

NO. CAAP-16-0000814

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

GENGHIS KAIHEWALU,  
Plaintiff-Appellant,  
vs.  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM,  
STATE OF HAWAII, HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION,  
Defendants-Third-Party Plaintiffs-Appellees,  
and  
REALTY LAUA, LLC.,  
Third-Party Defendant-Appellee  
and  
JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10;  
DOE PARTNERSHIPS 1-10; DOE UNINCORPORATED ORGANIZATIONS 1-10;  
and DOE GOVERNMENTAL AGENCIES 1-10, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 13-1-2827)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over the appeal of Plaintiff-Appellant Genghis Kaihewalu (Kaihewalu) from the Honorable Edwin C. Nacino's September 22, 2016 Judgment because the September 22, 2016 Judgment neither resolves all claims nor contains a finding of no just reason for delay in the entry of judgment as to one or more but fewer than all claims or parties pursuant to Rule 54(b)

of the Hawai'i Rules of Civil Procedure (HRCP), as Hawaii Revised Statutes (HRS) 641-1(a) (2016 Repl.) requires for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

When a party attempts to assert an appeal from a civil circuit court case, HRS § 641-1(a) and HRCP Rule 58 require that such an "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 at 119, 869 P.2d at 1338 (emphasis added). "Thus, 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); Bailey v. DuVauchelle, 135 Hawai'i 482, 489, 353 P.3d 1024, 1031 (2015). Furthermore, "an 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)." Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. "An 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." Id. at 120, 869 P.2d at 1339 (footnote omitted).

The September 22, 2016 Judgment neither resolves all claims against all parties nor contains the finding necessary for certification under HRCP Rule 54(b). The September 22, 2016 Judgment enters judgment in favor of Defendants-Third-Party Plaintiffs-Appellees Department of Business, Economic Development and Tourism, and Hawai'i Housing Finance and Development Corporation (collectively, State) and against Kaihewalu as to Kaihewalu's complaint. However, the September 22, 2016 Judgment

does not enter judgment on or dismiss the State's first amended third-party complaint.

We recognize that the July 25, 2016 stipulation to dismiss the State's third-party complaint purports to dismiss all claims by the State against the third-party defendants, and the Supreme Court of Hawai'i holds that where all parties sign the stipulation to dismiss without an order of the court pursuant to HRCF Rule 41(a)(1)(B), "a separate judgment is neither required nor authorized, inasmuch as a plaintiff's dismissal of an action, by filing a stipulation of dismissal signed by all parties [pursuant to HRCF Rule 41(a)(1)(B)], is effective without order of the court." Amantiad v. Odum, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 166 n.7 (1999) (internal quotation marks and brackets omitted). However, the parties have failed to comply with the express requirement under HRCF Rule 41(a)(1)(B) that any stipulation to dismiss must be "signed by all parties who have appeared in the action":

Rule 41. Dismissal of actions.

(a) Voluntary dismissal: Effect thereof.

(1) By plaintiff; by stipulation. An action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal at any time before the return date as provided in Rule 12(a) or service by the adverse party of an answer or of a motion for summary judgment, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action, in the manner and form prescribed by Rule 41.1 of these rules. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States, or of any state, territory or insular possession of the United States an action based on or including the same claim.

(Emphases added).

The Supreme Court of Hawai'i has acknowledged that the HRCF Rule 41(a) provisions regarding voluntary dismissals are very similar to the provisions in the federal counterpart, Hawai'i District Court Rules of Civil Procedure (HDCRCP) Rule 41(a). See, e.g., Tagupa v. Vipdesk, 135 Hawai'i 468, 476, 353

P.3d 1010, 1018 (2015) ("Since HDCRCP Rule 41(a)(2) is identical to HRCP Rule 41(a)(2) (2012) and essentially identical to FRCP [(Federal Rules of Civil Procedure)] Rule 41(a)(2) (2010), cases interpreting and applying HRCP Rule 41(a)(2) and FRCP Rule 41(a)(2) may be consulted for guidance in interpreting HDCRCP Rule 41(a)(2)."). When parties in a federal case stipulate to dismiss an action pursuant to FRCP Rule 41(a)(1)(A)(ii), "a stipulation that purports to dismiss the entire action without the consent of all parties may be deemed ineffective." 8 James Wm. Moore et al., Moore's Federal Practice § 41.34[4][b], at 41-115 (3d ed. 2009) (footnote omitted); see, e.g., Alholm American Steamship Co., 167 F.R.D. 75, 79-80 (D. Minn. 1996) (Ruling that a stipulation to dismiss under FRCP Rule 41(a) was ineffective where "the pertinent Stipulation fails to conform the requisites of the Rule, because [two of the three named] Defendants have not been joined in its execution."). In the instant case, Kaihewalu did not sign the July 25, 2016 stipulation to dismiss, despite that Kaihewalu was the plaintiff in the underlying action and indisputably appeared in this case. Therefore, the July 25, 2016 stipulation to dismiss does not satisfy the requirements under HRCP Rule 41(a)(1)(B).

Absent an appealable final judgment, we lack appellate jurisdiction over appellate court case number CAAP-16-0000814.

Therefore, IT IS HEREBY ORDERED AND DECREED that appellate court case number CAAP-16-0000814 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 29, 2017.

Presiding Judge

Associate Judge

Associate Judge