

Electronically Filed
Supreme Court
SCWC-13-000040
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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DEUTSCHE BANK NATIONAL TRUST COMPANY,
a National Banking Association, as Trustee of the
IndyMac INDX Mortgage Loan Trust 2006-AR12,
Mortgage Pass-Through Certificates Series 2006-AR12,
Under the Pooling and Servicing Agreement Dated July 1, 2006,
Respondent/Plaintiff-Appellee,

vs.

RONALD PAJELA AMASOL and JEAN LOUISE MORALES AMASOL,
Petitioners/Defendants-Appellants.

SCWC-13-000040

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-13-000040; CIV. NO. 11-1-2129)

APRIL 14, 2015

CONCURRING AND DISSENTING OPINION BY NAKAYAMA, J.,
IN WHICH CIRCUIT JUDGE CHANG, JOINS

I concur with the majority's decision affirming the Intermediate Court of Appeals (ICA) as to the Amended Hawaii Rules of Civil Procedure (HRCP) Rule 60(b) motion.¹ However, for

¹ Because HRCP Rule 60(b) motions are not tolling motions, HRAP Rule 4(a)(3) does not apply, and HRCP Rule 60(b) motions do not become appealable until after the court enters a written order disposing them. Pursuant to the language of the rule itself, HRAP Rule 4(a)(3) applies only to "a timely
(continued...)

the reasons set forth in my dissenting opinion in Ass'n of Condominium Homeowners of Tropics at Waikele v. Sakuma, 131 Hawai'i 254, 256-57, 318 P.3d 94, 96-97 (2013), I respectfully dissent from the majority's conclusion that the ICA erred when it decided that it lacked appellate jurisdiction over the denial of the motion for reconsideration and the underlying April 12, 2012 orders. I disagree with the majority's holding that a post-judgment motion that has been deemed denied does not trigger the 30-day deadline for filing a notice of appeal, and I believe the majority has misread Hawai'i Rules of Appellate Procedure (HRAP) Rules 4(a)(1) and (3).

"[C]ourts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." State v. Kaakimaka, 84 Hawai'i 280, 289-90, 933 P.2d 617, 626-27 (1997) (internal quotation marks and citations omitted). Moreover, "[a] rational, sensible and practicable interpretation is preferred to one which is unreasonable or impracticable." State v. Herrera, 63 Haw. 405, 410, 629 P.2d 626, 630 (1981).

¹(...continued)
motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs."

Here, the majority's interpretation of HRAP Rule 4(a)(3) renders the second clause of the rule superfluous. The first clause of HRAP Rule 4(a)(3)² already makes clear that the time to appeal is affected by post-judgment motions, which extend the deadline to 30 days after an order disposing of the motion. If the same rule is applied to motions that have been deemed denied, the second clause is redundant and unnecessary because the 30-day deadline would be triggered only when there has been an order or judgment, regardless if the motion has been deemed denied or not. HRAP Rule 4(a)(3) is titled "Time To Appeal Affected by Post-Judgment Motions," but the majority's reading of the rule regarding motions that have been deemed denied would have no legal effect on the time to appeal. However, a reading of the rule such that the time to appeal a post-judgment motion is extended (1) to 30 days after an order disposing of the motion, or (2) to 30 days after the circuit court has failed to issue an order within 90 days, would give legal effect to both clauses of the rule.

² HRAP Rule 4(a)(3) can be broken down into two clauses as follows:

[(1)] If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment of order, or for attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; [(2)] provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date of the motion was filed shall constitute a denial of the motion.

Furthermore, the majority's interpretation of HRAP Rule 4(a)(3) leads to the impracticable result that long periods of time could pass before a motion that has been deemed denied becomes appealable, and the finality of cases may be delayed indefinitely. Once a party makes a timely post-judgment motion pursuant to HRAP Rule 4(a)(3), the party may "invoke the potentially infinite deadline created by the supreme court's decision in Sakuma." Rebecca A. Copeland, Deemed Denial and the Deadline to File Notices of Appeal in Civil Cases, 18-AUG Haw. B.J. 13, 13 (2014). A reading of HRAP Rule 4(a)(3) such that the 30-day deadline to appeal is triggered on the 90th day when the motion is deemed denied would avoid this impracticable result.

Finally, under what I believe to be the proper reading of HRAP Rule 4(a)(3), I would agree with the ICA that once the circuit court failed to dispose of the motion for reconsideration within 90 days, the motion was deemed denied on July 16, 2012, and the Amasols had until 30 days later, August 15, 2012, to file an appeal.³ Because they did not file their appeal until January 23, 2013, it was untimely, and the ICA did not gravely err in dismissing the appeal for lack of jurisdiction.

/s/ Paula A. Nakayama

/s/ Gary W.B. Chang



³ Due to scrivener's error, there was some confusion as to when the motion for reconsideration was filed, but as the actual filing date appears to be April 16, 2012, these dates so reflect.