NO. 27725

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

WORLD BOTANICAL GARDENS, INCORPORATED,
a Nevada corporation, Plaintiff-Appellee

vs.

WALTER WAGNER and LINDA WAGNER, Defendants-Appellants

and

DAN PERKINS; DAVID ADAMS; JOHN DOES 1-10;
JANE DOES 1-10, and DOE ENTITIES 1-10, Defendants

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 05-1-0210)

ORDER

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

Upon consideration of Plaintiff-Appellee World Botanical Gardens, Inc.'s motion to dismiss the appeal of Defendant-Appellant Walter L. Wagner and Linda M. Wagner for lack of appellate jurisdiction and request for sanctions, the papers in support and opposition, and the records and files herein, it appears that: (1) on January 20, 2006, Appellants filed a notice of appeal from the order granting Plaintiff-Appellee's motion to compel discovery and for sanctions; (2) pursuant to HRS § 641-1, which governs appeals in civil cases, appeals are allowed only from final judgments, orders or decrees of the circuit and district courts unless the court appealed from certifies an interlocutory order for appeal pursuant to HRS § 641-1(b); (3) the order being appealed from by Appellants is not a final

judgment, and the circuit court did not grant Appellants leave to take an interlocutory appeal; (4) an order granting a motion to compel discovery is not appealable pursuant to the collateral order doctrine. See Abrams v. Cades. Schutte, Fleming & Wright, 88 Hawai'i 319, 966 P.2d 631 (1999) (an order granting a motion to compel discovery of a letter claimed to be protected by attorney-client privilege is not appealable in an interlocutory appeal pursuant to the collateral order doctrine), and (5) this court lacks appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that the motion to dismiss appeal is granted, and this appeal is dismissed for lack of appellate jurisdiction.

IT IS FURTHER ORDERED that the request for sanctions is denied.

DATED: Honolulu, Hawai'i, May 1, 2006.

Thomas L.H. Yeh
for plaintiff-appellee
on the motion

Walter L. Wagner
and Linda M. Wagner
defendants-appellants,
pro se, in opposition