NO. CAAP-15-0000895

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

MICHAEL ANTHONY KIMO HARLACHER and RONI LEE DU PREEZ,
Plaintiffs-Appellants,
and
ANDREW LAUTENBACH; MICHAEL SMYTHE;
THE LAW FIRM OF STARN, O'TOOLE, MARCUS AND FISHER,
Defendants-Appellees,
and
JOHN DOE ENTITIES 1-10, et al., Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 15-1-0475(1))

ORDER DISMISSING THE APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal by Plaintiffs-Appellants Michael Anthony Kimo Harlacher and Roni Lee Du Preez (**Appellants**), pro se, because the Circuit Court of the Second Circuit has not yet reduced its dispositive rulings on substantive claims to a separate judgment that resolves all claims against all parties in the case pursuant to Rule 58 of Hawaiʻi Rules of Civil Procedure (**HRCP**) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaiʻi 115, 119, 869 P.2d 1334, 1338 (1994).

Under Hawaiʻi law, "[a]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a) (Supp. 2015). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c) (Supp. 2015). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." "An appeal may be taken from circuit court orders resolving claims against parties 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 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); Bailey v. DuVauchelle, 135 Hawaiʻi 482, 489, 353 P.3d 1024, 1031 (2015). Furthermore, "an 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)." Jenkins, 76 Hawaiʻi at 119, 869 at 1338. When interpreting the requirements for a judgment under HRCP Rule 58, the Supreme Court of Hawaiʻi noted:

> If 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 Hawaiʻi at 119, 869 P.2d at 1338. "An appeal from an order that is not reduced to a judgment in favor of or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted).

The record on appeal in appellate court case number CAAP-15-0000895 contains no final judgment. Therefore, this court lacks jurisdiction over the appeal.

Although the January 6, 2016 "Order Granting Defendants[-Appellees] Andrew Launtenbach and Starn O'Toole Marcus & Fisher's Motion to Dismiss the Complaint Filed September 3, 2015 and Awarding Attorney's Fees," and "Order Granting Defendant[-Appellee] Michael Smythe's Motion to Dismiss the Complaint Filed September 3, 2015,"[1] resolve all substantive claims by dismissing all counts in the Complaint, the orders have not been reduced to a separate judgment, as required by Jenkins and HRCP Rule 58. See Carlisle, 119 Hawaiʻi at 254, 195 P.3d at 1186 ("an order is not appealable, even if it resolves all claims against the parties, until it has been reduced to a separate judgment.").

Therefore, IT IS HEREBY ORDERED that Appellate No. CAAP-15-0000895 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawaiʻi, April 27, 2016.

Presiding Judge

Associate Judge

Associate Judge

[1] The Honorable Rohonda I.L. Loo issued the orders.