

NO. 27998

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CYNTHIA A. MISERENDINO, Plaintiff-Appellee

v.

RONALD A. MISERENDINO and LARISSA ALEXEEVA FERRER
Defendants/Cross-Claim Defendants-Appellants

and

TRACE MAUI CORPORATION, a Hawai'i corporation,
and TRACE CORPORATION, a Wisconsin corporation,
Defendants/Cross-Claim Plaintiffs-Appellees,

and

TRACE MAUI CORPORATION, a Hawai'i corporation,
and TRACE CORPORATION, a Wisconsin corporation,
Defendants/Third-Party Plaintiffs-Appellees,

v.

MARK MISERENDINO,
Third-Party Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CV. NO. 02-1-0348(2))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Defendant/Cross-Claim Defendant-Appellant Larissa Alexeeva Ferrer's (Appellant Ferrer) appeal from the Honorable Shackley F. Raffetto's March 7 2006 judgment, because the March 7, 2006 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,

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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 parties asserted multiple claims in this case:

1. Plaintiff-Appellee Cynthia A. Miserendino's two-count complaint for fraud and unjust enrichment against Defendant/Cross-Claim Defendant/Appellee Ronald A. Miserendino (Appellee Ronald Miserendino), Appellant Ferrer, and Defendants/Cross-Claim Plaintiffs/Third-Party Plaintiffs/Appellees Trace Maui Corporation and Trace Corporation (Appellees Trace Maui Corporation and

Trace Corporation);

2. Appellees Trace Maui Corporation's and Trace Corporation's two-count cross-claims for fraud and indemnification against Appellee Ronald Miserendino and Appellant Ferrer; and
3. Appellees Trace Maui Corporation's and Trace Corporation's two-count third-party complaint for fraud and indemnification against Third-Party Defendant/Appellee Mark Miserendino.

Despite these multiple claims, the March 7, 2006 judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCF Rule 54(b). Instead, the March 7, 2006 merely enters judgment on Appellees Trace Maui Corporation's and Trace Corporation's cross-claims without specifically identifying whether Appellees Trace Maui Corporation and Trace Corporation prevailed on their cross-claims for fraud, or indemnification, or both. Furthermore, the March 7, 2006 judgment does not resolve the claims other than the cross-claims. As the supreme court has held, "[i]f 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). Therefore, the March 7, 2006 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.

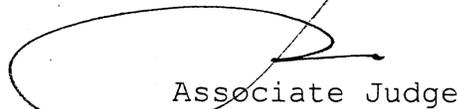
NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

Absent an appealable final judgment, this appeal is premature. Accordingly,

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

DATED: Honolulu, Hawai'i, September 8, 2006.


Chief Judge


Associate Judge


Associate Judge