

NO. 29674

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ESTATE OF RONALD H. GOMES, deceased, by its Special Administrator, PHYLLIS L. GOMES and PHYLLIS L. GOMES, Individually, TYLERANN CARVALHO-GOMES, a minor, by her Next Friend, KIMBERLY A.C. JORDAO, Plaintiffs-Appellants,

v.

TOMMY WAI HUNG MA; SINDY SIN YEE MA; HAWAIIAN ISLAND HOMES, LTD.; ASSOCIATION OF APARTMENT OWNERS OF QUEEN EMMA GARDENS; SAVIO DEVELOPMENT CO., INC., Defendants-Appellees,

and

JOHN DOES 1-5; DOE CORPORATIONS 1-5; JOHN DOE PARTNERSHIPS 1-5; ROE NON-PROFIT CORPORATIONS 1-5; and ROE GOVERNMENTAL AGENCIES 1-5, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 07-1-1292)

ORDER GRANTING MAY 15, 2009 MOTION TO DISMISS APPEAL
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) Defendants/Cross-Claim Defendants/Appellees Tommy Wai Hun Ma and Sindy Sin Yee Ma's (the Ma Appellees) May 15, 2009 motion to dismiss appellate court case number 29674 for lack of jurisdiction, (2) Defendant/Cross-Claim Plaintiff/Appellee Association of Apartment Owners of Queen Emma Gardens' (Appellee AOA Queen Emma Gardens) May 22, 2009 joinder in the Ma Appellees' May 15, 2009 motion to dismiss, (3) the May 22, 2009 memorandum by Plaintiffs-Appellants Estate of Ronald H. Gomes, deceased, by its Special Administrator, Phyllis L. Gomes, Phyllis L. Gomes, individually, Tylerann Carvalho-Gomes, a Minor, by her Next Friend, Kimberly A. C. Jordao (collectively the Gomes Appellants) in opposition to the Ma Appellees' May 15,

EMERSON
CLERK, APPELLATE COURT
STATE OF HAWAII

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FILED

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

2009 motion to dismiss, and (4) the record,¹ it appears that we lack jurisdiction over the Gomes Appellants' appeal from the following four interlocutory orders that the Honorable Gary W. B. Chang entered in this case:

- (1) the December 29, 2008 "Order Granting Defendant Association of Apartment Owners of Queen Emma Gardens' Motion for Partial Summary Judgment Filed October 10, 2008";
- (2) the February 2, 2009 "Order Granting Defendants Tommy Wai Hung Ma and Sindy Sin Yee Ma's Motion for Summary Judgment, Filed on September 18, 2008";
- (3) the February 2, 2009 "Order Granting Defendants Tommy Wai Hung Ma and Sindy Sin Yee Ma's joinder to Defendant Hawaiian Island Homes, Ltd.'s Motion for Summary Judgment Filed on September 17, 2008";
- (4) the February 2, 2009 "Order Granting Defendants Tommy Wai Hung Ma and Sindy Sin Yee Ma's joinder to Defendant Association of Apartment Owners of Queen Emma Gardens Motion for Partial Summary Judgment, Filed on October 23, 2008."

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 Hawai'i Rules of Civil Procedure (HRCP) 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 held fifteen years ago 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."

¹ We disregard Defendants/Appellees Tommy Wai Hun Ma and Sindy Sin Yee Ma's (the Ma Appellees) May 26, 2009 reply memorandum, because Rule 27 of the Hawai'i Rules of Appellate Procedure does not authorize a reply memorandum in support of a motion.

Id. at 120, 869 P.2d at 1339.

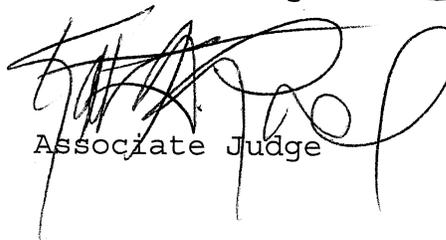
The four appealed orders are interlocutory orders that do not constitute a judgment either individually or as a group. On April 28, 2009, the appellate court clerk filed the record on appeal for appellate court case number 29674, at which time the record of appeal still did not include a separate judgment that resolved all claims against all parties, as HRCF Rule 58 requires under the holding in Jenkins. Absent an appealable final judgment, this appeal is premature and must be dismissed for lack of appellate jurisdiction.

Accordingly, IT IS HEREBY ORDERED that the Ma Appellees' May 15, 2009 motion to dismiss appellate court case number 29674 is granted, and this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 2, 2009.


Daniel R. Foley
Presiding Judge


Associate Judge


Associate Judge