

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28044

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LEU OKUDA & LEU, a law partnership,
Plaintiff-Appellee/Cross-Appellee,
v.
GATEWAY FINANCIAL SERVICE, a California Corporation, et al.,
Defendant-Appellant

and

GATEWAY FINANCIAL SERVICE, a California Corporation, et al.,
Third-Party Plaintiff-Appellant,

v.

LLOYDS UNDERWRITERS AND COMPANIES,
Third-Party Defendant-Appellee/Cross-Appellee,
and

OPTION ONE MORTGAGE CORPORATION,
a California Corporation; BNC MORTGAGE INC.,
a California Corporation, Third-Party Defendants

and

LEU OKUDA & LEU, a law partnership,
Third-Party Plaintiff/Cross-Appellee,

v.

RAYMOND DEANGELO,
Third-Party Defendant/Cross-Appellant

EXHIBIT
FILED
2006 OCT 11 AM 11:31
REG. APPELLATE COURTS
STATE OF HAWAII

FILED
2006 OCT 11 AM 11:31

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CV. NO. 03-1-2180)

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/Counterclaim-Plaintiff/Third-Party Plaintiff/Appellant/Cross-Appellee Gateway Financial Service's appeal and Third-Party Defendant/Appellee/Cross-Appellant Raymond

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Deangelo's (Cross-Appellant Deangelo) cross-appeal from the Honorable Randall K. O. Lee's June 19, 2006 judgment, because the June 19, 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, 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. 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 parties asserted multiple claims in this case, the June 19, 2006 judgment resolves only Plaintiff/Counterclaim Defendant/Third-Party Plaintiff/Appellee/Cross-

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Appellee Leu Okuda & Leu's third-party complaint against Cross-Appellant Deangelo. "If the circuit court intends that claims other than those listed in the judgment language should be dismissed, [then] 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. The June 19, 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). Therefore, the June 19, 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.

Absent an appealable final judgment, this appeal is premature and we lack appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, October 12, 2006.


Chief Judge


Associate Judge


Associate Judge