

*** NOT FOR PUBLICATION ***

NO. 27218

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Trust Created Under the Will Dated
November 15, 1917 of EMANUEL S. CUNHA, Deceased

CARMA R. MENG, DONNA PATRICIA MURRAY, and HARVE D. MURRAY,
Petitioners-Appellants/Cross-Appellees

vs.

HAWAIIAN TRUST COMPANY, LTD.,
Respondent-Appellee/Cross-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(TRUST NO. 97-0116)

AMENDED ORDER DISMISSING APPEAL
(By: Nakayama, J., for the court¹)

Upon review of the record, it appears that jurisdiction over Count I was transferred from the circuit court to the appellate court on August 20, 2000 upon the filing of the interlocutory appeal of the order denying summary judgment on Count I. The interlocutory appeal was disposed by opinion filed on April 23, 2004, after which the circuit court entered judgment on Counts II, III and IV on February 7, 2005. The February 7, 2005 judgment purported to enter judgment on Count I, but the circuit court lacked jurisdiction to resolve Count I inasmuch as appellate jurisdiction over Count I did not terminate until the judgment on appeal was filed and the judgment on appeal was not filed until April 21, 2005 after it was submitted by the parties for filing on April 11, 2005. See State v. Ortiz, 91 Hawai'i 181, 197, 981 P.2d 1127, 1143 (1999) ("Appellate jurisdiction in Hawai'i does not terminate until the appellate court files its

¹Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

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judgment on appeal," citing McCarthy v. Jaress, 6 Haw. App. 143, 146, 711 P.2d 1315, 1318 (1985).). The circuit court's lack of jurisdiction cannot be waived by the parties or disregarded by the court. McCarthy, 6 Haw. App. at 146, 711 P.2d at 1318. Consequently, the February 7, 2005 judgment is null and void as to the entry of judgment on Count I and the entry of judgment on Counts II, III and IV is not appealable. See HRS §. 641-1(a); Hawaii Probate Rules 20(f) and 34. Thus, this appeal is premature and we lack jurisdiction. Therefore,

IT IS HEREBY ORDERED that the appeal by appellants Carma Meng, Donna Murray and Harve Murray and the cross-appeal by Bank of Hawaii are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 23, 2005.

FOR THE COURT:

Donna A. Murray

Associate Justice

