

NO. CAAP-17-0000655

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

MATHIAS & NIEHAUS, LLC, a Hawai'i limited liability company,  
Plaintiff/Counterclaim Defendant/Appellee,

v.

KALIAE, LLC, a Hawai'i limited liability company,  
Defendant/Counterclaim-Plaintiff/Appellant.

KALIAE, LLC, a Hawai'i limited liability company,  
Third-Party Plaintiff/Appellant,

v.

MATHIAS & NIEHAUS KALIAE, LLC, a Hawai'i limited liability  
company, Third-Party Defendant/Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 15-1-0463 (2))

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION  
AND DISMISSING ALL PENDING MOTIONS AS MOOT

(By: Nakamura, Chief Judge, Fujise and Chan, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over appellate court case number CAAP-17-0000655 in which Defendant/Counterclaim-Plaintiff/Appellant Kaliae, LLC (Appellant Kaliae), filed a September 8, 2017 notice of appeal in an attempt to assert an

appeal from the following four orders that the Honorable Peter Cahill had entered in Civil No. 15-1-0463:

- (1) the June 19, 2017 "Court's Findings of Fact, Conclusions of Law and Order";
- (2) the May 15, 2017 "Order [Defendant/Counterclaimant/Third-Party Plaintiff Kaliae LLC's Motion [Filed 03/15/2017] for Judgment on the Pleadings or Summary Judgment]";
- (3) the April 3, 2017 "Order Denying Defendant/Counterclaimant/Third Party Plaintiff Kaliae LLC's Motion to Strike Plaintiff Mathias & Niehaus Kaliae, LLC's Motion for Summary Judgment"; and
- (4) the November 29, 2016 "Order Denying Defendant/Counterclaimant Kaliae LLC's Motion for Summary Judgment[.]"

On September 22, 2017, the circuit court clerk filed the record on appeal for appellate court case number CAAP-17-0000655, which does not contain a final judgment, as Hawai'i Revised Statutes (HRS) § 641-1(a) (2016) and Rule 58 of the Hawai'i Rules of Civil Procedure require for an appeal under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Consequently, all four orders are interlocutory, and Appellant Kaliae's appeal is premature.

Exceptions to the final judgment requirement exist under the doctrine in Forgay v. Conrad, 47 U.S. 201 (1848) (the Forgay doctrine), the collateral order doctrine, and HRS § 641-1(b) (2016). See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine); Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for the collateral order doctrine); HRS § 641-1(b) (regarding the requirements for an appeal from an interlocutory order). Nevertheless, even assuming, arguendo, that any one of these four interlocutory orders was independently appealable, Rule 4(a)(1) of the Hawai'i Rules of Appellate

Procedure (HRAP) requires that "[w]hen a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order."

Appellant Kaliae did not file his September 8, 2017 notice of appeal within thirty days after entry of any of these four interlocutory orders, as HRAP Rule 4(a)(1) requires for a timely appeal. No party filed any timely motion that could have arguably tolled the time period under HRAP Rule 4(a)(3) for filing a notice of appeal. See HRAP Rule 4(a)(3) (explaining that this provision regarding tolling applies only to certain enumerated motions that are timely filed pursuant to court or agency rules that specify the time by which the motion shall be filed). Therefore, even assuming that any of the four interlocutory orders was appealable as an exception to the final judgment requirement, Appellant Kaliae's appeal would be untimely as to all of the four interlocutory orders.

Based on the foregoing, IT IS HEREBY ORDERED that appellate court case number CAAP-17-0000655 is dismissed for lack of appellate jurisdiction.

IT IS FURTHER HEREBY ORDERED that all pending motions in appellate court case number CAAP-17-0000655 are dismissed as moot.

DATED: Honolulu, Hawai'i, October 13, 2017.

Chief Judge

Associate Judge

Associate Judge