

NO. 29364

NORMA T. YARA
CLERK APPELLATE COURTS
STATE OF HAWAII

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FILED

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MANUEL R. MENDES, aka CURLEY MENDES, Plaintiff-Appellee, v.
ALLAN J. MENDES, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIV. NO. 08-1-0174)

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-Appellant (Allan J. Mendes (Appellant Allan Mendes) asserted from the Honorable Joseph E. Cardoza's August 19, 2008 judgment, because the August 19, 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, 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 Hawaii 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. (emphasis added).

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."

Id. 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 HRCF [Rule] 54(b)." Id. at 119, 869 P.2d at 1338.

The August 19, 2008 judgment does not, on its face, resolve all claims against all parties. Although the August 19, 2008 judgment enters judgment in favor of Appellee Manuel R. Mendes (Appellee Manuel Mendes) and against Appellant Allan Mendes on the complaint, the August 19, 2008 does not resolve Appellant Allan Mendes's counterclaim against Appellee Manuel Mendes. The August 19, 2008 judgment does not contain an express finding of no just reason for delay in the entry of judgment pursuant to HRCF Rule 54(b). Therefore, the August 19, 2008 judgment does not satisfy the requirements for an appealable final 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,

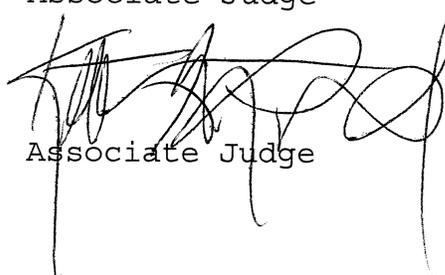
NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

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

DATED: Honolulu, Hawai'i, January 23, 2009.


Daniel R. Foley
Presiding Judge


Aunna Odu Fujian
Associate Judge


Associate Judge