

IN THE SUPREME COURT OF GUAM
TERRITORY OF GUAM

**ARCHBISHOP OF GUAM,
ANTHONY SABLAN APURON,
OFM, CAP. D.D., INCUMBENT,**
Plaintiff-Appellee,

vs.

G.F.G. CORP.,
Defendant-Appellant.

Supreme Court Case No. CVA96-016

Superior Court Case No. CV1083-96

Filed: January 22, 1997

Cite as: 1997 Guam 2

DECISION AND ORDER

[1] This matter comes before the Court as a motion to dismiss the present appeal on the claimed basis that the Notice of Appeal was not timely filed. The factual and legal arguments are sufficiently clear that this procedural motion is appropriately resolved without a hearing.

[2] The Plaintiff-Appellee correctly observes, as an abstract principle of law, that the filing of the notice of appeal is a jurisdictional prerequisite and that its being filed beyond the authorized period prevents the

[3] But the real issue before this Court is not the passage of time between the entry of the Judgment

Court's jurisdiction from obtaining and necessitates dismissal. *See Culinary and Serv. Employees Union, AFL-CIO Local 555 v. Hawaii Employee Benefit Admin., Inc.*, 688F.2d 1228, 1232 (9th Cir. 1982). He also correctly identifies the interval allowed for filing the appeal, after the notice of entry of the judgement appealed from, to be thirty (30) days. Rule 4(a) of the Rules of Appellate Procedure for the Supreme Court of Guam (hereinafter, "RAP").

and the date that the Notice of Appeal was filed. It is whether the Judgment was ever entered in a

manner that started the time in which to file such a Notice. The Appellee takes the position that on 9 October 1996 the parties were noticed of the Entry of the Judgment on the Superior Court Clerk's docket. The Appellant responds noting that the document which was given notice of that day was itself captioned "Findings of Fact, conclusions of Law and Judgment" and that the failure to enter the Judgment as a distinct and separate filing violates Rule 58 of the Guam Rules of Civil Procedure.

[4] As the Appellant correctly notes, that Rule states in pertinent part: "Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth." Significantly, the heading on the purported Judgment reflects its preparation by Appellee's counsel, and it contains no indication that it was approved as to form by the Appellant's legal representative. Therefore, the "Judgment" appears facially defective and there is no apparent justification for finding that the Appellant ratified the deficient

[6] The conjunction of a deficient Judgment and an insufficient Notice¹

¹The description of the Notice as insufficient is in no way intended as criticism of the Superior Court Clerk.

document or otherwise consented to accept it as a valid Judgment.

[5] Furthermore, the Notice of the "Judgment's" entry on the Clerk's Docket was insufficient to activate the application of RAP 4. Pursuant to Rule 4(a), it is the entry of the Judgment that starts the clock and "a judgment . . . is entered within the meaning of this subdivision when it is entered in the civil . . . docket and notice is **given to the parties of this entry** by the Clerk of the Superior Court." (emphasis added). In fact, the Notice which was provided the parties' counsel on October 9, 1996 did NOT notice them of the entry of the Judgment. That Notice indicates on its face only that "the Findings of Fact and Conclusion of Law filed on October 4, 1996" had been entered. Absent Notice of the entry of Judgment the entry is without effect. *See Farmer v. Slotnick*, Nos. CV95-00073A, CV0688-90, 1996 WL 104527 at *2 (D.Guam App. Div., Mar. 05, 1996) (interpreting the analogous provisions of the Rules of Appellate Procedure for the District Court of Guam).

While it may have been an oversight that caused the reference to the Judgment to be left off the Notice, it is equally likely that the Clerk understood that the Judgment was to be filed and

thereof certainly make the application of a timing bar inappropriate in this instance. Judgment has neither been filed nor entered. Arguably, the Notice of Appeal was filed prematurely. However, Rule 4(a) also provides that a Notice filed between the date of a decision and entry of judgment is treated "as being filed after such entry and on the date thereof". In any case premature filing presents no general bar to the exercise of this Courts jurisdiction. *Stevenson v. Grentec, Inc.*, 652 F.2d 20 (9th Cir. 1981). The Motion to Dismiss is accordingly DENIED.

SO ORDERED! this 22nd day of January, 1997.

PETER C. SIGUENZA
Chief Justice

entered as a separate document and the underlying document did not properly qualify as such. The Notice simply does not satisfy Rule 4(a) in activating the entry of the Judgment.

Archbishop Apuron, vs. G.F.G. Corp., 1997 Guam 2, (Decision & Order)