

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28312

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

BANQUE DE TAHITI, a Tahiti Corporation,  
Judgment Creditor-Appellee,

v.

THOMAS CHRISTIAN KURTH,  
Judgment Debtor-Appellant

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 FEB 27 AM 9:18

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(S.P. NO. 03-1-045)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Judgment Debtor/Counterclaim Plaintiff/Appellant Thomas Christian Kurth's (Appellant Kurth) from the Honorable Glenn S. Hara's July 20, 2006 "Findings of Fact; Conclusions of Law; Order Granting Plaintiff Banque De Tahiti's Motion for Summary Judgment Filed March 10, 2006 and Denying Judgment Debtor Counterclaimant Thomas C. Kurth's Motion for Summary Judgment Filed February 16, 2006" (the July 20, 2006 summary judgment order) because the July 20, 2006 summary judgment order did not end the post-judgment proceeding, leaving nothing further to be accomplished.

Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2006) authorizes appeals to the intermediate court of appeals from "final judgments, orders, or decrees[.]" (Emphasis added). In

circuit court proceedings that conclude with a final judgment pursuant to Rule 58 of the Hawai'i Rules of Appellant Procedure, "[a]n appeal may be taken . . . 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). However, in this case, a judgment already exists, because Judgment Creditor/Counterclaim Defendant/Appellee Banque De Tahiti initiated this case by filing a foreign judgment on September 19, 2003, pursuant to HRS § 658C-4 (Supp. 2006), and, in the ensuing post-judgment proceeding, Appellant Kurth has appealed from a post-judgment order regarding the validity of the foreign judgment, namely the July 20, 2006 summary judgment order. "A post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citation omitted). Furthermore, "the separate judgment requirement articulated in Jenkins [v. Cades Schutte Fleming & Wright], 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994),] is inapposite in the post-judgment context." Ditto v. McCurdy, 103 Hawai'i at 158, 80 P.3d at 979.

The July 20, 2006 summary judgment order appears to have determined the issue whether the foreign judgment is enforceable in Hawai'i under HRS § 658C-4 (Supp. 2006). However,

the July 20, 2006 summary judgment order does not resolve Appellant Kurth's counterclaim, which includes two separate causes of action, even though Appellant Kurth's counterclaim is a part of this post-judgment proceeding. Regardless whether Appellant Kurth's counterclaim is actually authorized in this post-judgment proceeding, the post-judgment proceeding will not have concluded until the circuit court resolves Appellant Kurth's counterclaim by, at a minimum, expressly dismissing both of the two causes of action in Appellant Kurth's counterclaim. The circuit court has not resolved Appellant Kurth's counterclaim. Although the July 20, 2006 summary judgment contains a finding that there is no just reason for delay in the entry of a final judgment, such a finding does not provide sufficient finality in the context of a post-judgment proceeding, because such language is applicable only in proceedings that conclude with a final judgment. As already stated, "the separate judgment requirement articulated in Jenkins [v. Cades Schutte Fleming & Wright], 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994),] is inapposite in the post-judgment context." Ditto v. McCurdy, 103 Hawai'i at 158, 80 P.3d at 979. When and if the circuit court enters a post-judgment order that resolves the two causes of action in Appellant Kurth's counterclaim, then the post-judgment proceeding will have ended, leaving nothing further to be accomplished, and that final post-judgment order, as the last of a series of orders in this post-judgment proceeding, will be an appealable final

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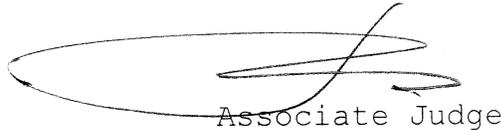
post-judgment order. Cf. S. Utsunomiya Enterprises, Inc. v. Moomuku Country Club, 75 Haw. 480, 494-95, 866 P.2d 951, 960 (1994).

Absent an appealable final post-judgment order, we lack appellate jurisdiction, and this appeal is premature. Therefore,

IT IS HEREBY ORDERED that this appeal in appellate court case number 28312 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 27, 2007.

  
Chief Judge

  
Associate Judge

  
Associate Judge