

NO. CAAP-14-0001324

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

JERRY ELDER as Trustee of THE ELDER TRUST,  
Plaintiff/Counterclaim Defendant/Appellee,  
v.  
THE BLUFFS AT MAUNA KEA COMMUNITY ASSOCIATION,  
Defendant/Counterclaimant/Cross-Claim Defendant,  
and  
ROBERT V. GUNDERSON, JR. and ANNE D. GUNDERSON,  
Defendants/Counterclaimants/Cross-Claim Plaintiffs/Appellants,  
and  
JOHN DOES 1-100; JANE DOES 1-100; DOE PARTNERSHIPS 1-100,  
and DOE CORPORATIONS 1-100, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 11-1-088K)

ORDER

(1) DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION,

AND

(2) ALL PENDING MOTIONS ARE DISMISSED AS MOOT

(By: Nakamura, C.J., Foley and Reifurth, JJ.)

Upon review of the record on appeal, it appears that we lack appellate jurisdiction over this appeal that Defendants/Counterclaimants/Cross-Claim Plaintiffs/Appellants Robert V. Gunderson, Jr. and Anne D. Gunderson (**collectively, Gundersons**)

have asserted from the Honorable Elizabeth A. Strance's March 16, 2015 judgment, because the March 16, 2015 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) (1993 & Supp. 2013) 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).

HRS § 641-1(a) authorizes appeals to the 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). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." The Supreme Court of Hawai'i requires 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, 76 Hawai'i at 119, 869 P.2d at 1338. "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). Furthermore,

if a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (emphases added).

When interpreting the requirements for an appealable final judgment under HRS § 641-1(a) and HRCP Rule 58, the Supreme Court of Hawai'i has explained that

[i]f we do not require a judgment that resolves on its face all of the issues in the case, the burden of searching the often voluminous circuit court record to verify assertions of jurisdiction is cast upon this court. Neither the parties nor counsel have a right to cast upon this court the burden of searching a voluminous record for evidence of finality, . . . and we should not make such searches necessary by allowing the parties the option of waiving the requirements of HRCP [Rule] 58.

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (citation omitted; original emphasis). "[A]n 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)." Id. (original emphasis).

The March 16, 2015 judgment does not contain the finding necessary for certification under HRCP Rule 54(b). Therefore, in order to be an appealable final judgment, the March 16, 2015 judgment must resolve all claims involving the Gundersons, Plaintiff/Counterclaim Defendant/Appellee Jerry Elder as Trustee of the Elder Trust (**Elder**), and Defendant/Counterclaimant/Cross-Claim Defendant The Bluffs at Mauna Kea Community Association (**The Bluffs**).

Although the March 16, 2015 judgment enters judgment on Elder's Complaint and Gundersons' Cross-Claim against The Bluffs, the March 16, 2015 judgment does not either enter judgment on or dismiss Gundersons' Counterclaim against Elders or The Bluffs' counterclaim against Elders.

While the March 16, 2015 judgment includes language that the judgment "resolves all claims as to all parties pursuant to Rule 58 of the Hawaii Rules of Civil Procedure[,]" which appears to imply that there are no other outstanding claims (JROA Doc. 52 at 4283), the Supreme Court of Hawai'i has explained that

[a] statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, "Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is entered in favor of Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Jenkins, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added). Because the March 16, 2015 judgment does not, on its face, resolve all claims against all parties, the March 16, 2015 judgment fails to satisfy the requirements for an appealable final judgment under HRS § 641-1(a), HRCF Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright.

Absent an appealable final judgment, Appellants Gundersons' appeal is premature and we lack appellate jurisdiction over appellate court case number CAAP-14-0001324.

Accordingly, IT IS HEREBY ORDERED that appellate court case number CAAP-14-0001324 is dismissed for lack of appellate jurisdiction. All pending motions are dismissed as moot.

DATED: Honolulu, Hawai'i, June 30, 2015.

Chief Judge

Associate Judge

Associate Judge