

*** NOT FOR PUBLICATION ***

NO. 26654

IN THE SUPREME COURT OF THE STATE OF HAWAII

SUNTERA, THE SOLAR ELECTRIC CHARIOT COMPANY, A HAWAII CORPORATION, Plaintiff-Appellant

vs.

THOMAS QUINN; HAWAII ELECTRIC VEHICLE DEMONSTRATION PROJECT; BARBARA KIM-STANTON; HERBERT HENDRICKSON; DAVID YUN; HIGH TECHNOLOGY DEVELOPMENT CORPORATION, A HAWAII CORPORATION; KENNETH KATO; RICHARD MOODY; MAURICE KAYA; STATE OF HAWAII OFFICE OF ATTORNEY GENERAL; ARGYLE TELEVISION COMPANY; CATHERINE CRUZ, Defendants-Appellees

and

JOHN DOES AND JANE ROES, INDIVIDUALS 1 THROUGH 12; DOE PARTNERSHIPS 1 THROUGH 12; DOE CORPORATIONS 1 THROUGH 12; DOE MUNICIPAL CORPORATIONS 1 THROUGH 5 AND STATE AGENCIES 1 THROUGH 5, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 96-3580)

ORDER DISMISSING APPEAL

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

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that the judgment entered on May 26, 2004 was the appealable final judgment on the plaintiffs' claims against the government defendants. The time for appealing the judgment was not extended under HRAP 4(a)(3) by the filing of the May 24, 2004 "motion for leave to file motions" which was not a motion for reconsideration of the judgment. The June 28, 2004 notice of appeal was not filed within thirty days after entry of the May 26, 2004 judgment and appellant did not

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obtain an extension of time to appeal the judgment from the circuit court pursuant to HRAP 4(a)(4)(B). The June 28, 2004 notice of appeal is an untimely appeal of the May 26, 2004 judgment and we lack jurisdiction over this appeal. See HRAP 4(a)(1) and 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 this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 4, 2004.