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NO. 29344

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 JAN 12 AM 10: 43

FILED

ASUNCION R. GARCIA, Plaintiff-Appellant,

v.

HONDA KAIHATSU KOGYO KABUSHIKI KAISHA
dba PEARL COUNTRY CLUB, Defendant-Appellee,

and

JOHN DOES 1-10; JANE DOES 1-10;
DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10;
DOE GOVERNMENTAL ENTITIES 1-10; and DOE ASSOCIATIONS 1-10,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 05-1-0985)

ORDER OF DISMISSAL FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Nakamura and Leonard, JJ.)

Upon review of (1) Plaintiff-Appellant Asuncion R. Garcia's (Appellant Garcia) appeal from the Honorable Karen S.S. Ahn's August 7, 2008 "Order Denying Motion to Set Aside Order of Dismissal and to Reinstate Case and Motion to Allow Substitution of Counsel Filed on June 13, 2008" (the August 7, 2008 order) and the Honorable Karen S.S. Ahn's January 7, 2008 "Order of Dismissal (Rule 12(c) and Rule 12(q); Notice of Entry" (the January 7, 2008 order of dismissal) and (2) the record in this case, it appears that we lack jurisdiction over Appellant Garcia's appeal, because the circuit court has not yet reduced the January 7, 2008 order of dismissal to a separate judgment.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) authorizes appeals to the intermediate court of appeals

from "final judgments, orders, or decrees[.]" (Emphasis added). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c). Rule 58 of the Hawaiʻi Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement, the Supreme Court of Hawaiʻi 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 Hawaiʻi 115, 119, 869 P.2d 1334, 1338 (1994). "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawaiʻi 14, 20, 122 P.3d 809, 815 (2005) (citation omitted). For example, the supreme court has held that, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCP [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawaiʻi 171, 176, 914 P.2d 1364, 1369 (1996). The circuit court has not yet entered a final judgment in this case, and, thus, neither the August 7, 2008 order nor the January 7, 2008 order of dismissal is eligible for appellate

review. Absent an appealable final judgment, Appellant Garcia's appeal is premature and we lack jurisdiction.

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

DATED: Honolulu, Hawai'i, January 12, 2009.

Presiding Judge

Associate Judge

Associate Judge