

NO. CAAP-13-0000040

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

DEUTSCHE BANK NATIONAL TRUST COMPANY,
A National Banking Association, As Trustee of the
IndyMac INDX Mortgage Loan Trust 2006-AR12, Mortgage
Pass-Through Certificates Series 2006-AR12, Under the Pooling
and Servicing Agreement Dated July 1, 2006, Plaintiff-Appellee
v.

RONALD PAJELA AMASOL and JEAN LOUISE MORALES AMASOL,
Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 11-1-2129)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, C.J., Leonard and Reifurth, JJ.)

Upon review of the record on appeal, it appears this court lacks appellate jurisdiction because Defendants-Appellants Ronald P. Amasol and Louise Jean Morales Amasol (Appellants) Notice of Appeal was untimely filed. Appellants appeal from the (1) Order Granting Plaintiff's Motion for Summary Judgment and Writ of Possession, filed on April 12, 2012, (2) Judgment for Possession, filed on April 12, 2012, (3) Writ of Possession, filed on April 12, 2012, (4) Order Denying Defendant's Motion to Reconsider Ruling, filed on December 31, 2012, and (5) denial of Amended Rule 60(b) Motion for Relief from Judgment.

An Order Granting Plaintiff's Motion for Summary Judgment and Writ of Possession was filed on April 12, 2012. A Judgment for Possession and Writ of Possession was also filed on April 12, 2013. On April 16, 2012 Appellants filed a Motion to Reconsider Ruling. The Motion to Reconsider Ruling was timely under HRCF Rule 59(e). On July 13, 2012, Appellants filed a Amended Rule 60(b) Motion for Relief From Judgment.¹

If a party files a timely motion to reconsider, the time to file a notice of appeal is extended to 30 days after entry of an order disposing of the motion, provided however, that the failure to dispose of any motion by order within 90 days after the date of the motion was filed shall constitute a denial of the motion. HRAP Rule 4(a)(3). The circuit court had until July 17, 2012 to dispose of the Motion to Reconsider Ruling or it was deemed denied 90 days after filing. The circuit court did not enter an order disposing of the Motion to Reconsider Ruling until December 31, 2012. Thus, the Motion to Reconsider Ruling was deemed denied on July 17, 2012. Therefore, Appellants had until August 18, 2012 to file a Notice of Appeal. Appellants did not file a Notice of Appeal until January 23, 2013.

The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Consequently, the intermediate court of appeals lacks jurisdiction over this case.

Although Appellants appeal the denial of their Amended Rule 60(b) Motion for Relief from Judgment, the record on appeal does not reflect that the circuit court entered a written order denying the motion. Thus, Appellants may not appeal from the Amended Rule 60(b) Motion for Relief from Judgment.

¹ There is nothing in the record to suggest that a Rule 60(b) Motion for Relief From Judgment was filed by Appellants.

IT HERE HEREBY ORDERED that the appeal from the (1) Order Granting Plaintiff's Motion for Summary Judgment and Writ of Possession, filed on April 12, 2012, (2) Judgment for Possession, filed on April 12, 2012, (3) Writ of Possession, filed on April 12, 2012, and (4) Order Denying Defendant's Motion to Reconsider Ruling, filed on December 31, 2012, is dismissed for lack of appellate jurisdiction because the appeal was untimely. Appellants' appeal from the Amended Rule 60(b) Motion for Relief from Judgment is dismissed without prejudice for lack of appellate jurisdiction because the circuit court has not entered a written order denying the motion.

DATED: Honolulu, Hawai'i, November 20, 2013.

Chief Judge

Associate Judge

Associate Judge