

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29739

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WORLD BOTANICAL GARDENS, INCORPORATED, a Nevada corporation,
Plaintiff-Appellee,

v.

WALTER L. WAGNER, LINDA WAGNER and DAN PERKINS
Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 05-1-0210)

KHAMAKO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 AUG 12 AM 8:33

FILED

ORDER DISMISSING APPEAL FOR
LACK OF APPELLATE JURISDICTION

(By: Watanabe, Acting C.J., Foley and Nakamura, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Defendants-Appellants Walter L. Wagner, Linda Wagner and Dan Perkins have asserted from the Honorable Greg K. Nakamura's February 25, 2009 judgment, because the February 25, 2009 judgment does not satisfy the requirements for an appealable final judgment under Rule 58 of the Hawaii Rules of Civil Procedure (HRCP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaii 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." HRCP Rule 58. Based on HRCP Rule 58, 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). Furthermore,

if 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 (emphasis 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. at 119, 869 P.2d at 1338.

Although Plaintiff-Appellee World Botanical Gardens, Incorporated (Appellee World Botanical Gardens), asserted nine separate and distinct counts within its complaint, the February 25, 2009 judgment does not specifically identify the claim or claims on which the circuit court is entering judgment. For example, if the circuit court intended to enter judgment as to all of Appellee World Botanical Gardens' claims, then the

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February 25, 2009 should have included language that specifically entered judgment on "all claims." The February 25, 2009 judgment does not refer to "all claims," nor does the February 25, 2009 judgment refer to any specifically identified claim or claims. Consequently, the February 25, 2009 judgment does not satisfy the requirements for an appealable final judgment under HRS § 641-1(a) (1993 & 2008), HRCF Rule 58, and the holding in Jenkins.

Absent an appealable final judgment, this appeal is premature and we lack appellate jurisdiction over appellate court case number 29739. Accordingly,

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

DATED: Honolulu, Hawai'i, August 12, 2009.

Corinne K.A. Watanabe

Acting Chief Judge

Daniel R. Foley

Associate Judge

Cy G. Nakamura

Associate Judge