

NO. 25755

IN THE SUPREME COURT OF THE STATE OF HAWAII

---

WAYNE C. METCALF, III, in his capacity as Liquidator  
and Trustee of the PGMA Liquidating Trust,  
Plaintiff-Appellee,

vs.

PACIFIC BENEFIT SERVICES, INC.,  
Defendant-Appellant,

and

HENRY AKIU, JR., PETER POSANG WONG, ET AL.,  
Defendants.

---

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NOS. 97-5273 and 99-4504)

ORDER DENYING APPELLEE'S MOTION TO DISMISS APPELLANT'S  
NOTICE OF APPEAL FOR LACK OF APPELLATE JURISDICTION  
AND FOR AN AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS  
(By: Levinson, J.)

Upon consideration of Appellee J. P. Schmidt's motion to dismiss Appellant's notice of appeal for lack of appellate jurisdiction and for an award of reasonable attorney's fees and costs, the papers in support and opposition, and the records and files herein, it appears that the record on appeal will not be transmitted to the supreme court until June 7, 2003, and without the record, this court cannot determine whether it has appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that the motion to dismiss appeal is denied without prejudice to Appellee filing a statement contesting jurisdiction in accordance with HRAP Rule 12.1 or a

subsequent motion to dismiss after the record on appeal is transmitted.

DATED: Honolulu, Hawai'i, April 30, 2003.

STEVEN H. LEVINSON  
Associate Justice

Clifford K. Higa,  
Wendell H. Fuji,  
Lanson K. Kupau, and  
Duane C. Seabolt  
(Kobayashi, Sugita &  
Goda) for plaintiff-appellee  
on the motion

Charles S. Lotsof for  
defendant-appellant on  
the opposition