NO. CAAP-17-0000042

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

THOMAS SCHMIDT, Plaintiff-Appellant,
vs.
GARY VICTOR DUBIN; DUBIN LAW OFFICES,
Defendants/Third-Party Plaintiffs/Third-Party Counterclaim Defendants-Appellees,
and
JOHN AND MARY DOES 1-10; DOE CORPORATIONS;
PARTNERSHIPS AND OTHER ENTITIES 1-10, Defendants.

GARY VICTOR DUBIN; DUBIN LAW OFFICES,
Defendants/Third-Party Plaintiffs/Third-Party Counterclaim Defendants-Appellees,
vs.
JOHN S. CARROLL,
Third-Party Defendant/Third-Party Counterclaim Plaintiff-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 15-1-0482)

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

Upon review of the record in CAAP-17-0000042, it appears that this court lacks appellate jurisdiction over the appeal. Plaintiff-Appellant Thomas Schmidt (Appellant) appeals pro se from the "Order Granting Defendants Gary Victor Dubin and Dubin Law Offices' Motion for Partial Summary Judgment #1 On All

Claims Based on an Alleged Debt, Filed On September 23, 2016" (Order), filed on December 27, 2016, in the Circuit Court of the First Circuit.

The Order granted summary judgment on Appellant's claims for recovery of an alleged debt and/or which are premised upon an alleged debt, and as to legal malpractice, in favor of Defendants-Third Party Plaintiffs-Appellees Gary Victor Dubin and Dubin Law Offices (Dubin).

HRS § 641-1(a) (Repl. 2016) authorizes appeals from final judgments, orders, or decrees from the Circuit Court. 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 Hawaiʻi Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." The Supreme Court of Hawaiʻi 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 HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaiʻi 115, 119, 869 P.2d 1334, 1338 (1994). "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 Hawaiʻi 245, 254, 195 P.3d 1177, 1186 (2008). "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." Jenkins, 76 Hawaiʻi at 120, 869 P.2d at 1339 (footnote omitted).

All of the claims have not been resolved or dismissed. Specifically, Dubin's third-party claim against Third-Party Defendant-Appellee John S. Carroll was not adjudicated or dismissed. In addition, no separate judgment on the Order was entered, as required by Jenkins. Therefore, the appeal is premature and this court lacks appellate jurisdiction.

IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

IT IS FURTHER ORDERED that all pending motions for appellate case number CAAP-17-0000042 are dismissed as moot.

DATED: Honolulu, Hawaiʻi, June 29, 2017.

Presiding Judge

Associate Judge

Associate Judge