

NO. 24375

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

ALAN H. BIRDSALL, dba ELEGANT INTERIORS,  
Plaintiff-Appellee, v. RANDALL PODALS  
dba R. DESIGN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,  
HONOLULU DIVISION  
(Civ. No. 1RC97-6805)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe, and Foley, JJ.)

In this assumpsit case, Defendant-Appellant Randall Podals, doing business as R. Design, (Podals) appeals the May 18, 2001 order of the District Court of the First Circuit (the district court), Judge Rhonda A. Nishimura presiding, denying Podals' motion to set aside the default judgment entered on May 26, 1998, in favor of Plaintiff-Appellee Alan H. Birdsall, doing business as Elegant Interiors, (Birdsall) and against Podals for the amount of \$9,394.99. We affirm.

BACKGROUND

It appears to be undisputed that Birdsall entered into a contract with Podals, an interior designer, whereby Birdsall agreed to provide labor and materials to renovate Suite 3101 of the Discovery Bay Center, a condominium unit owned by John and Carolyn Stewart (collectively, the Stewarts).

Although Birdsall completed the work under the contract, he was not paid for it. On August 26, 1997, Birdsall sued Podals for \$8,058.00, the balance due on the contract. Podals was served with the complaint on August 29, 1997 and entered a general denial on September 8, 1997. Both parties appeared at a pretrial conference on October 27, 1997, and trial of the case was set for November 6, 1997, with exchange of exhibits to be made by October 30, 1997. Podals, however, failed to appear for trial on the set date, and as a result, the district court entered default against him.

On February 27, 1998, Birdsall filed a non-hearing motion for judgment against Podals. On May 26, 1998, a judgment against Podals was entered for the principal amount of \$8,058.00, plus interest of \$485.54, attorney fees of \$826.45, and court costs of \$25.00, a total of \$9,394.99. Notice of entry of the judgment was entered the same day. Podals did not appeal the judgment against him. On July 15, 1998, Birdsall obtained an Order for Examination of Judgment Debtor, which was served upon Podals on August 19, 1998. Podals did not respond to the order.

Nearly three years later, on April 25, 2001, Podals filed in the district court a motion to set aside the default judgment, pursuant to District Court Rules of Civil Procedure (DCRCP), Rule 60(b). Podals claimed that the judgment against him was void because Birdsall had been aware when he entered into the contract with Podals that Podals was acting as an agent for

disclosed principals, the Stewarts, and therefore, Podals could not be personally liable to Birdsall under Corps Constr. Ltd. v. Hasegawa, 55 Haw. 474, 552 P.2d 694 (1974). Podals did not indicate why he had failed to appear in court for trial or why he had waited three years before bringing a motion to set aside the default judgment.

The district court denied Podals' motion on May 18, 2001. On May 21, 2001, Podals filed a motion for leave to file a third-party complaint against the Stewarts, pursuant to DCRCP Rules 7 and 14. On June 15, 2001, Podals filed a notice of appeal from the judgment in Birdsall's favor. On July 24, 2001, the district court denied Podals' motion for leave to file a third-party complaint against the Stewarts. Although Podals never appealed the district court's denial of his DCRCP Rule 14 motion, he nevertheless argues on appeal that the denial was erroneous.

#### STANDARD OF REVIEW

DCRCP Rule 60, which is identical in language to Hawai'i Rules of Civil Procedure (HRCPP), Rule 60, states, in relevant part:

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void[.]

This court recently explained that the standard to be applied in reviewing whether a judgment is void under HRCF Rule 60(b)(4) is as follows:

[W]ith respect to motions under HRCF Rule 60(b)(4), alleging that a judgment is void,

the determination of whether a judgment is void is not a discretionary issue. It has been noted that a judgment is void only if the court that rendered it lacked jurisdiction of either the subject matter or the parties or otherwise acted in a manner inconsistent with due process of law. Wright & Miller, *Federal Practice and Procedure: Civil* § 2862 (1973). Other authorities, cognizant of the extraordinary remedy afforded by the rule and the need to narrowly define it, have stated:

In brief, then, except for the rare case where power is plainly usurped, if a court has the general power to adjudicate the issues in the class of suits to which the case belongs then its interim orders and final judgment, whether right or wrong, are not subject to collateral attack.

7 Moore's Federal Practice ¶ 60.25 (1980). See also *V.T.A. Inc. v. Airco, Inc.*, 597 F.2d 220 (1979); *In Re Four Seasons Securities Law[s] Litigation*, 525 F.2d 500 (10th Cir. 1975).

*In re Hana Ranch Co., Ltd.*, 3 Haw.App. 141, 146, 642 P.2d 938, 941-42 (1982). Moreover, "in the sound interest of finality, the concept of void judgment must be narrowly restricted." *Dillingham Investment Corp. v. Kunio Yokoyama Trust*, 8 Haw.App. 226, 233, 797 P.2d 1316, 1320 (1990) (internal quotation marks and citation omitted).

Citicorp Mortgage, Inc. v. Bartolome, 94 Hawai'i 422, 428, 16 P.3d 827, 833 (App. 2000) (internal brackets and ellipsis omitted).

#### DISCUSSION

Initially, we hold that since Podals never filed a notice of appeal from the district court's order denying leave to

file a third-party complaint, we lack jurisdiction to consider Podals' arguments on that issue.

We disagree with Podals' claim that the district court's May 26, 1998 default judgment against him is "void" because the court "acted in a manner inconsistent with due process of law."<sup>1</sup> Podals admits that he was accorded procedural due process by the district court but claims that his substantive due process rights were violated because the court erroneously determined that he was personally liable to Birdsall. According to Podals, "it was clear on the record that [he] was merely the agent for a disclosed principal," and therefore, the district court was "under a legal duty to follow [the supreme court's] decision in *Corps Construction Ltd. vs. Hasegawa[,]*" which held that an agent for a disclosed principal is not ordinarily liable for a contract entered into on behalf of that principal. *Corps Constr. Ltd. v. Hasegawa*, 55 Haw. at 476, 522 P.2d at 695.

Podals is essentially arguing that the judgment is "void" because he should have won on the merits. Hawai'i case law indicates otherwise. The term "void" in this context must, "[i]n the sound interest of finality, . . . be narrowly restricted." *Dillingham Inv. Corp. v. Kunio Yokoyama Trust*, 8 Haw. App. 226, 233, 797 P.2d 1316, 1320 (1990) (internal quotation marks omitted).

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<sup>1</sup> Defendant-Appellant Randall Podals does not argue that judgment against him was void because the district court lacked jurisdiction to enter it.

Podals decided, for whatever reason, not to defend the suit against him in the district court. Having defaulted, he cannot return to the district court three years later, claiming that the judgment was "void" merely because he should have won on the merits. To hold otherwise would mean there could be no "final" judgments in any case. No appellate deadline would be binding, and a party to a case could simply default and then collaterally attack the judgment at a later date, on grounds that the court "violated due process."

Affirmed.

DATED: Honolulu, Hawai'i, November 29, 2002.

On the briefs:

R. Steven Geshell  
for defendant-appellant.

Greg Nishioka (Nishioka  
& Fujioka) for  
plaintiff-appellee.