

NO. 29421

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

MCCULLY ASSOCIATES, a registered Hawaii limited partnership,  
Plaintiff-Appellee,

v.

ALEXANDER Y. MARN, individually, Defendant-Appellant,

AND

ALEXANDER Y. MARN, as Co-Trustee of the James Y. Marn Family Trust created under that certain James Yee Marn Third Amended Revocable Trust Agreement dated January 21, 1982, made by James Yee Marn, with powers to sell, lease, mortgage and other powers as set forth in said Trust Agreement, and as Co-Personal Representative of the Estate of James Yee Marn, deceased; JAMES K.M. DUNN, Successor Trustee of the Annabelle Y. Dunn Trust, dated June 18, 1991, JAMES YEE MARN, JR., individually and as Co-Trustee of the James Y. Marn Family Trust created under that certain James Yee Marn Third Amended Revocable Trust Agreement dated January 21, 1982, made by James Yee Marn, with powers to sell, lease, mortgage and other powers as set forth in said Trust Agreement, and as Co-Personal Representative of the Estate of James Yee Marn, deceased, Defendants-Appellees,

AND

BEATRICE YEE MARN; WALTER T.C. CHANG, as Co-Trustee of the James Y. Marn Family Trust created under that certain James Yee Marn Third Amended Revocable Trust Agreement dated January 21, 1982, made by James Yee Marn, with powers to sell, lease, mortgage and other powers as set forth in said Trust Agreement; ERIC YEE MARN, individually, and as Trustee under unrecorded Declaration of Trust dated December 24, 1984, and as Personal Representative of the Estate of Esther C. Marn, deceased; JOHN DOES 1-5; JANE DOES 1-5; DOE CORPORATIONS 1-5; DOE PARTNERSHIPS 1-5; DOE ASSOCIATIONS 1-5; DOE GOVERNMENTAL UNITS 1-5; and DOE ENTITIES 1-5, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 07-1-0565)

ORDER GRANTING DECEMBER 29, 2008 MOTION TO DISMISS APPEAL  
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) Defendant-Appellee James K. M.

T. M. SIMMONDO  
CLERK APPELLATE COURTS  
STATE OF HAWAII

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Dunn's (Appellee Dunn) December 29, 2008 motion to dismiss this appeal for lack of appellate jurisdiction, (2) Defendant-Appellant Alexander Y. Marn's (Appellant Marn) January 6, 2009 memorandum in opposition to Appellee Dunn's December 29, 2008 motion to dismiss this appeal, and (3) the record, it appears that we lack jurisdiction over Appellant Marn's appeal from the Honorable Victoria S. Marks's

- September 16, 2008 "Order Granting Defendant James K.M. Dunn's, Successor Trustee of the Annabelle Y. Dunn Trust, Dated June 18, 1991, Motion Authorizing Payment of Attorneys' Fees and Costs Awarded Against Alexander Y. Marn and in Favor of the Annabelle Y. Dunn Trust, Dated June 18, 1991 (Filed August 8, 2008)" (the September 16, 2008 order awarding attorneys' fees and costs), and
- November 7, 2008 "Order Denying Defendant Alexander Y. Marn's Motion for Reconsideration and Disgorgement of Proceeds and Request for Rule 54(b) Certification" (the November 7, 2008 order denying reconsideration).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) authorizes appeals from "final judgments, orders, or decrees[.]" 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." Based on this requirement under HRCP Rule 58, 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).

Both the September 16, 2008 order awarding attorneys' fees and costs and the November 7, 2008 order denying reconsideration are interlocutory orders relating to the circuit court's award of attorneys' fees and costs. According to the record on appeal, filed on December 15, 2008, the circuit court has not entered a final judgment on all claims in this case. Although there are exceptions to final judgment requirement for appealability, such as the collateral order doctrine (see Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998)) and the Forgay doctrine (see Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995)), Hawai'i appellate courts have consistently held that, "[a]bsent entry of an appealable final judgment on the claims [to which an award of attorneys' fees and costs relates], the award of attorneys' fees and costs is . . . not appealable." Fujimoto v. Au, 95 Hawai'i 116, 123, 10 P.3d 699, 706 (2001); CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i 301, 306, 22 P.3d 97, 102 (App. 2001). Absent the entry of an appealable final judgment, we lack appellate jurisdiction in this case. Accordingly,

IT IS HEREBY ORDERED that Appellee Dunn's December 29, 2008 motion to dismiss this appeal is granted, and this appeal is dismissed for lack of appellate jurisdiction.

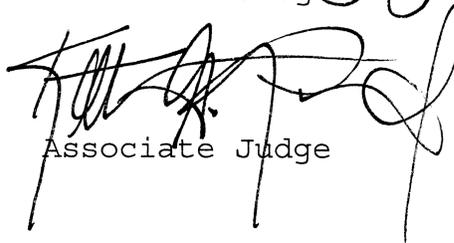
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IT IS FURTHER ORDERED that Appellee Dunn's request for sanctions against Appellant Marn is denied.

DATED: Honolulu, Hawai'i, January 29, 2009.

  
Daniel R. Foley  
Presiding Judge

  
Anna O. Su  
Associate Judge

  
Associate Judge