

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28420

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIIK. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 MAY 16 PM 3:59

FILED

KAILUA LOCAL CAB, INC., a Hawai'i corporation,  
Plaintiff-Appellee, v. AJA MOTORS CORP., a Hawai'i  
corporation, Defendant-Appellant, and VAN-CON, INC., a  
New Jersey corporation; JOHN DOES 1-50; JANE DOES 1-50;  
DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 2-50; DOE  
ENTITIES 1-50; and DOE GOVERNMENTAL UNITS 1-50,  
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(Civ. No. 04-1-0522)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Defendant/Counterclaim-Plaintiff/Appellant AJA Motors Corp.'s (Appellant AJA Motors) appeal from the Honorable Karen S. S. Ahn's September 26, 2006 judgment because Appellant AJA Motors' appeal is not timely under Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(3).

Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2006) authorizes appeals to the intermediate court of appeals from "final judgments, orders, or decrees[.]" (Emphasis added). Furthermore, based on Hawai'i Rules of Civil Procedure (HRCP) Rule 58, "[a]n appeal may be taken . . . only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to

HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id.

The September 26, 2006 judgment resolved all claims against all parties by (1) entering judgment in favor of Appellant AJA Motors and against Plaintiff/Counterclaim-Defendant/Appellee Kailua Local Cab, Inc. (Appellee Kailua Local Cab) as to Counts IV and VI of Appellant AJA Motors' counterclaim; and (2) expressly dismissing all other unidentified claims, counterclaims, and cross-claims. Therefore, the September 26, 2006 judgment is an appealable final judgment pursuant to HRS § 641-1(a) (Supp. 2006), HRCP Rule 58, and the holding in Jenkins.

Pursuant to HRAP Rule 4(a)(3),<sup>1</sup> Appellant AJA Motors and Appellee Kailua Local Cab extended the time period for filing a notice of appeal by timely filing (1) Appellant AJA Motors' September 22, 2006 motion for an award of attorneys' fees, costs, and pre-judgment interest; and (2) Kailua Local Cab's October 5, 2006 motion for an award of attorneys' fees and costs within

---

<sup>1</sup>"If any party files a timely motion . . . for attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion[.]" Hawai'i Rules of Appellate Procedure Rule 4(a)(3).

fourteen days after entry of the September 26, 2006 judgment, as HRCP Rule 54(d)(2)(B) required. Thus, under HRAP Rule 4(a)(3), the time period for filing a notice of appeal was extended until thirty days after entry of an order that disposed of these two post-judgment motions. Although the circuit court entered a written order on January 25, 2007 that purported to dispose of (1) Appellant AJA Motors' September 22, 2006 motion for an award of attorneys' fees, costs, and pre-judgment interest; and (2) Kailua Local Cab's October 5, 2006 motion for an award of attorneys' fees and costs, these two post-judgment motions were automatically deemed denied at the end of the business day on December 21, 2006 and January 3, 2007, respectively, pursuant to HRAP Rule 4(a)(3) because "the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion." HRAP Rule 4(a)(3). Therefore, the circuit court's January 25, 2007 written order that purported to dispose of these two post-judgment motions was a nullity.

Appellant AJA Motors did not file its February 23, 2007 notice of appeal within thirty days after the deemed denial dates of December 21, 2006 or January 3, 2007, as HRAP Rule 4(a)(3) required for a timely appeal. Therefore, Appellant AJA Motors' appeal is not timely. The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional

defect that the parties cannot waive and an appellate court 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) ("no court or judge or justice 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 the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 16, 2007.

*M. E. Nechtman*

Chief Judge

*Bonnie K. A. Watanabe*

Associate Judge

*Daniel P. Foley*

Associate Judge