

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28211

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

LOTHAR KUSTER, Plaintiff-Appellee,
v.

KEPIO, HEIRS OF KEPIO, GRACE RUTKOWSKI,
HEIRS OF GRACE RUTKOWSKI, JOSEPH RUTKOWSKI, SR.,
JOSEPH RUTKOWSKI, JR., ELAINE RUTKOWSKI, JOSLYN RUTKOWSKI,
DWIGHT RUTKOWSKI, ROBERT PUU, HEIRS OF ROBERT PUU,
JOHN PUU, HEIRS OF JOHN PUU, CHARLES PUU, JR.,
JARED PUU, NORA ADRIE, GEORGE PUU, DOROTHY DRISCHOLL,
DACKY PUU, ERNEST GLEASON, WILHELMINA K. GLEASON,
DEBORAH A. GOODWIN, DINAH LEE STARBUCK, Defendants-Appellants

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2007 JAN 19 PM 1:04

FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CV. NO. 05-1-0062(3))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over this appeal from the Honorable Joseph E. Cardoza's November 27, 2006 judgment because the November 27, 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).

HRS § 641-1(a) (Supp. 2005) authorizes appeals from "final judgments, orders, or decrees[.]" Furthermore, under the HRCP Rule 58 separate document rule, "[a]n appeal may be taken from circuit court orders resolving claims against parties only

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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 (emphasis added).

[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 Plaintiff-Appellee Lothar Kuster asserted two separate counts against multiple defendants in his amended complaint, the November 27, 2006 judgment does not enter judgment in favor of and against the appropriate parties, nor does it specifically identify the claim or claims for which judgment is entered. Although November 27, 2006 judgment contains a statement that declares "that there are not further issues in dispute as to any party to this proceeding[.]" 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. The November 27, 2006 judgment does not contain operative language that dismisses any claims. The November 27, 2006 judgment does not contain the language necessary for certification under HRCP Rule 54(b). Therefore, the November 27, 2006 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 premature. Accordingly,

IT IS HEREBY ORDERED that this appeal in appellate court case number 28211 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 19, 2007.


Chief Judge



Associate Judge


Associate Judge