

NO. CAAP-18-0000863

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

KOYO CORP., Claimant-Respondent-Counterclaimant-Appellee, v.
YASUHIRO HIRAYAMA, Respondent-Counterclaimant-Claimant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(SP NO. 18-1-0015K)

ORDER APPROVING STIPULATION FOR DISMISSAL
(By: Ginoza, Chief Judge, Leonard and McCullen, JJ.)

Upon consideration of the Stipulation for Dismissal of Appeal of Respondent-Counterclaimant-Claimant-Appellant Yasuhiro Hirayama (Stipulation), filed July 25, 2022, by Respondent-Counterclaimant-Claimant-Appellant Yasuhiro Hirayama (Hirayama), the papers in support, and the record, it appears that:

(1) On November 1, 2018, Hirayama filed a notice of appeal from the Circuit Court of the Third Circuit's (circuit court) October 12, 2018 Final Judgment Regarding Arbitration Award;

(2) The appeal has been docketed and the parties completed briefing on June 6, 2019;

(3) On August 12, 2019, Hirayama filed a Supplemental Notice of Appeal, purportedly from an order entered by the circuit court on July 15, 2019;

(4) On August 20, 2019, Hirayama filed another Supplemental Notice of Appeal, purportedly from the circuit

court's August 6, 2019 Final Judgment Confirming Arbitrator's Supplemental Findings of Fact, Conclusions of Law, Order and Award Regarding Berkeley Plastics Scheme;

(5) Under Hawai'i Rules of Appellate Procedure Rule 42(b), the parties stipulate to dismiss with prejudice "this appeal including the 20 August 2019 supplemental appeal," bear their own attorneys' fees and costs, and that "all claims for attorney fees and costs not otherwise granted in the dismissal are waived." The stipulation is dated and signed by counsel for all parties appearing in the appeal;

(6) Hirayama's so-called "Supplemental Notices of Appeal" are invalid in this appeal. The August 12, 2019 Supplemental Notice of Appeal purports to appeal from the circuit court's July 15, 2019 order and the August 20, 2019 Supplemental Notice of Appeal purports to appeal from the circuit court's August 6, 2019 final judgment, both entered after the parties completed briefing in this appeal. "'Since an amended notice of appeal relates back to the notice of appeal it purports to amend, it does not appeal an order, judgment, or decree entered subsequent to the notice of appeal it purports to amend.'" Enos v. Pac. Transfer & Warehouse, Inc., 80 Hawai'i 345, 355-56, 910 P.2d 116, 126-27 (1996) (quoting Chan v. Chan, 7 Haw. App. 122, 129, 749 P.2d 807, 811 (1987)). Thus, Hirayama failed to properly appeal from the July 15, 2019 order and the August 6, 2019 final judgment in this appellate case.

Therefore, IT IS HEREBY ORDERED that the Stipulation is approved and the appeal is dismissed with prejudice as to the appeal from the circuit court's October 12, 2018 Final Judgment Regarding Arbitration Award. As the purported appeals from the circuit court's July 15, 2019 order and the August 6, 2019 Final Judgment Confirming Arbitrator's Supplemental Findings of Fact, Conclusions of Law, Order and Award Regarding Berkeley Plastics Scheme are invalid, there are no remaining issues in this appeal.

The parties shall bear their own attorneys' fees and costs on appeal.

DATED: Honolulu, Hawai'i, August 5, 2022.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge