

NO. 30151

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

NORDIC CONSTRUCTION CO., LTD.,
Lienor-Appellee,

v.

MAUI BEACH RESORT LIMITED PARTNERSHIP, a Foreign
Limited Partnership; JOHN DOES 1-1000; JANE DOES 1-
1000; DOE CORPORATIONS 1-1000; DOE PARTNERSHIPS 1-1000;
DOE "NON-PROFIT" CORPORATIONS 1-1000; and DOE
GOVERNMENTAL ENTITIES 1-1000, Respondents-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(M.L. NO. 08-1-0017)

ORDER GRANTING JANUARY 11, 2010 MOTION
TO DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, C.J., Foley and Fujise, JJ.)

Upon review of (1) Lienor-Appellee Nordic Construction, Ltd.'s (Appellee Nordic Construction), January 11, 2010 motion to dismiss appellate court case number 30151 for lack of jurisdiction, (2) Respondent-Appellant Maui Beach Resort Limited Partnership's (Appellant Maui Beach Resort) January 19, 2010 memorandum in opposition to Appellee Nordic Construction's January 11, 2010 motion to dismiss appellate court case number 30151 for lack of jurisdiction, and (3) the record, it appears that we lack jurisdiction over Appellant Maui Beach Resort's appeal from the Honorable Joel E. August's October 26, 2009 "Order Denying Respondent Maui Beach Resort Limited Partnership's Motion to Discharge Surety Bond Filed December 2, 2008" (the October 26, 2009 interlocutory order), because the circuit court has not yet entered a separate judgment, as Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires for an appeal under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2009) authorizes appeals from final judgments, orders, or

decrees. Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c). HRCF Rule 58 requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement under HRCF Rule 58, the Supreme Court of Hawai'i has held that "[a]n appeal may be taken from circuit court orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCF [Rule] 58[.]" Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338. "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted).

Appellant Maui Beach Resort is appealing from the October 26, 2009 interlocutory order, which the circuit court has not yet reduced to a separate judgment, as HRCF Rule 58 requires. Absent an appealable separate judgment, Appellant Maui Beach Resort's appeal is premature, and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that appellate court case number 30151 is dismissed.

DATED: Honolulu, Hawai'i, March 4, 2010.

Chief Judge

Associate Judge

Associate Judge