

NO. CAAP-12-0000837

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

OCEANIC COMPANIES, INC., Plaintiff-Appellee, v.  
KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 11-1-0940)

ORDER GRANTING DECEMBER 3, 2012 MOTION TO  
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Nakamura, C.J., Foley and Ginoza, JJ.)

Upon review of (1) Plaintiff-Appellee Oceanic Companies, Inc.'s (Appellee Oceanic), December 3, 2012 motion to dismiss appellate court case number CAAP-12-0000837 for lack of appellate jurisdiction, (2) Defendant-Appellant Kukui'ula Development Company (Hawaii), LLC's (Appellant Kukui'ula Development Company), December 10, 2012 memorandum in opposition to Appellee Oceanic's December 3, 2012 motion to dismiss appellate court case number CAAP-12-0000837 for lack of appellate jurisdiction, and (3) the record on appeal, it appears that we do not have jurisdiction over Appellant Kukui'ula Development Company's appeal from the Honorable Patrick W. Border's September 10, 2012 "Findings of Fact and Conclusions of Law and Order" (the September 10, 2012 order), because the circuit court has not yet reduced the September 10, 2012 order to a separate

judgment, as Hawaii Revised Statutes (HRS) 641-1(a) (1993 & Supp. 2012) and Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) require for an appeal under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

HRS § 641-1(a) 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 court." HRS § 641-1(c). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." Based on HRCP Rule 58, the Supreme Court of Hawai'i requires 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 at 119, 869 P.2d at 1338. "An appeal from an order that is not reduced to a judgment in favor of or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted).

On February 22, 2013, the record on appeal was filed for appellate court case number CAAP-12-0000837, which does not contain a final judgment. Although the circuit court appears to have resolved the claims in this case through the September 10, 2012 order, the Supreme Court of Hawai'i has consistently held over the past nineteen years that, "based on Jenkins and HRCP Rule 58, an order is not appealable, even if it resolves all claims against the parties, until it has been reduced to a separate judgment." Carlisle v. One (1) Boat, 119 Hawai'i 245, 254, 195 P.3d 1177, 1186 (2008). Absent the entry of an appealable final judgment in this case, Appellant Kukui'ula Development Company's appeal is premature and we lack jurisdiction over appellate court case number CAAP-12-0000837.

Accordingly,

IT IS HEREBY ORDERED that Appellee Oceanic's December 3, 2012 motion to dismiss appellate court case number CAAP-12-0000837 for lack of appellate jurisdiction is granted, and appellate court case number CAAP-12-0000837 is dismissed.

DATED: Honolulu, Hawai'i, March 4, 2013.

Chief Judge

Associate Judge

Associate Judge