Ngiraked v. Media Wide, Inc., 6 ROP Intrm. 102 (1997)

JOHN O. NGIRAKED,
Appellant,

v.

MEDIA WIDE, INC.,
Appellee.

CIVIL APPEAL NO. 30-96
Civil Action No. 51-95

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: March 21, 1997

Counsel for Appellant: Pro se

Counsel for Appellee: Michael A. White

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, ⊥103 Associate Justice; and R. BARRIE MICHELSEN, Associate Justice

PER CURIAM:

The trial court entered summary judgment in favor of appellee Media Wide, Inc., and against appellant John O. Ngiraked, enforcing a contract between them and awarding appellee $999.00 in damages plus its costs. Appellant now contends that the court erred in finding that a contract existed, and erred in reaching this conclusion based on the transcript of an off-island deposition at which appellant was not present. We affirm.[1]

A review of the procedural history of this case provides a simple answer to appellant's contentions. Appellee filed its motion for summary judgment on May 27, 1996, relying in part on the disputed deposition. On June 3, 1996, appellant filed an unsworn "Answer to Motion For Summary Judgment", which mentioned, but did not raise any legal issue concerning, the deposition transcript submitted by appellee. [2] On August 12, 1996, the trial court granted the motion.

In light of this history, the issues raised in appellant's brief are not properly before this

---

[1] Pursuant to ROP R. App. Pro. 34(a), we find this case appropriate for submission without oral argument.

[2] Paragraph 6 of appellant's "Answer" states simply that "a deposition proceeding took place in Saipan . . . to the exclusion of the Defendant."

Court. Having failed to file any response cognizable under ROP R. Civ. Pro. 56(e), [3] appellant may not now question the trial court's conclusion that there was no ⊥104 genuine issue of fact and its acceptance of appellee's factual contentions. And having filed no legal argument of any sort, he may not now advance his arguments regarding the propriety of the off-island deposition. *Tell v. Rengiil*, 4 ROP Intrm. 224, 225-26 (1994) (arguments not presented to the Trial Division may not be raised for the first time on appeal). Whether or not those arguments have any validity -- which we do not address -- they could and should have been addressed to the trial court in the first instance.[4]

On the record before the trial court, a contract existed, appellee had performed under the contract, but appellant had not. The trial court was thus fully justified in concluding that appellee was "entitled to a judgment as a matter of law." ROP R. Civ. Pro. 56(c).

The judgment of the trial court is accordingly AFFIRMED.[5]

---

[3] "When a motion for summary judgment is made and supported as provided in this rule an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Unsworn factual recitals, such as those contained in appellant's "Answer", do not satisfy an adverse party's burden in responding to a motion for summary judgment.

[4] We see no unfairness in requiring appellant, who was a trial counselor for more than 30 years, to conform to these well established procedures. *See, e.g., Sechelong v. Trust Territory*, 2 TTR 92 (Tr. Div. 1959).

[5] Appellee's motion for sanctions pursuant to ROP R. App. Pro. 38 is denied.