

*Tmilchol v. Ngirchomlei*, 7 ROP Intrm. 66 (1998)  
**BECHESERRAK TMILCHOL,**  
**Appellant,**

v.

**HATSUICHI NGIRCHOMLEI,**  
**Appellee.**

CIVIL APPEAL NO. 4-97  
Civil Action No. 115-96

Supreme Court, Appellate Division  
Republic of Palau

Argued: April 23, 1998  
Decided: May 1 1998

Counsel for Appellant: David F. Shadel, Esq.  
Counsel for Appellee: David J. Kirschenheiter, Esq.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

## I. BACKGROUND

Appellant Becheserrak Tmilchol, through counsel, attempted to collect a debt well over ten years old in spite of the fact that there was an obvious affirmative defense: the statute of limitations.<sup>1</sup> When Appellee **L67** Hatsuichi Ngirchomlei was served with the complaint, he thought it concerned a case dismissed many years before and assumed it had to be a mistake. Appellee allowed the time for answering the complaint to expire and Appellant thereafter obtained a default judgment.

When Appellee discovered that Appellant was serious about collecting this debt, he moved to have the default judgment vacated, explained why he had not previously answered, and argued that the statute of limitations provided him with a meritorious defense. Over Appellant's objection, the Trial Division vacated the default judgment. Appellee then moved to dismiss Appellant's complaint on the ground that the statute of limitations had run. Appellant filed no

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<sup>1</sup> The relevant statute of limitations is six years. 14 P.N.C. § 405. Although the complaint did not set forth the date on which the alleged debt arose, it is possible to calculate that date using the principal amount of the debt requested in the complaint, \$3,340, an annual prejudgment interest rate of 9%, *see A.J.J. Enterprise v. Renguul*, 3 ROP Intrm. 29, 31 (1991), and the amount of the requested prejudgment interest, \$4,049. These figures show Appellee incurred the alleged debt more than thirteen years before the complaint was filed.

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opposition and the Trial Division entered judgment for Appellee. Appellant appealed, contending that the Trial Division abused its discretion by setting aside the initial default judgment. We disagree and therefore affirm.

## II. ANALYSIS

Appellant does not challenge the Trial Division's decision to grant Appellee's motion to dismiss the complaint.<sup>2</sup> He has no basis for doing so. As already noted, the statute of limitations provides a complete affirmative defense in this case. Appellant's counsel admitted as much at oral argument.

Instead, Appellant objects to the Trial Division's order vacating the original default judgment. Motions to vacate default judgments are governed by ROP R. Civ. P. 55(c) and 60(b). Rule 55(c) provides that: "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Rule 60(b) explains that a court may relieve a party from a final judgment for a number of reasons, including, "mistake, inadvertence, surprise or excusable neglect." ROP R. Civ. Pro. 60(b)(1). In analyzing whether to set aside a default judgment, a trial court must keep in mind three important factors:

First, Rule 60(b) is remedial in nature and therefore must be applied liberally . . .  
Second, default judgments are generally disfavored; whenever it is reasonably possible, cases should be decided on their merits . . . Third, where timely relief is sought from a default judgment and the movant has a meritorious defense, any doubt should be resolved in favor of the motion to set aside the judgment . . .

*Ngelei v. Rengulbai*, 3 ROP Intrm. 4, 9 (1991); *see also Intercontinental Trading L68 Corp. v. Johnsrud*, 1 ROP Intrm. 569, 572 (1989).

Appellate review of a trial court decision made pursuant to Rule 60(b) is limited to the question whether the trial court abused its discretion. *See Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 85 (1997); *Sugiyama v. Ngirausui*, 4 ROP Intrm. 177, 181 (1994).<sup>3</sup> Unless the trial court was "clearly wrong," it did not abuse its discretion. *See Intercontinental Trading Corp.*, 1 ROP Intrm. at 573.

The Trial Division set aside its default and default judgment based on Appellee's explanation that he believed that the lawsuit had already been resolved and that the refile was a

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<sup>2</sup> Although Appellant did not contest the merits of Appellee's "motion to dismiss," he did argue that it was untimely filed. Although Appellee labeled his motion a motion to dismiss and the court treated it as such, it was actually a motion for judgment on the pleadings pursuant to ROP R. Civ. P. 12(c) because Appellee had already filed an answer at the time it was filed. Rule 12(c) provides that a party may move for judgment on the pleadings at any time after the pleadings are closed and within such time as not to delay the trial.

<sup>3</sup> We believe that the Trial Division's decision to relieve Appellee from the entry of default pursuant to Rule 55(c) should be reviewed under the "abuse of discretion" standard also.

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mistake. Although not stated explicitly, the Trial Division appears to have determined that Appellee's actions amounted to "excusable neglect" under Rule 60(b)(1).

Appellant cites a number of American cases to show that a failure to file an answer does not constitute excusable neglect under Rule 60(b)(1). As a whole, the cases stand for the proposition that reasonable people respond to complaints served upon them. We accept the notion that reasonable people do not and should not ignore legal documents. However, we cannot adopt that blanket proposition as a rule for every case.

Obviously, Appellee should have taken the complaint to an attorney immediately rather than doing nothing. His conduct was neglectful. But the question is not whether such conduct was neglectful; it is whether the conduct was excusable neglect.

Here, Appellee was served with a complaint that was based on events that had transpired more than a decade before it was filed. Appellee reasonably believed the same facts had been the subject of a previous lawsuit that had been dismissed. It is not surprising that Appellee thought such papers were a mistake. Most people would be considerably perplexed if they received a document asserting an amount due on an alleged debt that had occurred that far in the past. They would be even more confused if they believed that the debt had been resolved in a prior lawsuit. We conclude that the Trial Division did not abuse its discretion in determining that Appellee's conduct was excusable neglect.

Appellant contends also that the Trial Division erred because Rule 60(b) requires that judgments be set aside "upon such terms as are just" and the Trial Division did not require Appellee to post a bond for the judgment's amount or pay the attorney fees Appellant incurred in obtaining the default judgment. This was a matter within the discretion of the Trial Division and we find no abuse of that discretion here.

Appellant's final argument is that the Trial Division erred by not granting his motion to reenter default judgment after Appellee failed to file an answer within twenty days after the court set aside the initial default judgment. In its order setting that judgment, the Trial Division stated:

Plaintiff's and defendant's counsel are urged to meet, to share information about plaintiff's claim and the previous lawsuit, and to take appropriate action. Absent a **¶69** stipulated resolution before that date, a status conference is hereby set for September 4, 1996, at 1:00 p.m.

The court did not provide Appellee a deadline for the filing of an answer. Appellee could not have found any guidance in the Rules of Civil Procedure either; those rules do not address the time frame for the filing of an answer once a default judgment has been set aside. Given that the Trial Division said nothing and the rules are silent, Appellee was technically not obligated to file an answer before the September 4 conference. The Trial Division did not abuse its discretion in denying Appellant's motion to reenter default judgment.<sup>4</sup>

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<sup>4</sup> Similarly, the court did not err by permitting Appellee to file his answer and motion to dismiss when he did.

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Accordingly, the decision of the Trial Division is affirmed. Appellee shall be awarded his costs.