

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29661

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

In the Matter of the Grievance Arbitration Between:
HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO, on Behalf of Phyllis Jolly, Union-Appellee,

and

HAWAII HEALTH SYSTEMS CORPORATION, Employer-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(S.P. NO. 08-1-0105)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

(By: Foley, Presiding Judge, Nakamura and Leonard, JJ.)

Upon review of the record on appeal, it appears that we do not have jurisdiction over Employer-Appellant Hawaii Health Systems Corporation's (Appellant Hawaii Health Systems Corporation) appeal from the Honorable Randal G. B. Valenciano's January 23, 2009 "Order Granting Union's Motion to Compel Arbitration Filed December 30, 2008" (the January 23, 2009 order compelling arbitration) because, under the circumstances of this case, the January 23, 2009 order compelling arbitration is not an appealable order.

Hawaii Revised Statutes (HRS) § 658A-28(a)(1) (Supp. 2008) authorizes an appeal from an order denying a motion to compel arbitration, but HRS § 658A-28 (Supp. 2008) does not authorize an appeal from an order granting a motion to compel arbitration. Therefore, HRS § 658A-28 (Supp. 2008) does not authorize Appellant Hawaii Health Systems Corporation's appeal from the January 23, 2009 order compelling arbitration.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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HRS § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of appeals only from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (emphasis added). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (1993 & Supp. 2008). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) requires that "[e]very judgment shall be set forth on a separate document." HRCPP Rule 58. Based on HRCPP Rule 58, the Supreme Court of Hawai'i holds "[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 HRCPP [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). The circuit court has not yet entered a separate, final judgment that resolves all of the claims in this case. Therefore, absent an exception to the general rule requiring a final judgment for an appeal, Appellant Hawaii Health Systems Corporation's appeal is premature, and we lack appellate jurisdiction.

Although exceptions to the final judgment requirement exist under the Forgay v. Conrad, 47 U.S. 201 (1848), doctrine (the Forgay doctrine) and the collateral order doctrine, the January 23, 2009 order compelling arbitration does not satisfy all of the requirements for appealability under the Forgay

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doctrine or the collateral order doctrine. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine) and Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for appealability under the collateral order doctrine). We note that, under the collateral order doctrine, "[a]n order granting a motion to compel arbitration is final and appealable" under circumstances when such an order "is one of that small category of orders which finally determine claims of right separable from and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." Sher v. Cella, 114 Hawai'i 263, 266-67, 160 P.3d 1250, 1253-54 (App. 2007) (citation and internal quotation marks omitted) (emphasis added). However, in contrast to the collateral order compelling arbitration in Sher v. Cella, the January 23, 2009 order compelling arbitration in the instant case is not separable from, and collateral to, the merits of the claim for relief that Union-Appellee Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Appellee HGEA), sought in its motion to compel arbitration. On the contrary, the January 23, 2009 order compelling arbitration relates directly to Appellee HGEA's claim for relief. Therefore, the January 23, 2009 order compelling arbitration does not satisfy the second requirement for the collateral order doctrine, namely that the order must resolve an important issue completely separate from,

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and collateral to, the merits of the action. Accordingly, under the circumstances of the instant case, the January 23, 2009 order compelling arbitration is not appealable under the collateral order doctrine.

Finally, the circuit court has not certified the January 23, 2009 order compelling arbitration for an interlocutory appeal pursuant to HRS § 641-1(b) (1993 & Supp. 2008). Therefore, the January 23, 2009 order compelling arbitration is not appealable pursuant to HRS § 641-1(b).

Absent an appealable final order or judgment,¹ Appellant Hawaii Health Systems Corporations's appeal is premature and we lack appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

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


Daniel R. Foley
Presiding Judge


Craig H. Nakama
Associate Judge


Associate Judge

¹ If the circuit court has finally determined all of the issues in Appellee HGEA's special proceeding motion to compel arbitration, then it should enter a final judgment.