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Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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WALTER Y.C. CHANG, Individually and as Trustee under that certain unrecorded Trust Agreement of Walter Yin Choy Chang dated August 3, 1982, and SYLVIA S.W. CHANG, Individually and as Trustee under that certain unrecorded Trust Agreement of Sylvia Seu Way Chang, dated August 3, 1982,
Respondents/Plaintiffs-Appellees,

vs.

EADEAN MICHIE BUFFINGTON, Petitioner/Defendant-Appellant,

and

STEVEN MONTGOMERY CROUCH, NAOMI HOKULANI CROUCH,
HOKULANI SQUARE, INC., INVESTORS FUNDING CORPORATION,
Respondents/Defendants-Appellees,

and

INTEGRITY ESCROW AND TITLE COMPANY, INC., fka First Financial Title and Escrow Agency of Hawaii, Inc., nka Hawaii Escrow & Title, Inc., Petitioner/Third-Party Defendant-Appellant.

NO. 30259

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CIV. NO. 05-1-1708)

JULY 13, 2011

DISSENTING OPINION BY NAKAYAMA, J.,
IN WHICH CIRCUIT JUDGE TRADER, JOINS

I respectfully dissent from the holding that the Intermediate Court of Appeals (ICA) had appellate jurisdiction to

review the U.S. Bankruptcy Court's good faith settlement determination.

i.

"The fundamental starting point for statutory interpretation is the language of the statute itself." Estate of Roxas v. Marcos, 121 Hawai'i 59, 66, 214 P.3d 598, 606 (2009).

"Where the statutory language is plain and unambiguous, [the appellate court's] sole duty is to give effect to its plain and obvious meaning." Id.

HRS § 602-57(1) (Supp. 2010) confers the ICA with jurisdiction "to hear and determine appeals from any court or agency when appeals are allowed by law." Various provisions of the Hawai'i Revised Statutes allow appeals to the ICA from judgments, decrees, orders, or decisions of Hawai'i circuit courts, district courts, tax appeal court, land court, and administrative agencies. No provision of the Hawai'i Revised Statutes and no federal statute allows an appeal to the ICA from a judgment, decree, order, or decision of a federal court. Thus, "any court," as used in HRS § 602-57(1), plainly and obviously means a Hawai'i state court and does not plainly and obviously include a federal court.

The majority concludes that HRS § 602-57(1) conferred the ICA with jurisdiction to review the U.S. Bankruptcy Court's

good faith settlement order because “[a]t the time the notices of appeal were filed, this case had been remanded to the circuit court of the first circuit, and the notices of appeal were filed in that court” and “[t]hus, the requirement that the appeal be from ‘any court’ was satisfied since the circuit court is clearly a ‘court’ within the meaning of [HRS § 602-57(1)].” Majority opinion at 17. However, “appeals from any court,” as used in HRS § 602-57(1), necessarily assumes that the appeal is from an order or judgment entered by the court from which the appeal is taken. Here, the good faith settlement order was entered by the U.S. Bankruptcy Court, not the circuit court. The order effectuated the good faith settlement determination made by the U.S. Bankruptcy Court and was an order of the U.S. Bankruptcy Court, not the circuit court. The majority concludes that “regardless of the fact that [the order] was originally entered by the bankruptcy court, it was an order of the circuit court at the time the notices of appeal were filed.” Majority opinion at 18. However, the fact the U.S. Bankruptcy Court’s order was made part of the circuit court’s record upon remand did not convert the order to an order of the circuit court. Petitioners’ appeal of the December 2, 2009 good faith settlement order entered by the U.S. Bankruptcy Court is not an appeal from the circuit court within the jurisdiction conferred upon the ICA by HRS § 602-

57(1).

ii.

HRS § 663-15.5(e) (Supp. 2010) provides that “[a] party aggrieved by a court determination on the issue of good faith may appeal the determination.”

