

NO. CAAP-17-0000655

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

MATHIAS & NIEHAUS, LLC, a Hawai'i limited liability company,
Plaintiff/Counterclaim Defendant/Appellee,

v.

KALIAE, LLC, a Hawai'i limited liability company,
Defendant/Counterclaim-Plaintiff/Appellant.

KALIAE, LLC, a Hawai'i limited liability company,
Third-Party Plaintiff/Appellant,

v.

MATHIAS & NIEHAUS KALIAE, LLC, a Hawai'i limited liability
company, Third-Party Defendant/Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 15-1-0463 (2))

ORDER DENYING OCTOBER 17, 2017 HRAP RULE 40 MOTION
FOR RECONSIDERATION OF OCTOBER 13, 2017 ORDER
DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Fujise and Chan, JJ.)

Upon review of (1) the October 13, 2017 order dismissing appellate court case number CAAP-17-0000655 for lack of appellate jurisdiction (Dismissal Order), (2) Defendant/Counterclaim-Plaintiff/ Appellant Kaliae, LLC's (Appellant Kaliae), October 17, 2017 motion for reconsideration of the Dismissal Order pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record, it appears that

we did not overlook or misapprehend any points of law or fact when we entered the Dismissal Order.

We note that the Supreme Court of Hawai'i recently held that, where "[t]he record on appeal indicate[d] that all claims against all parties have been resolved[,]" the Hawai'i Intermediate Court of Appeals "should have exercised its authority under HRS § 602-57(3) to direct the circuit court to enter an appropriate appealable final judgment." Waikiki v. Hoomaka Village Association of Apartment Owners, 140 Hawai'i 197, 204, 398 P.3d 786, 793 (2017) (footnote omitted). However, the instant case is distinguishable from the circumstances in Waikiki because, in the instant case, the record does not indicate that the circuit court has resolved all claims as to all parties in Civil No. 15-1-0463(2). For instance, the record does not contain any order adjudicating Appellant Kaliae's July 1, 2016 counterclaim as to Plaintiff/Counterclaim-Defendant/Appellee Mathias & Niehaus Kaliae, LLC. Therefore, the holding in Waikiki does not apply to the instant case.

IT IS HEREBY ORDERED that Appellant Kaliae's October 17, 2017 HRAP Rule 40 motion for reconsideration of the October 13, 2017 dismissal order is denied.

DATED: Honolulu, Hawai'i, October 25, 2017.

Chief Judge

Associate Judge

Associate Judge