

Kedung Clan v. Kerradel, 3 ROP Intrm. 13 (1991)
**IN THE MATTER OF AN APPEAL
FROM A TITLE DETERMINATION
OF LAND CLAIMS HEARING OFFICE,**

**KEDUNG CLAN,
Plaintiff/Appellant,**

v.

**SESARIO KERRADEL,
Defendant/Appellee.**

CIVIL APPEAL NO. 16-91
Civil Action No. 516-90

Supreme Court, Appellate Division
Republic of Palau

Order re motion to dismiss and motion to strike opening brief or for enlargement of time
Decided: July 24, 1991

Counsel for Plaintiff/Appellant: John S. Tarkong

Counsel for Defendant/Appellee: David F. Shadel

Before: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice; and
ALEX R. MUNSON, Associate Justice

PER CURIAM

Judgment was entered below on March 26, 1991. The Order denying plaintiff's Motion for Reconsideration was entered on April 10, 1991. Appellant filed its Notice of Appeal and Designation of Record on April 12, 1991. The Designation requested seven categories of documents but failed to specifically request a transcript of the proceedings before the trial court.

¶14 Although no transcript was specifically requested, the Clerk of Courts notified Appellant of the estimated cost of preparing the transcript and on April 23, 1991, Appellant paid the estimated costs.

On April 26, 1991, Appellee filed a Further Designation of Records requesting that "all documents in the records of this case shall be included in the entire record for appeal as certified by the Clerk of the Trial Court." Thereafter, Appellant paid the remaining cost of preparing the record below and the record was certified on May 20, 1991. Twenty-one days later, on June 10, 1991, Appellant filed its Opening Brief.

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On June 5, 1991, shortly before Appellant's Opening Brief was filed, Appellee filed a Motion to Dismiss. Appellee alleged that because Appellant had not designated the transcript it waived its right to a transcript and its Opening Brief was therefore due 45 days from the Notice of Appeal, or on May 27, 1991. According to Appellee, Appellant's Opening Brief was, therefore, fourteen days late.

Appellant argues that the Further Designation of Record filed by Appellee extended the time to file its Opening Brief. We do not need to decide the issue of whether Appellee's Further Designation requested a transcript. Whether it did or did not is irrelevant because it would neither cure the defect in Appellant's original designation nor automatically extend the time for Appellant to file its Opening Brief. If Appellant desired an enlargement of time to L15 file it was incumbent upon Appellant to file a motion with the Court.

Appellee admitted at oral argument that no "legal prejudice" was suffered by Appellant's untimely Opening Brief. Where an Appellee has failed to show prejudice resulting from a late filing, Appellee's Motion to Dismiss should be denied. *Becheserrak v. Koror State*, (Civil Appeal No. 4-88, June 3, 1991); *Nakatani v. Nishizono*, 1 ROP Intrm. 718 (App. October 10, 1989); *Marcaida v. Rascoe*, 569 F.2d 828, 830 (5th Cir. 1978). Appellee did claim monetary prejudice caused by having to prepare the Motion to Dismiss and by having to appear at the hearing.

Because the only prejudice suffered by Appellee was monetary, we find that dismissal of the appeal for failure to comply with Rule 31(b) of ROP Rules of Appellate Procedure would be too harsh of a result under the circumstances of this case. We, therefore, deny Appellee's Motion to Dismiss. As compensation for the monetary prejudice suffered by Appellee, we award Appellee attorney fees in the amount of \$300. The attorney fee is imposed against Appellant's counsel, and not Appellant, and is to be paid within seven days of the filing of this order.

Consistent with the foregoing, we also deny Appellee's Motion to Strike Opening Brief, but grant Appellee a thirty day enlargement of time to file an Opposition Brief. The thirty days shall begin to run from the date this order is filed.