

Belmar v. Dalton, 6 ROP Intrm. 90 (1997)
RITA BELMAR, et al.,
Appellants,

v.

MARGARITA BORJA DALTON, et al.,
Appellees

CIVIL APPEAL NO. 1-97
Civil Action No. 354-93

Supreme Court, Appellate Division
Republic of Palau

Order denying motion to dismiss
Decided: March 12, 1997

Counsel for Appellants: Micronesian Legal Services Corp., By: David J. Kirschenheiter

Counsel for Appellee Dalton: Mark Doran

Counsel for Appellees Heirs of Drairoro, et al.: Mariano W. Carlos

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

PER CURIAM:

Before the Court are motions to dismiss this appeal as untimely. Pursuant to ROP R. App. Pro. 4(a) an appeal must be filed “within thirty (30) days after . . . service of [the] judgment or order” appealed from. The order in this case indicates on its face that it was signed by the trial court on December 3, 1996, and filed on December 4, 1996. However, appellants’ counsel has submitted an affidavit averring that it is the practice of his office to check its box at the courthouse every day and that he personally recalls retrieving the order from his box on December 5, 1996. If these facts are accepted as true, then the appeal was **191** timely filed.¹ The log sheets maintained in the Office of the Clerk of Courts confirm that service was not effected until December 5, 1996. Therefore, the motions to dismiss are denied.²

¹ We do not understand appellant to argue, nor do we hold, that the date of service turns on when an order is picked up from the courthouse mailbox. Rather, we read counsel’s affidavit to support the conclusion that the order was placed in his mailbox and service was thereby effected on the same day that he retrieved it.

² We reject one appellee’s suggestion that the use of the word “intention” in the body of the notice of appeal affects its validity or timeliness.