

NO. CAAP-15-0000726

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JPMORGAN CHASE BANK, NA, Plaintiff-Appellee,
v.
SCOT LIEPACK, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
Defendants-Appellees,
and
ASSOCIATION OF APARTMENT OWNERS OF ALII COVE, et.al.,
Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 13-1-348K)

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

Upon review of the record, it appears that we lack jurisdiction over Defendant-Appellant Association of Apartment Owners of Ali'i Cove's (**Appellant's**) appeal from the Honorable Ronald Ibarra's September 17, 2015 order denying Appellant's motion for reconsideration of an order denying "[Appellant's] Motion for Leave to File Counterclaim After Pleading" (**Order Denying Motion for Reconsideration**) because the Circuit Court of the Third Circuit (**circuit court**) has not yet entered an appealable, final judgment.

Hawaii Revised Statutes ("HRS") § 641-1(a) (1993 & Supp. 2015) 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) (1993). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." "An 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). Consequently, "[a]n appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Jenkins, 76 Hawai'i at 120, 869 P.2d at 1339 (footnote omitted).

Further, relief under HRCP Rule 60(b), "requires an underlying judgment that comports with the principles of finality set forth in Jenkins." Bailey v. DuVauchelle, 135 Hawai'i 482, 491, 353 P.3d 1024, 1033 (2015). "Absent an underlying appealable final judgment, the circuit court's rulings on a purported Rule 60(b) motion are interlocutory and not appealable until entry of such a judgment." Id.

In this case, on December 7, 2015, the circuit court clerk filed the record on appeal, which does not include a final judgment. Although exceptions to the final judgment requirement exist under the doctrine in Forgay v. Conrad, 47 U.S. 201 (1848) (the Forgay doctrine), the collateral order doctrine, and HRS § 641-1(b) (1993), the September 17, 2015 Order Denying Motion for Reconsideration does not satisfy the requirements for appealability under the Forgay doctrine, the collateral order doctrine, or HRS § 641-1(b). See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine); Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for the collateral order doctrine); HRS § 641-1(b) (regarding the requirements for an appeal from an interlocutory order). Absent an appealable final judgment, we lack appellate jurisdiction and the appeal is premature.

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-15-0000726 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 6, 2016.

Presiding Judge

Associate Judge

Associate Judge