

*** NOT FOR PUBLICATION ***

NO. 27738

IN THE SUPREME COURT OF THE STATE OF HAWAII

CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

In the Matter of the Tax Appeal of

HENRY F. JOHNSON (SHAREHOLDER), Taxpayer/Appellant/Appellant
and INTERNATIONAL RESOURCE RECOVERY, INC., Taxpayer/Appellant,

vs.

DIRECTOR OF TAXATION, STATE OF HAWAII, Appellee.

APPEAL FROM THE TAX APPEAL COURT
(TAX APPEAL CASE NO. 05-0066)

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

Upon review of the record, it appears that we lack jurisdiction over Taxpayer/Appellant/Appellant Henry F. Johnson's (Appellant Johnson) appeal in this case, because the Honorable Gary W. B. Chang's December 30, 2005 judgment does not satisfy the requirements for an appealable final judgment under HRS § 232-19 (1993), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), and our holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

HRS § 232-19 (1993) authorizes an aggrieved taxpayer to appeal to the supreme court from the decision of the tax appeal court. Rule 29 of the Rules of the Tax Appeal Court of the State of Hawai'i (RTAC) provides that, "[i]n procedural matters not specifically provided for by the foregoing rules, the court will be guided, to the extent applicable, by . . . the Hawai'i Rules of Civil Procedure." HRCP Rule 58 requires that "[e]very

¹Considered by: Moon, C.J., Levinson, Nakayama, Acoba and Duffy, JJ.

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judgment shall be set forth on a separate document." Thus, "[a]n appeal may be taken from circuit court orders resolving claims against parties 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). Although Taxpayer/Appellant International Resource Recovery, Inc., (Taxpayer International Resource Recovery), was a named party in the November 2, 2005 notice of appeal to, and the resulting proceedings before, the tax appeal court, the December 30, 2005 judgment does not identify, enter judgment on, or dismiss the claims of Taxpayer International Resource Recovery. Although the December 30, 2006 judgment contains a statement that declares that "[t]his final judgment disposes of all claims and all parties in this action[,] " we have explained under analogous circumstances that "[a] statement that declares 'there are no other outstanding claims' is not a judgment." Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4. "If the circuit court intends that claims other than those listed in the judgment language should be dismissed," then the circuit court should include operative language within the judgment that orders "all

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other claims, counterclaims, and cross-claims are dismissed.”
Id. (internal quotation marks omitted).

Therefore, the December 30, 2005 judgment does not satisfy the appealability requirements of HRS § 232-19 (1993) and the HRCF Rule 58 separate document rule under our holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, the appeal is premature. Accordingly,

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

DATED: Honolulu, Hawai'i, June 15, 2006.

FOR THE COURT:

Diana C. Trakman
Associate Justice

