

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29132

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ASSOCIATION OF OWNERS OF WEHILANI, Plaintiff-Appellee,

v.

LEONARD M. WELTER, Trustee of the Leonard M. Welter 1983 Trust,
and JOHN DOES 1-5, Defendants-Appellants.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIV. NO. 07-1-0024K)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

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

Upon review of the record, it appears that we lack jurisdiction over the appeal that Defendant/Counterclaim-Plaintiff/Appellant Leonard M. Welter, Trustee of the Leonard M. Welter 1983 Trust (Appellant Welter) asserted from the following three documents that Honorable Elizabeth A. Strance entered:

- (1) the December 14, 2007 "Findings of Fact and Conclusion of Law and Order Granting Plaintiff's Motion for Summary Judgment filed June 05, 2007 and Denying Defendant's Motion for Summary Judgment filed May 25, 2007" (the December 14, 2007 summary judgment order);
- (2) the December 14, 2007 "Notice of Entry of Judgment/Order";
- (3) the April 14, 2008 "Order Denying Defendant Leonard M. Welter, Trustee of the Leonard M. Welter 1983 Trust's Motion for Reconsideration, Filed December 24, 2007" (the April 14, 2008 order denying reconsideration).

Although the parties have asserted multiple claims, the focus of this case has been the merits of Plaintiff/Counterclaim-Defendant/Appellee Association of Owners of Wehilani's (Appellee AOA Wehilani) complaint for foreclosure.

K. HAMAKOHO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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In a circuit court foreclosure case, there are two primary statutes that authorize appellate review: (1) Hawai'i Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) and (2) HRS § 667-51 (Supp. 2007). Both of these statutes require a judgment for appellate review.

For example, 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). 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). The circuit court has not entered a separate judgment that resolves, on its face, all of the claims in this case.

HRS § 667-51 (Supp. 2007) authorizes a party in a foreclosure action to assert an appeal from (1) a judgment on a decree of foreclosure, (2) an 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) (Supp. 2007). The circuit court has not entered any of these three types of judgments.

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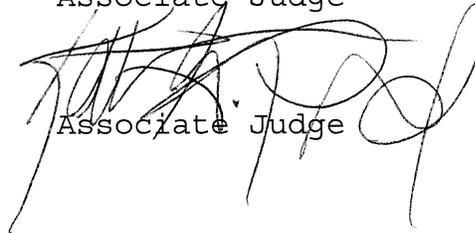
The December 14, 2007 "Notice of Entry of Judgment/Order" is not a judgment. Absent an appealable final judgment, this appeal is premature and must be dismissed for lack of appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, September 10, 2008.


Daniel R. Foley
Presiding Judge


Associate Judge


Associate Judge