

NO. 29392

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

RYAN FITZGERALD, Plaintiff-Appellant, v.  
ISLAND HOME CAPITAL, LLC, a Hawaii Limited Liability Company  
Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT.  
(CIV. NO. 05-1-0176K)

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 Plaintiff-Appellant Ryan Fitzgerald's (Appellant Fitzgerald) appeal from the Honorable Elizabeth A. Strance's June 27, 2007 "Order Granting Defendant Island Home Capital's Motion for Partial Summary Judgment Re: Plaintiff Ryan Fitzgerald's Complaint, Count II 'breach of Contract[,'] Filed October 26, 2005, Filed May 9, 2007[,]" as well as the Honorable Ronald Ibarra's:

- June 6, 2008 "Order Granting Defendant Island Home Capital's Motion for Partial Summary Judgment Filed April 16, 2008[,]"
- June 9, 2008 "Order Granting Defendant Island Home Capital's Motion for Attorneys['] Fees and Costs[,]" and
- October 14, 2008 "Judgment Re Order Granting Defendant Island Home Capital's Motion for Attorneys['] fees and Costs Entered on July 9, 2008" (the October 14, 2008 judgment awarding attorneys' fees and costs).

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 Procedure (HRCP) requires that "[e]very judgment shall be set

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forth on a separate document." Based on the separate document requirement, 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. (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.

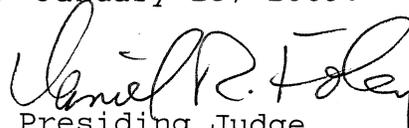
The circuit court has not reduced any of the appealed interlocutory orders to a separate judgment that resolves, on its face, all claims against all parties, as HRCP Rule 58 requires for an appeal under the holding in Jenkins. Although the circuit court entered the October 14, 2008 judgment awarding attorneys' fees and costs, this "judgment" document does not resolve, on its face, the substantive claims. An award of attorneys' fees and costs "is not a final decision with respect to a claim for relief." Fujimoto v. Au, 95 Hawai'i 116, 136 n.16, 19 P.3d 699, 719 n.16 (2001) (citation and internal quotation marks omitted). "The entry of judgment and taxation of costs are separate legal acts." CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i 301, 307, 22 P.3d 97, 103 (App. 2001) (citation, internal quotation

marks and brackets omitted). "Absent entry of an appealable final judgment on the claims [to which the award of attorneys' fees and costs relates], the award of attorneys' fees and costs is . . . not appealable." Fujimoto v. Au, 95 Hawai'i at 123, 10 P.3d at 706; CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i at 306, 22 P.3d at 102.

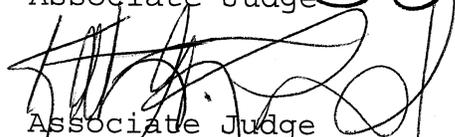
The circuit court has not entered an appealable final judgment on the claims to which the award of attorneys' fees and costs relates. Therefore, Appellant Fitzgerald's appeal is premature.

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

DATED: Honolulu, Hawai'i, January 28, 2009.

  
Presiding Judge

  
Associate Judge

  
Associate Judge