The provision is normally invoked in circuit court actions. In such cases, “a court determination on the issue of good faith,” as used in HRS § 663-15.5(e), is the determination by a circuit court, which determination “may [be] appeal[ed].” The determination by a circuit court is appealable to the ICA pursuant to HRS § 641-1(a) (Supp. 2010).¹

The good faith settlement provision of HRS § 663-15.5 is also invoked in Hawai‘i federal court actions, as petitioners note,² and was invoked by the Changs in the adversary proceeding and applied by the U.S. Bankruptcy Court in the instant case. In such cases, “a court determination on the issue of good faith,” as used in HRS § 663-15.5(e), is the determination by the U.S. District Court or the U.S. Bankruptcy Court, which determination “may [be] appeal[ed].” The determination by the U.S. District

¹ HRS § 641-1(a) (“Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court to the intermediate appellate court, subject to chapter 602.”).

² See e.g. White v. Sabatino, 526 F.Supp.2d 1135 (D. Hawaii 2007); Whirlpool Corporation v. CIT Group/Business Credit, Inc., 293 F.Supp.2d 1144 (D. Hawaii 2003).

Court is appealable, pursuant to 28 U.S.C. § 1291 (2006), to the Ninth Circuit Court of Appeals. The determination by the U.S. Bankruptcy Court is appealable, pursuant to 28 U.S.C. § 158 (2005), to the U.S. District Court, a bankruptcy appellate panel, or the Ninth Circuit Court of Appeals. Petitioners appealed the December 2, 2009 good faith settlement order to the U.S. District Court pursuant to 28 U.S.C. § 158. The remand of the adversary proceeding divested the U.S. Bankruptcy Court of jurisdiction over the adversary proceeding, but did not divest the U.S. District Court of jurisdiction over petitioners' appeals of the December 2, 2009 good faith settlement order.³

³ The majority concludes that the remand of the adversary proceeding divested the U.S. Bankruptcy Court and the U.S. District Court of jurisdiction over the federal court proceedings, citing In re C & M Props., L.L.C., 563 F.3d 1156, 1161-62 (10th Cir. 2009) and Mathewson v. Aloha Airlines, 82 Hawai'i 57, 70-74, 919 P.2d 969, 982-86 (1996). Majority opinion at 23, n.17. In C & M Props., a federal district court approved a bankruptcy court's recommendation to remand a malpractice claim removed to bankruptcy court and "[o]nce the district court remanded [the] malpractice claim to state court, it and the bankruptcy court lost authority to adjudicate the claim's merits." 563 F.3d at 1161-62. In Mathewson, the U.S. District remanded a wrongful termination action removed to the U.S. District Court and the mailing of a certified copy of the remand order to the circuit court divested the U.S. District of jurisdiction over the wrongful termination action. 82 Hawai'i at 73, 919 P.2d at 985. Neither C & M Props. nor Mathewson involved a second federal proceeding separate and distinct from the federal proceeding remanded to state court. Neither case supports the majority's conclusion that the U.S. Bankruptcy Court's remand of the adversary proceeding divested the U.S. District Court of jurisdiction over petitioners' appeals of the December 2, 2009 good faith settlement order.

Even if the remand of the adversary proceeding divested the U.S. District Court of jurisdiction over petitioners' appeals, petitioners' inability to obtain appellate review from the federal court does not permit petitioners to obtain appellate review from the ICA inasmuch as "the right of appeal [to the ICA] is purely statutory and exists only when given by some Constitutional or statutory provision." Chambers v. Leavey, 60 Haw. 52, 57, 587 P.2d 807, 810 (1978).

The majority acknowledges that petitioners' appeal of the good faith settlement order to the U.S. District Court was authorized by HRS § 663-15.5(e) and 28 U.S.C. § 158. Majority opinion at 7, n.7; 18, n.14. The majority concludes that HRS § 663-15.5(e) also authorized the appeal of the good faith settlement order to the ICA because the order "was an order of the circuit court at the time the notices of appeal were filed." Majority opinion at 18, 21. However, as discussed above, the December 2, 2009 good faith settlement order is an order of the U.S. Bankruptcy Court, not the circuit court. Such order, according to 28 U.S.C. § 158, is appealable only to the U.S. District Court, a bankruptcy appellate panel, or the Ninth Circuit Court of Appeals.

iii.

