

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29358

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MATTHEW M. RYAN, SR., Plaintiff-Appellee,

v.

CERTIFIED MANAGEMENT, INC., a Hawai'i Corporation,
Defendant-Appellant,

and

JAMES E. MCKELLAR, a Natural Person,
NICKOLAS DENZER, a Natural Person, and
3 BUILDERS INC., a Hawai'i Corporation,
Defendants-Appellees,

and

DOE DEFENDANTS 1-10, and DOE BUSINESS ASSOCIATIONS 1-10,
Defendants

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 APR 17 AM 11:49

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-0388)

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

Upon review of the record, it appears that we lack jurisdiction over Defendant-Appellant Certified Management, Inc.'s (Appellant Certified Management), appeal from the Honorable Victoria S. Marks's August 21, 2008 order denying Appellant Certified Management's motion for an award of attorneys' fees and costs, because the August 21, 2008 order is an interlocutory order and the circuit court has not yet entered an appealable judgment.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of appeals from "final judgments, orders, or decrees[.]" Appeals under HRS

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§ 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." Based on this requirement, the supreme court 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). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 20, 122 P.3d 809, 815 (2005) (citation omitted) (emphasis added)).

Although the circuit court entered a June 26, 2008 order granting Appellant Certified Management's motion for summary judgment against Plaintiff-Appellee Matthew M. Ryan, Sr. (Appellee Ryan), the circuit court has not yet reduced the June 26, 2008 order to a separate judgment. Although the circuit court entered an August 21, 2008 order granting Appellant Certified Management's motion to certify a judgment in favor of Appellant Certified Management and against Appellee Ryan pursuant to HRCP Rule 54(b), the supreme court has explained that "a party cannot appeal from a circuit court order even though the order may contain [HRCP Rule] 54(b) certification language; the order

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must be reduced to a judgment and the [HRCP Rule] 54(b) certification language must be contained therein." Oppenheimer v. AIG Hawaii Ins. Co., 77 Hawai'i 88, 93, 881 P.2d 1234, 1239 (1994).

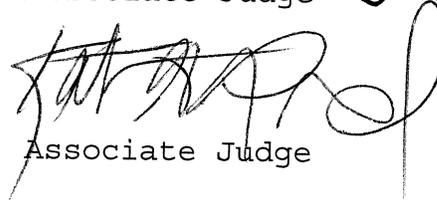
Absent an appealable final judgment, Appellant Certified Management's appeal is premature, and the intermediate court of appeals lacks jurisdiction over this appeal.

Therefore, IT IS HEREBY ORDERED that appellate court case number 29358 is dismissed for lack of appellate jurisdiction.

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


Daniel R. Foley
Presiding Judge


Auna Olu Fijini
Associate Judge


Associate Judge