

NO. 29707

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

C. BREWER AND COMPANY, LTD.,
Plaintiff/Counterclaim-Defendant-Appellee

v.

INDUSTRIAL INDEMNITY COMPANY;
INDUSTRIAL INSURANCE COMPANY OF HAWAII, LTD.,;
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG; et al.,
Defendants/Cross-Claim Plaintiffs/
Cross-Claim Defendants/Appellees

STATE OF HAWAII,
Defendant/Counterclaim-Plaintiff/Cross-Claim Plaintiff/
Cross-Claim Defendant/Third-Party Plaintiff/Appellant

v.

MARSH USA, INC.; and DOE THIRD-PARTY DEFENDANTS 1-30,
Third-Party Defendants/Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. 06-1-0140)

ORDER DISMISSING THIS APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Nakamura, J. and
Circuit Judge Nishimura, in place of
Watanabe, Acting C.J., Fujise and Leonard, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Defendant/Counterclaim-Plaintiff/Cross-Claim Plaintiff/Cross-Claim Defendant/Third-Party Plaintiff/Appellant State of Hawaii (Appellant State) has asserted from the Honorable Kathleen N. A. Watanabe's February 20, 2009 "Final Judgment Pursuant to Rule 54(b) Regarding Defendant Kilauea Irrigation Company, Inc.'s[,] Duty to

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JANIS KILYAR
CLERK OF APPELLATE COURTS
STATE OF HAWAII

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Defend Defendant State of Hawaii" (the February 20, 2009 HRCP Rule 54(b)-certified judgment).

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) (1993 & Supp. 2008). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on this requirement under HRCP Rule 58, 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. (emphases added).

For example: "Pursuant to the jury verdict entered on (date), judgment in the amount of \$ _____ is hereby entered in favor of Plaintiff X and against Defendant Y upon counts I through IV of the complaint." 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 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added).

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

The February 20, 2009 HRCP Rule 54(b)-certified judgment does not express how the circuit court intends to enter judgment. Instead, the February 20, 2009 HRCP Rule 54(b)-certified judgment vaguely purports to enter judgment, but without specifically identifying the party or parties in favor of whom and against whom judgment is entered, without explaining the manner (e.g., in part or in whole) in which the circuit court is entering judgment on a claim or claims, and without specifically identifying the claim or claims (e.g., a party's complaint, counterclaim, cross-claim, or third-party claim). The February 20, 2009 HRCP Rule 54(b)-certified judgment is too vague to satisfy the requirements for an appealable judgment under the holding in Jenkins.

Absent an appealable final judgment, Appellant State's appeal is premature and we lack appellate jurisdiction over appellate court case number 29707.

Accordingly, IT IS HEREBY ORDERED that appellate court case number 29707 is dismissed for lack of appellate jurisdiction.

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


Daniel R. Foley
Presiding Judge


C. S. Nakamura
Associate Judge


Rhonda Aina
Acting Associate Judge