

**Electronically Filed
Intermediate Court of Appeals
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NO. CAAP-23-0000400

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

NAOMI HASEGAWA; ATSUSHI MORITA; KASUMI ISHIDA; TATSUTO EHARA;
MAKOTO ISHIDA; HUN-DONG YU; TAO JIANG; WEI JIANG; XIUJUAN LI;
SONGHUA ZHANG; YIHAO XU; RUIGANG TAN,
Plaintiffs-Appellants/Cross-Appellees, and
YANLI XU; LILI WU; CHUANJIAO YU; TIANGE YANG; XIAOMIN HUANG;
PINMEI WANG; XIAOHUI WU; YUYANG JING; LI WANG; DONG ZHANG;
KE YUAN; WEI WANG; JING LIU,
Plaintiffs-Appellees/Cross-Appellees, v.
ZHONG FANG, aka JOHNSON FANG; MIN HU, aka MICHELLE HU;
ZHE FANG, aka JAY FANG; YUJIA WANG, aka JIAJIA WANG; LAMEI FANG;
USA REALTY CONSTRUCTION GROUP, INC.;
CALIFORNIA INVESTMENT REGIONAL CENTER, LLC;
CALIFORNIA REGIONAL CENTER, LLC;
AMERICAN INVESTMENT IMMIGRATION FUND;
WUHAN WESTERN U.S. INVESTMENT IMMIGRATION CONSULTANT, INC.;
HAWAII CITY PLAZA LP; HAWAII OCEAN PLAZA LP;
LOS ANGELES CITY PLAZA LP; LA VALLEY GARDEN PLAZA LP;
9920 VALLEY BLVD. LP; HAWAII OCEAN PLAZA, LLC,
Defendants-Appellees/Cross-Appellees, and
DAVID R. SQUERI; SOL V. YI; GREATER PACIFIC LAW OFFICE, LLLC,
Defendants-Appellees/Cross-Appellants, and
JUNSUKE AARON OTSKUKA; OTSUKA & ASSOCIATES,
A LIMITED LIABILITY LAW COMPANY,
Defendants-Appellees/Cross-Appellees, and
JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10;
DOE CORPORATIONS 1-10; DOE ENTITIES 1-10;
and DOE GOVERNMENTAL UNITS 1-10, Defendants

DAVID R. SQUERI; SOL V. YI; GREATER PACIFIC LAW OFFICE, LLLC,
Third-Party Plaintiffs/Third-Party Counterclaim Defendants-
Appellees/Cross-Appellants, v.
WEN SHENG GAO;
LAW OFFICE OF WEN SHENG GAO LIMITED LIABILITY LAW COMPANY,
Third-Party Defendants/Third-Party Counterclaimants-
Appellants/Cross-Appellees, and
JUNSUKE AARON OTSKUKA; OTSUKA & ASSOCIATES,
A LIMITED LIABILITY LAW COMPANY,
Third-Party Plaintiffs-Appellees/Cross-Appellees, and
DOE THIRD-PARTY DEFENDANTS 1-100, Third-Party Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NOS. 1CCV-19-0002169, 1CCV-19-0002025, and
1CCV-19-0002037 (consolidated))

ORDER GRANTING MOTION TO DISMISS CROSS-APPEAL

(By: Leonard, Presiding Judge, Nakasone and McCullen, JJ.)

Upon consideration of Plaintiffs-Appellants/Cross-Appellees Naomi Hasegawa, Atsushi Morita, Kasumi Ishida, Tatsuto Ehara, Makoto Ishida, Hun-Dong Yu, Tao Jiang, Wei Jiang, Xiujuan Li, Songhua Zhang, Yihao Xu, and Ruigang Tan and Third-Party Defendants/Third-Party Counterclaimants-Appellants/Cross-Appellees Wen Sheng Gao and Law Office of Wen Sheng Gao, LLC's (together, **Appellants**) Motion to Dismiss the Cross-Appeal, the papers in support and in opposition, and the record, it appears that Appellants seek dismissal of Defendants/Third-Party Plaintiffs/Third-Party Counterclaim Defendants-Appellees/Cross-Appellants David R. Squeri, Sol V. Yi, and Greater Pacific Law Office LLC's (together, **Cross-Appellants**) July 21, 2023 cross-appeal from, *inter alia*, the May 19, 2023 "Supplemental Order Re Order (1) Denying GPL Attorneys' Motion For Rule 11 Sanctions, Filed July 1, 2021 (Dkt. 914); (2) Denying LP Defendants' Motion For Rule 11 Sanctions Against Plaintiffs' Counsel, Filed July 1, 2021 (Dkt. 917); and (3) Granting GPL Attorneys' Motion For Sanctions Against Attorney Wen Sheng Gao and His Respective Plaintiff Clients, Filed July 15, 2022 (Dkt. 1167)" (**Supplemental Sanction Order**) on the basis that the notice of cross-appeal was not timely filed under Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 4.1(b)(1).¹

