

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28470

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

HAWAIIAN AIRLINES, INC., Plaintiff-Appellee, v.
PARADISE SKYCAP SERVICES, INC., Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 06-1-1500-08)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding J., Foley, and Fujise, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Defendant-Appellant Paradise Skycap Services, Inc.'s (Appellant Paradise Skycap Services) appeal from the Honorable Sabrina S. McKenna's February 28, 2007 "Order Denying Defendant Paradise Skycap Services, Inc.'s Motion for Judgment on the Pleadings Filed February 1, 2007" and March 27, 2007 "Order Granting Defendant Paradise Skycap Services, Inc.'s Motion for Leave to File an Interlocutory Appeal on Order Filed February 28, 2007 (Filed March 7, 2007)" because the Circuit Court of the First Circuit (the circuit court) did not expressly conclude that an interlocutory appeal was advisable for the speedy termination of the litigation before it, as Hawaii Revised Statutes (HRS) § 641-1(b) (1993 & Supp. 2006) required.

Appellant Paradise Skycap Services is asserting an interlocutory appeal. All of the claims remain unresolved. HRS § 641-1(a) (1993 & Supp. 2006) authorizes appeals only from "final judgments, orders, or decrees[.]" Nevertheless, HRS § 641-1(b) (1993 & Supp. 2006) authorizes interlocutory appeals to the intermediate court of appeals under the following circumstances:

(b) Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it. The refusal of the circuit court to allow an appeal from an interlocutory judgment, order, or decree shall not be reviewable by any other court.

HRS § 641-1(b) (1993 & Supp. 2006) (emphasis added). In determining whether an interlocutory appeal is advisable for the speedy termination of the litigation before it, the circuit court's discretion is not unfettered. Lui v. City & County of Honolulu, 63 Haw. 668, 672, 634 P.2d 595, 598 (1981). Furthermore, if the circuit court concludes that an interlocutory appeal is advisable for the speedy termination of the litigation before it, the circuit court must "set forth, in the order allowing the appeal, its reasons for that conclusion." Mason v. Water Resources Int'l, 67 Haw. 510, 512, 694 P.2d 388, 389 (1985). Thus, the Hawai'i Supreme Court has dismissed interlocutory appeals where a circuit court has "allow[ed] an interlocutory appeal without expressing any determination on the matter." McCabe v. Berdon, 67 Haw. 178, 180, 681 P.2d 571, 572 (1984).

Although the circuit court in the instant case entered the March 27, 2007 order granting Appellant Paradise Skycap Services' motion for leave to file an interlocutory appeal from the February 28, 2007 order pursuant to HRS § 641-1(b) (1993 & Supp. 2006), the circuit court did not include within the March 27, 2007 order an express conclusion that an interlocutory appeal was advisable for the speedy termination of the litigation before it, as HRS § 641-1(b) (1993 & Supp. 2006) required, nor did the circuit court include any reasons that would support such a conclusion. Therefore, we do not have jurisdiction over this interlocutory appeal. Accordingly,

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IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 28, 2007.

Corinne K A Watanabe

Presiding Judge

Daniel R. Foley

Associate Judge

Aura D N Jijiro

Associate Judge