

*** NOT FOR PUBLICATION ***

NO. 25987

IN THE SUPREME COURT OF THE STATE OF HAWAII

FIRST HAWAIIAN BANK, Successor by Merger to
First Interstate Bank of Hawaii, fka American Security Bank,
a Hawaii corporation, Plaintiff-Appellee

vs.

CAROL SING and GARY SING, aka Phillip G.K. Sing,
Defendants-Appellants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NO. 1RC96-3799)

ORDER DISMISSING APPEAL

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

Upon review of the statements support and contesting jurisdiction, the motion to dismiss appeal, the papers in opposition to the motion and the record, it appears that the thirty-day period for appealing the order denying appellants' post-judgment motions commenced when the order was filed in the district court on May 30, 2003, not when the order was received by appellants. See HRAP 4(a)(1) ("[T]he notice of appeal shall be filed within 30 days after entry of the judgment or appealable order"); HRAP 4(a)(5) ("A judgment or order is entered when it is filed in the office of the clerk of the court."). Appellants claim that they did not receive prompt notice of the May 30, 2003 order, but the district court's failure to provide prompt notice did not excuse appellants from filing a timely notice of appeal from the May 30, 2003 order inasmuch as appellants knew that the order was being approved by the district judge and appellants received a file-stamped copy of the order two weeks before the June 29, 2003 deadline for filing the notice of appeal or for seeking an extension of time to file the notice of appeal under HRAP 4(a)(4)(A). The notice of appeal filed on July 17, 2003 is an untimely appeal of the May 30, 2003 order and we lack jurisdiction over this appeal. See HRAP 26(b); Bacon v. Karlin,

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68 Hawai'i 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 this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 18, 2003.