

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27768

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

RICHARD SCHEFFER and JACQUELINE SCHEFFER
Plaintiffs/Counterclaim Defendants/Appellant

v.

DAVID CHARLES RICH, DAVINA PIZARRO RICH, and DOES 1-10,
Defendants/Counterclaim Plaintiffs/Appellees

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CV. NO. 04-1-0004)

ORDER DISMISSING APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Plaintiffs/Counterclaim Defendants/Appellants Richard Scheffer and Jacqueline Scheffer's appeal from the Honorable Kathleen N. A. Watanabe's November 16, 2005 judgment, because the November 16, 2005 judgment is not an appealable final judgment under HRS § 641-1(a) (Supp. 2005), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Under the HRCP Rule 58 separate document rule, "[a]n appeal may be taken from circuit court orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]"

Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338.

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id. (emphases added). Furthermore, "if the judgment resolves fewer than all claims against all parties, or reserves any claim for later action by the court, an appeal may be taken only if the judgment contains the language necessary for certification under HRCP [Rule] 54(b)[.]" Id. Therefore, "an appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id.

The November 16, 2005 judgment does not, on its face, resolve all claims against all parties. Although the November 16, 2005 judgment includes a statement that declares that "[a]ll of the claims, rights and liabilities of all the parties in the above-entitled action have been adjudicated[,]" the supreme court has explained that "[a] statement that declares 'there are no other outstanding claims' is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, . . . 'all other claims, counterclaims, and cross-claims are dismissed.'" Jenkins v. Cades Schutte Fleming & Wright, 76

Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphasis added). The November 16, 2005 judgment does not contain operative language that dismisses the claims other than those listed in the judgment language.

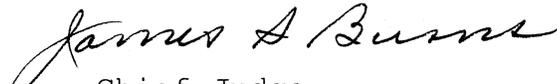
Although the circuit court attempted to certify the November 16, 2005 judgment for appeal by including an express finding of no just reason for delay in the entry of judgment pursuant to HRCF Rule 54(b), such a certification is appropriate and valid only "when the trial court chooses to enter a judgment on one or more claims or as to one or more parties in a multiple-claim or multiple-party case and there are claims yet to be determined." International Savings and Loan Association, Limited v. Woods, 69 Haw. 11, 18, 731 P.2d 151, 156 (1987) (citation and internal quotation marks omitted) (emphasis added). In the instant case, all the claims have been determined as to all the parties, and "Rule 54(b) has no application when all the claims have been determined as to all the parties." 10 Charles Alan Wright et al., Federal Practice and Procedure § 2656, at 60 (3d ed. 1998). Consequently, HRCF Rule 54(b) had no application to the November 16, 2005 judgment.

Therefore, the November 16, 2005 judgment does not satisfy the requirements for an appealable final judgment under HRCF Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is premature. Accordingly,

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

DATED: Honolulu, Hawai'i, October 18, 2006.


Chief Judge


Associate Judge


Associate Judge