

NO. 29657

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

SUPPA CORP., a Hawai'i corporation,  
and RAYMOND JOSEPH SUPPA, Plaintiffs/Counterclaim-  
Defendants/Appellants,

v.

ASSOCIATION OF APARTMENT OWNERS OF THE KAHALA BEACH,  
by its Board of Directors; JOHN DOES 1-50; JANE  
DOES 1-50; DOE CORPORATIONS 1-50; DOE PARTNERSHIPS  
1-50; DOE GOVERNMENTAL ENTITIES 1-50; DOE NON-  
PROFIT ENTITIES 1-50; and DOE DEFENDANTS 1-50,  
Defendants/Counterclaim-Plaintiffs/Third-Party  
Plaintiffs/Appellees

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ASSOCIATION OF APARTMENT OWNERS OF THE KAHALA BEACH,  
by its Board of Directors, Third-Party Plaintiff/Appellee,

v.

WAIALAE COUNTRY CLUB; KAHALA HOTEL INVESTORS, LLC;  
JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS  
1-10; DOE PARTNERSHIPS 1-10; DOE GOVERNMENTAL  
ENTITIES 1-10; DOE LIMITED LIABILITY PARTNERSHIPS  
1-10; and DOE LIMITED LIABILITY CORPORATIONS 1-10,  
Third-Party Defendants/Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 06-1-1061)

ORDER DISMISSING THIS APPEAL  
FOR LACK OF APPELLATE JURISDICTION

(By: Watanabe, Acting Chief Judge, Nakamura and Leonard, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Plaintiffs/Counterclaim-Defendants/Appellants Suppa Corp. and Raymond Joseph Suppa (the Suppa Appellants) have asserted from the Honorable Eden Elizabeth Hifo's February 5, 2009 judgment in favor of Defendant/Counterclaim-Plaintiff/Third-Party Plaintiff/Appellee Association

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STATE OF HAWAII

of Apartment Owners of the Kahala Beach (Appellee AOA Kahala Beach), because the February 5, 2009 judgment does not satisfy 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." The supreme court holds 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 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. (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.

Although the parties in this case asserted multiple claims, the February 5, 2009 judgment does not resolve all of the

parties' claims. For example, the February 5, 2009 judgment does not resolve Appellee AOA Kahala Beach's amended counterclaim and amended third-party complaint. The February 5, 2009 judgment also does not contain an express finding of no just reason for delay in the entry of judgment. Therefore, the February 5, 2009 judgment is not an appealable judgment under HRCF Rule 58 and the holding in Jenkins.

Granted, a judgment does not need to identify and resolve claims that the parties have stipulated to dismiss pursuant to HRCF Rule 41(a)(1)(B), because a stipulation to dismiss pursuant to HRCF Rule 41(a)(1)(B) is effective without an order of the court. Cf. Amantiad v. Odum, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 166 n.7 (1999) ("We . . . hold that a separate judgment is neither required nor authorized, inasmuch as a plaintiff's dismissal of an action [pursuant to HRCF Rule 41(a)(1)(B)], by filing a stipulation of dismissal signed by all parties, is effective without order of the court."

(Citation, internal quotation marks, and brackets omitted).).

However, in order to be effective pursuant to HRCF Rule 41(a)(1)(B), a stipulation to dismiss must be "signed by all parties who have appeared in the action." HRCF Rule 41(a)(1)(B). Although the parties filed a January 26, 2009 "stipulation" to dismiss the remaining claims, no attorney signed the January 26, 2009 "stipulation" on behalf of Third-Party Defendant/Appellee Waialae Country Club, as HRCF Rule 41(a)(1)(B) requires. Although the circuit court entered a February 6, 2009 "amended stipulation" to dismiss the remaining claims, which was signed by

all parties who have appeared in this case, the presiding judge signed the February 6, 2009 "amended stipulation" as "approved and so ordered," and, thus, converted the February 6, 2009 "amended stipulation" into a dismissal order pursuant to HRCP Rule 41(a)(2). When a circuit court dismisses claims through court orders, the HRCP Rule 58 separate document rule under Jenkins requires the circuit court to reduce all of the dismissal orders to a single separate judgment that, on its face, resolves all claims against all parties. See, e.g., Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996) ("Although RCCH 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.'"); CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i 301, 306, 22 P.3d 97, 102 (App. 2001) ("[W]here all claims are dismissed and there is no relevant HRCP Rule 54(b) certification as to one or more but not all of the dismissals, there must be one final order (judgment) dismissing all claims against all parties."). As already explained, the February 5, 2009 judgment neither resolves all of the parties' claims nor contains an express finding of no just reason for delay in the entry of judgment. Therefore, the February 5, 2009 judgment is not an appealable judgment under HRCP Rule 58 and the holding in Jenkins.

Absent an appealable final judgment, the Suppa Appellants' appeal is premature and we lack appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, July 13, 2009.

*Corinne K. A. Watanabe*

Acting Chief Judge

*Craig H. Kukama*

Associate Judge

*[Signature]*

Associate Judge