

NO. CAAP-13-0001182

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

CREDIT ASSOCIATES OF MAUI, LTD.,
a Hawaii corporation, Plaintiff-Appellee,^{1/}
v.
WILLIAM K. FREITAS and CINDY K. FREITAS,
Defendants-Appellants
and
PA'A POHAKU BUILDERS, INC., Defendant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
NORTH AND SOUTH KONA DIVISION
(CASE NO. 3RC12-01-112K)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., and Reifurth and Ginoza, JJ.)

This appeal arises out of a debt collection action in the District Court of the Third Circuit ("District Court")^{2/} claiming that \$16,199.79 was owing under a \$75,000 promissory note entered into between Defendants-Appellants William K. Freitas and Cindy K. Freitas ("Defendants") as guarantors and the Native Hawaiian Revolving Loan Fund, Office of Hawaiian Affairs. OHA claimed that the loan was in default and on August 18, 2011, notified Defendants that their account would be assigned to former Plaintiff-Appellee Credit Associates of Maui, Inc. ("CAM") for collection if there was no asset sale, payment, or loan

^{1/} On December 9, 2013, the request by the Office of Hawaiian Affairs ("OHA") to be substituted as the plaintiff-appellee in place of Credit Associates of Maui, Ltd. was approved.

^{2/} The Honorable Joseph P. Florendo, Jr. presided.

payoff by August 31, 2011.

Defendants, appearing pro se, and purportedly also on behalf of Pa'a Pohaku Builders, Inc. ("PPBI") appeal from the December 17, 2012 Order Granting Plaintiff's Motion for Summary Judgment ("December 17, 2012 Order"), the March 1, 2013 Order Denying Defendants' Motion to Reconsider Plaintiff's Summary Judgment on October 30, 2012 ("March 1, 2013 Order"),^{3/} the March 1, 2013 Judgment,^{4/} and the April 1, 2013 Order Denying Defendants' [Rule 60(b)] Motion to Dismiss ("April 1, 2013 Order"), each order and judgment entered by the District Court in favor of CAM. On appeal, Defendants allege that the District Court erred in granting CAM's motion for summary judgment, and abused its discretion in denying both their motion to reconsider the grant of summary judgment and their motion to dismiss.^{5/}

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised, we resolve the Defendants' appeal as follows:^{6/}

We begin by noting that Defendants are not entitled to appellate review of the December 17, 2012 Order, the March 1, 2013 Order, or the March 1, 2013 Judgment. The Hawai'i Rules of Civil Procedure ("HRCPP") Rule 58 separate-judgment-document rule under *Jenkins v. Cades Schutte Fleming & Wright*, 76 Hawai'i 115,

^{3/} Defendants attached an unfiled copy of the March 1, 2013 Order to the notice of appeal. This is not fatal to Defendants' appeal because the notice of appeal gives CAM effective notice of the intent to appeal from the March 1, 2013 Order, the March 1, 2013 Judgment, and the April 1, 2013 Order, each of which have been filed and are part of the record on appeal. See *State v. Graybeard*, 93 Hawai'i 513, 516, 6 P.3d 385, 388 (App. 2000).

^{4/} Defendants' notice of appeal does not designate the December 17, 2012 Order or the March 1, 2013 Judgment, but it appears from the opening brief that Defendants intend to appeal from that order and judgment. As OHA raises no objection, we proceed to address our jurisdiction over the order and judgment.

^{5/} Defendants' points of error have been re-written for clarity and organization.

^{6/} Defendants purport to appeal on behalf of not only themselves, but also PPBI. Defendants, however, are not attorneys, and are not entitled to represent a corporation such as PPBI in a trial court or on this appeal. Therefore, Defendants and PPBI's May 30, 2013 notice of appeal is not effective as to PPBI, and PPBI is not entitled to any appellate review in this case.

869 P.2d 1334 (1994) is not applicable to district court cases. Accordingly, "an order that fully disposes of an action in the district court may be final and appealable . . . as long as the appealed order ends the litigation . . . and leaves nothing further to be adjudicated." *Casumpang v. ILWU, Local 142*, 91 Hawai'i 425, 427, 984 P.2d 1251, 1253 (1999).

The March 1, 2013 Judgment granted judgment against Defendants, and awarded \$16,213.10 in damages, \$78.32 in interest, \$3079.71 in attorney's fees, and \$556.60 in various costs in favor of CAM. As such, the March 1, 2013 Judgment finally determined and ended the litigation. See *Wiesenberg v. University of Hawai'i*, 138 Hawai'i 210, 216-17, 378 P.3d 926, 932-33 (2016) (final amended judgment that included specific amount of fees and costs was the appealable final order). Therefore, the March 1, 2013 Judgment was an appealable final order under Hawaii Revised Statutes ("HRS") section 641-1(a) (Supp. 2011), and triggered the initial thirty-day time period under Hawaii Rules of Appellate Procedure ("HRAP") Rule 4(a)(1) for filing a notice of appeal. Defendants, however, did not timely file their May 30, 2013 notice of appeal within thirty days after the entry of the March 1, 2013 Judgment or any of the preceding orders.

