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ENRI RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

NO. 28500

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

KALBERT YOUNG, in His Official Capacity as Director,  
Department of Finance, County of Maui, Plaintiff-  
Counterclaim Defendant-Appellee,

v.

WILLIAM SOCOR ELLIS, JR., Defendant-Appellant,  
and

QUADRANT HOLDINGS PTY. LTD., RICHARD EMERY, Trustee,  
KULA-OLINA ASSOCIATES, ONIEL EUGENE LONG, JR., and  
SARA MORELAND LONG, Trustees of the Gene and Sara  
Long Family Trust Dated March 23, 1994, ROY CLARK  
KESNER, WILLIAM JAMES LEMKE, TRAVIS O. THOMPSON, J.P.  
SCHMIDT, JOSEPH A. WOLSZTNIAK, and ROBERT EDWARD STRAND,  
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 94-0646(3))

ORDER DISMISSING APPEAL

(By: Foley, Presiding Judge, Nakamura and Fujise, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Defendant/Counterclaim-Plaintiff [sic]/Cross-Claim Plaintiff [sic]/Cross-Claim Defendant/Third-Party Plaintiff/ Appellant William Socor Ellis, Jr.'s (Appellant Ellis) appeal from the Honorable Joseph E. Cordoza's March 14, 2007 "Order of Dismissal," because the March 14, 2007 dismissal order is not an appealable order under Hawaii Revised Statutes (HRS) § 667-51 (Supp. 2006) or HRS § 641-1 (Supp. 2006).

HRS § 667-51 authorizes a party in a foreclosure action to assert an appeal from (1) a judgment on a decree of foreclosure, (2) an Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b) certified judgment on an order confirming the sale of the foreclosed property, and (3) a deficiency judgment. HRS § 667-51(a). However, the March 14, 2007 dismissal order does not belong to any of these categories of judgments that are

appealable under HRS § 667-51. Therefore, the March 14, 2007 order is not appealable under HRS § 667-51.

The instant foreclosure case is unusual in that the circuit court has not entered a foreclosure decree, a judgment confirming the sale of the foreclosed property, nor a deficiency judgment. Instead, the circuit court has gradually resolved all of the parties' multiple claims by entering a series of dismissal orders that culminated with the March 14, 2007 dismissal order, much in the same way that a circuit court might resolve a standard civil circuit court case. In standard civil circuit court cases, an aggrieved party may appeal from final judgments, orders or decrees. HRS § 641-1(a). However, "[a]n appeal may be taken from circuit court orders resolving claims against parties 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). Thus, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 21, 122 P.3d 809, 816 (2005) (citation omitted; emphasis added). For example, the Hawai'i Supreme Court has held that "[a]lthough [Rules of the Circuit Courts (RCCH) Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCP [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996) (emphasis added).

Although the circuit court resolved several of the parties' multiple claims through a series of dismissal orders, and then dismissed all of the parties' remaining claims through the March 14, 2007 dismissal order based on a lack of prosecution by the parties, the circuit court has not reduced the dismissal

orders to a separate judgment document that dismisses all of the parties' claims, as HRCF Rule 58 requires under the holding in Jenkins v. Cades Schutte Fleming & Wright. The Hawai'i Supreme Court holds that an appeal from an order that is not reduced to a separate judgment "by the time the record is filed in the supreme court will be dismissed." Jenkins, 76 Hawai'i at 120, 869 P.2d at 1339 (footnote omitted). Absent an appealable order or judgment in this case, this appeal is premature and we lack appellate jurisdiction. Therefore,

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

DATED: Honolulu, Hawai'i, July 9, 2007.

  
Daniel R. Foley  
Presiding Judge

  
Cass H. Nakamura  
Associate Judge

  
AUSA D. H. Zizine  
Associate Judge