

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

MASAO SALVADOR,
Appellant,
v.
EMILIANO ANGEL,
Appellee.

Cite as: 2018 Palau 14
Civil Appeal No. 18-003
Appeal from Civil Action No. 16-075

Decided: August 10, 2018

Counsel for Appellant Salvador Remoket
Counsel for Appellee Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice,
presiding.

OPINION

MICHELSEN, Justice:

[¶ 1] In this appeal we are called upon to consider Rules 7 and 56 of the Palau Rules of Civil Procedure. In the trial court Plaintiff Emiliano Angel filed a motion for summary judgment. Because Defendant Masao Salvador failed to file a timely opposition, the court deemed the motion confessed and granted the requested relief. We hold that the trial court must always require that a party moving for summary judgment meet the standards for summary judgment set forth in ROP R.Civ.P. 56. Here, the trial court abused its discretion in granting the requested relief, given the failure of the plaintiff to adhere to the requirements of either Rule 7 or Rule 56.

FACTS

[¶ 2] The pertinent facts are not in dispute. On August 23, 2016, Angel filed suit against Salvador for failure to pay for land conveyed to him for the amount of \$17,000. He requested judgment in that amount plus interest. Salvador filed an answer, denying Angel was entitled to any relief and asserted that Angel already admitted in writing receipt of the \$17,000. Both parties were representing themselves.

[¶ 3] In April 2017, Attorney Remoket entered an appearance on behalf of Salvador. Subsequently Angel filed a motion for summary judgment which was served upon Attorney Remoket, who then missed the deadline for filing an opposition to the motion. His subsequent motion to enlarge time for filing was denied on the basis that he failed to meet the standard of "excusable neglect" for such a motion to be granted.

[¶ 4] On November 27, 2017, the court held that the "[f]ailure of the [defendant] to timely file an opposing brief authorizes the court to deem the matter confessed and the requested relief is granted."

STANDARD OF REVIEW

[¶ 5] We review the trial court's grant of summary judgment de novo. "Therefore, this court must reach the same conclusion of law as the trial court did to uphold a summary judgment ruling, and no deference is appropriate." *Akiwo v. ROP*, 6 ROP Intrm. 105, 106 (1997). "It includes both a review of the determination that there is no genuine issue of material fact, and whether the substantive law was correctly applied." *ROP v. S.S. Enters., Inc.*, 9 ROP 48, 51 (2002) (using standard adopted from *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2510 (1986)).

[¶ 6] A trial court's decision to deem a motion confessed by the non-moving party and to grant the requested relief is a matter of discretion for the trial court. ROP R.Civ.P. 7(c)(1).

An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered,

but the court in weighting those factors commits a clear error of judgment.

Eller v. ROP, 10 ROP 122, 128-29 (2003) (quoting *United States v. Kramer*, 827 F.2d 1174, 1179 (8th Cir. 1987)).

ANALYSIS

[¶ 7] Salvador's first issue on appeal is that the court should not have granted Angel's motion for summary judgment because the plaintiff failed to comply with ROP R.Civ.P. 56 when he failed to submit affidavits to support his assertions of facts. Because Salvador prevails on this argument, we need not reach his second issue concerning the denial of his request for an enlargement of time.

[¶ 8] As a preliminary matter, we first examine Rule 7. If the court is going to hold a defendant to the requirements of Rule 7 and to the consequences for not meeting those requirements (as well it should), the same standard must apply to the plaintiff. With respect to plaintiff's obligations, ROP R.Civ.P. 7(b)(2) provides

If a motion requires consideration of matters not established by the pleadings, the moving party, at the time of filing the motion, shall also file such evidentiary materials, including affidavits, as are being relied upon. Documents must be identified and authenticated by affidavit. Each affidavit must be made on personal knowledge, must set forth such facts as would be admissible in evidence, must show affirmatively that the affiant is competent to testify to the matters stated therein, and must identify the motion in connection with which the affidavit is filed. If the motion requires consideration of discovery materials, the motion shall refer to the specific pages and lines being relied upon.

[¶ 9] To obtain summary judgment the requirements are similar.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of

all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. 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 the adverse party's pleading, but the adverse party's 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 the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

ROP R.Civ.P. 56(e).

[¶ 10] In this case plaintiff filed no affidavits, and provided no documents identified and authenticated by affidavit. He merely reasserted his claim in an unsworn statement that he had not received payment for the transferred property, and submitted documents purporting to be a lease by Salvador of the subject land and Salvador's mortgage of the property to the Development Bank.

[¶ 11] As a matter of law, the motion for summary judgment should have been denied. The trial court abused its discretion in granting the motion solely on the basis that defendant failed to file a timely response. The defendant's failure to respond is insufficient to override the plaintiff's initial and mandatory obligation to provide admissible evidence to support a summary judgment motion.

[¶ 12] The judgment is **VACATED**, and **REMANDED** with instructions to deny the plaintiff's summary judgment motion.