

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

<p><b>WILLY WALLY,</b> <i>Appellant,</i> <b>v.</b> <b>PALAU PUBLIC UTILITIES CORPORATION,</b> <i>Appellee.</i></p>
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Cite as: 2023 Palau 3  
Civil Appeal No. 22-011  
Appeal from Civil Action No. 21-199

Decided: January 9, 2023

Counsel for Appellant .....	Masami Elbelau Jr.
Counsel for Appellee .....	C. Quay Polloi

BEFORE: JOHN K. RECHUCHER, Associate Justice  
FRED M. ISAACS, Associate Justice  
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice.

**OPINION<sup>1</sup>**

PER CURIAM:

[¶ 1] This appeal asks us whether the Trial Division erred in denying a Motion to Reconsider after Appellant’s counsel failed to timely file discovery responses and oppositions to dispositive motions.

[¶ 2] Because Appellant did not show excusable neglect for his failure to timely file, we **AFFIRM**.

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<sup>1</sup> The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

## BACKGROUND

[¶ 3] On October 29, 2021, Appellant Willy Wally ("Wally") filed suit against Appellee Palau Public Utilities Corporation ("PPUC"). On January 18, 2022, PPUC served on Wally a set of discovery requests, which included a set of requests for admission. Responses were due on February 18, 2022. Wally did not file a response by the deadline, so the requests were automatically deemed admitted. ROP R. Civ. P. 36(a); *see also Island Paradise Resort Club v. Ngarametal Ass'n.*, 2020 Palau 27.

[¶ 4] On March 3, 2022, PPUC filed dispositive motions to dismiss for failure to state a claim upon which relief may be granted, for failure to join a necessary party, for summary judgment, and for costs and attorney's fees. Under ROP R.Civ.P. 7(c)(1), Responses were due by March 17, 2022, but Wally did not respond nor did he seek an enlargement of time in which to respond.

[¶ 5] On April 11, 2022, given the admissions and unopposed dispositive motions, the Trial Division entered an Order Granting Defendant's Motions to Dismiss and for Summary Judgment, followed by a final judgment dismissing Wally's claims and awarding fees and costs to PPUC on April 20, 2022. The very next day, April 21, 2022, Wally filed a Motion to Reconsider in which he asked the trial court to allow for the late filing of his opposition to the motions, his discovery, as well as a motion to withdraw the admissions.

[¶ 6] On May 20, 2022, the trial court denied the motion to reconsider, finding that Wally did not demonstrate excusable neglect pursuant to ROP R. Civ. P. 6(b). The Trial Division explained that Wally's reconsideration argument is that the Covid-19 pandemic explains and otherwise constitutes excusable neglect. The trial court, however, found that Wally had other recourse options, such as email, remote proceedings, or e-filing, or could have requested an enlargement of time.

## STANDARD OF REVIEW

[¶ 7] "We review a trial court's handling of a motion for reconsideration for abuse of discretion." *Rekemel v. Tkel*, 2019 Palau 36 ¶ 5 (citing *In re Idelui*, 17 ROP 300, 302 (2010)). "Under this standard, a decision of the Trial

Division will not be overturned unless it was clearly wrong." *Sugiyama v. Airai State Pub. Lands Auth.*, 19 ROP 99, 101-02 (2012) (internal quotation marks omitted).

## DISCUSSION

[¶ 8] Wally asserts that the trial court erred in denying his motion for reconsideration. According to Wally, the Covid-19 surge in January 2022 is an event of force majeure that resulted in Wally's inability to timely respond to discovery and file his opposition.

[¶ 9] Under the Rules of Civil Procedure, when "an act is required or allowed to be done at or within a specified time, the court may at any time in its discretion . . . upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect . . . ." ROP R.Civ.P. 6.

[¶ 10] Thus, where a litigant requests an extension after the expiration of the time period, the Court will apply the excusable neglect standard. This standard was defined in *Fritz v. Koror State Pub. Lands Auth.*, 17 ROP 294 (2010), as "something more than the normal (or even reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law[.]" such that "[m]ere inadvertence," including the inadvertence of a party's counsel, which was at issue in *Fritz* and is generally attributable to the party pursuant to common principles of agency, "will not carry the day"; nor will "the party's own carelessness, inattention, or willful disregard of the court's process." *Id.* at 299. Accordingly, we held in *Fritz* that "[t]he Court prefers to think along the lines of acts of God, like fires, floods, inexplicably inconsistent judgments, hospitalizations, and other such force majeure. It is not excusable neglect that an attorney fails to mind his or her own calendar." *Id.*

[¶ 11] To support his assertion of excusable neglect, Wally's counsel brings forward Covid-19 statistics in January 2022 and his and Wally's status as "high risk" from Covid-19. Wally's counsel states that at the time, he was working and meeting in person with another client in a criminal case, and chose to limit his contact with others, including Wally. Wally's counsel states that he had landline and cellular problems, which made it difficult to obtain discovery responses from Wally, that he does not know how to e-file or

organize video conferences, and that going to a print shop for scanning and copying would heighten his risk of catching Covid-19.

[¶ 12] This argument borders on frivolous. Wally's evidence is not part of the record, not factually tied to the case, and is far from sufficient to show excusable neglect. The Trial Division appropriately noted all the different options open to Wally and his counsel to meet the court's deadlines:

[Wally] and his counsel had the opportunity to meet via remote proceedings, such as online video conferences, and counsel are aware of the court's efforts to minimize disruption to services by providing for e-filing, remote proceedings, or emails, in carrying out the work of the courts. Plaintiff has failed to show why such steps could not have been taken, at the very least to seek an enlargement of time. Seeking an enlargement of time to respond to outstanding requests or pending motions continues to be an available option. Failing to seek such an enlargement in this case has not been shown to be the result of excusable neglect which the Court will consider.

[¶ 13] The technological hurdles encountered by Wally's counsel do not amount to more than the normal vicissitudes inherent in the practice of law. Wally's counsel also notes that he was able to meet in person with his client from another case, which suggests to this Court that counsel was merely unable to mind his own calendar. Under our decision in *Fritz*, we do not find excusable neglect. The Trial Division did not abuse its discretion in denying the motion for reconsideration.

### CONCLUSION

[¶ 14] We **AFFIRM** the Trial Division's judgment.

**SO ORDERED**, this 9th day of January 2023.

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JOHN K. RECHUCHER  
Associate Justice

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FRED M. ISAACS  
Associate Justice

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DANIEL R. FOLEY  
Associate Justice