

NO. 30087

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

PHILIP K. PALAMA, JR., et al.,
Plaintiffs-Appellees/Cross-Appellants,

v.

GILBERT MEDEIROS, SR., et al.,
Defendants-Appellants/Cross-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. 99-0050)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Foley and Fujise, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal and cross-appeal that Defendant/Appellant/Cross-Appellee Antone "Max" Medeiros (Max Medeiros) (Appellant Eric Hoo) and Plaintiffs/Appellees/Cross-Appellants Philip K. Palama, Jr. (Appellee Philip Palama), Patricia M. Palama (Appellee Patricia Palama), Violet K. Ihara (Appellee Violet Ihara) and Iris P. Hornstine (Appellee Hornstine) have asserted from the Honorable Randal G. B. Valenciano's July 22, 2009 judgment, because the July 22, 2009 judgment does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008), Rule 58 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).

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 the 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 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). Furthermore,

if 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).

For example: "Pursuant to the jury verdict entered on (date), judgment in the amount of \$ _____ is hereby entered in favor of Plaintiff X and against Defendant Y upon counts I through IV of the complaint." 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."

Id. at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added).

"[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. at 119, 869 P.2d at 1338.

The July 22, 2009 does not, on its face, resolve all claims against all parties in this case. For example, although the July 22, 2009 judgment enters judgment in favor of Appellee

Philip Palama, Appellee Patricia Palama, Appellee Violet Ihara and Appellee Hornstine, the July 22, 2009 judgment refers to neither Plaintiff/Appellee/Cross-Appellee Teruo Ihara (Appellee Teruo Ihara) nor any of the numerous defendants in this case. Although this case involves (a) an amended complaint with seven separate counts, (b) counterclaims and (c) cross-claims, the July 22, 2009 judgment does not specifically identify the claim or claims on which the circuit court intends to enter judgment. The July 22, 2009 judgment does not expressly dismiss any of the numerous unidentified claims. If the circuit court intends to resolve less than all the claims in this case, then the July 22, 2009 judgment does not contain the express finding necessary for certification of a judgment that resolves less than all claims pursuant to HRCP Rule 54(b). Consequently, the July 22, 2009 judgment does not satisfy the requirements for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins.

Absent an appealable final judgment, the appeal and cross-appeal in appellate court case number 30087 are premature and we lack jurisdiction. Accordingly,

IT IS HEREBY ORDERED AND DECREED that appellate court case number 30087 is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, February 11, 2010.

Chief Judge

Associate Judge

Associate Judge