

NO. 29635

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

KAREN GOO, RON LEINWEBER,
SUE LEINWEBER, NANCY OSHIRO, et al.,
Plaintiffs/Counterclaim-Defendants/Appellees/Cross-Appellees

2009 JUN 18 AM 8:01
JANAK K. SIVANEK
CLERK, APPELLATE COURTS
STATE OF HAWAII

FILED

v.

MAYOR CHARMAINE TAVARES, Successor-In-Interest
to Mayor Alan Arakawa, JEFF HUNT, Director of Planning,
County of Maui, Successor-In-Interest to Director Michael Foley,
County of Maui, Defendants/Cross-Claim Defendants/Cross-
Claimants/Appellants

and

VP AND PK(ML), et al.,
Defendants/Intervenor-Defendants/Cross-Claim
Defendants/Counterclaimants/Cross-Claimants/Appellees

and

KILA KILA CONSTRUCTION,
Defendant/Cross-Claim Defendant/Cross-Claimant/Appellee,

and

(JOHN G.) JOHN G'S DESIGN & CONSTRUCTION, INC.,
Defendant/Cross-Claimant/Cross-Claim Defendant/Appellee,

and

NEW SAND HILLS LLC.,
Defendant/Cross-Claim Defendant/Counterclaim
Plaintiff/Appellee/Cross-Appellee,

and

DAVID B. MERCHANT; JOYCE TAKAHASHI; BRIAN TAKAHASHI,
Defendants/Intervenor-Defendants/Appellees,

and

DAVID L. REASER, et al.,
Defendants/Intervenor-Defendants/Cross-Claim
Defendants/Appellees,

and

DOE DEFENDANTS 1-100,
Defendants/Intervenor-Defendants/Cross-Claim Defendants/Appellees

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 07-1-0258)

ORDER DISMISSING THIS 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 and cross-appeals that the parties have asserted from the Honorable Joel E. August's January 12, 2009 judgment and April 3, 2009 judgment, because neither of these two essentially identical judgments satisfies the requirements for an appealable final judgment under Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of 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). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." 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.

[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. (emphases 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.

Both the January 12, 2009 judgment and the April 3, 2009 judgment enter judgment in favor of some, but not all, of the plaintiffs, and against some, but not all, of the defendants as to Count 1 and Count 2 of Plaintiffs/Counterclaim-Defendants/Appellees/Cross-Appellees Karen Goo, Ron Leinweber, Sue Leinweber, Nancy Oshiro, Amber Torrencer-Paz, Reyn Tateyama, Emery Lee, Donna Lee, Larry Oshiro, Adrienne Owens, Yoshi Sakuma, Jane Sakuma, Lillian Torrecer, Kahai Shishido, Wendy Shishido, Clark Nakamoto, Scott Oshiro, John Zaner, Julie Zaner, John Waiwaiole, Norma Waiwaiole, Andrew Fujikawa, Sheila Fujikawa, Juanito Riglos, Janis Riglos, Eric Engh, and Emily Engh's (the plaintiffs) fourth amended complaint. Both the January 12, 2009 judgment and the April 3, 2009 judgment also expressly state that the plaintiffs' claim for monetary damages is dismissed. However, instead of expressly dismissing the plaintiffs' claims involving the other remaining plaintiffs and defendants (i.e., the plaintiffs and defendants for and against whom judgment is not being entered), the January 12, 2009 and the April 3, 2009 judgment merely describe how those other claims were either dismissed or withdrawn through other previous circuit court documents, instead of resolving those claims through operative language within the judgment document itself that expressly dismisses those claims. Furthermore, the January 12, 2009 judgment and the April 3, 2009 judgment do not address, much less resolve, any of the counterclaims or cross-claims that the

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parties have asserted in this case. Although neither the January 12, 2009 judgment nor the April 3, 2009 judgment, on its face, resolves all claims against all parties, neither document contains an express finding of no just reason for delay in the entry of judgment pursuant to HRCP Rule 54(b). Furthermore, although both the January 12, 2009 judgment and the April 3, 2009 judgment contain statements that there are no remaining claims, the supreme court 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."

Id. at 120 n.4, 869 P.2d at 1339 n.4 (emphases added).

Consequently, neither the January 12, 2009 judgment nor the April 3, 2009 judgment is an appealable judgment under HRS § 641-1(a), HRCP Rule 58, and the holding in Jenkins.

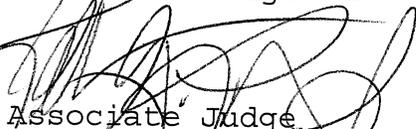
Absent an appealable final judgment, the appeal and cross-appeals in appellate court case number 29635 are premature and we lack appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that appellate court case number 29635 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 18, 2009.


Presiding Judge


Associate Judge


Associate Judge