

**Electronically Filed
Intermediate Court of Appeals
CAAP-11-0000447
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NO. CAAP-11-0000447

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

FIRST HAWAIIAN BANK, a Hawaii Corporation,
Plaintiff-Appellee,
v.
CHADWICK HAWAII DISTRIBUTING, INC., BRUCE CHADWICK,
Defendants-Appellants,
and
JOHN DOES 1-10; JANE DOES 1-10; et al., Defendants

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 11-1-0245)

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION
(By: Foley, Presiding Judge, Fujise and Reifurth, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal that Defendants-Appellants Bruce Chadwick and Chadwick Hawaii Distributing, Inc., (the Chadwick Appellants) have asserted from the Honorable Blaine J. Kobayashi's April 20, 2011 judgment for possession in D.C. Civil No. 11-1-0245, because the Chadwick Appellants' appeal appears to be untimely under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP). The April 20, 2011 judgment for possession is

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an appealable judgment pursuant to HRS § 641-1(a) (1993 & Supp. 2010) and the Forgay doctrine under Forgay v. Conrad, 47 U.S. 201 (1848), and Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995). Nevertheless, the Chadwick Appellants did not file their June 2, 2011 notice of appeal within thirty days after entry of the April 20, 2011 judgment for possession, as HRAP Rule 4(a)(1) required for a timely appeal. Therefore, the Chadwick Appellants' appeal in appellate court case number CAAP-11-0000447 is untimely. 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, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, October 27, 2011.


Presiding Judge


Associate Judge


Associate Judge