NO. CAAP-22-0000397

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

ESTATE OF DAVID S. DELUZ, SR.,
by and through Personal Representative, JAN K. DELUZ,
Plaintiff-Appellee, v. HAWAII TIRE CO., LLC,
a Hawaii limited liability company, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
NORTH AND SOUTH HILO DIVISION
(CIVIL NO. 3DRC-22-0000040)

ORDER GRANTING MOTION TO DISMISS APPEAL
(By: Leonard, Presiding Judge, McCullen and Chan, JJ.)

Upon consideration of Plaintiff-Appellee Estate of David Deluz, Sr., by and through Personal Representative Jan K. Deluz's (**Deluz**) July 6, 2022 Motion to Dismiss Appeal, the papers in support and in opposition, and the record, it appears that:

(1) Deluz seeks dismissal of the appeal filed by Defendant-Appellant Hawaii Tire Co., LLC (**Hawaii Tire**) from the May 18, 2022 Order Denying Defendant Hawaii Tire Co., LLC's Renewed Motion to Compel Arbitration (**May 18, 2022 Denial Order**), entered in the District Court of the Third Circuit, North and South Hilo Division, for lack of jurisdiction;

(2) Deluz contends that the May 18, 2022 Denial Order is not appealable under Hawaii Revised Statutes (**HRS**) § 658A-28(a) and the collateral order doctrine as an order denying a motion to compel arbitration;

(3) On January 26, 2022, Hawaii Tire moved to dismiss the underlying complaint (**Complaint**) and to submit "all claims" in the Complaint to arbitration (**Motion to Compel Arbitration**).

The Complaint appears to raise two claims: (1) summary possession, and (2) damages related to unpaid general excise taxes (**GET Issue**);

(4) On February 8, 2022, the district court ordered arbitration of the GET Issue and denied the Motion to Compel Arbitration as to "all other issues that [Hawaii Tire] seeks to compel arbitration" (**February 8, 2022 Order**) and, thus, this order was appealable as an order denying a motion to compel arbitration of all other issues raised by the Complaint;

(5) Hawaii Tire's April 12, 2022 Renewed Motion to Compel Arbitration (**April 12, 2022 Renewed Motion**) did not raise a new issue of arbitrability; though labeled as a "renewed" motion for arbitration, it was, in substance, a motion for reconsideration, see Khaleghi v. Indymac Ventures, LLC, No. CAAP-15-0000486, 2016 WL 4268709, at *4 (App. Aug. 11, 2016) (Mem.) (noting that "it is the substance of a motion that should control rather than the title of the motion");

(6) Therefore, the May 18, 2022 Denial Order from which Hawaii Tire appeals was not an order denying a motion to compel arbitration as Hawaii Tire contends, but rather, an order denying an Hawaiʻi Rules of Civil Procedure (**HRCP**) Rule 59 motion for reconsideration.[1]

(7) Because Hawaii Tire did not file the notice of appeal within 30 days of the February 8, 2022 Order, the appeal was untimely absent an exception, Hawaiʻi Rules of Appellate Procedure (**HRAP**) Rule 4(a)(1);

(8) Although a timely post-judgment motion for reconsideration tolls the time to appeal, the motion for reconsideration must be filed within 10 days after entry of the order or judgment to be reconsidered, HRAP Rule 4(a)(3); HRCP Rule 59(e).

[1] Though not essential to our analysis here, it appears that the District Court denied the Renewed Motion on the basis that Hawaii Tire filed it while litigation was stayed. Though we decline to comment on the propriety of this basis for denial, we nonetheless recognize that the Renewed Motion was untimely under HRCP Rule 59(e) as a motion for reconsideration, and it would have otherwise been denied on that basis.

(9) Because Hawaii Tire filed its April 12, 2022 Renewed Motion more than 10 days after the February 8, 2022 Order, it did not toll the time to appeal;

(10) Accordingly, this court lacks jurisdiction.

Therefore, IT IS HEREBY ORDERED that Deluz's July 6, 2022 Motion to Dismiss Appeal is granted, and this appeal is dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that all pending motions are dismissed.

DATED: Honolulu, Hawaiʻi, September 9, 2022.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Derrick H.M. Chan
Associate Judge