

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28927

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WELLS FARGO HOME MORTGAGE, INC., successor in
interest to The Prudential Home Mortgage Company, Inc.,
Plaintiff-Appellant,

v.

U.S. FINANCIAL MORTGAGE CORPORATION, Defendant-Appellee

and

DOE DEFENDANTS 1-10, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 04-1-1445)

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 MAY - 8 AM 11:24

FILED

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Recktenwald, C.J., Watanabe and Foley, JJ.)

Upon review of the record in this case, it appears that we lack jurisdiction over the appeal that Plaintiff-Appellant Wells Fargo Home Mortgage, Inc. (Appellant Wells Fargo Home Mortgage), asserted from the Honorable Karen S. S. Ahn's

- (1) October 22, 2007 "Findings of Fact, Conclusions of Law and Order Granting Motion to Dismiss for Failure to Prosecute" (the October 22, 2007 dismissal order),
- (2) the October 25, 2007 "Notice of Entry of the Order Granting Motion to Dismiss for Failure to Prosecute [HRCF Rule 77(d)]" (the October 25, 2007 notice of entry of the October 22, 2007 dismissal order), and
- (3) December 6, 2007 "Order Denying Plaintiff Wells Fargo Home Mortgage, Inc.'s Motion for H.R.C.P. Rule 60(b)(1) Reconsideration of the Findings of Fact, Conclusions of Law, Order Granting Motion to Dismiss for Failure to Prosecute" (the December 6, 2007 order denying Appellant Wells Fargo Home Mortgage's HRCF Rule 60(b)(1) motion for reconsideration),

because the circuit court has not yet entered an appealable final

judgment in this case. Hawai'i Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) authorizes appeals to the ICA from "final judgments, orders, or decrees[.]" (Emphasis added). Appeals under HRS § 641-1 (1993 & Supp. 2007) "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (1993 & Supp. 2007). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on this requirement under HRCP Rule 58, the Supreme Court of Hawai'i 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 HRCP [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). Consequently, "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). For example, the supreme court has held that, "[a]llthough 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).

The circuit court has not yet entered a final judgment in this case, and, thus, neither the October 22, 2007 dismissal order nor the October 25, 2007 notice of entry of the October 22, 2007 dismissal order is an appealable final order.

Appellant Wells Fargo Home Mortgage also purports to be appealing from a post-judgment order, namely, the December 6, 2007 order denying Appellant Wells Fargo Home Mortgage's HRCP Rule 60(b)(1) motion for reconsideration. "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). For example, "[a]n order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." Id. at 160, 80 P.3d at 981 (citation omitted). However, "a motion for reconsideration, pursuant to HRCP Rule 60(b), is authorized only in situations involving final judgments." Cho v. State, 115 Hawai'i 373, 382, 168 P.3d 17, 26 (2007) (citations and internal quotation marks omitted); Crown Properties, Inc. v. Financial Security Life Insurance Co., Ltd., 6 Haw. App. 105, 112, 712 P.2d 504, 509 (1985) ("A Rule 60(b), HRCP, motion is authorized only in situations involving final judgments."); Tradewinds Hotel, Inc. v. Cochrane, 8 Haw. App. 256, 262, 799 P.2d 60, 65 (1990) ("Rule 60(b) applies to motions seeking to amend final orders in

the nature of judgments."). Without a judgment in the instant case, "relief pursuant to HRCF Rule 60(b) was not available[.]" Cho v. State, 115 Hawai'i at 383, 382, 168 P.3d at 27.

Therefore, the December 6, 2007 order denying Appellant Wells Fargo Home Mortgage's HRCF Rule 60(b)(1) motion for reconsideration is merely an interlocutory order, rather than an appealable post-judgment order.

Absent an appealable final judgment, Wells Fargo Home Mortgage's appeal is premature and we lack jurisdiction.

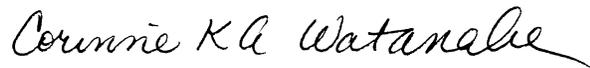
Therefore,

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

DATED: Honolulu, Hawai'i, May 8, 2008.



Chief Judge



Associate Judge



Associate Judge