

NO. 29498

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

RAND KAAR, JOE MORENO, FRANCES MILLER and DANIEL MILLER,  
Plaintiffs/Counterclaim-Defendants/Appellees  
v.

TERESA J. MOORE, Individually and doing business  
as FINANCIAL NETWORK EXCHANGE, and unincorporated entity,  
Defendant/Counterclaim-Plaintiff/Third-Party Plaintiff/Appellant

TERESA J. MOORE,  
Cross-Complainant-Appellant,

v.

RAND KAAR, JOE MORENO, FRANCES MILLER,  
DANIEL MILLER, JOE PAIKAI, TONY COFRAN,  
SHIDLER HAWAII INVESTMENT PARTNERS, LLC., DOES 1-10  
Cross-Defendants-Appellees

FILED  
2009 JUN -5 AM 10:02  
L M RINANDO  
CLERK APPELLATE COURT  
STATE OF HAWAII

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 07-1-1001)

ORDER DISMISSING APPEAL  
FOR LACK OF APPELLATE JURISDICTION  
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of the record for this case, it appears that we lack jurisdiction over the appeal that Defendant/Counterclaim-Plaintiff/Third-Party Plaintiff/Appellant Teresa J. Moore (Appellant Moore) asserted from the Honorable Bert I. Ayabe's November 18, 2008 "Order Denying Defendant/Cross-Complainant Teresa J. Moore's Motion of the Amendment By the Rule 52(b) or the Trial of the New By the Rule 59(e) and Request of the Findings and the Conclusions by the Rule 52(a)" (the November 18, 2008 interlocutory order), because the circuit court has not yet entered a final judgment in this case.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) 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). Rule 58 of the Hawaii Rules of Civil Procedure (HRCP)

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requires that "[e]very judgment shall be set 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). "An appeal from an order that is not reduced to a judgment in favor of 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.

The November 18, 2008 interlocutory order is not a judgment, but rather, the January 7, 2009 summary judgment order is an interlocutory order that is not independently appealable. On January 30, 2009, the appellate court clerk filed the record on appeal for appellate court case number 29498, at which time the record of appeal still did not include a separate judgment in favor of and against the appropriate parties pursuant to HRCP Rule 58. Absent an appealable final judgment, this appeal is premature and must be dismissed for lack of appellate jurisdiction.

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

DATED: Honolulu, Hawai'i, June 5, 2009.

  
Daniel R. Foley  
Presiding Judge

  
Associate Judge

  
Associate Judge