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FILED
CLERK, APPELLATE COURTS
STATE OF HAWAII

NO. 29516

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

In the Matter of the Application of 754
HAROLD KAINALU LONG CASTLE, to register and
confirm title to land situate at Kailua, District
of Koolaupoko, City and County of Honolulu, State of Hawai'i,

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ESTRELLA C.S. IGARATA, Petitioner-Appellee,

v.

ANTHONY PAUL LOCRICCHIO and BARBARA MARIE LOCRICCHIO,
husband and wife, Respondents-Appellants

APPEAL FROM THE LAND AND TAX APPEAL COURT
(APPLICATION NO. 754)

ORDER GRANTING IN PART AND
DENYING IN PART PETITIONER-APPELLEE
ESTRELLA C. S. IGARTA'S JUNE 1, 2009 MOTION TO DISMISS APPEAL
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) the June 1, 2009 motion by Petitioner-Appellee Estrella C. S. Igarta (Appellee Igarta) to dismiss this appeal for lack of jurisdiction, (2) Respondents-Appellants Anthony Paul Locricchio and Barbara Marie Locricchio's (the Locricchio Appellants) June 15, 2009 memorandum in opposition to Appellee Igarta's June 1, 2009 motion to dismiss, and (3) the record, it appears that we have appellate jurisdiction over the Locricchio Appellants' timely appeal from the Honorable Gary W. B. Chang's December 1, 2008 "Order Denying Respondents' Motion for award of Rule 11, Sanctions Filed 08/07/08" (the December 1, 2008 post-judgment order), but we do not have appellate jurisdiction over the Locricchio Appellants' untimely appeal from the Honorable Gary W. B. Chang's

1. August 22, 2008 judgment,

2. May 2, 2008 "Order Denying Respondents' Non-Hearing Motion to Reset Argument to Respondents' Motion for Summary Judgment and for Leave to File Counterclaim Until a New Date to Be Set By Court After March 15, 2008, Filed on 01/21/08" (the May 2, 2008 pre-judgment interlocutory order) and

3. March 14, 2008 "Order Denying Respondents Anthony P. Locricchio and Barbara M. Locricchio's Motion for Summary Judgment on Estrella S.S. Igarta's Petition Filed with This Court on April 16, 2007 and Motion for Leave to File Counterclaim fro Fraud and Misrepresentation, Filed December 28, 2007" (the March 14, 2008 pre-judgment interlocutory order)

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals from "final judgments, orders, or decrees of . . . the land court to the intermediate appellate court[.]" Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c). The Hawai'i Rules of Civil Procedure (HRCP) apply to "[p]roceedings in the land court under chapter 501[.]" HRCP Rule 81(b)(1). HRCP Rule 58 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 from circuit court orders resolving claims against parties 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).

The August 22, 2008 judgment is an appealable final judgment pursuant to HRS § 641-1(a) and HRCP Rule 58, and a timely appeal from the August 22, 2008 judgment would have allowed the Locricchio Appellants to obtain appellate review of all prejudgment interlocutory orders, because a timely "appeal from a final judgment brings up for review all interlocutory orders not appealable directly as of right which deal with issues in the case." Ueoka v Szymanski, 107 Hawai'i 386, 396, 114 P.3d 892, 902 (2005) (citation and internal quotation marks omitted). However, the Locricchio Appellants did not file their December 1,

2008 notice of appeal within thirty days after entry of the August 22, 2008 judgment, as HRAP Rule 4(a)(1) requires. Furthermore, the Locricchio Appellants did not timely file any post-judgment motions that could have extended the time period for filing a notice of appeal pursuant to Rule 4(a)(3)[1] of the Hawai'i Rules of Appellate Procedure (HRAP). The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Therefore, we do not have appellate jurisdiction to review the Locricchio Appellants' untimely appeal from the August 22, 2008 judgment, the May 2, 2008 prejudgment interlocutory order, and the March 14, 2008 prejudgment interlocutory order.

In contrast, we do have appellate jurisdiction to review the Locricchio Appellants timely appeal from the December 1, 2008 post-judgment order. "A post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citation omitted). Although, for the purpose of appealability, a separate judgment is usually necessary under HRCP Rule 58 and the holding in Jenkins, "the separate judgment requirement

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[1] Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP) provides:

> (3) Time to Appeal Affected by Post-Judgment Motions. If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.

HRAP Rule 4(a)(3) (effective July 1, 2006).

articulated in Jenkins is inapposite in the post-judgment context." Ditto, 103 Hawai'i at 158, 80 P.3d at 979. The December 1, 2008 post-judgment order finally ended the post-judgment proceeding for the Locricchio Appellants' post-judgment motion for HRCP Rule 11 sanctions against Appellee Igarta's attorneys by denying all of the post-judgment relief for which the Locricchio Appellants prayed, leaving nothing further to be accomplished in that particular post-judgment proceeding. Therefore, the December 1, 2008 post-judgment order is an appealable post-judgment order pursuant to HRS § 641-1(a).

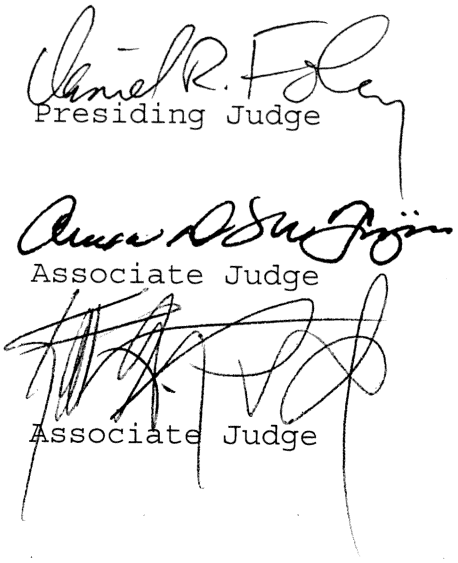
The Locricchio Appellants filed their December 10, 2008 notice of appeal within thirty days after entry of the December 1, 2008 post-judgment order, as HRAP Rule 4(a)(1) required. Therefore, the Locricchio Appellants' appeal from the December 1, 2008 post-judgment order is timely. Consequently, we have jurisdiction over this appellate case pursuant to HRS § 641-1(a), but, only as to the Locricchio Appellants' appeal from the December 1, 2008 post-judgment order.

We additionally note that, although the Locricchio Appellants filed two requests to prepare a reporter's transcript of hearings on June 4, 2009, and June 10, 2009, the Locricchio Appellants failed to file these requests within ten days after filing their December 10, 2008 notice of appeal, as HRAP Rule 10(b)(1)(A) requires. Although this violation is sanctionable pursuant to HRAP Rule 51, we decline to impose a sanction at this time, and, instead, we caution the Locricchio Appellants to follow the Hawai'i Rules of Appellate Procedure.

IT IS HEREBY ORDERED that Appellee Igarta's June 1, 2009 motion to dismiss this appeal is granted in part and denied in part. We grant Appellee Igarta's motion to dismiss this appeal to the extent that the Locricchio Appellants seek appellate review of the August 22, 2008 judgment, the May 2, 2008 prejudgment interlocutory order, and the March 14, 2008 prejudgment interlocutory order. We deny Appellee Igarta's motion to dismiss this appeal to the extent that the Locricchio

Appellants seek appellate review of the December 1, 2008 post-judgment order.

DATED: Honolulu, Hawai'i, June 19, 2009.



Presiding Judge

Associate Judge

Associate Judge