

NO. 29015

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

SS&M AUTO PARTS, LLC, a Hawaii limited
liability company, formerly known as American Recycling,
Plaintiff-Appellant,

v.

SAND ISLAND BUSINESS ASSOCIATION,
a Hawaii non-profit corporation; ISLAND WORKS, INC.,
a dissolved Hawaii corporation; and MICHAEL CHOCK,
doing business as Mokihana Builders, Defendants-Appellees,

and

DOES 1-50, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 05-1-0936)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding J., Fujise and Leonard, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Plaintiff/Counterclaim-Defendant/Appellant SS&M Auto Parts's (Appellant SS&M Auto Parts's) appeal from the Honorable Bert I. Ayabe's January 18, 2008 order granting Defendant/Counterclaim-Plaintiff/Appellee Sand Island Business Association's (Appellee Sand Island Business Association's) motion to establish a rent trust fund pursuant to Hawaii Revised Statutes (HRS) § 666-21 (1993), because the January 18, 2008 order is an interlocutory order, and the circuit court has not yet entered an appealable final judgment pursuant to HRS § 641-1(a), Rule 58 of the Hawaii Rules of Civil Procedure (HRCP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaii 115, 119, 869 P.2d 1334, 1338 (1994).

HRS § 641-1(a) authorizes appeals from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (1993 & Supp.

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2007) (emphasis added). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (1993 & Supp. 2007). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." 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, 76 Hawai'i at 119, 869 P.2d at 1338. "[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 HRCP [Rule] 54(b)." Id. Therefore, "an appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)[.]" Id.

The January 18, 2008 order granting Appellee Sand Island Business Association's motion to establish a rent trust fund pursuant to HRS § 666-21 is an interlocutory order that is eligible for appellate review only by way of an appeal from a final judgment. The circuit court has not entered a final judgment in this case. Although exceptions to the final judgment requirement exist under the Forgay v. Conrad, 47 U.S. 201 (1848), doctrine (the Forgay doctrine) and the collateral order doctrine, the January 18, 2008 order does not satisfy all of the requirements for appealability under the Forgay doctrine and the collateral order doctrine. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (requirements for appealability under the Forgay doctrine) and Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (requirements for appealability under the collateral order doctrine). The circuit court has not certified the January 18,

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2008 order for an interlocutory appeal pursuant to HRS § 641-1(b) (1993 & Supp. 2007). Therefore, Appellant SS&M Auto Parts's appeal from the January 18, 2008 order is premature, and we lack appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, July 23, 2008.


Presiding Judge


Associate Judge


Associate Judge