

NO. 29944

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

MARI BEREDAY and JASON TOBIAS DAVIES, Individually and  
on Behalf of LA MARIAGE, INC., a Hawai'i corporation,  
Plaintiffs-Appellants,

v.

YASUTOMI TSUGO and DOE DEFENDANTS 1-100,  
Defendants-Appellees,

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YASUTOMI TSUGO and YASUSHI TSUGO, Individually  
and derivatively on Behalf of La Mariage, Inc.,  
and KABUSHIKI KAISHA FUKUYA KASHIISHOTEN,  
Counterclaim-Plaintiffs/Appellees

v.

MARI BEREDAY, Individually, et al.,  
Counterclaim-Defendants/Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 04-1-2026)

ORDER DISMISSING APPEAL  
FOR LACK OF APPELLATE JURISDICTION  
(By: Nakamura, C.J., Watanabe and Foley, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Plaintiff/Counterclaim-Defendant/Appellant Mari Bereday (Appellant Bereday) has asserted from the Honorable Rom A. Trader's June 16, 2009 Final Judgment (June 16, 2009 judgment), because the June 16, 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." 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.

The June 16, 2009 judgment appears to enter judgment in favor of Defendant/Counterclaim-Plaintiff/Appellee Yasutomi Tsugo (Appellee Yasutomi Tsugo), and Counterclaim Plaintiffs/Appellees Yasushi Tsugo (Appellee Yasushi Tsugo) and Kabushiki Kaisha Fukuya Kashiishoten (Appellee Kabushiki Kaisha Fukuya Kashiishoten) and against Appellant Bereday, but the June 16, 2009 judgment does not specifically identify the claim or claims on which the circuit court intends to enter judgment. For example, although

- Appellant Bereday's complaint asserted multiple claims through three separate counts against Appellee Yasutomi Tsugo, and
- Appellees Yasutomi Tsugo, Yasushi Tsugo and Kabushiki Kaisha Fukuya Kashiishoten's second amended counterclaim asserted multiple claims against Appellant Bereday (claiming that Appellant Bereday was liable for "breach of fiduciary duties, wasting of and usurping corporate assets and opportunities, breach of the covenant of good faith and fair dealing, negligent and intentional misrepresentation, fraud, conversion, unjust enrichment, non-disclosure, concealment, and punitive damages"),

the June 16, 2009 judgment purports to enter judgment without specifically identifying the claim or claims on which the circuit court intends to enter judgment. Consequently, the June 16, 2009 judgment does not satisfy the requirements for an appealable final judgment under HRS § 641-1(a) (1993 & 2008), HRCP 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 29944. Accordingly,

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

DATED: Honolulu, Hawai'i, November 24, 2009.

Chief Judge

Associate Judge

Associate Judge