

NO. 29261

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

TED ERUM, JR., Plaintiff-Appellant/Cross-Appellee,
v.

ERIC A. KNUDSEN TRUST, its trustee, STACEY WONG, Defendants-
Appellees/Cross-Appellants,

and

KAUAI COUNTY COUNCIL, Defendant.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. 08-1-0032)

ORDER GRANTING PLAINTIFF-APPELLANT/CROSS-APPELLEE
TED ERUM, JR.'S, NOVEMBER 24, 2008
MOTION TO DISMISS APPEAL AND CROSS-APPEAL
(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Upon review of (1) Plaintiff-Appellant/Cross-Appellee Ted Erum, Jr.'s (Appellant Erum) November 24, 2008 motion to dismiss the appeal and cross-appeal from the Honorable Randal G. B. Valenciano's June 13, 2008 judgment, (2) Defendants-Appellees/Cross-Appellants Eric A. Knudsen Trust, Stacey Wong, Trustee of the Eric A. Knudsen Trust's (the Knudsen Cross-Appellants) December 2, 2008 memorandum in opposition to Appellant Erum's November 24, 2008 motion to dismiss the appeal and cross-appeal, and (3) the record, it appears that we lack appellate jurisdiction over this case.

Hawaii Revised Statutes (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). Rule 58 of the Hawai'i Rules of Civil

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Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." 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).

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

Appellant Erum argues that the June 13, 2008 judgment is not appealable because the June 13, 2008 judgment does not specifically identify and resolve Appellant Erum's claim against Defendant-Appellee/Cross-Appellee Kauai County Council (Appellee Kauai County Council). In contrast, the Knudsen Cross-Appellants argue that the June 13, 2008 judgment is appealable because Appellant Erum erroneously filed his amended complaint (that included Appellant Erum's claim against Appellee Kauai County Council) without leave of the court, and, thus, the June 13, 2008 judgment did not need to identify and resolve Appellant Erum's

claim against Appellee Kauai County Council. However, HRCPC Rule 15 provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served[.]" HRCPC Rule 15(a). At the time when Appellant Erum filed his amended complaint, the Knudsen Cross-Appellants had filed a motion to dismiss Appellant Erum's original complaint, rather than an answer to Appellant Erum's original complaint. While an answer would have been a "responsive pleading" within the meaning of HRCPC Rule 15(a), the Supreme Court of Hawai'i has held that "a motion to dismiss is not a 'responsive pleading' within the meaning of [HRCPC Rule 15(a)]," and, "[t]herefore, the mere service of [a] motion for dismissal cannot terminate the right to amend [the complaint]." Ellis v. Crockett, 51 Haw. 45, 60, 451 P.2d 814, 824 (1969) (citations omitted). Under such circumstances, HRCPC Rule 15(a) authorized Appellant Erum to file his amended complaint without leave of the circuit court. The fact that Appellant Erum never served the amended complaint on Appellee Kauai County Council did not, by itself, nullify Appellant Erum's claim against Appellee Kauai County Council, and, thus, the June 13, 2008 judgment had to identify and resolve Appellant Erum's claim against Appellee Kauai County Council (as well as all other claims). The June 13, 2008 judgment does not, on its face, contain operative language that enters judgment on or dismisses Appellant Erum's claim against Appellee Kauai County Council, and, thus, the June 13, 2008 judgment does not satisfy the requirements for an appealable final judgment under HRCPC

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Rule 58 and the holding in Jenkins.

Absent an appealable final judgment, we lack jurisdiction over this appeal and cross-appeal. Accordingly,

IT IS HEREBY ORDERED that Appellant Erum's November 24, 2008 motion to dismiss the appeal and cross-appeal is granted, and this appeal and cross-appeal are dismissed.

DATED: Honolulu, Hawai'i, December 4, 2008.

Corinne K. A. Watanabe
Presiding Judge

Daniel R. Foley
Associate Judge

Aewa D. Ono
Associate Judge