

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27848

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

FRANK FISTES individually and dba
STORAGE CONTAINER SALES U.S.A., Plaintiff-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 JUL 26 PM 1:33

FILED

v.

JOHN M. KOBAYASHI individually and dba
KOBAYASHI KONA COFFEE aka KOBO'S KONA COFFEE;
DOES 1-10, Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(Civ. No. 04-1-146K)

ORDER GRANTING THE JULY 7, 2006 MOTION TO DISMISS APPEAL
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of (1) Plaintiff-Appellee Frank Fistes Individually and dba Storage Container Sales U.S.A.'s (Appellee Fistes) July 7, 2006 "Motion to Dismiss Appeal or in the Alternative for Temporary Remand," and (2) the record, it appears that we lack jurisdiction over Defendant-Appellant John M. Kobayashi Individually and dba Kobayashi Kona Coffee aka Kobo's Kona Coffee's (Appellant Kobayashi) appeal from the Honorable Elizabeth A. Strance's February 22, 2006 judgment, because the February 22, 2006 judgment does not satisfy the requirements for 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).

HRCF Rule 58 requires that "[e]very judgment shall be set forth on a separate document." Thus, "[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 HRCF [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

[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). Although Appellee Fistes asserted two distinct claims in his complaint, the February 22, 2006 judgment does not identify the claim for which it is entered, nor does it state that it is entered on both of the claims.

Therefore, the February 22, 2006 judgment does not satisfy the appealability requirements of HRS § 641-1(a) (1993) and the HRCF Rule 58 separate document rule under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, the appeal is premature. Accordingly,

IT IS HEREBY ORDERED that Appellee Fistes's July 7,

2006 motion is granted, and this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, July 26, 2006.

James A. Burns

Chief Judge

[Signature]

Associate Judge

Kevin R. Foley

Associate Judge