

NO. 28064

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

BANK OF AMERICA, N.A., Plaintiff-Appellee,
v.
KALE K. GUMAPAC, Defendant-Appellant,
and
KALAMA ENTERPRISES, INC., a Hawai'i corporation,
DIANNE D. GUMAPAC, STATE OF HAWAII, Defendants

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CLERK, APPELLATE COURTS
STATE OF HAWAII

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APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CV. NO. 05-1-152)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Kale K. Gumapac's (Appellant Gumapac) appeal from the Honorable Greg K. Nakamura's June 6, 2006 judgment confirming the sale of the foreclosed real estate, because Appellant Gumapac did not file his July 27, 2006 notice of appeal within thirty days after entry of the June 6, 2006 judgment, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required. The circuit court certified the June 6, 2006 judgment pursuant to Rule 54(b) of the Hawai'i Rules of Civil Procedure, as HRS § 667-51(a)(2) (Supp. 2005) required, but "[a]n appeal shall be taken in the manner and within the time provided by the rules of court." HRS § 667-51(b) (Supp. 2005). The failure of Appellant Gumapac to file a timely notice of appeal within thirty days after entry of the June 6, 2006

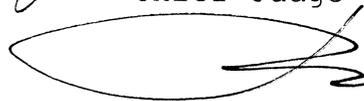
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judgment, as HRAP Rule 4(a)(1) required, is a jurisdictional defect that the parties cannot waive and we cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Therefore, we lack jurisdiction over this appeal. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 12, 2006.


Chief Judge


Associate Judge


Associate Judge