The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. *Bacon v. Karlin*, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986) (quoting *Naki v. Hawaiian Elec. Co.*, 50 Haw. 85, 86, 431 P.2d 943, 944 (1967)); Haw. R. App. P. 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules."); Haw. R. App. P. 26(e) ("The reviewing court for good cause shown may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal."). Therefore, we lack jurisdiction to review the December 17, 2012 Order, the March 1, 2013 Order, or the March 1, 2013 Judgment.

As to the April 1, 2013 Order, however, the Defendants timely requested a thirty-day extension of time from the District Court pursuant to HRAP Rule 4(a)(4)(A). On May 6, 2013, the District Court granted Defendants' request. Accordingly, pursuant to HRS section 641-1(a), this court has jurisdiction over Defendants' appeal as it pertains to the April 1, 2013 Order. Thus, we consider only the third point of error.

In Defendants' third point of error, Defendants claim that the District Court "erred in denying Defendant[s'] Motion to Dismiss case base[d] on a letter from OHA terminating [CAM] in the alleged assignment on December 31, 2012 and hiring another collection agency Revenue Cycle Management LLC[.]" Defendants further assert that they were "unjustly misinformed . . . which took away the right of Defendant[s] to respon[d] to any of [CAM]'s filing[s]." Defendants based their motion on Hawai'i District Court Rules of Civil Procedure ("DCRCP") Rule 60(b). On appeal, they reference no case or statutory law to support their assertions, and their argument is without merit.

This court reviews the District Court's grant or denial of DCRCP Rule 60(b) motions for an abuse of discretion. The law provides in relevant part, that a district court,

may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party[.]

D. Ct. R. Civ. P. 60(b).

Here, the District Court did not abuse its discretion when it concluded that:

Defendants fail to show any good cause to grant their Motion to Dismiss. First, the contract expired over ten (10) months after the complaint was filed, two (2) months after the Court granted Plaintiff's Motion for Summary Judgment, and fourteen (14) days after the entry of the Order Granting Plaintiff's Motion for Summary Judgment. Thus, during all of the proceedings leading up to a judgment in its favor, Plaintiff was legally entitled to prosecute the complaint against Defendants.

Further, there is no evidence or case law to support the Defendants' conclusion that the Plaintiff's failure to disclose the fact that the contract between it and the Office of Hawaiian Affairs expired on December 31, 2012 constitutes

a fraudulent, deceptive, or misleading representation prohibited by HRS § 443B-18.^{2/}

(Footnote added).

Defendants fail to explain why they are entitled to relief under any of the provisions of DCRCP Rule 60(b). Defendants appear to assert that CAM's failure to inform them that CAM's contract with OHA expired on December 31, 2012 constituted fraud. However, Defendants do not "establish that the conduct complained of prevented [them] from fully and fairly presenting [their] case or defense[.]" See *Kawamata Farms, Inc. v. United Agri Products*, 86 Hawai'i 214, 251-52, 948 P.2d 1055, 1092-93 (1997); *Bank of New York Mellon v. Johnson*, No. CAAP-12-0000446, 2013 WL 2650489, *2 (Hawai'i App. June 12, 2013) (Ginoza, J., concurring). Although CAM and OHA ended their contractual relationship on December 31, 2012, there is no evidence in the record that shows that the District Court abused its discretion when it determined that CAM was legally entitled to prosecute the complaint against Defendants because a valid assignment between CAM and OHA existed until after the December 17, 2012 Order was issued. In fact, the District Court's conclusion was supported by the declaration of Jerome Taniyama of OHA who attested that, notwithstanding the expiration of OHA's contract with CAM, OHA had authorized CAM and its attorneys to complete the instant case and to obtain judgment against the Defendants.

Further, the District Court did not abuse its discretion when it concluded that CAM's failure to disclose the

^{2/} Hawaii Revised Statutes section 443B-18 states in relevant part:

No collection agency shall use any fraudulent, deceptive, or misleading representation or means to collect, or attempt to collect, claims or to obtain information concerning a debtor or alleged debtor, including any conduct which is described as follows:

. . . .

- (4) The failure to disclose clearly the name and full business address of the person to whom the claim has been assigned for collection or to whom the claim is owed at the time of making any demand for money[.]

Haw. Rev. Stat. § 443B-18(4) (Supp. 2011).

fact that its contract with OHA expired on December 31, 2012 does not constitute fraud, since at the time the complaint was prosecuted, CAM was properly assigned the right to do so by OHA. Defendants fail to demonstrate how the District Court abused its discretion in denying Defendants' post-judgment motion. Accordingly the District Court did not abuse its discretion in denying Defendants' Rule 60(b) motion.

Therefore, Defendants' appeal from the December 17, 2012 Order Granting Plaintiff's Motion for Summary Judgment, the March 1, 2013 Order Denying Defendants' Motion to Reconsider Plaintiff's Summary Judgment on October 30, 2012, and the March 1, 2013 Judgment are dismissed for lack of appellate jurisdiction; and the April 1, 2013 Order Denying Defendants' Motion to Dismiss is affirmed.

DATED: Honolulu, Hawai'i, May 26, 2017.

On the briefs:

William K. Freitas
and Cindy K. Freitas,
Pro Se Defendants-Appellants.

Chief Judge

Jeffrey Daniel Lau
and Kurt K. Leong
(Ogawa, Lau, Nakamura & Jew)
for Plaintiff-Appellee
Office of Hawaiian Affairs.

Associate Judge

Associate Judge