ANDRES A. SAN NICOLAS and ADELA R. SAN NICOLAS, Appellants

v.

BANK OF AMERICA, Appellee

Civil Appeal No. 103

Appellate Division of the High Court

September 7, 1973

Motion to dismiss untimely appeal. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that the appeal would be dismissed where notice was a day late.

Appeal and Error—Notice and Filing of Appeal—Late Filing

Where notice of appeal was filed one day later than 30-day period for filing, and no unusual circumstances warranted exception to rule that late appeal will not be accepted, appeal would be dismissed. (6 TTC § 352)

TURNER, *Associate Justice*

Motion by the Appellee for dismissal of the appeal upon the ground the Notice of Appeal was not filed within the thirty-day period provided by 6 TTC § 352, together with an affidavit and supporting memorandum of law, was filed with the Trial Division Clerk of Courts and by him transferred to the Clerk of the Appellate Division September 5, 1973.

The record shows judgment was entered July 9, 1973. Appellants filed a motion to waive prepayment of fees, in accordance with 6 TTC § 404, July 23, 1973, and the Trial Division granted the motion by order entered August 2, 1973. Appellants' motion recited the date of entry of judgment and indicated familiarity with appeal statutes.

The notice of appeal was filed August 9, 1973, thirty-one days after entry of judgment. No extension of time for appeal was granted. The question has been settled by many Appellate Division rulings. *Milne v. Tomasi*, 4 T.T.R. 488. *You v. Gaameu*, 2 T.T.R. 264. *Aguon v. Rogoman*, 2 T.T.R. 258. *Ngiralois v. Trust Territory*, 3 T.T.R. 637. No unusual circumstances appear in this case which might warrant an exception to the jurisdictional rule.

The notice of appeal, when filed late, was inadequate in that it was primarily based on a challenge to the sufficiency of the evidence without specifying wherein the trial court findings were "clearly erroneous." 6 TTC § 355. *Jatios v. Levi*, 1 T.T.R. 578, *In re Estate of Wisly*, 5 T.T.R. 81.

Ordered that the appeal filed herein be, and the same is, dismissed.