SCWC-12-0000711

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

TITLE GUARANTY ESCROW SERVICES, INC.,
a Hawaiʻi corporation, Respondent/Plaintiff-Appellee,

vs.

MICHAEL J. SZYMANSKI,
Petitioner/Defendant, Cross-Claimant, Third-Party Plaintiff,
Third-Party Counterclaim Defendant-Appellant,

and

WAILEA RESORT COMPANY, LTD., a Hawaiʻi corporation,
Respondent/Defendant, Cross-Claim Defendant-Appellee,

and

ADOA-SHINWA DEVELOPMENT CORPORATION, a Hawaiʻi corporation, and
SHINWA GOLF HAWAIʻI CO., LTD., a Hawaiʻi corporation,
Third-Party Counterclaimants-Appellees.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0000711; CIV. NO. 02-1-0352(2))

JANUARY 24, 2014

DISSENTING OPINION BY NAKAYAMA, J.

For the reasons set forth in my dissenting opinion in Ass'n of Condo. Homeowners of Tropics at Waikele v. Sakuma, SCWC-

12-0000870, 2013 WL 6633990 (Dec. 17, 2013), I respectfully dissent from the majority's conclusion that the deemed denial of a post-judgment motion does not trigger the thirty-day deadline for filing a notice of appeal pursuant to Hawaiʻi Rules of Appellate Procedure (HRAP) Rules 4(a)(1) and 4(a)(3). Under the majority's reading of HRAP Rule 4(a)(3), a deemed denial has no legal effect and it therefore renders the second clause of the rule superfluous. In my view, the deemed denial of a timely post-judgment motion constitutes an order disposing of the motion and triggers HRAP Rule 4(a)(1)'s thirty-day deadline for the filing of a notice of appeal. In this case, because Petitioner/Defendant, Michael J. Szymanski did not timely file his notice of appeal within thirty days of the HRAP Rule 4(a)(3) deemed denial of his motion for reconsideration, the ICA did not have jurisdiction over his appeal. Accordingly, I respectfully dissent.

/s/ Paula A. Nakayama