

NO. 24727

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

VON TEMPSKY FAMILY PARTNERSHIP, a Hawai'i limited partnership,
Plaintiff/Counter-claim Defendant-Appellee

vs.

JOEL EDELMAN and JEANNINE FARR-EDELMAN, Defendants/Counter-Claim
Plaintiffs-Appellants

and

JOEL EDELMAN and JEANNINE FARR-EDELMAN, Third-Party Plaintiffs

vs.

LYNN VON TEMPSKY and ROBBIE VON TEMPSKY, Third-Party Defendants

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CIV. NO. W01-412)

ORDER DISMISSING APPEAL

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

Upon review of the statements supporting and contesting jurisdiction, the motion to dismiss appeal and the record, it appears that: (1) the district court's November 30, 2001 order did not grant summary judgment on the complaint for summary possession in Civil No. W01-412, but only determined that the subject three-year lease had been terminated and that the defendants were month-to-month tenants since the termination; (2) the November 30, 2001 order was not certifiable for immediate appeal pursuant to DCRCP 54(b) inasmuch as it did not finally decide the plaintiff's claim for summary possession and the district court's failure to hear appellants' motion for 54(b) certification was of no consequence; (3) the November 30, 2001 order was not immediately appealable under the collateral order doctrine inasmuch as the matter of whether the three-year lease had been terminated was central to the merits of the complaint

for summary possession; (4) the November 30, 2001 order was not immediately appealable under the Forgay doctrine inasmuch as it did not direct the immediate transfer of the subject premises to the plaintiff; (5) the appeal of the November 30, 2001 order is not a premature appeal under HRAP 4(a)(2) of the December 21, 2001 judgment for possession inasmuch as the judgment for possession was entered in Civil No. W01-1638 that did not exist at the time the notice of appeal was filed; (6) absent entry of final judgment on the complaint, counterclaims and third-party claims in Civil No. W01-412, the appeal of the November 30, 2001 order is premature and thus, (7) we lack jurisdiction over this appeal. HRS § 641-1(a). Therefore,

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

DATED: Honolulu, Hawai'i, April 29, 2002.