

NO. CAAP-12-0000433

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

THE BANK OF NEW YORK MELLON
fka THE BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATE-HOLDERS CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2007-BC1, Plaintiff-Appellee,
v.

DAVID VELEZ, JOHN DOE OR JANE DOE;
ALL PERSONS RESIDING WITH AND ANY PERSONS
CLAIMING BY AND THROUGH OR UNDER THEM, Defendants-Appellants

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
SOUTH KOHALA DIVISION
(CIVIL NO. 3RC11-1-208H)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Foley and Leonard, JJ.)

Defendant-Appellant David Velez (**Velez**) appeals from the April 23, 2012 (post-judgment) Order Denying Defendant David Velez's Motion to Dismiss Complaint Pursuant to HRCP 12(b)(1) Filed Herein on January 24, 2012 (**Order Denying Dismissal**), entered by the District Court of the Third Circuit, South Kohala Division (**District Court**).¹

On appeal, Velez raises two points of error, asserting that the District Court erred: (1) when it denied Velez's pro se motion to dismiss the complaint for lack of jurisdiction; and (2)

¹ The Honorable Melvin H. Fujino presided.

when it denied Velez's Rule 60(b)(3) and (4) motion for relief from judgment.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we conclude this appeal is without merit.

(1) As stated in this court's December 14, 2012 Order Denying October 31, 2012 Motion to Dismiss and/or for Summary Affirmance, the District Court's October 5, 2011 Judgment for Possession was final and immediately appealable pursuant to HRS §641-1(a). Velez did not timely file a notice of appeal from the judgment for possession. Therefore, Velez is not entitled to appellate review of the judgment for possession or the District Court's pre-judgment orders, including the September 27, 2011 Order Denying Defendant's Challenge of Jurisdiction.

As further stated in this court's December 14, 2012 Order Denying October 31, 2012 Motion to Dismiss and/or for Summary Affirmance, we have appellate jurisdiction to review the District Court's Order Denying Dismissal. To the extent that Velez challenges the Order Denying Dismissal, this appeal is without merit. Our appellate courts have repeatedly held that claims involving the applicability of the Kingdom of Hawai'i laws are without merit. The Hawai'i Supreme Court in State v. Kaulia, 128 Hawai'i 479, 487, 291 P.3d 377, 385 (2013), recently reaffirmed this principle:

Kaulia appears to argue that he is immune from the court's jurisdiction because of the legitimacy of the Kingdom government. In that regard, we reaffirm that "[w]hatever may be said regarding the lawfulness" of its origins, "the State of Hawai'i . . . is now a lawful government." State v. Fergerstrom, 106 Hawai'i 43, 55, 101 P.3d 652, 664 (App.2004), aff'd, 106 Hawai'i 41, 101 P.3d 225 (2004). Individuals claiming to be citizens of the Kingdom and not of the State are not exempt from application of the State's laws. See id. at 55, 101 P.3d at 664; State v. Lorenzo, 77 Hawai'i 219, 883 P.2d 641 (App. 1994); State v. French, 77

Hawaii 222, 883 P.2d 644 (App. 1994); Nishitani v. Baker,
82 Hawaii 281, 921 P.2d 1182 (App. 1996); State v. Lee, 90
Hawaii 130, 976 P.2d 444 (1999).

(2) Velez also contends that the District Court erred when, on June 28, 2012, it orally denied relief pursuant to Hawaii Rules of Civil Procedure Rule 60(b). However, as acknowledged in Velez's jurisdictional statement, no written order was entered on this matter. Hawaii Rules of Appellate Procedure Rule 4(a)(5) provides that "[a] judgment or order is entered when it is filed in the office of the clerk of the court." A district court's "oral decision is not an appealable order." KNG Corp. v. Kim, 107 Hawaii 73, 77, 110 P.3d 397, 401 (2005). Although district court minutes may reflect a district court's oral announcement of a ruling, "a minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming, & Wright, 88 Hawaii 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) (emphasis added).

Accordingly, the District Court's January 24, 2012 Order Denying Dismissal is affirmed.

DATED: Honolulu, Hawaii, May 16, 2013.

On the briefs:

Sandra D. Lynch
Property Rights Law Group, P.C.,
Of Counsel
for Defendant-Appellant
DAVID VELEZ

Chief Judge

Associate Judge

R. Euna Kim
(Reed Smith LLP)
and
Robert E. Chapman
Mary Martin
(Clay Chapman Iwamura Pulice
& Nervell)
for Plaintiff-Appellee

Associate Judge