Silmai v. LCHO, 3 ROP Intrm. 225 (1992)
SADANG N. SILMAI,
Plaintiff/Appellant,

v.

LAND CLAIMS HEARING OFFICE (LCHO),
Defendant/Appellee.

CIVIL APPEAL NO. 30-91
Civil Action No. 291-91

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: November 13, 1992

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Rosemary Skebong

BEFORE: ARTHUR NGIRAKLSONG, Acting Chief Justice; ROBERT A. HEFNER, Part-time Associate Justice; ALEX R. MUNSON, Part-time Associate Justice

PER CURIAM.

BACKGROUND

This is an appeal from the Trial Court's judgment affirming appellee Land Claims Hearing Office's (LCHO) adjudication of ownership of Lot No. 3G-216, located in Ngeryuns, Kayangel State.

The LCHO scheduled a hearing in Kayangel to determine the ownership of Lot No. 3G-216, and there is no dispute that proper statutory notice was given pursuant 35 PNC 1101 *et seq.* Appellant alleges, however, that he did not receive actual notice of the hearing until the day before, while he was in Koror, through the governor of Kayangel. Appellant tried that same day to contact the ⊥226 LCHO in Kayangel by radio but could not get through because of mechanical problems. On the following day, the same day of the hearing, he became ill and was hospitalized. He did, however, have his wife contact the clerk of the LCHO's main office in Koror to request that he be given an opportunity to present his claim. Apparently, no effort was made by the Koror office to communicate the request to the hearing officer in Kayangel and the request was not received until after the hearing was concluded. When the hearing officer returned to Koror the request for an opportunity to be heard was made again, but he refused to reopen the hearing and advised appellant to seek judicial relief.

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On July 25, 1991, appellant filed a Complaint in the Trial Division of the Supreme Court against the LCHO seeking to compel the LCHO to reopen its proceedings to hear appellant's claim, or in the alternative, to allow appellant to present his claim to the Trial Division in a trial *de novo*.

The LCHO filed its Answer to the Complaint on August 12, 1991 and raised the affirmative defenses of laches and failure to state a claim for which relief may be granted.

Sua sponte, the trial court treated the pleadings as a motion for judgment on the pleadings pursuant to ROP Civ. Pro. 12(b)(6). Without notice or hearing, the trial court issued its Judgment and Memorandum of Decision on August 14, 1991 dismissing appellant's complaint pursuant to ROP Civ. Pro. Rule 12(b)(6). The trial court premised its judgment on the fact that constructive notice established by the Land Registration Act, 35 PNC 1101, et. seq., is ⊥227 binding upon appellant, and that appellant has no right to appeal the LCHO's determination because he is not an aggrieved party under 35 PNC 1113.

Appellant alleges on appeal that the trial court erred by:

1) failing to provide notice and a hearing on the *sua sponte* motion for judgment on the pleadings, thus violating his due process rights to notice and an opportunity to be heard protected by Art. IV, Sec. 6 of the ROP Constitution; and

2) denying his motion for a trial *de novo* on an appeal of a decision of the LCHO, which is an administrative agency.

The LCHO filed no opposition and waived oral argument.

DISCUSSION

A trial court may dismiss an action on the pleadings *sua sponte* provided the parties have had an opportunity to be heard. 2A Moore's Federal Practice, parag. 12.15, citing, *Flora v. Home Federal Savings & Loan Ass'n*, 685 F.2d 209 (1982). In *Flora*, the trial court granted summary judgment on defendant's counter-claim and then acted *sua sponte* to dismiss the Complaint on the pleadings. In affirming the *sua sponte* dismissal, the court of appeals held that where one party is clearly entitled to judgment and both parties have had an opportunity to be heard, dismissal is proper. *Id.* It was, therefore, an abuse of discretion for the trial court to dismiss the action without giving appellant an opportunity to be heard.

In addition, although there is no dispute that appellant was charged with constructive notice of the hearing pursuant to 35 PNC ⊥228 1102 *et seq.*, it was an abuse of discretion for the LCHO not to: 1) communicate appellant's request for an opportunity to be heard to the hearing officer in Kayangel; and 2) grant appellant a short continuance to present his claim because of his inability to attend due to his being hospitalized.

We therefore REVERSE the trial court's dismissal of appellant's complaint and

REMAND with instructions to the trial court to return this matter to the LCHO for a hearing *de novo* in which appellant shall have an opportunity to present his claim.