A.J.J. Enterprises v. Renguul, 2 ROP Intrm. 117 (1990)

A.J.J. ENTERPRISES,
Appellant,

v.

LEVAL RENGUUL, et al.,
Appellees.

CIVIL APPEAL NO. 7-90
Civil Case Nos. 530-89, 531-89, 533-89, 540-89

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: July 18, 1990

Counsel for Appellant: David F. Shadel

Counsel for Appellee: Clara Kalscheur

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice; ROBERT A. HEFNER, Associate Justice.

NAKAMURA, Chief Justice:

BACKGROUND

On January 29, 1990, Appellant filed its Notice of Appeal and request for the record, and stated that no transcript of the trial proceedings was necessary. On March 23, 1990, the Clerk of Courts certified the record for each of these four consolidated cases.

Appellee Markub filed a Motion to Dismiss Appeal under ROP R. App. Pro. 31(c) for failure to comply with ROP R. App. Pro. 31(b) on April 4, 1990. On April 5, 1990, Appellant filed a Motion for Leave to File Brief, and Opposing Dismissal.

⊥118 DISCUSSION

The primary issue in this case is whether ROP R. App. Pro. 31(b) requires appellant's brief to be filed within 45 (forty-five) days of the Notification of Certification of the Record, (March 23, 1990), or 45 days after the Notice for Appeal (January 29, 1990).

Appellant's imaginative argument is that the term "transcript" is unclear and ambiguous. Because of that ambiguity, appellant says, there was "good cause shown" for appellant to have missed the earlier deadline, and the Court should therefore exercise discretion and allow him to

file the brief now.

If that novel argument fails to persuade this Court, appellant argues that, in any case, the Court should sanction counsel, not the parties themselves. As a final fall-back position, appellant asks that only the appellee who has filed the Motion to Dismiss be relieved of this appeal.

The Court finds the first three of appellant's arguments unpersuasive, but agrees with the last. ROP R. App. Pro. 31(c) states that, "[I]f an appellant fails to file his brief within the time provided by this rule, . . . an appellee may move for dismissal of the appeal." Here, one appellee has so moved.

⊥119 In *Silmai v. The Pension Fund Board of Trustees v. Silmai* , Civil Appeal No. 15-88 (App. Div., May, 1989), appellant failed to file his appellate brief within 45 days of the date the notice of appeal was filed, having mistakenly thought he had 45 days from the date of the certification of the record. However, Rule 31(b) also states, "[I]f there is no transcript designated, or if it is waived, appellant must file the brief within forty-five (45) days after the filing of the notice of appeal." Appellee moved for dismissal, which we granted.

Similarly, in *Kebekol v. Palau Election Commission* , Civil Appeal No. 1-89 (App. Div., Sept. 1989), the Court, on motion of the appellee, dismissed the appeal because appellant failed to file his brief in a timely manner, and appellee moved for dismissal on that basis.

Appellant's unique reliance on the idea that there is a supposed ambiguity in the meaning of the word "transcript," and that this ambiguity amounts to good cause for not filing his brief on time, has no merit. Whatever else appellant may have thought a transcript might or might not be, it clearly must include a record of the oral proceedings of the hearing.

Good cause "shall not be deemed to exist unless the movant avers something more than the normal (or even the reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law." *Silmai v. The Pension Fund Board of Trustees v. Silmai* , Civil Appeal No. 15-88, Opinion at 633.

⊥120 Courts prefer that controversies be settled on their merits, but the sanctioning sections of the Rules of Civil Procedure exist, in part, so that courts can expedite their business. Without them, litigants could find it difficult to move their cases forward. *Intercontinental Trading Corp. v. Johnsrud d/b/a A.J.J. Enterprises and Lawrence Johnsrud* , 1 Intrm. Rptr. 569, 577 (App. Div. Jan. 1989).

However, in this case only one appellee has complied with Rule 31(c) and moved for dismissal. As to this appellee, the appeal is dismissed.

The other three appellees have not made this motion, and as to them the appeal may go forward. ROP R. App. Pro. 31(c) is discretionary, 5 Am. Jur. 2d *Appeal and Error* § 685 (1962); 9 J. Moore, *Moore's Federal Practice*, Para 231-02[3] (2d ed. 1983), as an appellee "may" move for dismissal, and an appellate court should therefore not dismiss unless an appellee first so

moves.

A party that sleeps on its rights should not, in the interest of justice, be relieved of the burden of a lawsuit simply because another party with its own interest, as here in these consolidated cases, has vigorously asserted its rights under the law.

The Court will not grant a sleeping appellee a free ride. The appeal with respect to appellee Markub is therefore hereby DISMISSED. Appellant's brief is accepted by the Court ⊥121 as of this date, and the remaining three appellees have thirty (30) days to file their Response Briefs.

Since the three remaining appellees are representing themselves pro se, the Chief Clerk of Courts is hereby instructed to provide each of them with a copy of this Opinion and with a copy of Appellant's Brief.