

**Electronically Filed
Intermediate Court of Appeals
CAAP-15-0000326
30-JUN-2015
04:05 PM**

NO. CAAP-15-0000326

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MICHAEL C. GREENSPON,
Plaintiff/Counterclaim Defendant/Appellant,
v.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee of Residential Asset Securitization Trust 2006-A8,
Mortgage Pass-through Certificates Series 2006-H Under the
Pooling and Servicing Agreement dated June 1, 2006,
Defendants/Counterclaim-Plaintiff/Appellee,
and

ONE WEST BANK, F.S.B.; CAL-WESTERN RECONVEYANCE CORPORATION,
and INDYMAC FEDERAL BANK, F.S.B., Defendants-Appellees,
and

DOES 1-50, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 11-1-0194)

ORDER

DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION

AND

DISMISSING ALL PENDING MOTIONS IN CAAP-15-0000326 AS MOOT
(By: Foley, Presiding Judge, Leonard and Reifurth, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over the appeal that Plaintiff/Counterclaim-Defendant/Appellant Michael C. Greenspon (Appellant Greenspon) has asserted from the following two documents that someone entered in Civil No. 11-1-0194-01 BIA, the Honorable Bert I. Ayabe presiding, because these two documents do not constitute appealable final post-judgment orders of the circuit court:

- (1) a March 6, 2015 file-stamped copy of Appellant Greenspon's February 2, 2015 "Ex Parte Request to Enter Ruling for Plaintiff's November 17, 2014 Motion to Set Aside Judgment with Respect to Possession" with the word "DENIED" stamped on it; and
- (2) a March 20, 2015 file-stamped copy of Appellant Greenspon's March 17, 2015 "Ex Parte Request to Enter Ruling for Plaintiff's September 26, 2014 HRCP 27(b) Motion for Leave to Perpetuate Discovery" with the word "DENIED" stamped on it.

Hawaii Revised Statutes (HRS) 641-1(a) (1993 & Supp. 2014) authorizes appeals to the Hawai'i 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). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) 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 v. Cades Schutte Fleming & Wright, 76 Hawai'i 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 Hawai'i 245, 254, 195 P.3d 1177, 1186 (2008). After a circuit court enters an appealable final judgment, such as the March 13, 2013 HRCP Rule 54(b)-certified judgment that the circuit court entered in the instant case, then, thereafter, "[a] post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further

to be accomplished." Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citation omitted). Although, for the purpose of appealability, a separate judgment is usually necessary under HRCP Rule 58 and the holding in Jenkins, "the separate judgment requirement articulated in Jenkins is inapposite in the post-judgment context." Ditto v. McCurdy, 103 Hawai'i at 158, 80 P.3d at 979. For example, "[a]n order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." Id. at 160, 80 P.3d at 981 (citation omitted).

However, in the instant case, Appellant Greenspon is attempting to appeal from two documents that someone merely stamped with the word, "DENIED":

- (1) the March 6, 2015 file-stamped copy of Appellant Greenspon's February 2, 2015 "Ex Parte Request to Enter Ruling for Plaintiff's November 17, 2014 Motion to Set Aside Judgment with Respect to Possession" with the word "DENIED" stamped on it; and
- (2) the March 20, 2015 file-stamped copy of Appellant Greenspon's March 17, 2015 "Ex Parte Request to Enter Ruling for Plaintiff's September 26, 2014 HRCP 27(b) Motion for Leave to Perpetuate Discovery" with the word "DENIED" stamped on it.

Without any accompanying signature by a presiding judge, these two documents do not constitute post-judgment orders, much less appealable post-judgment orders. With respect to the form of circuit court orders, Rule 23 of the Rules of the Circuit Courts of the State of Hawai'i (HRCC) requires that, after the parties have had their opportunities to propose the form of an order to the presiding judge, "the court shall proceed


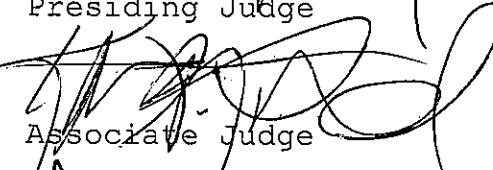

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

to settle the . . . order." HRCC Rule 23. Implicit within HRCC Rule 23, is the notion that the circuit court has not settled a proposed written order until a circuit court judge has signed the written order. See also, HRS § 603-14(d) (1993) ("Any decision, order decree, judgment, or any other document requiring the signature of a circuit judge, in any cause or proceeding whatsoever in a circuit court, may be signed without, as well as within, the boundaries of the circuit in which the court is situated."). Thus, for example, "a minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) (emphasis added). Absent an appealable final post-judgment order, we lack appellate jurisdiction over appellate court case number CAAP-15-0000526.

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-15-0000326 is dismissed for lack of appellate jurisdiction.

IT IS FURTHER HEREBY ORDERED that all pending motions in appellate court case number CAAP-15-0000526 are dismissed as moot.

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


Claret R. Foley
Presiding Judge

Associate Judge

Lawrence M. Ruffalo
Associate Judge