¹ Cross-Appellants' notice of cross-appeal also includes the March 23, 2023 "Order (1) Denying GPL Attorneys' Motion For Rule 11 Sanctions, Filed July 1, 2021 (Dkt. 914); (2) Denying LP Defendants' Motion For Rule 11 Sanctions Against Plaintiffs' Counsel, Filed July 1, 2021 (Dkt. 917); and (3) Granting GPL Attorneys' Motion For Sanctions Against Attorney Wen Sheng Gao and His Respective Plaintiff Clients, Filed July 15, 2022 (Dkt. 1167)" (**3/23/23 Sanction Order**). Though the 3/23/23 Sanction Order is not independently appealable, a timely filed notice of cross-appeal from the Supplemental Sanction Order would bring up for review the 3/23/23 Sanction Order, which is a preliminary ruling in the same series of orders. Cook v. Surety Life Insurance Co., 79 Hawai'i 403, 409, 903 P.2d 708, 714 (App. 1995).

In opposition, Cross-Appellants contend the cross-appeal is timely because the original appeal, filed June 19, 2023, was a premature appeal from the July 7, 2023 "Final Judgment Re Count 15" (**Judgment Re Count 15**), and thus, the notice of appeal is deemed filed immediately after entry of the judgment, pursuant to HRAP Rule 4(a)(2). Because the July 21, 2023 notice of cross-appeal was filed within 14 days after July 7, 2023, they maintain it is timely under HRAP Rule 4.1(b)(1). They alternatively argue that Appellants' July 10, 2023 second amended notice of appeal² substantively altered the content of the appeal, creating a new deadline to file a cross-appeal under HRAP Rule 4.1(b)(1), which expired on July 24, 2023.

We conclude that the July 21, 2023 notice of cross-appeal from the Supplemental Sanction Order is untimely filed. Cross-Appellants cross-appeal from the Supplemental Sanction Order but not from the Judgment Re Count 15. "A notice of cross-appeal shall be filed within 14 days after the notice of appeal is served on the cross-appellant, or within the time prescribed for filing the notice of appeal, whichever is later." HRAP Rule 4.1(b)(1). Though the time to file an appeal from the July 7, 2023 Judgment Re Count 15 did not expire until August 7, 2023, the time to file an appeal from the May 19, 2023 Supplemental Sanction Order terminated on June 19, 2023, the day Appellants filed and served their notice of appeal. HRAP Rules 4(a)(1), 26(a). Accordingly, Cross-Appellants were required to file any cross-appeal *from the Supplemental Sanction Order* no later than 14 days after being served with the notice of appeal, *i.e.*, by July 3, 2023. They failed to do so. Moreover, Appellants' July 10, 2023 second amended notice of appeal could not and did not substantively alter the content of the appeal; it merely clarified that, in addition to appealing from the Supplemental Sanction Order, the original notice of appeal also

² Though Cross-Appellants refer to the "3rd Amended Notice of Appeal," their arguments concern the amended notice of appeal filed on July 10, 2023, which is Appellants' second amended notice of appeal.

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

prematurely appealed from the Judgment Re Count 15.³ See Enos v. Pac. Transfer & Warehouse, Inc., 80 Hawai'i 345, 355-56, 910 P.2d 116, 126-27 (1996) ("[A]n amended notice of appeal relates back to the notice of appeal it purports to amend[.]"); HRAP Rule 4(a)(2) ("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."). Therefore, it did not create a new effective date of service of the notice of appeal for purposes of HRAP Rule 4.1(b)(1). Accordingly, the cross-appeal is untimely and must be dismissed for lack of jurisdiction. See Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) ("Compliance with the requirements of the timely filing of a notice of appeal is jurisdictional, and we must dismiss an appeal if we lack jurisdiction."); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules.").

Therefore, IT IS HEREBY ORDERED that the motion is granted, and the cross-appeal is dismissed.

DATED: Honolulu, Hawai'i, September 8, 2023.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Karen T. Nakasone
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge

³ Appellants' June 19, 2023 notice of appeal purports to appeal from seven orders. The Circuit Court subsequently reduced two of these orders to an appealable Hawai'i Rules of Civil Procedure Rule 54(b) judgment in the Judgment Re Count 15. One of the other orders is the Supplemental Sanction Order, which is an independently-appealable collateral order. Siangco v. Kasadate, 77 Hawai'i 157, 161, 883 P.2d 78, 82 (1994).