

NO. CAAP-12-0000629

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

DW AINA LE'A DEVELOPMENT, LLC., Co-Petitioner-Appellant-Appellee,  
v. BRIDGE AINA LE'A, LLC., Co-Petitioner-Appellee-Appellee, v.  
STATE OF HAWAII LAND USE COMMISSION, Appellee-Appellant,  
and STATE OF HAWAII OFFICE OF PLANNING,  
COUNTY OF HAWAII PLANNING AGENCY, Appellees  
(CIVIL NO. 11-1-112K)

and

BRIDGE AINA LE'A, LLC., Appellant-Appellee v.  
STATE OF HAWAII LAND USE COMMISSION, and STATE OF HAWAII OFFICE  
OF PLANNING and COUNTY OF HAWAII, Appellees, and DW AINA LE'A  
DEVELOPMENT, LLC., Appellee-Appellant  
(CIVIL NO. 11-1-0969-05)

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION  
(By: Nakamura, C.J., Fujise and Reifurth, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Appellee-Appellant State of Hawaii Land Use Commission (Appellant State LUC) has asserted from the Honorable Elizabeth A. Strance's June 15, 2012 amended judgment in favor of Appellants-Appellees DW Aina Le'a, LLC (Appellee DWAL), and Bridge Aina Le'a, LLC (Appellee BAL), because the June 15, 2012 amended judgment does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2010), Rule 58

and Rule 72(k) 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).

When a circuit court adjudicates an appeal from an administrative agency order, "[r]eview of any final judgment of the circuit court under this chapter shall be governed by chapter 602." HRS § 91-15 (1993). The Hawai'i Intermediate Court of Appeals has jurisdiction "[t]o hear and determine appeals from any court or agency when appeals are allowed by law[.]" HRS § 602-57(1) (1993 & Supp. 2010). Under Hawai'i law, "[a]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of 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 this requirement under HRCP Rule 58, the Supreme Court of Hawai'i has held that "[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, 76 Hawai'i at 119, 869 P.2d at 1338 (emphasis added). Thus, in a consolidated circuit court civil case, the circuit court must enter a single judgment that resolves all claims as to all parties in all of the cases that the circuit court has consolidated, unless the circuit court certifies the judgment (on fewer than all claims) for appeal pursuant to HRCP Rule 54(b). See, e.g., Leslie v. Estate of Tavares, 109 Hawai'i 8, 13, 122 P.3d 803, 808 (2005) ("[A] judgment or order in a consolidated case, disposing of fewer than all claims among all parties, is not appealable in the absence of [HRCP] Rule 54(b) certification."). HRCP Rule 72(k) similarly requires that, upon a circuit court's adjudication of an administrative appeal, "the court having jurisdiction shall enter judgment." HRCP Rule 72(k). Therefore, the separate judgment document rule under

the holding in Jenkins applies to a secondary appeal from a circuit court order that adjudicates an administrative appeal. See, e.g., Raquinio v. Nakanelua, 77 Hawai'i 499, 500, 889 P.2d 76, 77 (App. 1995) ("We conclude . . . that the requirements for appealability set forth in Jenkins apply to appeals from circuit court orders deciding appeals from orders entered by the Director of Labor and Industrial Relations."). When explaining the requirements for an appealable judgment under the separate document rule, the Supreme Court of Hawai'i has noted that

[i]f we do not require a judgment that resolves on its face all of the issues in the case, the burden of searching the often voluminous circuit court record to verify assertions of jurisdiction is cast upon this court. Neither the parties nor counsel have a right to cast upon this court the burden of searching a voluminous record for evidence of finality[.]

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338. "[W]e should not make such searches necessary by allowing the parties the option of waiving the requirements of HRCP [Rule] 58." Id. "[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., (emphasis added).

Although the circuit court reduced its final decision in the consolidated administrative appeals in Civil Nos. 11-1-0112K and 11-1-0969-05 to the June 15, 2012 amended judgment in favor of Appellees DWAL and BAL, the June 15, 2012 amended judgment neither enters judgment on, nor dismisses the consolidated circuit court administrative appeals as to, three named parties: Appellees-Appellees State of Hawai'i Office of Planning, County of Hawai'i Planning Agency, and County of Hawai'i. Although the June 15, 2012 amended judgment closes with a statement that declares that there are no remaining claims, parties or issues in this matter, the Supreme Court of Hawai'i has explained that,

[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."

Jenkins, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added). Although the June 15, 2012 amended judgment does not does not expressly resolve the consolidated administrative appeals as to all of the named parties, the June 15, 2012 amended judgment does not contain an express finding of no just reason for delay in the entry of judgment on one or more but fewer than all claims pursuant to HRCF Rule 54(b). Therefore, the June 15, 2012 amended judgment does not satisfy the requirements for an appealable final judgment under HRCF Rule 58, HRCF Rule 72(k), and the holding in Jenkins. Absent an appealable final judgment, this appeal is premature and we lack jurisdiction. Accordingly,

IT IS HEREBY ORDERED AND DECREED that appellate court case number CAAP-12-0000629 is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, October 18, 2012.

Chief Judge

Associate Judge

Associate Judge