

NO. 24392

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, by its Office of Consumer Protection,
Plaintiff-Appellee, v. METRO CLUB, INC., a foreign
corporation, and DAVID A. KERSH, individually and as an
officer of METRO CLUB, INC., Defendants-Appellants, and
METRO CLUB, INC., a Michigan corporation, and DAVID A.
KERSH, Defendants/Third-Party Plaintiffs/Appellants,
and INTERNATIONAL KITCHENS, a Hawaii corporation,
WYMT, INC., dba FOGCUTTER RESTAURANT, a Hawaii
corporation, TRATTORIA, C&W CORPORATION, dba KING TSIN,
a Hawaii corporation, CHURCH'S FRIED CHICKEN, INC., a
Texas corporation, GANNETT PACIFIC CORPORATION, dba
HONOLULU STAR-BULLETIN, a foreign corporation, BETTER
BUSINESS BUREAU OF HAWAII, INC., a Hawaii corporation,
Third-Party Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 00-0-63668)

ORDER DENYING JUNE 8, 2009 MOTION
TO SET ASIDE ALL ORDERS ENTERED IN THIS APPEAL
AND DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) Defendant/Third-Party Plaintiff/
Appellant David Kersh's (Appellant Kersh) June 8, 2009 motion to
set aside all orders entered in this appeal and dismiss this
appeal for lack of appellate jurisdiction, (2) the intermediate
court of appeals' April 2, 2003 memorandum opinion in appellate
court case number 24392, (3) Appellant Kersh's May 19, 2003
application for a writ of certiorari in appellate court case
number 24392, (4) the supreme court's May 29, 2003 order denying
Appellant Kersh's May 19, 2003 application for a writ of
certiorari in appellate court case number 24392, and (5) the
record, we note that "jurisdiction divests [from the intermediate
court of appeals] to the supreme court upon an application for
writ of certiorari[.]". Christiansen v. First Insurance Company

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STATE OF HAWAII

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FILED

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

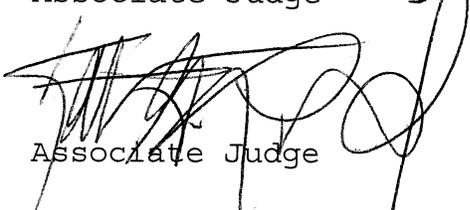
of Hawaii, Ltd., 88 Hawai'i 136, 140, 963 P.2d 345, 349 (1998)
(holding, therefore, that the intermediate court of appeals erred
by attempting to amend its opinion after a party applied for a
writ of certiorari to the supreme court). Appellate court case
number 24392 has concluded and is closed. The intermediate court
of appeals does not have jurisdiction over appellate court case
number 24392. Therefore,

IT IS HEREBY ORDERED that Appellant Kersh's June 8,
2009 motion to set aside all orders entered in this appeal and
dismiss this appeal for lack of appellate jurisdiction is denied.

DATED: Honolulu, Hawai'i, June 17, 2009.


Presiding Judge


Associate Judge


Associate Judge