

*** NOT FOR PUBLICATION ***

NO. 27628

IN THE SUPREME COURT OF THE STATE OF HAWAII

2006 APR 19 PM 3:08

FILED

NORMAN T. KARR
CLERK APPELLATE COURTS
STATE OF HAWAII

HUI MALAMA I NA KUPUNA O HAWAI'I NEI, a Hawaii non-profit corporation, PAULETTE KA'ANOHIOKALANI KALEIKINES, Plaintiffs-Appellants

vs.

WAL-MART a Delaware Corporation doing business in Hawai'i; STATE OF HAWAI'I; PETER YOUNG; in his official capacity as the Director of the Department of Land and Natural Resources of the State of Hawai'i; DEPARTMENT OF LAND AND NATURAL RESOURCES; STATE HISTORIC PRESERVATION DIVISION; HOLLY McELDOWNEY, in her official capacity as the Acting Administrator of the State Historic Preservation Division of the Department of Land and Natural Resources; CITY and COUNTY OF HONOLULU; DEPARTMENT OF PLANNING AND PERMITTING FOR THE CITY AND COUNTY OF HONOLULU; HENRY ENG, in his official capacity as the Director of the Department of Planning and Permitting for the City and County of Honolulu, Defendants-Appellees

and

JOHN DOES 2-10, JANE DOES 1-10, DOE Corporations, Partnerships, Governmental Units or Other Entities 4-20, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 03-1-1112)

ORDER DISMISSING APPEAL
(By: Nakayama, J., for the court¹)

Upon review of the record, it appears that the October 26, 2005 judgment, the Honorable Victoria S. Marks, presiding, entered judgment on the claim against the City defendants and finally determined all claims against all the parties in Civil No. 03-1-1112. The October 26, 2005 judgment did not on its face resolve all claims against all the parties inasmuch as it did not dismiss the claims against the State defendants. See Jenkins v.

¹Considered by: Moon, C.J., Levinson, Nakayama, and Duffy, JJ. and Circuit Judge Ahn, in place of Acoba, J., recused.

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Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994) (in a multiple-claim or multiple-party circuit court case, the HRCP 58 final judgment "[must], on its face, . . . resolve all claims against all parties[.]"). The August 24, 2005 dismissal of the claims against the State defendants had to be included in an HRCP 58 final judgment inasmuch as the August 24, 2005 dismissal was not signed by the City defendants and was not a stipulated dismissal pursuant to HRCP 41(a)(1)(B) signed by all the parties who appeared in Civil No. 03-1-1112. See HRCP 41(a)(1)(B); Amantiad v. Odom, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 166 n.7 (1999) (HRCP 58 does not apply when claims are dismissed by stipulation pursuant to HRCP 41(a)(1)(B)). The October 26, 2005 judgment purported to be certified under HRCP 54(b), but HRCP 54(b) was inapplicable inasmuch no further claims were left to be determined in Civil No. 03-1-1112. See International Savings & Loan Ass'n v. Woods, 69 Haw. 11, 18, 731 P.2d 151, 157 (1987) (HRCP 54(b) applies when "the trial court chooses to enter a judgment on one or more claims or as to one or more parties in a multiple-claim or multiple-party case and there are claims yet to be determined."). Thus, this appeal is premature and we lack jurisdiction. Therefore,

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

DATED: Honolulu, Hawai'i, April 19, 2006.

FOR THE COURT:

Anne C. Traxler
Associate Justice

