appellant chose to do virtually nothing for 15 months.

Appellee's motion to dismiss is granted and the parties are to bear their own costs.