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KHAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

NO. 28400

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

C. BREWER AND COMPANY, LIMITED, a Hawai'i corporation,
Plaintiff-Appellee, v. HAWAII INSURANCE GUARANTY
ASSOCIATION, a statutorily created non-profit
unincorporated legal entity, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 05-1-0543-03)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Defendant-Appellant Hawaii Insurance Guaranty Association's (Appellant HIGA) appeal from the Honorable Victoria S. Marks's January 11, 2007 Rule 54(b) judgment (the Judgment) because the Circuit Court of the First Circuit (the circuit court) should not have certified the Judgment as final pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b).

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.) Furthermore, under HRCP Rule 58, "[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). "[I]f 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 HRCF

[Rule] 54(b)[.]" Id.

The circuit court ensured that the Judgment contained the language necessary for certification under HRCF Rule 54(b). However an HRCF Rule 54(b) "certification of finality is limited to only those cases where (1) more than one claim for relief is presented or multiple parties (at least three) are involved, and (2) the judgment entered completely disposes of at least one claim or all of the claims by or against at least one party." Elliot Megdal & Assocs. v. Daio USA Corp., 87 Hawai'i 129, 133, 952 P.2d 886, 890 (App. 1998) (citation omitted). With respect to the finality requirement,

[a] final decision for purposes of Rule 54(b) generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. When the plaintiff retains the right to appear and assert additional damages against the defendant[,] the judgment cannot be viewed as final since finality implies that, after entry of judgment, the court will concern itself with nothing other than the mechanics of execution. In other words, the lower court may utilize its Rule 54(b) powers with respect to a given claim only if all damages stemming from that claim have been fixed. There is no material difference between an order that leaves all damages issues open and an order that leaves one, important damages issue open.

Id. at 135, 952 P.2d at 892 (citations, ellipses, internal quotation marks, and brackets omitted). Thus, we have held that, where a case "(1) . . . was not a multiple-claim lawsuit, and (2) the circuit court did not fully adjudicate [a plaintiff's] claim for damages, the circuit court erred in certifying the . . . [j]udgment in favor of [the plaintiff] as final pursuant to HRCF Rule 54(b)." Id.

Similarly, the instant case (1) involves only one claim by one party, Plaintiff-Appellee C. Brewer and Company, Limited

(Appellee C. Brewer), against one other party, Appellant HIGA, and, thus, the instant case is not a multiple-claim lawsuit; and (2) the Judgment does not completely dispose of Appellee C. Brewer's single claim because, although the Judgment declares that Appellee C. Brewer is entitled to recover pursuant to HRS §§ 431:16-101 to 431:16-219 (2005), it does not finally determine the amount of money that Appellee C. Brewer is entitled to recover. Therefore, similar to the judgment in Elliot Megdal & Assocs., the January 11, 2007 "judgment was not final and should not have been certified by the circuit court as final pursuant to HRCP Rule 54(b)." Id.

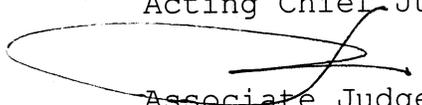
Absent an appealable final judgment, this appeal is premature, and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 23, 2007.

Corinne K A Watanabe

Acting Chief Judge


Associate Judge

Clair R. Foley
Associate Judge