

AMERICAN FOREIGN INSURANCE ASSOCIATION, Plaintiff
v.
NAM TRADING COMPANY, S. FUNOWAY, RAPHAEL
DABUCHIREN, YAP SHIPPING CO-OP ASSOCIATION, and
YAP COOPERATIVE ASSOCIATION, Defendants

Civil Action No. 51

Trial Division of the High Court

Yap District

October 6, 1969

TURNER, *Associate Justice*

The above-entitled matter came before the court upon the call of the calendar this date, upon motion of defendants to quash service and dismiss the complaint for failure to state a claim upon which relief can be granted.

The parties not being present nor represented by counsel, the court finds from the record before it **that:-**

1. Complaint was filed in the Trial Division of the High Court, Mariana Islands District Civil Action No. 275, on January 22, 1969.

2. That pursuant to defendants' motion for change of venue, the matter was ordered transferred to Yap District on March 31, 1969.

3. That at the same time motion for change of venue was filed on February 28, 1969, defendants also filed motion to quash service of summons and dismiss complaint.

4. That on May 21, 1969, plaintiff filed its motion for default judgment for failure of defendants to answer complaint.

5. That call of the calendar was held July 1, 1969, at which time plaintiff's motion for entry of default judgment and defendants' motion to dismiss were before the court. Plaintiff was not present nor represented, but had been notified of the calendar call.

6. Plaintiff's motion for entry of default judgment was denied as untimely because the pending motion by defendants to quash service and dismiss complaint for failure to state a cause of action was entered July 1, 1969.

7. Defendants' motion to dismiss was continued and defendants' counsel was directed to serve a copy of the motion to dismiss, together with a copy of the memorandum of authorities in support, upon counsel for plaintiff, by registered mail within ten (10) days.

8. Counsel for plaintiff received defendants' motion to dismiss and supporting memorandum July 8, 1969.

9. Counsel for plaintiff mailed notice of appeal from the order denying motion for entry of default on September 12, 1969, and again on October 3, 1969. Each time, counsel's check for the five-dollar appeal fee was enclosed. The first "notice" was no more than a letter expressing intent to appeal and the second "notice" was formal notice setting forth grounds as required by rule. The notice was received this day by the Clerk of Courts and entered accordingly.

The court being fully advised in the premises, it is,

Ordered:-

1. That defendants' motion to quash service and dismiss complaint for failure to state a claim upon which relief can be given is granted and the complaint is dismissed.

2. The Clerk is directed to prepare and certify the record to the Appellate Division of the High Court and to notify counsel of such certification at such time as plaintiff's counsel has paid the appeal fee in accordance with Section 263, Trust Territory Code.

3. Upon receipt by the Clerk of Courts of payment of the appeal fee, the Clerk is directed to return to plaintiff's counsel his two checks, one made payable to the "Trust Territory Government", and the other to "District Finance Officer-Yap."