

*** NOT FOR PUBLICATION ***

NO. 27066

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

REALTY FINANCE, INC., Plaintiff-Appellant/Cross-Appellee

vs.

THOMAS FRANK SCHMIDT and LORINNA JHINCIL SCHMIDT
Defendants-Appellees/Cross-Appellants

and

KALOKO TWO PARTNERSHIP, a Hawai'i Limited Partnership; AMERASIAN
LAND CO., a Nevada Corporation; ASSOCIATION OF APARTMENT OWNERS
OF THE MARCO POLO APARTMENTS, an Unincorporated Condominium
Association; LAWHN & KEEVER, a Law Corporation; JOHN RAPP,
DOUGLAS J. IGE; INVESTORS FINANCE, INC., a Hawai'i Corporation;
STATE OF HAWAI'I BY AND THROUGH THE CHIEF, OAHU COLLECTIONS
BRANCH; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50;
DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; and DOE GOVERNMENTAL
UNITS 1-50, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 97-1235)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that the proceeding on the May 13, 2004 motion for accounting and for attorney's fees and costs and the October 18, 2004 motion for prejudgment interest was a post-judgment proceeding in Civil No. 97-1235. The October 12, 2004 order determined the amount of the plaintiff's overpayment, directed the plaintiff to pay that sum to the defendants and denied attorney's fees and costs to the defendants. The November 24, 2004 order denied prejudgment interest to the defendants. The October 12, 2004 and

T.M. RIMANBO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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November 24, 2004 orders were properly entered in the record and resolved the May 13, 2004 and October 18, 2004 motions. The November 24, 2004 order left nothing further to be accomplished and was the appealable final order in the post-judgment proceeding. See Familian Northwest, Inc. v. Central Pacific Boiler & Piping, Ltd., 68 Haw. 368, 369-70, 714 P.2d 936, 937 (1986) (A post-judgment order is an appealable final order if it finally determines the post-judgment proceeding, leaving nothing further to be accomplished.). Entry of the November 24, 2004 order definitively signaled the end of the post-judgment proceeding and it was unnecessary for the circuit court to enter the December 21, 2004 judgment as a separate document under HRCP 58. See Ditto v. McCurdy, 103 Hawai'i 153, 158-159, 80 P.3d 974, 979-80 (2003) (The separate judgment of rule of HRCP 58 "is limited to circuit court orders disposing of *claims raised in a circuit court complaint*" and "is inapposite in the post-judgment context."). The time for appealing the post-judgment matters commenced upon entry of the November 24, 2004 order, not upon entry of the December 21, 2004 judgment, which was superfluous. The notices of appeal filed on January 18, 2005 and January 19, 2005 were filed more than thirty days after entry of the November 24, 2004 order and are untimely appeals of the post-judgment matters. The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can

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neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986). Thus, we lack jurisdiction over this appeal. Therefore,

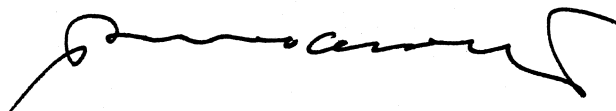
IT IS HEREBY ORDERED that the appeals by Realty Finance, Inc. and by Thomas Schmidt and Lorinna Schmidt are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 9, 2005.



Steve Levinson

Annika C. Nakamura



Kanae E. Deeds, J.