

NO. CAAP-17-0000164

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WOOLSEY EATON RICE, JR.,
Plaintiff/Counterclaim-Defendant-Appellee.

v.

WOOLSEY EATON KAENAUILANI RICE and PATRICIA MAILE RICE,
Defendants/Counterclaim-Plaintiffs-Appellants,

and

FIRST HAWAIIAN BANK,
Defendant-Appellee,

and

DOE DEFENDANTS 1-10,
Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 14-1-1759-08 (JHC))

ORDER GRANTING MAY 25, 2017 MOTION TO DISMISS APPELLATE COURT
CASE NUMBER CAAP-17-0000164 FOR LACK OF APPELLATE JURISDICTION
(By: Leonard, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) Defendants/Counterclaim-Plaintiffs/
Appellants Woolsey Eaton Kaenauilani Rice and Patricia Maile
Rice's (the Appellants) May 25, 2017 motion to dismiss their
appeal in appellate court case number CAAP-17-0000164, (2) the
lack of any memorandum by any other party in response to the
Appellants' May 25, 2017 motion to dismiss, and (3) the record,
it appears that we lack appellate jurisdiction over the
Appellants' appeal from the Honorable Jeannette H. Castagnetti's
February 13, 2017 interlocutory "Order Granting in Part and

Denying in Part Defendants Woolsey Eaton Kaenauilani Rice and Patricia Maile Rice's Motion for Leave to File First Amended Counterclaim" (the February 13, 2017 interlocutory order), because the circuit court has not yet reduced any substantive rulings to a separate, appealable final judgment.

Hawaii Revised Statutes ("HRS") § 641-1(a) (2016) authorizes appeals to the Hawai'i 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). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPC) requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement under HRCPC Rule 58, the Supreme Court of Hawai'i has held 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 HRCPC [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "Thus, based on Jenkins and HRCPC 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); Bailey v. DuVauchelle, 135 Hawai'i 482, 489, 353 P.3d 1024, 1031 (2015). Consequently, "[a]n appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Jenkins, 76 Hawai'i at 120, 869 P.2d at 1339 (footnote omitted).

On May 11, 2017, the circuit court clerk filed the record on appeal for appellate court case number CAAP-17-0000164, which does not include a final judgment. Although exceptions to the final judgment requirement exist under the doctrine in Forgay v. Conrad, 47 U.S. 201 (1848) (the Forgay doctrine), the collateral order doctrine, and HRS § 641-1(b) (2016), the February 13, 2017 interlocutory order does not satisfy the requirements for appealability under the Forgay doctrine, the

collateral order doctrine, or HRS § 641-1(b). See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine); Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for the collateral order doctrine); HRS § 641-1(b) (regarding the requirements for an appeal from an interlocutory order). Absent an appealable final judgment, we lack appellate jurisdiction over appellate court case number CAAP-17-0000164 and the Appellants' appeal is premature.

Therefore, IT IS HEREBY ORDERED that the Appellants' May 25, 2017 motion to dismiss their appeal in appellate court case number CAAP-17-0000164 is granted, without prejudice to any party seeking appellate review of the February 13, 2017 interlocutory order by way of a timely appeal from a future appealable final judgment. Appellate court case number CAAP-17-0000164 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 21, 2017.

Presiding Judge

Associate Judge

Associate Judge