

NO. 29296

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

GEORGE ROBERT TOTH, Plaintiff-Appellant,
v.

DONALD S. RULLO; RED TIME REALTY LLC,
a Hawaii limited liability company; MICHAEL J. SWERDLOW;
HO'OMAU I MUA LLC, a Hawaii limited liability company;
LEHMAN BROTHERS BANK, FSB, a Federal Savings Bank;
JOHN DOES 1-20, Defendants-Appellees

KHAMAKADO
CLERK APPELLATE COURTS
STATE OF HAWAII

2009 DEC -3 AM 11:02

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 07-1-0097)

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 Plaintiff-Appellant Robert Toth (Appellant Toth) asserted from the Honorable Elizabeth Strance's August 1, 2008 judgment, because the August 1, 2008 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 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[.]" 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 Hawaii 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 (emphasis added).

[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.

The August 1, 2008 judgment purports to enter judgment, but the August 1, 2008 judgment does not specifically identify the party or parties in favor of whom, and against whom, judgment is entered. The August 1, 2008 judgment also does not expressly dismiss the claims on which the circuit court does not intend to enter judgment. Although the August 1, 2008 judgment contains a statement that declares that "[e]ach and every claim by each and every party is resolved by this FINAL JUDGMENT[.]" 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 (emphasis 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 HRCP [Rule] 54(b)." Id. at 119, 869 P.2d at 1338.

The August 1, 2008 judgment does not, on its face, resolve all claims against all parties, and thus, the August 1,

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2008 judgment does not satisfy the requirements for an appealable judgment under HRCF Rule 58 and the holding in Jenkins. Absent an appealable final judgment, the appeal 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, December 3, 2008.


Presiding Judge


Associate Judge

Associate Judge