

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29793

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

THE MEDICAL PROTECTIVE COMPANY, Plaintiff-Appellant,

v.

TRAVELERS INSURANCE COMPANY, Defendant-Appellant,

and

JOHN DOES 1-10; DOE PARTNERSHIPS 1-10;  
DOE CORPORATIONS 1-10; DOE NON-PROFIT CORPORATIONS 1-10;  
and DOE GOVERNMENTAL AGENCIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 06-1-1918.)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Watanabe, Acting Chief Judge, Foley and Nakamura, JJ.)

Upon review of the record in this case, it appears that we lack jurisdiction over the appeal that Defendant-Appellant Travelers Insurance Company (Appellant Travelers Insurance Company) has asserted from the Honorable Bert I. Ayabe's March 31, 2009 interlocutory "Order Granting Motion for Summary Judgment Filed March 28, 2007 and Denying Defendant Travelers Insurance Company's Cross-Motion for Summary Judgment on All Claims Filed April 20, 2007" (the March 31, 2009 interlocutory summary judgment order), because the circuit court has not reduced the March 31, 2009 interlocutory summary judgment order to a separate, appealable final judgment.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of appeals only 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). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on HRCP Rule 58, the Supreme Court of Hawai'i holds that "[a]n

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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). Thus, "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)).

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 Travelers Insurance Company'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 March 31, 2009 interlocutory summary judgment order does not satisfy all of the requirements for appealability under the Forgay 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). Among other things, the March 31, 2009 interlocutory summary judgment order relates directly to the merits of this case, and, thus, is not a collateral order. Furthermore, although the March 31, 2009 interlocutory summary judgment order provides that Appellant Travelers Insurance Company must contribute, at some unspecified time, an unspecified amount of money to a third party for the

third party's defense in a separate litigation matter, this transfer of money does not subject Appellant Travelers Insurance Company to irreparable injury if appellate review has to wait the final outcome of the litigation. See Jalapeno Property Management, LLC v. Dukas, 265 F.3d 506, 512 n.8 (6<sup>th</sup> Cir. 2001) ("Indeed, in most situations, the transfer of money is unlikely to create irreparable harm, for money can usually be returned if improvidently given.").

Finally, the circuit court has not certified the March 31, 2009 interlocutory summary judgment order for an interlocutory appeal pursuant to HRS § 641-1(b) (1993 & Supp. 2008). Therefore, the March 31, 2009 interlocutory summary judgment order is not appealable pursuant to HRS § 641-1(b) (1993 & Supp. 2008).

Absent a separate, appealable, final judgment, Appellant Travelers Insurance Company's appeal is premature and we lack appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that appellate court case number 29793 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 20, 2009.

*Corinne K. A. Watanabe*  
Acting Chief Judge

*Daniel R. Foley*  
Associate Judge

*Cruz H. Nakamura*  
Associate Judge