

*** NOT FOR PUBLICATION ***

NO. 23624

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

GE CAPITAL HAWAI'I, INC.,
Plaintiff-Appellee/Cross-Appellant

vs.

THELMA SALAGUBAN BALICANTA, FAITH ELSA BALICANTA,
SAMUEL MACARIO BALICANTA, and NEMESIA HOPE BALICANTA,
Defendant-Appellant/Cross-Appellee

and

JOHN DOES 1-50, JANE DOES 1-50, DOE PARTNERSHIPS 1-50,
DOE CORPORATIONS 1-50, DOE ENTITIES 1-50, and
DOE GOVERNMENTAL UNITS 1-50, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-0003)

SUMMARY DISPOSITION ORDER

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

Defendants-appellants Thelma Salaguban Balicanta, Faith Elsa Balicanta, Samuel Macario Balicanta, and Nemesia Hope Balicanta [hereinafter, collectively, "the Balicantas"] appeal from (1) the May 30, 2000 order and judgment of the circuit court granting GE Capital Hawai'i, Inc.'s (GE Capital) motion for summary judgment and for writ of ejectment, and (2) the May 30, 2000 writ of possession. On appeal, the Balicantas argue that the circuit court erred in: (1) granting GE Capital's motion for summary judgment and for writ of ejectment; (2) issuing a writ of possession; and (3) concluding, as a matter of law, that the Mortgagee's Affidavit be admitted into evidence and that the power of sale was duly executed in accordance with Hawai'i Revised Statutes (HRS) § 667-8.

GE Capital cross-appeals from the July 28, 2000 order and judgment of the circuit court (1) denying the Balicantas'

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motion to vacate (a) the May 30, 2000 order and judgment granting GE Capital's motion for summary judgment and for writ of ejectment, and (b) the May 30, 2000 writ of possession, and (2) granting the Balicantas' motion for an order to extend time to file notice of appeal. On cross-appeal, GE Capital argues that the circuit court erred in granting the Balicantas' alternate motion for an extension of time within which to file their notice of appeal for excusable neglect.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and the arguments advanced, we hold that the circuit court abused its discretion in finding that defense counsel's "miscalendaring" constituted excusable neglect within the meaning of Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(4)(B). By finding that defense counsel's "miscalendaring" was caused by his ignorance of the number of calendar days in May 2000, and, therefore, deemed excusable neglect, the circuit court set the excusable neglect standard so low as to nearly eliminate the standard altogether. See Northwest Truck & Trailer Sales, Inc. v. Dvorak, 877 P.2d 31 (Mont. 1994) (Nelson, J., concurring) (implying that the excusable neglect standard was intended to apply only "in extraordinary cases where injustice would otherwise result."). Inasmuch as defense counsel "calendared the [thirty-]day deadline to file the notice of appeal for [June 30, 2000,]" instead of June 29, 2000, because he did not realize there were thirty-one days in May, defense counsel's conduct was not excusable. See Enos v. Pacific Transfer & Warehouse, Inc., 80 Hawai'i 345, 910 P.2d 116 (1996) (noting that the excusable neglect standard was a "strict standard, requiring a showing that the failure to timely

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file a notice of appeal was due to circumstances beyond the appellant's control"). Accordingly, because the Balicantas did not file their notice of appeal within the thirty-days prescribed by HRAP Rule 4(a)(4)(B), their notice of appeal was untimely. See HRAP Rule 4(a)(4)(B). Inasmuch as the notice of appeal was not timely filed, this court lacks jurisdiction to consider the appeal. Therefore,

IT IS HEREBY ORDERED the circuit court's order and judgment granting the Balicantas' motion to extend time to file notice of appeal is reversed.

DATED: Honolulu, Hawai'i, May 28, 2004.

On the briefs:

Richard Lee, Paul D. Hicks,
and Brian K. Yomono for
defendants-appellants/
cross-appellees

Allen I. Marutani
for plaintiff-appellee/
cross-appellant