

*** NOT FOR PUBLICATION ***

NO. 26352

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MITSUI NORIN CO., LTD., Plaintiff/Counterclaim Defendant/Appellee

vs.

KAKAAKO M-P DEVELOPMENT (KAKAAKO) and MOTOI KOSAN U.S.A., INC.,
Defendants/Counterclaim Plaintiffs/Cross-Claim
Defendants/Appellants

and

HAWAI'I COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAI'I,
Defendant/Counterclaim Plaintiff/Cross-Claim Plaintiff/Appellee

and

CITY AND COUNTY OF HONOLULU, Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 03-1-0648)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.
and Acoba, J., dissenting separately)

Upon review of the statements supporting and contesting jurisdiction, the motion to dismiss the appeal, the papers in support and in opposition, and the record, it appears that we do not have jurisdiction over the appeal from the December 22, 2003 order granting Plaintiff/Counterclaim Defendant/Appellee Mitsui Norin Co., Ltd.'s, motion for an order disqualifying the law firm of Carlsmith Ball, LLP, from representing Defendants/Counterclaim Plaintiffs/Cross-Claim Defendants/Appellants Kakaako M-P Development and Motoi Kosan U.S.A., Inc. (the Appellants). HRS § 641-1(a) (1993) authorizes appeals only from final judgments, orders, or decrees. An order granting or denying a motion to disqualify a party's counsel "d[oes] not determine the merits of the case, and it can be final for the purpose of appeal

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only if it comes within the collateral order doctrine[.]” Gomes v. Kauwe’s Heirs, 52 Haw. 126, 127, 472 P.2d 119, 120 (1970) (citation omitted); Chuck v. St. Paul Fire and Marine Ins. Co., 61 Haw. 552, 556-57, 606 P.2d 1320, 1323-24 (1980). “In order to fall within the narrow ambit of the collateral order doctrine, the order must [1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.” Siangco v. Kasadate, 77 Hawai‘i 157, 161, 883 P.2d 78, 82 (1994) (citations and internal quotation marks omitted) (original brackets). The December 22, 2003 order does not satisfy all three requirements for appealability under the collateral order doctrine. Furthermore, the Appellants did not obtain leave to file an interlocutory appeal pursuant to HRS § 641-1(b) (1993). Therefore, the appeal is premature, and we lack jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai‘i, April 29, 2004.

I would not dismiss for lack of jurisdiction inasmuch as I believe the appeal is permissible under the collateral order doctrine.