

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28758

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

MALUHIA APARTMENT 1, LLC nka MALUHIA ONE, LLC; and
 MALUHIA APARTMENT 9, LLC nka MALUHIA NINE, LLC,
 Petitioners-Appellees

v.

JEN-HSUN HUANG and LORI HUANG,
 Respondents-Appellants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
 (S.P. NO. 07-1-0241)

ORDER DISMISSING APPEAL

(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Respondents-Appellants Jen-Hsun Huang and Lori Huang's (the Huang Appellants) appeal, because the Honorable Sabrina S. McKenna has not reduced her dispositive order to a separate judgment, as the supreme court requires under Hawai'i Revised Statutes (HRS) § 641-1(a) (Supp. 2006), 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).

HRS § 641-1(a) (Supp. 2006) authorizes appeals from "final judgments, orders, or decrees[.]" (Emphasis added). The supreme court has specifically noted that "a minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming &

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 HONOLULU, HAWAII

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Wright, 88 Hawai'i 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) (emphasis added). Therefore, the circuit court's September 10, 2007 minute order is not an appealable order.

The October 16, 2007 "Order Granting Petitioners' Amended Petition to Expunge Notice of Pendency of Action Filed on August 8, 2007" (the October 16, 2007 order) is also not an appealable order. Appeals under HRS § 641-1 (Supp. 2006) "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (Supp. 2006). The Hawai'i Rules of Civil Procedure "govern the procedure in the circuit courts of the State in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81." HRCPC Rule 1 (emphasis added). HRCPC Rule 81 does not provide an exception for a special proceeding to expunge a notice of the pendency of an action. Therefore, the Hawai'i Rules of Civil Procedure govern the procedures before the circuit court in this case. HRCPC Rule 58 requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement, the supreme court has held that "[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 HRCPC [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "An appeal from an order that is not reduced to a judgment in favor

or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted).

For example, "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, 20, 122 P.3d 809, 815 (2005) (citation omitted). Thus, the supreme court has held that, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCF [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).

In the instant case, the circuit court has not yet reduced the October 16, 2007 order to a separate judgment in favor of and against the appropriate parties, as HRCF Rule 58 requires under the holding in Jenkins v. Cades Schutte Fleming & Wright. Therefore, the Huang Appellants' appeal is premature.

The supreme court has held that, under the appropriate circumstances, an order expunging a notice of the pendency of an action can satisfy all three requirements for the collateral order doctrine,¹ and, thus, be an appealable collateral order

¹ In order to be appealable under the collateral order doctrine, an appealed order must satisfy all three of the following requirements: "the order must [1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (citations and internal quotation marks omitted) (brackets in original).

collateral order under HRS § 641-1(a) (Supp. 2006). Knauer v. Foote, 101 Hawai'i 81, 84-85, 63 P.3d 389, 393-394 (2003).

However, in the instant case, the sole issue of the case has been whether the circuit court should expunge a notice of the pendency of an action. The October 16, 2007 order directly addresses the merits of this case rather than an issue that is completely separate from the merits of the case. Therefore, the October 16, 2007 order is not appealable under the collateral order doctrine.

Absent an appealable final judgment, this appeal is premature. Therefore,

IT IS HEREBY ORDERED that the appeal in appellate court case number 28758 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 14, 2007.



Chief Judge



Associate Judge



Associate Judge