

NO. 30599

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

AMERICAN EXPRESS CENTURION BANK, Plaintiff-Appellee, v.
SOLOMON NALUA'I, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 1RC09-1-1148)

ORDER GRANTING OCTOBER 26, 2010 HRAP RULE 40
MOTION TO RECONSIDER OCTOBER 19, 2010
ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION
(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) the October 19, 2010 order dismissing appeal for lack of jurisdiction, (2) Defendant-Appellant Solomon D. Nalua'i's (Appellant Nalua'i) October 26, 2010 motion to reconsider the October 19, 2010 order dismissing appeal for lack of jurisdiction pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record, it appears that Appellant Nalua'i's October 26, 2010 HRAP Rule 40 motion for reconsideration has merit.

The only notice of appeal in the record on appeal for appellate court case number 30599 and Civil No. 1RC09-1-1148 is Appellant Nalua'i's June 22, 2010 notice of appeal, which Appellant Nalua'i did not file within thirty days after entry of the May 20, 2010 judgment, as HRAP Rule 4(a)(1) required.

However, Appellant Nalua'i has drawn to the attention

of this court an uncertified photocopy of an October 19, 2009 notice of appeal that Appellant Nalua'i apparently filed in Civil No. 1RC09-1-1148 in response to the district court's September 16, 2009 announcement that the district court intended to summarily adjudicate this case in favor of Plaintiff-Appellee American Express Centurion Bank (Appellee American Express Centurion Bank) and against Appellant Nalua'i. The district court appears to have file-stamped Appellant Nalua'i's October 19, 2009 notice of appeal with the date October 19, 2009. It is not clear why the District Court Clerk of the District Court of the First Circuit, Ko'olaupoko Division, did not include Appellant Nalua'i's October 19, 2009 notice of appeal in the record on appeal for appellate court case number 30599 and Civil No. 1RC09-1-1148.

"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). It appears that Appellant Nalua'i filed his October 19, 2009 notice of appeal after the district court's September 16, 2009 announcement of the district court's summary adjudication, but before entry of the May 20, 2010 judgment, as HRAP Rule 4(a)(2) requires. Under such circumstances, Appellant Nalua'i's October 19, 2009 notice of appeal is timely as to the May 20, 2010 judgment pursuant to HRAP Rule 4(a)(2). Therefore,

IT IS HEREBY ORDERED that Appellant Nalua'i's October 26, 2010 HRAP Rule 40 motion for reconsideration is granted, and the October 19, 2010 order dismissing appeal for lack of jurisdiction is vacated. This appeal shall proceed, and Appellant Nalua'i shall file an opening brief within seventy days after the date of this order, unless Appellant Nalua'i obtains an extension of time pursuant to HRAP Rule 29. The parties shall file all subsequent appellate briefs in accordance with HRAP Rule 28.

IT IS FURTHER HEREBY ORDERED:

The District Court Clerk of the District Court of the First Circuit, Ko'olaupoko Division, shall, within fifteen days

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after the date of this order, supplement the record on appeal for appellate court case number 30599 and Civil No. 1RC09-1-1148 with the October 19, 2009 notice of appeal that Appellant Nalua'i appears to have filed.

DATED: Honolulu, Hawai'i, November 4, 2010.

Presiding Judge

Associate Judge

Associate Judge