

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28275

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

FRANK FISTES individually and dba STORAGE CONTAINERS
SALES U.S.A., Plaintiff-Appellee,
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
(CV. NO. 04-1-146K)

ORDER DISMISSING APPEAL

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

Upon review of 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 October 18, 2006 second amended judgment, because the October 18, 2006 second amended 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).

HRCP 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

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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 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. "[A]n 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. (emphasis in original).

Although the October 18, 2006 second amended judgment (1) enters judgment in favor of Plaintiff-Appellee Frank Fistes Individually and dba Storage Container Sales U.S.A. (Appellee Fistes) and against Appellant Kobayashi on Count I of Appellee Fistes's complaint, and (2) dismisses all other claims, the October 18, 2006 second amended judgment does not, on its face, fully resolve all claims because the October 18, 2006 second amended judgment omits Appellee Fistes's award of money damages. Instead of including Appellee Fistes's award of money damages, the October 18, 2006 second amended judgment attempts to incorporate Appellee Fistes's money damages award by referring to the previously entered May 30, 2006 first amended judgment. This

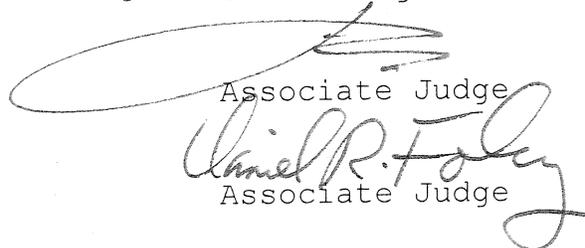
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omission of an express money damages award prevents the October 18, 2006 second amended judgment from resolving, on its face, all of the claims in Appellee Fistes's complaint, when, in fact, the record shows that the circuit court intends to award money damages to Appellee Fistes. The judgment must, on its face, resolve all claims, including the prayers for damages, in order to be an appealable final judgment. Incorporation by reference to a previous order or judgment is not sufficient. Because the October 18, 2006 second amended judgment does not, on its face, resolve all of the claims, the October 18, 2006 second amended judgment does not satisfy the requirements for an appealable final judgment under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, the appeal is premature, and we lack appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that this appeal in appellate court case number 28275 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 31, 2007.


Chief Judge


Associate Judge
Associate Judge