

NO. 29991

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

MATTHEW M. RYAN, SR., Plaintiff-Appellee,

v.

CERTIFIED MANAGEMENT, INC., a Hawaii corporation,
Defendant-Appellant,

and

JAMES E. MCKELLAR, a Natural Person; et al.,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-0388)

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

Upon review of the record, it appears that we lack jurisdiction over Defendant-Appellant Certified Management, Inc.'s (Appellant Certified Management), appeal from the Honorable Victoria S. Marks's July 29, 2009 "Final Judgment Pursuant to Rule 54(b) as to Defendant Certified Management, Inc.'s[,] Motion for an Award of Fees and Costs against Plaintiff" (the July 29, 2009 judgment on attorneys' fees and costs) because the July 29, 2009 judgment on attorneys' fees and costs does not enter judgment on any of the parties' substantive claims, and, absent the entry of an appealable final judgment on a substantive claim, the July 29, 2009 judgment on attorneys' fees and costs is not eligible for appellate review.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of appeals from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (1993 & Supp. 2008). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS

§ 641-1(c). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on this requirement under HRCP Rule 58, the supreme court has held that "[a]n appeal may be taken . . . only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "[A]n appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id. Therefore, when a party intends to appeal from a judgment on less than all claims pursuant to HRCP Rule 54(b), "the [HRCP Rule] 54(b) certification language must be contained therein." Oppenheimer v. AIG Hawaii Ins. Co., 77 Hawai'i 88, 93, 881 P.2d 1234, 1239 (1994).

The July 29, 2009 judgment on attorneys' fees and costs purports to enter judgment on less than all claims pursuant to HRCP Rule 54(b), and yet the July 29, 2009 judgment on attorneys' fees and costs does not contain the HRCP Rule 54(b) certification language expressly finding no just reason for delay in the entry of judgment. More importantly, however, the July 29, 2009 judgment on attorneys' fees and costs does not enter judgment on any of the parties' substantive claims. Instead, the July 29, 2009 judgment on attorneys' fees and costs merely enters judgment as to an order denying Appellant Certified Management Certified Management's motion for an award of attorneys fees and costs. The supreme court holds "that [a] circuit court's order awarding attorneys' fees and costs may not be certified as a final judgment, pursuant to HRCP Rule 54(b), because such an order is not a final decision with respect to a claim for relief." Fujimoto v. Au, 95 Hawai'i 116, 136 n.16, 19 P.3d 699, 719 n.16 (2001) (citation and internal quotation marks omitted). "The entry of judgment and taxation of costs are separate legal acts."

CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i 301, 307, 22 P.3d 97, 103 (App. 2001) (citation, internal quotation marks and brackets omitted). Therefore, "[a]bsent entry of an appealable final judgment on the claims [to which an award of attorneys' fees and costs relates], the award of attorneys' fees and costs is . . . not appealable." Fujimoto, 95 Hawai'i at 123, 10 P.3d at 706; CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i at 306, 22 P.3d at 102. In the instant case, the circuit court has not entered an appealable final judgment on any of the parties' substantive claims, and, thus, July 29, 2009 judgment on attorneys' fees and costs is not appealable.

Absent an appealable final judgment, Appellant Certified Management's appeal is premature, and the intermediate court of appeals lacks jurisdiction over this appeal. Therefore,

IT IS HEREBY ORDERED that appellate court case number 29991 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 11, 2009.

Chief Judge

Associate Judge

Associate Judge