

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CHEN'S CORPORATION,
Plaintiff-Appellee,

v.

AMBROSE R. FRANK, b/k/a FRANK R. HAMBROS,
Defendant-Appellant.

Supreme Court Appeal No. 06-0029-GA
Small Claims Case No. 06-0261

OPINION

Cite as: *Chen's Corporation v. Hambros*, 2007 MP 04

**Argued and submitted on February 22, 2007
Saipan, Northern Mariana Islands**

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No brief filed

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FOR PUBLICATION

BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ALEXANDRO C. CASTRO; *Associate Justice*; and JESUS C. BORJA, *Associate Justice pro tempore*

DEMAPAN, Chief Justice:

I.

¶1 This consumer debt case stems from a post-judgment proceeding against Mr. Hambros on a small claims judgment. This case raises the procedural question of whether the first appeal from a small claims action must be made to the Superior Court before being brought at the Supreme Court. We find that a preliminary appeal to the Superior Court is required and dismiss the appeal.

II. FACTS

¶2 Both parties appeared without counsel at this small claims case, brought by Chen's Corporation against Mr. Hambros for collision damage to a car. At the hearing, a Ms. Li Yun Chen appeared for Chen's Corporation ("Chen's"), who said she was an accountant and held a power of attorney for Chen's. There was a local attorney who sat with Ms. Chen during the proceedings, but he told the court that he was not there to represent Chen's. Mr. Hambros admitted he was responsible for the damage to the car and the court awarded a judgment of \$1,320.00. The Judge then asked Mr. Hambros how he supported himself. He replied that he did not have a job. The Judge ordered him to look for a job and report back with proof that he made applications to obtain work so that he could pay off the judgment.

¶3 At oral argument, counsel for the Appellant stated that, even though insurance carriers are listed on the accident report which is part of the appellate record, Mr. Hambros actually did not have coverage. In addition, at oral argument, counsel informed the Court

that she had filed for a stay in Superior Court which was denied. While counsel noted that the stay information was part of the Superior Court Clerk's notes, this information was not made part of the excerpt of record. Chen's never replied to any court papers and did not file a brief in opposition. Ms. Chen and a translator were present at oral arguments but not heard pursuant to Com. R. App. P., Rule 31(c).

III. JURISDICTION

¶4 This Court has jurisdiction over an appeal from a final order of the Commonwealth Superior Court pursuant to Article IV, Section 3 of the Commonwealth Constitution and Title 1, Section 3102(a) of the Commonwealth Code.

IV. ANALYSIS

¶5 A defendant who has had a small claims judgment rendered against him may appeal the judgment by requesting, in writing, a new trial in the Superior Court within 30 days after the judgment was entered. Com. R. Civ. P. Rule 83(i), Small Claims Procedure (filed 6-2-04). The reason a small claims appeal first proceeds to Superior Court is because the rules of evidence and procedure will be enforced, and thus 1. give the lower court an opportunity to make a ruling based on more formal rules of evidence and procedure, and 2. make any resulting appeal to the Supreme Court more capable of setting forth an adequate record. As is the case in many states, in California, the losing party in small claims court may appeal to Superior Court and obtain a *de novo* trial where normal rules of procedure and evidence apply. *Cold Springs Farm Development, Inc. v. Ball*, 163 Vt. 466, 470-471, 661 A.2d 89, 92 (Vt.,1995) citing to *Perez v. City of San Bruno*, 616 P.2d 1287, 1291-92, 168 Cal.Rptr. 114, 118-19, 27 Cal.3d 875 (1980).

¶6 We are, of course, able to waive procedural steps. *See Commonwealth of Northern Mariana Islands v. Pua*, 2006 MP 19. This ability gives us the “latitude to effectuate the policy behind the rules.” *Id.* We note, though, that we consider whether a litigant’s action “is the *functional equivalent* of what the rule requires.” *Id.*, citing *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316-7 (1988).

