

NO. 30057

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

AMERICAN HOME MORTGAGE SERVICING, INC., Plaintiff-Appellee,

v.

KIN-CHUNG ROCKY YEUNG, Defendant-Appellant

and

JOHN and MARY DOES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 09-1-0816)

FILED
2010 MAR -4 AM 8:34
EM. NUNAKI DO
CLERK, APPELLATE COURT
STATE OF HAWAII

FILED

ORDER DENYING FEBRUARY 25, 2010
HRAP RULE 40 MOTION FOR RECONSIDERATION
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) the January 13, 2010 order dismissing this appeal for lack of jurisdiction, (2) Defendant-Appellant Kin-Chung Rocky Yeung's (Appellant Yeung) February 25, 2010 motion to reconsider the January 13, 2010 order of dismissal pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record on appeal, it appears that Appellant Yeung's HRAP Rule 40 motion to reconsider the January 13, 2010 order of dismissal is untimely and lacks merit.

Appellant Yeung failed to file his February 25, 2010 HRAP Rule 40 motion for reconsideration within ten days after the filing of the January 13, 2010 order dismissing this appeal for lack of jurisdiction, as HRAP Rule 40(a) required. Therefore, Appellant Yeung's February 25, 2010 HRAP Rule 40 motion for reconsideration is untimely under HRAP Rule 40(a), and Appellant Yeung is no longer entitled to reconsideration pursuant to HRAP Rule 40.

Even if Appellant Yeung's February 25, 2010 HRAP Rule 40 motion for reconsideration were timely, it lacks merit. As already explained in the January 13, 2010 order of dismissal, "[a]n appeal may be taken . . . only after the orders have been reduced to a judgment and the judgment has been entered in favor

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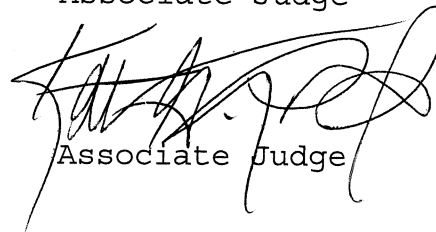
of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted). The appellate court clerk filed the record on appeal for this appellate case on November 10, 2009, at which time the record did not contain a final judgment that resolves all claims against all parties in this case. Absent an appealable final judgment in the record on appeal, Appellant Yeung's appeal is premature and we lack appellate jurisdiction. Therefore, Appellant Yeung's February 25, 2010 HRAP Rule 40 motion for reconsideration does not state any points of law or fact that we have overlooked or misapprehended. Accordingly,

IT IS HEREBY ORDERED that Appellant Yeung's February 25, 2010 HRAP Rule 40 motion for reconsideration of the January 13, 2010 order of dismissal is denied.

DATED: Honolulu, Hawai'i, March 4, 2010.


Daniel R. Foley
Presiding Judge


Auna Olu Fijine
Associate Judge


Associate Judge