

NO. 24655

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---

SOLAR ENGINEERING AND CONTRACTING, Plaintiff-Appellant

vs.

THE AOA OF RIDGEWAY II CONDOMINIUM, PETER GRINDLEY  
and JOY GRINDLEY, Defendants-Appellees

---

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 98-0813-02)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, and  
Ramil, JJ; with Acoba, J., concurring separately)

Upon review of the record, it appears that the time for appeal in Civil No. 98-0813-02 commenced upon entry of the August 24, 2001 order denying Plaintiff-Appellant Solar Engineering and Contracting's (Solar Engineering) motion for reconsideration, not upon entry of the October 4, 2001 order denying Defendant-Appellee The AOA of Ridgeway II Condominium's (Ridgeway) motion for attorneys' fees. Under Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), the appealable final judgment in this matter was the Final Judgment, entered July 24, 2001. The Amended Final Judgment, entered on August 24, 2001, was superfluous because it differed from the Final Judgment only by additionally incorporating the August 24, 2001 order granting Ridgeway's motion for taxation of costs. Under HRCP 58, the taxation of costs is not part of a judgment. HRCP 58 ("The entry of the judgment shall not be delayed for the taxing of costs.");

CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i 301, 307, 22 P.3d 97, 103 (App. 2001) (A "trial court's decisions with respect to . . . costs and attorney fees are not required to be stated in the one separate final judgment[.]"). Under Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP), Solar Engineering extended the time for appealing the July 24, 2001 Final Judgment, by filing its motion for reconsideration pursuant to HRCP 59(e) on July 30, 2001, "not later than ten days after entry of judgment[.]" HRAP 4(a)(3). Ridgeway's motion for attorneys' fees filed on August 31, 2001, thirty-eight days after entry of the Final Judgment, did not extend the time for filing the notice of appeal under HRAP 4(a)(3). Although Ridgeway filed its motion for attorneys' fees within ten days after entry of the Amended Final Judgment, the phrase "entry of judgment" in HRAP 4(a)(3) refers to the entry of the appealable final judgment, and the superfluous Amended Final Judgment was not the appealable final judgment. On August 24, 2001, when the circuit court denied Solar Engineering's motion for reconsideration pursuant to HRCP 59(e), Solar Engineering had thirty days under HRAP 4(a)(3) to file a notice of appeal. However, Solar Engineering did not file its notice of appeal until October 30, 2001, which was untimely. Therefore, we lack jurisdiction over this appeal. HRAP 4(a)(1); HRAP 26(b); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional

defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion.). Accordingly,

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

DATED: Honolulu, Hawai'i, January 30, 2002.

I concur in the result.