

NO. 27479

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

BUENA VISTA INVESTORS, LLC, a Hawai'i limited liability company,  
Plaintiff-Appellee

vs.

DAMON SCHMIDT, Defendant-Appellant

and

INDYMAC BANK, a federal banking corporation, KALOKO II  
ASSOCIATION, a Hawai'i non-profit corporation, KALOKO LANI  
TERRACE, an unincorporated association, COUNTY OF HAWAI'I,  
JOHN and JANE DOES 1-10, DOE PARTNERSHIPS, CORPORATIONS and  
ENTITIES 1-10, and DOE GOVERNMENTAL UNITS 1-10,  
Defendants

APPEAL FROM THE THIRD CIRCUIT COURT  
(CIV. NO. 03-1-0097K)

ORDER DENYING MOTION FOR  
CLARIFICATION AND/OR PARTIAL RECONSIDERATION  
(By: Duffy, J. for the court<sup>1</sup>)

Upon consideration of the motion for clarification and/or partial reconsideration of the January 11, 2006 order denying appellant's motion to dismiss appeal for lack of jurisdiction, the papers in support and the record, it appears that the separate judgment rule of HRCP 58, as interpreted by Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), applies to a final judgment in a civil case appealable pursuant to HRS § 641-1(a) and does not extend to a judgment entered on a decree of foreclosure appealable pursuant

<sup>1</sup>Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

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CHIEF, APPELLATE COURTS  
STATE OF HAWAII

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to HRS § 667-51(a)(1)(Supp. 2004). The July 29, 2005 "Judgment for Interlocutory Decree of Foreclosure" -- though appealable pursuant to HRS § 641-1(a), but not compliant with Jenkins - is a judgment entered on a decree of foreclosure that is alternatively appealable pursuant to HRS § 667-51(a)(1)(Supp. 2004).

It further appears that the request for clarification and/or reconsideration as to Supreme Court No. 27440 should be filed in No. 27440 by the parties to that appeal. Therefore,

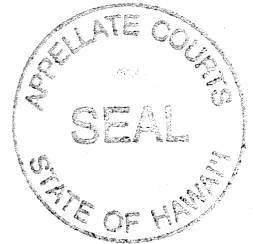
IT IS HEREBY ORDERED that the motion for clarification and/or partial reconsideration is denied.

DATED: Honolulu, Hawai'i, January 27, 2006.

FOR THE COURT:

*James E. Duggan, Jr.*

Associate Justice



Gary Victor Dubin  
for appellant  
on the motion