

*** NOT FOR PUBLICATION ***

NO. 26788

IN THE SUPREME COURT OF THE STATE OF HAWAII

AHI HARBOR LIMITED PARTNERSHIP, by and through CB Richard Ellis
Hawaii, Inc., Plaintiff-Appellee

vs.

MASSIMO FUCHS, Defendant-Appellant

and

DAVID CLAYSON and All Other Occupants, Defendants
(CIV. NO. 1RC03-1-5414)

AHI HARBOR LIMITED PARTNERSHIP, by and through CB Richard Ellis
Hawaii, Inc., Plaintiff-Appellee

vs.

MASSIMO FUCHS, Defendant-Appellant
(CIV. NO. 1RC03-1-6191)

APPEALS FROM THE DISTRICT COURT OF THE FIRST CIRCUIT

ORDER DISMISSING APPEAL

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

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that final judgment has not been entered in consolidated Civil Nos. 1RC03-1-5414 and 1RC03-1-6191. The August 24, 2004 order concerning the denial to strike the complaint in Civil No. 1RC03-1-5414 is not a final order immediately appealable under the collateral order doctrine inasmuch as the denial to strike the complaint is effectively reviewable on appeal from a final judgment. The second August 24, 2004 order concerning the denial of leave to demand a

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jury trial is not a final order immediately appealable under the collateral order doctrine inasmuch as the district court conducted the trial on the plaintiff's claims for damages and assumpsit and consequently, the asserted right not to have the district court try those claims has already been lost. The denial of leave to demand a jury trial is reviewable on appeal from the final judgment. See K.H. Properties v. Mitchell, 72 Haw. 373, 818 P.2d 1177 (1991) (the denial of a jury trial on a claim for damages in a summary possession case was reviewable on appeal from the judgment on the claim for damages). Therefore,

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

DATED: Honolulu, Hawai'i, March 4, 2005.