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NO. 29209

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E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

DON WILLIAMS, Petitioner-Appellant,

v.

STATE OF HAWAI'I, DEPARTMENT OF LAND AND NATURAL RESOURCES,
Respondent-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(S.P. NO. 07-1-0061(1))

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of Petitioner-Appellant Don Williams's (Appellant Williams) appeal from the Honorable Joel E. August's June 5, 2008 "Order Granting, in Part, Respondent State of Hawaii's Application: (i) to Compel Arbitration; (ii) to Impose Sanctions Against Petitioner for Any Further Delay in the Start of Arbitration Proceedings; and (iii) for Award of Costs and Attorney's Fees against Petitioner" (the June 5, 2008 order compelling arbitration), it appears that we lack appellate jurisdiction over this case because the June 5, 2008 order compelling arbitration is not an independently appealable order.

Hawaii Revised Statutes (HRS) § 658A-28(a)(1) authorizes an appeal from an order denying a motion to compel arbitration, but HRS § 658A-28 does not authorize an appeal from an order granting a motion to compel arbitration. Therefore, HRS § 658A-28 (Supp. 2007) does not authorize Appellant Williams's appeal from the June 5, 2008 order compelling arbitration.

HRS § 641-1(a) (1993 & Supp. 2007) authorizes appeals

to the intermediate court of appeals only from "final judgments, orders, or decrees[.]" (Emphasis added). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (1993 & Supp. 2007). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." The Supreme Court of Hawai'i has held that "[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). "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted). The circuit court has not yet entered a final judgment that resolves all of the claims in this case. Therefore, absent an exception to the general rule requiring a final judgment for an appeal, Appellant Williams's appeal from the June 5, 2008 order compelling arbitration is premature, and we lack appellate jurisdiction.

Although exceptions to the final judgment requirement exist under the Forgay v. Conrad, 47 U.S. 201 (1848), doctrine (the Forgay doctrine) and the collateral order doctrine, the June 5, 2008 order compelling arbitration does not satisfy all of the requirements for appealability under the Forgay doctrine and the collateral order doctrine. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine) and Abrams v. Cades,

Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for appealability under the collateral order doctrine).

Finally, the circuit court has not certified the June 5, 2008 order compelling arbitration for an interlocutory appeal pursuant to HRS § 641-1(b) (1993 & Supp. 2007). Therefore, the June 5, 2008 order compelling arbitration is not appealable pursuant to HRS § 641-1(b).

Absent an appealable final order or judgment, Appellant Williams's appeal is premature and we lack appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, October 17, 2008.

Daniel R. Foley
Presiding Judge

Associate Judge

Associate Judge