NO. 28744

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

JIM ANDREWS and THE LANDSCAPE WORKS, INC., Plaintiffs-Appellees

v.

MARCUS D.E. ROSEHILL and MARCUS R. ROSEHILL REVOCABLE LIVING TRUST and VIOLET MARIE M. REVOCABLE LIVING TRUST, dated December 23, 1986, Defendants-Appellants

(CIV. NO. 06-1-1976)

MARCUS ROSEHILL, Trustee of the MARCUS F. ROSEHILL REVOCABLE LIVING TRUST and VIOLET MARIE M. ROSEHILL REVOCABLE LIVING TRUST, Plaintiffs,

v.

JIM ANDREWS and THE LANDSCAPE WORKS, INC., Defendants

(CIV. NO. 06-1-1982)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION
(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of the statements in support of jurisdiction and contesting jurisdiction, and the record and files herein, it appears that we lack jurisdiction over Trustee Marcus Rosehill's appeal from the Honorable Glenn J. Kim's August 20, 2007 order denying Trustee Rosehill's motion to dismiss the complaint in Civ. No. 06-1-1976-11, where

(1) the August 20, 2007 order is not a final order or judgment under HRS § 641-1(a) (Supp. 2005), Rule 58 of the Hawaiʻi Rules of Civil Procedure (HRCP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaiʻi 115, 119, 869 P.2d 1334, 1338 (1994);

(2) Trustee Rosehill's September 13, 2007 notice of appeal is not a "premature filing of appeal that may be considered filed immediately after the time the judgment or order becomes final" pursuant to HRAP Rule 4(a)(2);

(3) exceptions to the finality requirement encompassed by the Forgay doctrine[1] and the collateral order doctrine do not apply; and

(4) an interlocutory appeal was not certified consistent with HRS § 641-1(b).

HRS § 641-1(a) (Supp. 2006) authorizes appeals from "final judgments, orders, or decrees[.]" "When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable." Casumpang v. ILWIJ, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999) (citation omitted). Furthermore, pursuant to the separate document rule under Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), "[a]n appeal may be taken from circuit court orders resolving claims against parties 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). Moreover, "a judgment or order in a consolidated case, disposing of fewer than all claims among all parties, is not appealable in the absence of [HRCP] Rule 54(b)

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[1] Forgay v. Conrad, 47 U.S. 201 (1848).

certification." Leslie v. Estate of Tavares, 109 Hawai'i 8, 13, 122 P.3d 803, 808 (2005) (emphases and brackets added). The August 20, 2007 order was not a final order where it did not end the litigation, did not dispose of all claims among all parties in the consolidated case, and was not reduced to a separate judgment.

Although HRAP Rule 4(a)(2) permits a premature notice of appeal in a civil case to be considered filed "immediately after the time the judgment or order becomes final for purposes of appeal[,]" the notice of appeal must have been filed "after the announcement of a decision but before entry of the judgment or order." In the instant case, it appears that no "announcement of a decision" resolving all consolidated claims in Civil No. 06-1-1982 and Civil No. 06-1-1976 had occurred as of the September 13, 2007 date of appeal, and that no final judgment appears in the record on appeal.

Although the Forgay doctrine and the collateral order doctrine provide exceptions to the finality requirement, the August 20, 2007 order does not satisfy all of the factors for appealability under the Forgay doctrine or the collateral order doctrine. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the Forgay doctrine), and Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321, 966 P.2d

631, 633 (1998) (regarding the collateral order doctrine).

HRS § 641-1(b) (Supp. 2006) provides that a circuit court may allow an appeal "from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it." The circuit court did not certify the August 20, 2007 order for interlocutory appeal. Therefore,

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

DATED: Honolulu, Hawaiʻi, February 8, 2008.

Chief Judge

Associate Judge

Associate Judge