¶7 Here, the appeal at issue entirely bypasses the first appeal required by our rules, and in so doing, deprives the Superior Court of its consideration of the issue and leaves this Court with an insufficient record. Because Mr. Hambros appeared in small claims court without counsel, there was nothing in the transcript to show that the court below was able to consider the argument that the post-judgment remedy was not constitutional. As a result, we find that the policy behind the rule, that appeals from small claims court must first be made to the Superior Court, has not been effectuated, and we are unwilling to hear this appeal.

¶8 Furthermore, we question how a corporation was enabled to appear as a plaintiff in small claims court without an attorney to obtain a judgment. Under the common law, a corporation may not appear without counsel in a court proceeding. *Oahu Plumbing and Sheet Metal, Ltd. v. Kona Const., Inc.*, 590 P.2d 570, 572 (Hawaii, 1979). The *Oahu* Court notes the problem of a non-attorney corporate officer appearing essentially in the capacity of an attorney, who is then engaging in the unauthorized practice of law.

¶9 Our small claims procedure rule specifically provides that “no individual, who is not an attorney licensed to practice in the Northern Mariana Islands, may represent another natural person or a corporation.” Com. R. Civ. Pro., Rule 83(b). The Rule continues on to state that “[a]n employee with first-hand knowledge of the facts of the underlying claim may appear on behalf of an employer.” We look at the plain meaning of the Rule to interpret it.

See Villanueva v. Tinian Shipping and Transp., Inc., 2005 MP 12. Clearly, the Rules do not allow a corporation to be represented by anyone but an attorney: we only allow an agent to represent its employer. While it could be argued that Ms. Chen was an agent of Chen's, the rule specifically prohibits representation of a corporation by anyone other than an attorney. Accordingly, Chen's should not have been able to proceed and obtain a judgment without counsel.¹

¶10 Finally, we briefly address counsel's argument to us that the record of the motion for a stay to the Superior Court was contained, at least in summary form, in the Clerk's Notes. The issue of what documents actually constitute the appellate record seems to be a point of confusion among many who practice before this Court. "It is the responsibility of appellant's counsel to ensure that the excerpts of record are sufficient for consideration and determination of the issues on appeal." *Pacific Saipan Technical Contractors v. Rahman*, 6 N.M.I. 146, 2000 MP 14. "The available record on appeal is that from which counsel may extract relevant information to bring to the Court's attention through inclusion in the appellate record." *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26, ¶22. *See Com. R. App. P., Rule 10(a)*. The Superior Court record does not automatically become part of the excerpt of record which comes before this Court for consideration. Instead, counsel must extract the documents, transcripts, etc. which we need to consider on appeal. Clerk's Notes from the

¹"Despite the procedures adopted to make small claims court "user friendly" to ordinary citizens, it remains a fragile institution that is often criticized for not accomplishing its purposes. See generally Comment, *The Iowa Small Claims Court: An Empirical Analysis*, 75 Iowa L.Rev. 433, 439-52 (1990) (summarizing many studies of small claims court). Studies have found the court inaccessible to the average citizen and ineffective in resolving disputes except for collection actions brought by businesses. See Small Claims Study Group, *Little Injustices: Small Claims Courts and the American Consumer* 22 (1972); Steele, *The Historical Context of Small Claims Court*, 1981 Am.B.Found.Res.J. 295, 351-54." *Cold Springs Farm Development, Inc. v. Ball*, 163 Vt. 466, 470-471, 661 A.2d 89, 92 (Vt.,1995). Considering the benefit conferred to corporations, who are allowed to take advantage of the ease of small claims court, the policy of requiring counsel is sound.

Superior Court are an inadequate substitute for a necessary and relevant document.

V. CONCLUSION

¶11 We believe that the Appellant has raised a valid and important issue concerning the constitutionality of requiring a judgment debtor to seek work or face jail time. We cannot, however, entertain an appeal which has not been brought in the proper manner, and this appeal is therefore DISMISSED.

SO ORDERED this 7th day of March, 2007.

/s/ Miguel S. Demapan

MIGUEL S. DEMAPAN
Chief Justice

/s/ Alexandro C. Castro

ALEXANDRO C. CASTRO
Associate Justice

/s/ Jesus C. Borja

JESUS C. BORJA
Associate Justice *pro tempore*