

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER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 CONTAINER
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 DENYING FEBRUARY 12, 2007 MOTION FOR
RECONSIDERATION OF JANUARY 31, 2007 DISMISSAL ORDER
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of (1) the January 31, 2007 order dismissing 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, (2) Plaintiff-Appellee Frank Fistes Individually and dba Storage Container Sales U.S.A.'s (Appellee Fistes) February 12, 2007 (filed ex officio on February 9, 2007) motion for reconsideration of the January 31, 2007 dismissal order pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record, it appears that Appellee Fistes's February 12, 2007 (filed ex officio on February 9, 2007) HRAP Rule 40 motion for reconsideration lacks merit.

As already stated in the January 31, 2007 dismissal

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order, the October 18, 2006 second amended judgment did not include the circuit court's complete award of money damages to Appellee Fistes, and, instead, the October 18, 2006 second amended judgment vaguely referred to a money damages award that the circuit court had entered into a May 30, 2006 first amended judgment. Thus, the October 18, 2006 second amended judgment did not, on its face, resolve all claims against all parties, as the separate document rule requires for an appealable final judgment under 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), and the October 18, 2006 second amended judgment was not an appealable final judgment.

In the interest of clarifying the January 31, 2007 dismissal order, we further note that the May 30, 2006 first amended judgment was also not an appealable final judgment. Although Appellee Fistes asserted multiple claims in his complaint, the May 30, 2006 first amended judgment failed to specifically identify the claim or claims for which the circuit court was entering judgment and awarding money damages. See 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 . . . must . . . identify the claims for which it is entered[.]"). Therefore, despite that the circuit court

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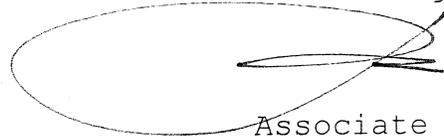
attempted to certify the May 30, 2006 first amended judgment for appeal pursuant to HRCF Rule 54(b), the May 30, 2006 first amended judgment failed to satisfy the requirements for an appealable final judgment under HRCF Rule 54(b), HRCF Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright.

We dismissed this appeal because the October 18, 2006 second amended judgment was not an appealable final judgment. Absent an appealable final judgment, the appeal was premature, and we lacked appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that Appellee Fistes's February 12, 2006 (filed ex officio on February 9, 2007) HRAP Rule 40 motion for reconsideration of the January 31, 2007 dismissal order is denied.

DATED: Honolulu, Hawai'i, February 16, 2007.


Chief Judge


Associate Judge


Associate Judge