

NO. 28008

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

DASON UDAC and ALFREDO UDAC,
Plaintiffs-Appellees/Cross-Appellants,
v.
TAKATA CORPORATION,
Defendant/Cross-Claim Defendant/Cross-Claim Plaintiff-
Appellant/Cross-Appellee,
and
HAWAII MOTORS, INC.,
Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant-
Appellee/Cross-Appellee,
and
JOHN DOES 1-10, et al., Defendants

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

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CV. NO. 02-1-0260)

ORDER DISMISSING APPEAL AND CROSS-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/Cross-Claim Plaintiff/Appellant/Cross-Appellee Takata Corporation's (Appellant Takata Corporation) appeal and Plaintiffs/Appellees/Cross-Appellants Dason Udac and Alfredo Udac's (the Udac Cross-Appellants) cross-appeal from the Honorable Glenn S. Hara's May 31, 2006 amended judgment, because the May 31, 2006 amended 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).

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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.

Although the circuit court initially certified the April 19, 2006 judgment for appeal by including an express finding of no just reason for delay in the entry of judgment pursuant to HRCP Rule 54(b), the circuit court superceded the April 19, 2006 judgment when the circuit court entered the May 31, 2006 amended judgment. However, the May 31, 2006 amended

judgment is not appealable. Although the parties asserted multiple claims in this case (for example, the Udac Cross-Appellants' six-count complaint, Appellant Takata Corporation's cross-claim, and Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant/Appellee/ Cross-Appellee Hawaii Motors, Inc.'s, cross-claim), the May 31, 2006 amended 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). Although the May 31, 2006 amended judgment describes how the circuit court and the parties resolved some of the other claims prior to the entry of a judgment, the May 31, 2006 amended judgment does not, on its face, include operative language that resolves all of those other claims. A summary of past orders is not sufficient. As the supreme court has explained, "[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).

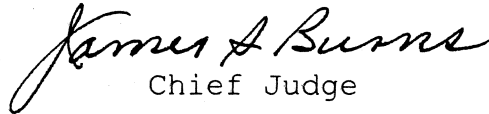
Therefore, the May 31, 2006 amended judgment does not satisfy the requirements for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is

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premature. Therefore,

IT IS HEREBY ORDERED that this appeal and cross-appeal are dismissed for lack of appellate jurisdiction.

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


Chief Judge


Associate Judge


Associate Judge