

SCWC-16-0000609

IN THE SUPREME COURT OF THE STATE OF HAWAII

YOUNG ACOPAN,
Respondent/Plaintiff/Counterclaim Defendant-Appellee,

Vs.

ELEGANT CONCEPTS, LLC, dba PACIFIC CRAFTWORKS,
Petitioner/Defendant/Counterclaim Plaintiff-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000609; CIV. NO. 1CC131000247)

DISSENT OF McKENNA, J., IN WHICH WILSON, J., JOINS

I respectfully disagree with the majority's rejection of the certiorari application filed by Elegant Concepts, LLC, dba Pacific Craftworks ("Pacific").

In this dispute arising out of a custom woodwork order, the circuit court entered its final judgment on February 22, 2016. On February 26, 2016, Pacific filed a motion entitled "Ex Parte Motion to Amend and Supplement Findings of Fact and Conclusions

of Law and/or Motion for New Trial or to Alter or Amend Judgment" ("2/26/16 motion"). Although the 2/26/16 motion included the term "ex parte," it actually was not filed as an ex parte motion but as a non-hearing motion. The cover page of the 2/26/16 motion indicated that a "Notice of Non-Hearing Motion" was attached, and the attached notice stated that any opposition was due within 10 days. Young Acopan ("Acopan") timely filed a memorandum in opposition pursuant to this notice on March 7, 2016.

The 2/26/16 motion was properly filed as a non-hearing motion as it was a motion to reconsider or amend a judgment by changing the findings upon which the final judgment was based. See Rules of the Circuit Courts of the State of Hawai'i ("RCCH") Rule 7.2(b) and Exhibit B attached to the RCCH.

On March 14, 2016, however, the circuit court filed a document entitled "Order Denying Ex Parte Motion To Amend Findings of Fact and Conclusions of Law" ("3/14/16 order"). The circuit court did not rule on the substance of the non-hearing motion --rather it merely stated "Defendant['s] Motion shall be set as a hearing motion and presented to the court for a hearing date in accordance with Circuit Court Rule 7.2(g)."

Although Pacific had properly filed the 2/26/16 motion as a non-hearing motion, the circuit court had authority to convert it into a hearing motion pursuant to RCCH Rule 7.2(c), which

provides: "Non-hearing motions shall be decided on written submissions, unless otherwise ordered by the court. The court in its discretion may set any non-hearing motion for hearing sua sponte" It was not necessary to file an order denying the non-hearing motion to do so.

Pursuant to the circuit court's 3/14/16 order, Pacific refiled its motion the next day, March 15, 2016, as a hearing motion. The motion was given a hearing date of June 1, 2016. An order denying the motion was not filed until August 15, 2016. Pacific filed a notice of appeal on September 2, 2016.

Hawai'i Rules of Appellate Procedure (HRAP") Rule 4(a)(3) provides that a motion to amend findings or make additional findings, which the 2/26/16 motion was, extends the notice of appeal deadline until "30 days after entry of an order disposing of a motion." Pursuant to AOAO Tropics at Waikele v. Sakuma, 131 Hawaii 254, 318 P.3d 94 (2013), as clarified by Deutsche Bank Nat. Trust Co. v Amasol, 135 Hawaii 357, 351 P.3d 584 (2015), a HRAP Rule 4(a)(3) ninety-day "deemed denial" was not triggered until the filing of an order disposing of the motion.

On appeal, the ICA majority concluded that the circuit court's 3/14/16 order "disposed of" Pacific's 2/26/16 motion and that Pacific's notice of appeal as to any appellate issues arising out of the February 22, 2016 final judgment should therefore have been filed by April 13, 2016. Judge Leonard

dissented, stating, "[a]n order finally disposing of the motion was not entered until the Circuit Court's August 15, 2016 Post-Hearing Order Denying Relief."

I agree with Judge Leonard. The circuit court's 3/14/16 order requiring that the motion be refiled as a hearing motion was not a "disposition" for purposes of HRAP Rule 4(a)(3). The circuit court had discretion to reschedule the non-hearing motion as a hearing motion, which it did in its 3/14/16 order. The 3/14/16 order did not, however, actually "dispose" of the 2/26/16 motion, as it merely required that it be scheduled as a hearing motion. Therefore, the September 2, 2016 notice of appeal was timely filed from the August 15, 2016 order.

In the alternative, if the circuit court's 3/14/16 order was a "disposition" for purposes of HRAP Rule 4(a)(3), under the circumstances of this case, I would then apply the "unique circumstances" doctrine of Cabral v. State, 127 Hawai'i 175, 277 P.3d 269 (2012) to allow an appeal from the final judgment.

For these reasons, I respectfully dissent from the majority's order rejecting certiorari.

DATED: Honolulu, Hawai'i, November 27, 2020.

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

