

Kumangai v. Isechal, 3 ROP Intrm. 43 (1991)
MYOKANG KUMANGAI, et al.,
Appellees,

v.

YASHINTO ISECHAL, et al.,
Appellants.

CIVIL APPEAL NO. 10-89
Civil Action No.11-87

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: August 14, 1991

Counsel for Appellants: Yukiwo P. Dengokl

Counsel for Appellees: David F. Shadel

BEFORE: LOREN A. SUTTON, Associate Justice; EDWARD C. KING, Associate Justice; and
ROBERT A. HEFNER, Associate Justice

PER CURIAM:

The original complaint was filed on January 15, 1987. It alleged, among other things, that plaintiffs were entitled to the return of Ngerutechong which had been lent to Tmeruk and was to be returned upon his death. Defendants filed their answer, but did not assert the affirmative defense that the complaint was barred by the statute of limitations.

Trial began on April 16, 1987. While plaintiffs' first witness was testifying, the trial court raised sua sponte the issue that the statute of limitations may have run. The trial was continued and the parties were ordered to brief the limitations issue. On May 20, 1987, the trial court ordered that its sua sponte 144 to defendants' answer and then dismissed the complaint on the grounds that it was time barred by the statute of limitations.

On June 18, 1987, plaintiffs appealed raising the single issue that the trial court had abused its discretion by raising the limitations issue sua sponte.

The appellate court issued its decision on April 12, 1989, reversing the trial court and remanding the matter, stating: "We reverse the trial court order of dismissal and remand the case to that court with instructions to proceed with trial on the merits and upon the pleadings as they stood prior to the raising of the issue of the statute of limitations." *Kumangai vs. Isechal*, 1 ROP Intrm. 587, 591 (App. Div. 1989). The day before the second trial, on June 26, 1987, defendants

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filed an amended answer with the Court Clerk raising the affirmative defense of the statute of limitations. They also filed a motion to dismiss on the same grounds.

At the commencement of the second trial, the court acknowledged that the motion had been filed but stated that the court could not hear it because of the appellate court's mandate on remand. The statute of limitations, therefore, was not litigated and judgment was entered in favor of plaintiff on July 31, 1987.

Defendants thereafter filed a Notice of Appeal alleging several bases of error, but have addressed only the following two points in their briefs:

1) Whether the trial court committed reversible error in failing to consider or allow appellants' amended answer which **L45** raised the affirmative defense of the statute of limitations after the case had been remanded by the appellate court; and

2) Whether the trial court committed reversible error in adjudging that appellee had met its burden of proof by a preponderance of the evidence.

A. THE ATTEMPTED AMENDMENT TO THE ANSWER AND THE MOTION TO DISMISS

Appellants list a myriad of arguments regarding why the trial court should have permitted the amended answer, heard the motion to dismiss and dismissed the case as barred by the statute of limitations. These arguments invite us to clarify, reinterpret or reverse the appellate court's holding in the first appeal, so that it provides room for the trial court to have permitted the amended answer and to have heard and granted the motion to dismiss. Appellants also ask that we conclude that because the trial court stated its disagreement with the appellate decision, it would have permitted the amendment and dismissed the case.

We decline appellants' invitation to examine these issues. The mandate issued by the appellate court to the trial court in the first appeal made it clear that trial on remand was to be confined to the issues raised by the pleadings as they stood prior to the trial court's sua sponte raising of the limitations issue. It was the duty of the trial court, on remand, to comply strictly with the mandate of the appellate court. 5 Am Jur 2d *Appeal and Error* sec. 991. The appellate court's decision became the law of the case, **L46** 991. The appellate court's decision became the law of the case, binding the trial court and this court on appeal. 5 Am Jur 2d *Appeal and Error* secs. 744, 750, 758 and 991.

B. BURDEN OF PROOF

Appellant also argues that the trial court erred by concluding that plaintiff had met its burden of proof by a preponderance of the evidence. ROP Rule of Civil Procedure 52(a) provides that: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *Benged v. Tanaka*, 1 ROP 597 (App. Div. 1989), and cases cited therein.

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The trial court weighed the testimony of all the witnesses, and after excluding hearsay evidence offered by defendants concluded that plaintiffs' evidence was more logical and consistent. The trial court then went one step further by giving defendants' inadmissible evidence the benefit of the doubt and concluded that there were still insurmountable problems in the consistency of defendants' evidence.

We have thoroughly examined the record below, including the testimony of all witnesses, and find that the trial court's conclusions based on the evidence are not clearly erroneous.

The judgment of the trial court is AFFIRMED.