

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29573

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DAMON LYUM SCHMIDT, Plaintiff-Appellant,

v.

JERRY A. RUTHRUFF; BUENA VISTA INVESTORS, LLC;
CLEARWATER INVESTMENTS, LLC; WALLACE KLEIN; PETER FREDERIKSEN;
ROBERT H. NAKATA; FIDELITY NATIONAL TITLE INSURANCE COMPANY;
and DOES 1-50, Defendants-Appellees,

and

ISLAND TITLE CORPORATION,
Nominal Defendant.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 08-1-0136K)

ORDER

(By: Watanabe, Acting C.J., Nakamura and Leonard, JJ.)

Upon consideration of: (1) Defendant-Appellee Fidelity National Title Insurance Company's Motion to Dismiss Appeal; (2) Plaintiff-Appellant Damon Lyum Schmidt's Motion to Stay Appeal and in Opposition to Defendant-Appellee Fidelity National Title Insurance Company's Motion to Dismiss Appeal; and (3) Defendant-Appellee Fidelity National Title Insurance Company's Opposition to Appellant's Motion to Stay Appeal and Reply in Support of Its Motion to Dismiss Appeal, it appears that: (1) on January 5, 2009, Plaintiff-Appellant (Appellant) filed a notice of appeal; (2) on March 6, 2009, the appellate clerk notified Appellant's attorney, Gary Victor Dubin, Esq., that the jurisdictional statement was due March 16, 2009 and the opening

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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brief was due April 16, 2009; (3) Mr. Dubin filed the jurisdictional statement, but he did not file the opening brief; (4) on April 24, 2009, the appellate clerk informed Mr. Dubin: (a) the opening brief was in default; (b) the matter would be brought to the attention of the court; and (c) the appeal may be dismissed; (5) on April 29, 2009, Mr. Dubin submitted a motion for an extension of time to file the opening brief stating that he inadvertently failed to obtain an extension prior to the due date; (6) this court granted the motion and extended the opening brief due date to May 15, 2009; (7) the opening brief was not filed on May 15, 2009; (8) on May 29, 2009, the appellate clerk again notified Mr. Dubin that: (a) the opening brief was in default; (b) the matter would be brought to the attention of the court; and (c) the appeal may be dismissed; (9) Appellant did not file the opening brief or seek relief from default; (10) on June 8, 2009, Defendant-Appellee Fidelity National Title Insurance and Title Corporation moved to dismiss the appeal due to Appellant's failure to file the opening brief; (11) on June 22, 2009, Appellant filed a motion to stay the appeal and opposition to the motion to dismiss appeal to allow time to file a HRCF Rule 60(b) motion in the circuit court; (12) Appellant fails to provide any valid reason to stay the appeal; and (13) Appellant failed to request an extension of time to file the opening brief, and the opening brief remains in default.

Therefore, IT IS HEREBY ORDERED that:

1. Appellant's motion to stay the appeal is denied.

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2. Appellee's motion to dismiss the appeal is granted, and this appeal is dismissed due to Appellant's failure to file the opening brief.

DATED: Honolulu, Hawai'i, July 23, 2009.

Brunne K A Watanabe

Acting Chief Judge

Craig H. Nakamura

Associate Judge

[Handwritten signature]

Associate Judge