

*** NOT FOR PUBLICATION ***

NO. 25447

IN THE SUPREME COURT OF THE STATE OF HAWAII

OX KOKO MARINA, INC., a Hawai'i corporation,
Plaintiff/Counterclaim-Defendant/Appellee

vs.

PACIFIC THOMAS CORPORATION, a California Corporation,
and RANDALL C.M. WORSLEY,
Defendants/Counterclaim-Plaintiffs/Appellants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. CASE NO. 1RC01-7154)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, and Nakayama, JJ.
Circuit Judge Hirai, assigned by reason of vacancy,
and Acoba, J., dissenting)

Upon review of the record, it appears that we do not have jurisdiction over Defendants/Counterclaim-Plaintiffs/Appellants Pacific Thomas Corporation (Appellant Pacific Thomas Corporation) and Randall C.M. Worsley's (Appellant Worsley) appeal.

fc Appellants Pacific Thomas Corporation and Worsley could obtain an extension of time to file their notice of appeal only upon a showing of "good cause" pursuant to Rule 4(a)(4)(A) of the Hawai'i Rules of Appellate Procedure (HRAP). "Good cause" for an extension of time to file a notice of appeal exists only where the circumstances necessitating the extension "are beyond the control of the movant[.]" Enos v. Pacific Transfer & Warehouse, Inc., 80 Hawai'i 345, 351, 910 P.2d 116, 122 (1996); Hall v. Hall, 96 Hawai'i 105, 110 n.3, 26 P.3d 594, 599 n.3 (App. 2001), affirmed in part, and vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 319, 22 P.3d 965, 966 (2001). The record shows that the circumstances necessitating Appellants Pacific

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Thomas Corporation and Worsley's extension involved their recent retention of new counsel, as well as Appellant Worsley's desire to travel to Germany. These circumstances were within Appellants Pacific Thomas Corporation and Worsley's control rather than beyond their control, and, thus, Appellants Pacific Thomas Corporation and Worsley did not show "good cause" for an extension, as HRAP Rule 4(a)(4)(A) required. The district court, the Honorable Gerald H. Kibe presiding, abused its discretion when it entered the October 2, 2002 order finding "good cause" for, and granting, an extension under HRAP Rule 4(a)(4)(A). Hall v. Hall, 95 Hawai'i at 319, 22 P.3d at 966 ("[T]he applicable standard of review is the abuse of discretion standard.").

The failure of Appellants Pacific Thomas Corporation and Worsley to file a timely notice of appeal is a jurisdictional defect that the parties cannot waive and an appellate court cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Therefore, we lack jurisdiction over this appeal. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 4, 2003.