

NO. 23868

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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YVETTE MARKUS and ASHLEY D. MARKUS, Individually and as Special  
Administrators of THE ESTATE OF JACOB ASHLEY MAKANA NOHONA  
MARKUS, Deceased, Plaintiffs-Appellants

vs.

ASAHI JYUKEN U.S.A., INC., a Hawai'i corporation; KUILIMA RESORT  
COMPANY, a Hawai'i general partnership; ASAHI PLAZA HAWAI'I, INC.,  
a Hawai'i corporation; A.J. PLAZA  
HAWAI'I CO., LTD., a Hawai'i corporation;  
AMERICAN SAVINGS BANK, F.S.B., Defendants-Appellees

and

JOHN DOES 1-10; et al., Defendants

and

AMERICAN SAVINGS BANK. F.S.B., Third-Party Plaintiff

vs.

JOHN DOES 1-10 AND JANE DOES 1-10, Third-Party Defendants

and

ASAHI JYUKEN U.S.A., INC., KUILIMA RESORT COMPANY;  
ASAHI PLAZA HAWAI'I, INC., and A.J. PLAZA HAWAI'I CO., LTD.,  
Fourth-Party Plaintiffs

vs.

BYRON CRISTOBAL, et al., Fourth-Party Defendants

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 97-1972)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson,  
Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that entry of the  
October 4, 2000 stipulated dismissal of claims did not give rise

to a right to appeal the August 8, 2000 order denying the motion to certify individuals as Doe Defendants 1 and 2 inasmuch as the stipulated dismissal with prejudice is not appealable. See 8 *Moore's Federal Practice*, § 41.34[7][b] (Matthew Bender 3d. ed.) ("A party may not appeal from a stipulated dismissal with prejudice because it is not an involuntary adverse judgment."). Insofar as the October 4, 2000 stipulated dismissal of claims purports to preserve the plaintiffs' right to appeal the August 8, 2000 order denying the motion to certify individuals as Doe Defendants, appellate jurisdiction cannot be invoked by agreement of the parties. Francone v. McClay, 40 Haw. 475, 477 (1954).

It further appears that the October 4, 2000 stipulated dismissal of claims purports to except the claims against Doe Defendants 1 and 2 from the dismissal by stating that those claims are "not dismissed." In that case, absent entry of judgment on the claims against Doe Defendants 1 and 2, the appeal of the August 8, 2000 order relating to those claims is an appeal of an interlocutory order that was not certified for appeal pursuant to HRS § 641-1(b). Therefore,

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

DATED: Honolulu, Hawai'i, February 14, 2001.