

Delbochel Lineage v. Mad, 3 ROP Intrm. 33 (1991)
**IN THE MATTER OF THE APPEAL FROM THE
DECISION OF THE LAND CLAIMS HEARING OFFICE**

**DELBOCHEL LINEAGE, et al.,
Appellants,**

v.

**SEBANGIOL MAD, et al.,
Appellees.**

CIVIL APPEAL NO. 4-91
Consolidated Civil Action Nos. 509-89, 510-89, and 511-89

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: August 13, 1991

Counsel for Appellants: John Rechucher

Counsel for Appellees: Clara Kalscheur

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

PER CURIAM:

BACKGROUND

On September 7, 1989, Appellants filed a Notice of Appeal in the Trial Division from the determination of the Land Claims Hearing Office (LCHO). On November 6, 1989, the Trial Court issued an order requiring Appellants' brief to be filed on December 21, 1989.

Appellants filed a "Motion Requesting a Verbatim Transcription L34 of Testimonies (sic)" on November 8, 1989. On November 21, 1989, Associate Justice Frederick J. O'Brien granted, by memorandum to the parties, Appellants' request for transcripts of the LCHO hearings. He also rescinded the prior briefing schedule and indicated that the briefing schedule would be extended as required for the preparation of the transcripts. Apparently unaware of this memorandum¹, Appellants' counsel filed one Opening Brief on December 11, 1989 (appeal of

¹ Appellant states in his brief that "[The Motion Requesting a Verbatim Transcription of Testimonies] was not ruled on while the deadline for filing of Appellant's brief, December 21, 1989, pressed toward its expiration. So Appellant went ahead and filed its Open (sic) brief on December 21, 1989." Appellant's Opening Brief at 3. Strangely, however, Appellant attached to

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determination in 509-89) and another brief on December 21, 1989 (appeal of determinations in 510-89 and 511-89).

On June 18, 1990, the Trial Court issued an estimated cost of preparing the transcript which Appellants paid. On November 5, 1990, the Trial Court issued another briefing schedule, ordering Appellants' opening brief to be filed by December 20, 1990. Appellants never filed another opening brief. On January 17, 1991, the Trial Court entered its Order granting Appellees' motion to dismiss the appeal for Appellants' failure to timely file its opening brief. On January 22, 1991, Appellants filed a Motion For **L35** Relief From Re. (sic) Order of Dismissal Entered on January 17, 1991. This was followed by the Trial Court's January 23, 1991 Ruling On Motion, denying relief, from which Appellants appeal.

DISCUSSION

The only issue to be addressed by this Court is whether the Appellants' opening brief, filed December 21, 1989 should be considered or whether it should be stricken and the appeal dismissed.

The failure of Appellants to file an opening brief under the second briefing schedule (by December 20, 1990) would unquestionably, in the absence of the previous brief, constitute grounds for dismissal of the appeal, for Appellants can show no good cause for the failure to file. *See, e.g., Decherong Markub v. Ngirutang Oit and Melelm Markub*, Civ. App. No. 16-89 (August 27, 1990); *Cascade Pacific Marine, Inc. v. Asian Tug & Salvage, Inc.*, Civ. App. No. 19-90 (April 30, 1991). However, in the present case, the first opening brief was timely filed, has not been explicitly stricken by the Trial Court and has not been withdrawn in any way by Appellants. The Trial Court made no mention of the existence of the 1989 opening brief in setting the second briefing schedule and Appellees took no action to resolve the status of the first opening brief.

The Rules of Appellate Procedure set deadlines for the filing of briefs and provide for dismissal where the deadlines are not met. The rules do not, however, punish a party for filing a brief **L36** earlier than it should have or for filing a brief without taking advantage of the trial transcripts even where the party himself requested the preparation of those transcripts. We therefore find that the Trial Court abused its discretion in dismissing this appeal and remand the case to the Trial Court to set further briefing schedules in accordance with the following instructions.

The appeal shall proceed based on Appellants' opening brief filed in December of 1989. The preparation of the transcript shall be deemed to have been waived. Neither Appellants nor

his Opening Brief as "Exhibit E" the memorandum from Justice O'Brien stating that the request for a transcription had been honored.

Appellant states that "Apparently, on this same date [December 21, 1989] the Trial Court issued its Order granting Appellant's motion" and cites to Exhibit E, the memorandum in footnote n.1, which was actually entered on November 21, 1989. Appellant's Opening Brief (on appeal from Trial Division) at 3.

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Appellees will be permitted to make any reference to the transcript in any briefs, papers or oral arguments.

Appellants' counsel shall reimburse his client for the costs of the transcript (\$1,200) within thirty (30) days of the date this Opinion is issued.

The Trial Court shall set a due date for Appellees' responsive brief and Appellants' reply brief.