

*Superluck Enter., Inc. v. ROP*, 5 ROP Intrm. 156 (1996)  
**SUPERLUCK ENTERPRISES, INC., et al.,**  
**Appellants/Cross-Appellees,**

v.

**REPUBLIC OF PALAU,**  
**Appellee/Cross-Appellant.**

CIVIL APPEAL NO. 31-95  
Civil Action Nos. 20-85 & 45-85

Supreme Court, Appellate Division  
Republic of Palau

Order

Decided: January 4, 1996

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: Jon Hinck, AAG

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice.

PER CURIAM:

Before the Court is cross-appellees' motion to allocate to cross-appellant half the cost of transcribing the testimony. Because cross-appellant intends to rely on testimony presented to the trial court in an attempt to alter the judgment, it has a legal obligation to pay a portion of the cost of transcribing that testimony. Calculating the exact portion of the cost that should be borne by cross-appellants is best determined in this case by the **L157** trial court. Accordingly, the matter is referred to the trial court for that limited purpose.

Cross-appellees contends that cross-appellant should bear some of the burden of paying the estimated cost of the transcript. Cross-appellee contends that 50% is the fair share. Cross-appellant contends that it has no burden to pay for any transcript cost because (1) the party that files a notice of appeal first should pay for the transcript, and (2) the government need not pay for a transcript unless authorized by the legislature to do so.

The Court rejects cross-appellant's contention that a cross-appellant should not, as a matter of law, have to pay for any portion of the cost to transcribe testimony. The rule proposed by cross-appellee would create an incentive for parties wishing to appeal to hold out until the last possible moment before filing a notice of appeal in the hope that another would file first and therefore have to bear the entire transcription cost. Penalizing a party who diligently files a notice of appeal prior to the deadline and providing a windfall to a party who waits until the last

moment to file would hinder the just, speedy and inexpensive determination of actions. Furthermore, considerations of equity strongly support a rule that would require a cross-appellant to pay a share of the transcription costs where it will rely on transcribed testimony to prosecute its appeal.

The Rules of Appellate Procedure clearly contemplate that a cross-appellant is to be treated the same as an appellant with regard to designating testimony and paying for the transcript. Rule 10(b) provides that “[u]pon filing a notice of appeal, any party desiring to raise an issue on appeal depending in whole or in part of the testimony or evidence adduced in the trial court shall request in writing that a transcript be made of such testimony or evidence. \* \* \* [T]he party requesting the transcript shall prepay the estimated expense. . . .” R. App. Proc. 10(b) (emphasis added). “If multiple appeals are involved, each party who appeals, including an appellee who cross appeals, is, of course, an appellant as to the issues presented by his appeal. As an appellant, he must comply with the provisions of Rule 10(b).” 9 J. M. MOORE, B. WARD & J. LUCAS, MOORES FEDERAL PRACTICE ¶ 210.05[1] (2d ed. 1991).

The Court also rejects cross-appellant's contention that because it is the government, it need not pay for its share of transcription costs in the absence of a statute requiring it to 1158 pay. Cross-appellant does not explain why the transcript cost associated with its appeal should be shifted to cross-appellant. Furthermore, cross-appellant cites no authority for the proposition that where it chooses to appeal, the transcript costs should be paid by cross-appellee. The only case cited by cross-appellant, *United States v. MacCullum*, 96 S.Ct. 2086 (1976), does not address the issue of whether the government must pay a portion of the transcript costs for appeals the government brings and prosecutes.

By the same token, the Court also rejects cross-appellees' proposal that cross-appellant be required to pay 50% of the cost without regard to what portion of the transcript cross-appellant intends to rely on in its attempt to alter the judgment. Although easily administered, cross-appellees' proposal does not necessarily reflect the fair allocation of transcription cost.

The more reasoned and equitable approach, and the approach the Court now adopts, is to distribute the estimated cost of the transcript among all appellants, whether they are the first or last to file a notice of appeal, based on what portion of the testimony each appellant would have designated for transcription had that party been the sole appellant. Where two or more parties anticipate relying on the same testimony, the cost of transcribing that testimony should be allocated equally among those parties. Thus, for example, if the first party to file a notice of appeal designates the entire record for transcription and the second party to file a notice of appeal designates only the testimony of X and Y, then the cost of transcribing the testimony of X and Y should be split equally between the parties. The cost of transcribing the remaining portions should be borne by the first party, not because it was the first party to file a notice of appeal, but because it was that party who designated the rest of the record. Of course, in prosecuting its cross-appeal to alter the judgment, the second party in the example above may rely only on that portion of the transcript for which it paid in whole or in part.<sup>1</sup>

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<sup>1</sup> Nothing herein requires a party to pay for the transcript where the party does not seek to alter the judgment.

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In this case, the record is not clear as to which portions of the transcript the government intends to rely.<sup>2</sup> Because the trial **L159** court has a superior working knowledge of the content of the transcript and the issues in the case, it is in the best position to properly determine the proper allocation of transcription costs. Accordingly this motion is hereby referred to the trial court for the limited purpose of allocating the estimated cost of the transcript between appellants/cross-appellees and appellee/cross-appellants.

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<sup>2</sup> Under Rule of Appellate Procedure 10(b), a party who files a notice of appeal should designate for transcription the testimony, if any, on which the party will rely in prosecuting the appeal, whether or not the party was the first or last to file a notice of appeal and whether or not another party has already designated the same testimony for transcription. Because the issue of allocating transcript costs among and between multiple appellants has not been raised in this jurisdiction before, the Court excuses cross-appellant's failure to file its designation of testimony here.