

**Electronically Filed
Intermediate Court of Appeals
CAAP-11-0000613
27-JAN-2012
08:30 AM**

NO. CAAP-11-0000613

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

ARYN NAKAOKA, individually and on behalf
of all others similarly situated,
Plaintiff/Appellee/Cross-Appellant,
v.

HILTON HAWAIIAN VILLAGE, LLC,
dba HILTON HAWAIIAN VILLAGE BEACH RESORT AND SPA,
Defendant/Appellant/Cross-Appellee,
and
DOE DEFENDANT 1-50, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-2512-12)

ORDER GRANTING DECEMBER 2, 2011
MOTION TO DISMISSING CROSS-APPEAL
(By: Nakamura, Chief Judge, Foley and Reifurth, JJ.)

Upon review of (1) Defendant/Appellant/Cross-Appellee Hilton Hawaiian Village, LLC, dba Hilton Hawaiian Village Beach Resort and Spa's (Appellant Hilton), December 2, 2011 motion to dismiss Plaintiff/Appellee/Cross-Appellant Aryn Nakaoka's (Cross-Appellant Nakaoka) cross-appeal in appellate court case number

CAAP-11-0000613, (2) Cross-Appellant Nakaoka's December 7, 2011 memorandum in opposition to Appellant Hilton's December 2, 2011 motion to dismiss Cross-Appellant Nakaoka's cross-appeal, and (3) the record, it appears that, while Appellant Hilton's appeal from the Honorable Virginia L. Crandall's June 2, 2011 judgment is timely pursuant to Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP), in contrast, Cross-Appellant Nakaoka's cross-appeal from the June 2, 2011 judgment is untimely under HRAP Rule 4.1(b)(1) and HRAP Rule 26.

The June 2, 2011 judgment resolved all claims against all parties, and, thus, the June 2, 2011 judgment is an appealable final judgment in this case pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2010), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Pursuant to HRAP Rule 4(a)(3), Appellant Hilton extended the initial thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal from the June 2, 2011 judgment when Appellant Hilton filed its June 8, 2011 HRCPP Rule 59 motion for a new trial within ten days after entry of June 2, 2011 judgment, as HRCPP Rule 59 required. Appellant Hilton filed its August 12, 2011 notice of appeal within thirty days after entry of the July 14, 2011 order denying Appellant Hilton's June 8, 2011 HRCPP Rule 59 motion for a new trial, as HRAP Rule 4(a)(3) required. Therefore, Appellant Hilton's appeal from the June 2, 2011 judgment is timely under HRAP Rule 4(a)(3).

In contrast, however, Cross-Appellant Nakaoka's August 31, 2011 notice of cross-appeal is not timely.

The cross-appellant shall file with the clerk of the court appealed from a notice of cross-appeal and pay the filing fee within 14 days after the notice of appeal is served on the cross-appellant, or within the time prescribed for filing the notice of appeal, whichever is later.

HRAP Rule 4.1(b)(1). The latter of the two possible time periods for filing a notice of appeal was the fourteen-day time period after Appellant Hilton's August 12, 2011 service of Hilton's August 12, 2011 notice of appeal. Pursuant to HRAP Rule 26(c), Cross-Appellant Nakaoka was entitled to add two days to the fourteen-day time period under HRAP Rule 4.1(b)(1), for a total time period of sixteen days, because Appellant Hilton served Cross-Appellant Nakaoka with the August 12, 2011 notice of appeal by mail. The sixteenth calendar day after August 12, 2011, was Sunday, August 28, 2011, and, thus, HRAP Rule 26(a) further extended the sixteen-day time period until Monday, August 29, 2011. Cross-Appellant Nakaoka did not file Cross-Appellant Nakaoka's August 31, 2011 notice of cross-appeal by the August 29, 2011 deadline, as HRAP Rule 4.1(b)(1) and HRAP Rule 26 required. Therefore, Cross-Appellant Nakaoka's August 31, 2011 notice of cross-appeal is not timely under HRAP Rule 4.1(b)(1) and HRAP Rule 26. Accordingly,

IT IS HEREBY ORDERED that Appellant Hilton's December 2, 2011 motion to dismiss Cross-Appellant Nakaoka's cross-appeal is granted, and, thus, Cross-Appellant Nakaoka's cross-appeal in Appeal No. CAAP-11-0000613 is dismissed as untimely.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

IT IS FURTHER HEREBY ORDERED that the parties shall proceed with the briefing for Appellant Hilton's appeal in Appeal No. CAAP-11-0000613 pursuant to HRAP Rule 28.

DATED: Honolulu, Hawai'i, January 27, 2012.


Chief Judge


Associate Judge


Associate Judge