Ren Int'l Co. v. Garcia, 11 ROP 9 (2003)

REN INTERNATIONAL CO., LTD.
and KIYOKAZU KOIZUMI,
Appellants,

v.

MARITA SUSAN GARCIA
and IRENE NOVELAS,
Appellees.

CIVIL APPEAL NO. 03-006
Civil Action No. 01-78

Supreme Court, Appellate Division
Republic of Palau

Decided: October 10, 2003

Counsel for Appellants: Douglas F. Cushnie

Counsel for Appellees: David F. Shadel

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

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Appellees have filed a motion to consolidate the instant appeal with two other cases currently on appeal, *Ren Int'l Co. v. Onada*, Civil Appeal No. 03-007, and *Ren Int'l Co. v. Alambatin*, Civil Appeal No. 03-017. Appellants do not object. These three appeals are hereby consolidated.

Appellees have also filed a motion to reconsider an Order dated September 8, 2003, granting Appellants additional time to file their opening briefs. Appellees contend that this Order was "premature" because it was issued before the expiration of Appellees' time to respond. ROP R. App. Pro. 27(b) provides, however, that "motions for procedural orders may be acted upon . . . *at any time*, without awaiting a response thereto" (emphasis added). Appellees' motion is nevertheless properly before the Court as a motion to reconsider. *See id*. ("Any party adversely affected by such action may request reconsideration . . . .").

Appellees maintain that Appellants' motion for an extension of time was not filed within 45 days of the service of transcript as required by ROP R. App. Pro. 31(b). The facts are these:

After the transcript was completed, the Appellate Clerk attempted to contact Appellants' counsel by email on June 25, 2003, to inform him that it was available, ⊥10 but the email could not be delivered.[1] On July 2, 2003, the Appellate Clerk sent a letter to counsel regarding the transcript. Counsel informed the clerk by fax dated July 8, 2003, that he had received the clerk's letter and had arranged for his clients to pick up the transcript. Counsel avers that he personally received the transcript by mail on July 17, 2003.

The difficulty in this case arises from the fact that Appellants are represented by off-island counsel. Although the Trial Division file in this matter reveals that Appellants had designated Gillian Tellames as local counsel, he was apparently allowed to withdraw,[2] and no local counsel was identified in the notice of appeal. Had there been local counsel, then the transcript could and should have been served on him or her. In the absence of local counsel, it would probably have been the better course at the outset for the Appellate Clerk to require, and off-island counsel to ensure, that a sufficient amount be deposited to allow the direct mailing of the transcript. In either case, there would have been no cause for delay and it would have been clear when Appellants had been served with their transcript. Neither of these courses were followed, however.

Appellees argue that Appellants were served with the transcript on July 2, the date the Appellate Clerk sent a letter to Appellants' counsel notifying him that the transcript was completed and could be picked up. Appellants counter that service was not complete until counsel actually received the transcript on July 17. In our view, neither position is quite correct. Rule 10(d) provides that "[i]f a transcript has been ordered, the Clerk of Courts shall serve the parties when it is complete," and Rule 31(b) states that the time to file an opening brief starts to run "forty-five (45) days after the appellant has been served with the transcript." Appellants were not served with the transcript on July 2; they were sent a letter. On the other hand, the transcript having been picked up by Appellants' representative on some date before July 17, we do not think Appellants' deadline should turn on how long it took to get from their representative to their counsel. Instead, we think that service was complete when the transcript was actually picked up. That date is not discernible from the record, however, and we are not inclined to multiply the proceedings concerning this issue. Given the legitimate confusion on this issue, and given the absence of any evident prejudice to Appellees, we adhere to our prior order.

Appellees' motion to reconsider is hereby denied.

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[1]Counsel subsequently informed the Appellate Clerk that the clerk had used the wrong email address.

[2]Although the file contains an order denying without prejudice a motion to withdraw, it appears from the file that Appellees and the court subsequently served filings either by delivering copies to Appellants' place of business and/or by mailing them to Appellants' off-island counsel.