

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29067

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

NANCY H. HO, Plaintiff/Appellee/Cross-Appellant

v.

HAWAIIAN AIRLINES, INC., and RUTH ANN YAMANAKA,
Defendants/Cross-Claim Defendants/Appellees/Cross-Appellees,

and

GRAY KISSINGER,
Defendant/Cross-Claim Plaintiff/Appellant/Cross-Appellee,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE ENTITIES 1-10,
DOE PARTNERSHIPS 1-10, DOE JOINT VENTURES 1-10,
and DOE CORPORATIONS 1-10, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 04-1-0608)

ORDER DISMISSING APPEAL AND CROSS-APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over the appeal and cross-appeal that Defendant/Cross-Claim Plaintiff/Appellant/Cross-Appellee Gary Kissinger (Appellant Kissinger) and Plaintiff/Appellee/Cross-Appellant Nancy H. Ho (Cross-Appellant Ho) asserted from the Honorable Karen S. Ahn's February 19, 2008 amended judgment, because the February 19, 2008 amended judgment does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) authorizes appeals from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (1993 & Supp. 2007). 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).

NORMA T. YARA
CLERK, APPELLATE COURTS,
STATE OF HAWAII

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Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) requires that "[e]very judgment shall be set forth on a separate document." HRCPP Rule 58. Based on this requirement under HRCPP 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 HRCPP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id. (emphases added). "[A]n 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 HRCPP [Rule] 54(b)."

Id.

The February 19, 2008 amended judgment does not specifically identify the counts in Cross-Appellant Ho's amended complaint on which the circuit court is entering judgment, nor does the February 19, 2008 amended judgment specifically enter judgment on all of the counts in Cross-Appellant Ho's amended complaint. Furthermore, the February 19, 2008 amended judgment does not utilize operative language to resolve all of the parties' claims in this case. For example, the February 19, 2008 amended judgment does not resolve Appellant Kissinger's cross-claims. Instead, the February 19, 2008 amended judgment merely declares that there are no other claims, counterclaims, cross-claims, third-party claims or parties remaining in this case. Such a statement does not resolve the remaining claims. As the Supreme Court of Hawai'i has explained,

[a] statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, "Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is

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entered in favor of Plaintiff/Counter-
Defendant Z," or "all other claims,
counterclaims, and cross-claims are dismissed."

Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 120 n.4, 869 P.2d at 1339 n.4 (emphases added). Therefore, the February 19, 2008 amended judgment does not satisfy the requirements for an appealable judgment under HRCF Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal and cross-appeal are premature, and we lack appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that this appeal and cross-appeal are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 17, 2008.


Presiding Judge


Associate Judge


Associate Judge