The majority concludes that the ICA had jurisdiction to review the U.S. Bankruptcy Court's good faith settlement determination because cases from the United States Courts of Appeal for the Third and Tenth Circuits and the Arizona Court of Appeals "illustrate that state courts have jurisdiction to review pre-remand orders entered by federal courts in cases that are remanded back to a state court." Majority opinion at 20. Those cases allowed state court review of a federal court's decision made prior to remand where the federal court's decision was a non-final interlocutory decision that was not appealable in the

federal system. See Powers v. Southland Corp., 4 F.3d 223, 234 (3rd. Cir. 1993) ("Because [] the order allowing the relation back amendment in this case was interlocutory in nature, there was no opportunity for the decision to have been reviewed in the federal courts, and, as such, the decision has no preclusive effect on the state courts."); In re C & M Props., L.L.C., 563 F.3d 1156, 1166 (10th Cir. 2009) ("[The bankruptcy court's] denial of summary judgment [was] a quintessential interlocutory order [unreviewable in the federal courts] with no preclusive effect on the parties in any future proceedings [in state court]."); Southern Leasing Corp. v. Tufts, 804 P.2d 1321, 1323 (Ariz. Ct. App. 1991) ("Since Tufts could not have the federal district court's [decision on service of process] reviewed in the federal system, there is no issue preclusion and he is free to litigate the issue in state court.").

The majority finds the above authorities consistent with Professor Moore's view that "underlying orders made by the federal court remain in effect in the remanded state court action until the state court takes action to modify or set them aside." Majority opinion at 18. This premise applies when the federal court's order is an interlocutory order, not a final order. 16 James Wm. Moore et al., Moore's Federal Practice § 107 App. 113[2][b], at 200-01 (3d. --ed. 2010) ("Insofar as they are

interlocutory and are included within the action or the part of the action remanded, [orders entered by the district court prior to a remand] would ordinarily remain in effect, following the remand, until the state court took appropriate action to modify or set them aside.").

The U.S. Bankruptcy Court's December 2, 2009 good faith settlement order -- though interlocutory in the sense that the underlying litigation in circuit court is not complete -- was a final order inasmuch as it barred the defendants from any further claims against the settling defendant, Investor's Funding, and resulted in the dismissal of all cross-claims against Investor's Funding.⁴ The December 2, 2009 order was appealable to, and was appealed to, the U.S. District Court, pursuant to the good faith settlement statute, HRS § 663-15.5(e) and 28 U.S.C. § 158. The order being appealable in the federal system and having been appealed in the federal system, the order is not reviewable by the circuit court or the ICA under the authorities cited by the

⁴ HRS § 663-15.5

. . . .

(d) A determination by the court that a settlement was made in good faith shall:

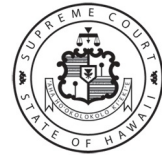
- (1) Bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor, except those based on a written indemnity agreement; and
- (2) Result in a dismissal of all cross-claims filed against the settling joint tortfeasor or co-obligor, except those based on a written indemnity agreement.

majority.⁵

I therefore would hold that the writ of certiorari was improvidently granted because the Intermediate Court of Appeals did not err in dismissing the appeal for want of appellate jurisdiction.

/s/ Paula A. Nakayama

/s/ Rom A. Trader



⁵ In a situation where a Hawai'i federal district court, prior to remand of a circuit court action, enters an interlocutory order that is not reviewable in the federal system, the interlocutory order, after remand to the circuit court, is reviewable by the ICA under the authorities cited in [the draft opinion]. However, review of the federal court's order cannot be effected by immediate appeal to the ICA given that the order is interlocutory, not final. Instead, review of the federal court's order can be effected at the conclusion of the circuit court action by appealing from the circuit court's final judgment. See Ueoka v. Szymanski, 107 Hawai'i 386, 396, 114 P.3d 892, 902 (2005) (An appeal from a final judgment "brings up for review all interlocutory orders not appealable as of right which deal with issues in the case."). Such appeal is an appeal from the circuit court's final judgment, not an appeal from the federal court's order. Interpreting "any court," as used HRS § 602-57(1), to mean a Hawai'i state court and not a Hawai'i state court or a federal court allows the ICA to review -- on appeal from a circuit court final judgment -- an interlocutory order of a federal court entered prior to remand of the circuit court action.