

NO. 25222

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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RICHARD M. KRYSTOFF and MAYUMI L. KRYSTOFF,  
Plaintiffs-Appellants,

vs.

KALAMA LAND COMPANY, LIMITED, Defendant-Appellee,

and

JOHN and JANE DOES 1-10, and DOE ENTITIES 1-10, Defendants.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 01-0648)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama,  
Ramil, and Acoba, JJ.)

Upon review of the statements supporting and contesting jurisdiction, the motion to dismiss appeal, the motion to reinstate No. 24917 and to consolidate Nos. 24917 and 25222, the papers in support and the record, it appears that the February 15, 2002 notice of appeal filed in No. 24917 is not a timely appeal of the June 14, 2002 judgment under HRAP 4(a)(2) inasmuch as: (1) the February 15, 2002 notice of appeal was rendered null by the dismissal of No. 24917 and (2) the June 14, 2002 judgment was not entered by the time the record for No. 24917 was filed in the supreme court on April 17, 2002, but was entered after No. 24917 was dismissed; see Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 120, 869 P.2d 1334, 1339 (1994) (an appeal filed before entry of an HRCP 58 separate judgment will be considered a timely appeal of the subsequently

entered separate judgment under HRAP 4(a)(2) if the separate judgment is entered "by the time the record [for the premature appeal] is filed in the supreme court").

It further appears that the denial of an extension of time to appeal the June 14, 2002 judgment was not an abuse of discretion, and the July 19, 2002 notice of appeal is an untimely appeal of the June 14, 2002 judgment. Thus, we lack jurisdiction over this appeal. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (the failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of discretion). Therefore,

IT IS HEREBY ORDERED that: (1) the motion to reinstate No. 24917 and to consolidate Nos. 24917 and 25222 is denied; and (2) this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 30, 2002.