

NO. 29426

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WAIKIKI TRADE CENTER INVESTORS, LLC,
Plaintiff-Appellee,

v.

NATIONAL CAREER COLLEGE, INC.,
dba HAWAII BUSINESS COLLEGE,
Defendant,

and

ALLEN MIRZAEI,
Defendant-Appellant,

and

DOES 1-10, Defendants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NO. 1RC07-1-7428)

ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon consideration of the Application to Expedite Docketing of Appeal and for an Order Dismissing Notice of Appeal, the papers in support, and the records and files herein, we find as follows.

The Notice of Appeal, filed on October 23, 2008, was purportedly filed on behalf of Defendants-Appellants National Career College, Inc., dba Hawaii Business College,¹ and Allen Mirzaei (Appellants) by "Allen Mirzaei In Propria Persona." The Notice of Appeal states that Appellants appeal from an "Order

2008 DEC 18 AM 10:13
Jann Kimoto
CLERK, APPELLATE COURTS
STATE OF HAWAII

FILED

¹ We note that Defendants-Appellants National Career College, Inc. dba Hawaii Business College cannot represent itself in litigation, but can do so only by an attorney. See Hawaii Revised Statutes §§ 605-2 and 605-14; see also Oahu Plumbing and Sheet Metal, Ltd. v. Kona Constr., Inc., 60 Haw. 372, 381, 590 P.2d 570, 571, (1979).

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Granting in Part and Denying in Part Defendants National Career College, Inc., dba Hawaii Business College and Allen Mirzaei's Motion to Set Aside Judgment" (Order), which was entered in the District Court of the First Circuit, Honolulu Division, on September 25, 2008.

On October 30, 2008, Plaintiff-Appellee Waikiki Trade Center Investors, LLC (Appellee) filed the instant Application to Expedite Docketing of Appeal and for an Order Dismissing Notice of Appeal. In the motion, Appellees contended this court lacks jurisdiction because the order being appealed is not a final judgment, order or decree. Appellants filed no response or opposition to the motion. On November 21, 2008, we issued an order noting that it appears the order being appealed is not final and the appeal may be premature. The order provided as follows:

[W]ithin seven (7) days from the date of this order Appellants shall show cause why this court should not enter an order (1) granting in part Appellees' Motion and (2) dismissing this case for lack of appellate jurisdiction.

Appellants did not respond to the Order to Show Cause or otherwise oppose dismissal.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) authorizes appeals to the intermediate court of appeals only from "final judgments, orders or decrees[.]" The order being appealed in this case is not a final judgment, order or decree. It further appears that the Order does not qualify for appealability under: (1) the collateral order doctrine; (2) the

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Forgay doctrine;² or (3) HRS § 641-1(b). Thus, the appeal is premature, and this court lacks jurisdiction over this appeal.

THEREFORE, IT IS HEREBY ORDERED that:

1. The Application to Expedite Docketing of Appeal and for an Order Dismissing Notice of Appeal is granted in part.
2. This appeal is dismissed for lack of jurisdiction.
3. The application is denied in all other respects.

DATED: Honolulu, Hawai'i, December 18, 2008.


Presiding Judge


Associate Judge


Associate Judge

² The Forgay doctrine is based on the United States Supreme Court's holding in Forgay v. Conrad, 47 U.S. 201 (1848). The Hawai'i Supreme Court has acknowledged the Forgay doctrine as "allow[ing] an appellant to immediately appeal a judgment for execution upon property, even if all claims of the parties have not been finally resolved." Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995). Under the Forgay doctrine, this court "ha[s] jurisdiction to consider appeals from judgments which [1] require immediate execution of a command that property be delivered to the appellant's adversary, and [2] the losing party would be subjected to irreparable injury if appellate review had to wait the final outcome of the litigation." Id. (citations, internal quotation marks omitted; some brackets omitted, some brackets added). It appears that a judgment for possession was entered by the District Court on February 11, 2008 and no appeal was filed.