

*** NOT FOR PUBLICATION ***

NO. 25713

IN THE SUPREME COURT OF THE STATE OF HAWAII

ALEXANDRA RAMIREZ and MIGUEL RAMIREZ,
Plaintiffs/Appellees

vs.

ELGIN SANTOS; EDWARD SANTOS; VIOLET-MARIE M. ROSEHILL,
INDIVIDUALLY AND AS TRUSTEE UNDER THE VIOLET-MARIE M. ROSEHILL
REVOCABLE LIVING TRUST DATED DECEMBER 23, 1986; AND ESTATE OF
MICHAEL MacKINNON, BY CLERK OF THE COURT ACTING AS SPECIAL
ADMINISTRATOR,
Defendants/Cross-Claim Plaintiffs/Cross-Claim
Defendants/Appellees

and

MARCUS F. ROSEHILL, INDIVIDUALLY AND AS TRUSTEE UNDER THE
MARCUS F. ROSEHILL REVOCABLE LIVING TRUST DATED
DECEMBER 23, 1986,
Defendant/Cross-Claim Defendant

and

THE LANDSCAPE WORKS, INC.; AND JAMES ANDREWS,
Defendants/Cross-Claim Plaintiffs/Cross-Claim
Defendants/Appellants

and

CITY AND COUNTY OF HONOLULU,
Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant/Third-Party
Plaintiff/
Counterclaim Defendant/Appellant

and

VERIZON HAWAII, INC., FKA GTE HAWAIIAN TEL CO., INC.,
a Hawaii Corporation; and
HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii Corporation,
Defendants/Third-Party Defendants/Counterclaim Plaintiffs/Cross-
Claim Plaintiffs/
Cross-Claim Defendants/Appellants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-2467)

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ORDER DISMISSING APPEAL IN PART AS TO DEFENDANT/
THIRD-PARTY DEFENDANT/COUNTERCLAIM PLAINTIFF/CROSS-CLAIM
PLAINTIFF/CROSS-CLAIM DEFENDANT/APPELLANT HAWAIIAN ELECTRIC
COMPANY, INC., AND DEFENDANT/CROSS-CLAIM PLAINTIFF/
CROSS-CLAIM DEFENDANT/THIRD-PARTY PLAINTIFF/COUNTERCLAIM
DEFENDANT/APPELLANT CITY AND COUNTY OF HONOLULU
(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Wilson, in place of Duffy, J., recused)

Upon review of the record, it appears that we do not have jurisdiction over some of the appeals by Defendants/Third-Party Defendants/Counterclaim Plaintiffs/Cross-Claim Plaintiffs/Cross-Claim Defendants/Appellants Verizon Hawaii, Inc., fka GTE Hawaiian Tel Co., Inc. (Appellant Verizon), Hawaiian Electric Company, Inc. (Appellant HECO), Defendants/Cross-Claim Plaintiffs/Cross-Claim Defendants/Appellants The Landscape Works, Inc. (Appellant Landscape), and James Andrews (Appellant Andrews), and Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant/Third-Party Plaintiff/Counterclaim Defendant/Appellant City and County of Honolulu (Appellant City of Honolulu).

When the circuit court entered the March 6, 2003 order granting Defendants/Cross-Claim Plaintiffs/Cross-Claim Defendants/Appellees Estate of Michael MacKinnon, Elgin Santos, and Edward Santos's petitions for determinations of the issue of good faith of their respective settlement agreements with Plaintiffs/Appellees Alexandra Ramirez and Miguel Ramirez (the Ramirez Appellees), HRS § 663-15.5(e) (Supp. 2002) authorized any aggrieved parties to appeal from the March 6, 2003 order. However, HRS § 663-15.5(e) required that any aggrieved party's "appeal shall be filed within twenty days after service of written notice of the determination, or within any additional time not exceeding twenty days as the court may allow." (Emphasis added). The record shows that the Ramirez Appellees served Appellants Verizon, Landscape, Andrews, HECO, and the City of Honolulu with copies of the March 6, 2003 order by hand-

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delivery on March 7, 2003. Appellant Verizon filed its March 21, 2003 notice of appeal within twenty days after March 7, 2003, as HRS § 663-15.5(e) required.

After Appellant Verizon filed its March 21, 2003 notice of appeal, Appellants Landscape, Andrews, HECO and the City of Honolulu filed "joinders" to Appellant Verizon's March 21, 2003 notice of appeal, purportedly under Rule 3(b) of the Hawai'i Rules of Appellate Procedure (HRAP). While HRAP Rule 3(b) authorizes two or more parties to file a "joint notice of appeal," it does not authorize parties to file retroactive "joinders" to another party's previously filed notice of appeal. Therefore, we deem Appellants Landscape, Andrews, HECO and the City of Honolulu's respective "joinders" to be separate and independent notices of appeal.

Appellants Landscape and Andrews filed their March 27, 2003 notice of appeal within twenty days after March 7, 2003, as HRS § 663-15.5(e) required.

In contrast, however, Appellant HECO did not file its April 3, 2003 notice of appeal within twenty days after March 7, 2003. Similarly, Appellant City of Honolulu did not file its April 4, 2003 notice of appeal within twenty days after March 7, 2003. Appellants HECO and City of Honolulu neither sought nor obtained the circuit court's permission for additional time to assert their appeals pursuant to HRS § 663-15.5(e). Therefore, Appellants HECO and City of Honolulu's respective appeals are not timely under HRS § 663-15.5(e).

Even if we would deem the appeals by Appellants HECO and the City of Honolulu to be "cross-appeals," the "cross-appeals" would be untimely under HRS § 663-15.5(e). HRAP Rule 4.1(b)(1) allows a cross-appellant to file a notice of cross-appeal up to fourteen days after the notice of appeal is served on the cross-appellant, but HRAP Rule 4.1(b)(1) applies only when the controlling jurisdictional statute authorizes the supreme

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court to set the time period for asserting the cross-appeal by a rule of court. For example, HRAP Rule 4.1(b)(1) applies to cross-appeals that parties assert pursuant to HRS § 641-1 (1993), which "shall be taken in the manner and within the time provided by the rules of court." HRS § 641-1(c) (1993) (emphasis added). In contrast, HRS § 663-15.5(e) specifically limits the time period for filing a notice of appeal to "within twenty days after service of written notice of the determination, or within any additional time not exceeding twenty days as the court may allow." HRS § 663-15.5 does not authorize the supreme court to alter the twenty-day time period by a rule of court. The twenty-day time period applies to all appeals that parties assert pursuant to HRS § 663-15.5, regardless of whether they are appeals or cross-appeals.

Therefore, HECO and the City of Honolulu's respective appeals are not timely, and we lack jurisdiction over them. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed in part for lack of appellate jurisdiction as to the appeals by Appellants HECO and the City of Honolulu.

DATED: Honolulu, Hawai'i, August 13, 2003.