

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29225

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

GAIL MARTIN,
Plaintiff/Appellant/Cross-Appellee,

v.

C. BREWER AND COMPANY, LTD., a Hawaii corporation;
MAUNA KEA AGRIBUSINESS CO., INC., a Hawaii corporation;
LAWRENCE PATAO; JOHN DOES 1-10; DOE PARTNERSHIPS 1-10;
DOE CORPORATIONS 1-10 and DOE ENTITIES 1-10,
Defendants/Appellees/Cross-Appellants.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIV. NO. 03-1-0186)

ORDER DISMISSING APPEAL AND CROSS-APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over the appeal and cross-appeal that Plaintiff/Appellant/Cross-Appellee Gail Martin (Appellant Martin) and Defendants/Appellees/Cross-Appellants Mauna Kea Agribusiness Co., Inc. (Cross-Appellant Mauna Kea Agribusiness) and Laurence Patao (Cross-Appellant Patao) have asserted from the Honorable Glenn S. Hara's two May 28, 2008 judgments, because neither of the two May 28, 2008 judgments satisfies 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 (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) (1993 & Supp. 2007) authorizes appeals from "final judgments, orders, or decrees[.]" 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

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and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCPC [Rule] 58[.]" Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338.

[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. "[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 HRCPC [Rule] 54(b)[.]" Id. "[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 HRCPC [Rule] 54(b)." Id.

The circuit court has attempted to resolve all claims against all parties by entering two May 28, 2008 judgments. However, neither of the two May 28, 2008 judgments, by itself, resolves, on its face, all claims against all parties. Furthermore, neither of the two May 28, 2008 judgments contains the finding necessary for certification under HRCPC Rule 54(b). Therefore, neither of the two May 28, 2008 judgments is an appealable final judgment under HRCPC Rule 58 and the holding in Jenkins.

Although each of the two May 28, 2008 judgments contains a statement that declares that there are no remaining parties and/or claims to this action, the Supreme Court of Hawai'i has explained that

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

Jenkins, 76 Hawai'i at 120 n.4, 869 P.2d at 1339 n.4 (emphases added). In order to resolve the remaining claims other than

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those listed in the judgment language, the circuit court must utilize operative language that dismisses those claims, so that the single judgment, on its face, resolves all claims against all parties.

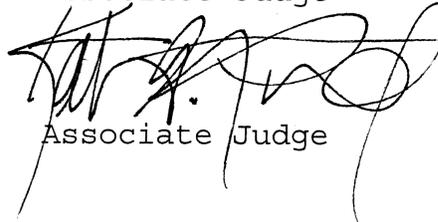
Absent an appealable final judgment, the appeal and cross-appeal are premature, and we lack appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that this appeal and cross-appeal in appellate court case number 29225 are dismissed for lack of appellate jurisdiction.

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


Daniel P. Foley
Presiding Judge


Associate Judge


Associate Judge