

**Electronically Filed
Intermediate Court of Appeals
CAAP-15-000041
25-MAR-2015
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NO. CAAP-15-000041

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

McCULLY ASSOCIATES, Plaintiff-Appellee, v.
TEN GRAND ASSOCIATES, a Hawaii Limited Partnership,
and TEN GRAND INVESTMENTS, INC., a Hawaii
Corporation, Defendants-Appellees, and
JERRY TARUTANI and HUO CHEN, Co-Trustees of the
Gregory Y.Y. Dunn Irrevocable Trust dated
December 17, 1993; Roger Y.H. Dunn Irrevocable
Trust dated December 17, 1993; Laurieann Y.F. Dunn
Irrevocable Trust dated December 17, 1993; and
Michael Y.H. Dunn Irrevocable Trust dated
December 17, 1993, Additional Defendants-Appellees, and
RONALD K. KOTOSHIRODO, RECEIVER, Third-Party Plaintiff-Appellee,
v. ALEXANDER Y. MARN, Third-Party Defendant-Appellant and
ERIC Y. MARN, Third-Party Defendant-Appellee, and
FIRST HAWAIIAN BANK, Garnishee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 05-1-2246-12 RAN)

AMENDED ORDER

GRANTING PLAINTIFF-APPELLEE MCCULLY ASSOCIATES'
FEBRUARY 25, 2015 MOTION TO DISMISS APPELLATE COURT CASE
NUMBER CAAP-15-000041 FOR LACK OF APPELLATE JURISDICTION
AND

DENYING ALL PENDING MOTIONS THEREIN AS MOOT¹

(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of (1) Plaintiff-Appellee McCully Associates' (McCully Associates') February 25, 2015 motion to dismiss appellate court case number CAAP-15-000041 for lack of appellate jurisdiction, and (2) the record, it appears that we lack appellate jurisdiction over Third-Party Defendant/Appellant Alexander Y. Marn's (Marn) appeal because Marn's January 23, 2015 notice of appeal is a legal nullity.

¹ Amended Order filed to reflect correction to case caption.

Marn appeals from two documents:

- (1) McCully Associates' January 7, 2015 notice of the pendency of action; and
- (2) the Honorable Rhonda A. Nishimura's February 11, 2015 post-judgment order granting McCully Associates' January 6, 2015 post-judgment motion for a writ of execution.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2014) authorizes appeals from final judgments, orders, or decrees. In appellate court case number 30114, we affirmed the September 16, 2009 judgment in this case. Where, as here, post-judgment proceedings have taken place, "[a] post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citation omitted).

McCully Associates' January 7, 2015 notice of the pendency of action is not a post-judgment order. A circuit court order granting or denying a motion to expunge a notice of pendency is an appealable order under the holdings in Knauer v. Foote, 101 Hawai'i 81, 85, 63 P.3d 389, 393 (2003), and Canales v. Artiga, 118 Hawai'i 421, 422, 192 P.3d 610, 611 (2008), but McCully Associates' January 7, 2015 notice of the pendency of action is not an appealable post-judgment order.

Marn filed the January 23, 2015 notice of appeal prior to entry of the February 11, 2015 post-judgment order granting McCully Associates' motion for a writ of execution. Rule 4(a)(2) of the Hawai'i Rules of Appellate Procedure (HRAP) authorizes a premature notice of appeal, but only under specific circumstances. "If a notice of appeal is filed after announcement of a decision but before entry of the judgment or order, such notice shall be considered as filed immediately after the time the judgment or order becomes final for the purpose of appeal." HRAP Rule 4(a)(2) (emphasis added). In the instant case, Marn filed his January 23, 2015 notice of appeal before the circuit court's January 29, 2015 announcement that the circuit

court intended to grant McCully Associates motion for a writ of execution. Consequently, Marn's January 23, 2015 notice of appeal in CAAP-15-0000041 is a legal nullity. See, e.g., Grattafiori v. State, 79 Hawai'i 10, 13-14, 897 P.2d 937, 940-41 (1995).

Therefore, we lack jurisdiction to address the merits in CAAP-15-0000041.


Accordingly, IT IS HEREBY ORDERED that McCully Associates' February 25, 2015 motion to dismiss is granted, and CAAP-15-0000041 is dismissed for lack of appellate jurisdiction.

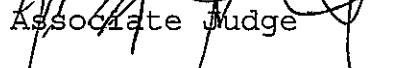
IT IS FURTHER HEREBY ORDERED that all pending motions in CAAP-15-0000041 are denied as moot.

DATED: Honolulu, Hawai'i, March 25, 2015.


Daniel R. Foley

Presiding Judge


Associate Judge


Associate Judge