

NO. 25462

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JAS.W. GLOVER, LTD., Petitioner-Appellant/Cross-Appellee

vs.

DERRICK CONCRETE CUTTING & CONSTRUCTION, LTD.,
Respondent-Appellee/Cross-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P. NO. 02-1-0402)

ORDER DISMISSING CROSS-APPEAL

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

Upon review of the record, it appears that the notice of cross-appeal in S.P. No. 02-1-0402 should have been filed, at the latest, thirty days after judgment was entered on October 25, 2002, not thirty days after notice of entry of judgment was filed on November 7, 2002. See HRAP 4.1(b)(1); HRAP 4(a)(1) and (5); Enos v. Pacific Transfer & Warehouse, Inc., 80 Hawai'i 345, 354, 910 P.2d 116, 125 (1996). The December 6, 2002 notice of cross-appeal was filed forty-two days after judgment was entered on October 25, 2002 and is untimely. Thus, we lack jurisdiction over this appeal. See HRAP 26(b); 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 judicial discretion). Therefore,

IT IS HEREBY ORDERED that the cross-appeal by Derrick Concrete Cutting & Construction, Ltd. is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 21, 2003.