

NO. CAAP-15-0000890

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ALEXANDER & BALDWIN, LLC, a Hawai'i limited liability company,  
Plaintiff-Appellee,

v.

NELSON ARMITAGE, et al., Defendants-Appellants,  
and

WAYNE ARMITAGE, et al., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 13-1-1065(3))

ORDER

DISMISSING APPELLATE COURT CASE NUMBER  
CAAP-15-0000890 FOR LACK OF APPELLATE JURISDICTION

AND

DISMISSING AS MOOT ALL PENDING MOTIONS IN  
APPELLATE COURT CASE NUMBER CAAP-15-0000890

(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over Non-Party/Appellant Henry Noa's (Appellant Henry Noa) and Defendant-Appellant Nelson Armitage's (Appellant Nelson Armitage) appeal from the Honorable Joseph E. Cardoza's November 2, 2015 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), because the November 2, 2015 HRCP Rule 54(b)-certified judgment does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) 641-1(a) (1993 & Supp. 2015), HRCP Rule 54(b), HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).<sup>1</sup>

HRS § 641-1(a) authorizes 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." An appeal may be taken . . . only after the orders have been reduced to a judgment and the judgment

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<sup>1</sup> We note that Plaintiff/Counterclaim-Defendant/Appellee Alexander & Baldwin, LLC (Appellee Alexander & Baldwin) did not, in its August 4, 2014 first amended complaint name Appellant Henry Noa as a defendant in this case, and Appellant Henry Noa did not intervene as a defendant pursuant to HRCP Rule 24. Furthermore, although Appellant Henry Noa does not appear to be licensed to practice law in Hawai'i, Appellant Henry Noa purports to represent Defendant-Appellee "Kingdom of Hawai'i, also known as Reinstated Lawful Hawaiian Government, also known as Lawful Hawaiian Government, also known as Reinstated Hawaiian Government, also known as Reinstated Hawaiian Nation, also known as Reinstated Hawaiian Kingdom, an unincorporated association" (hereinafter Appellee Reinstated Hawaiian Government), in this litigation matter, despite that HRS § 605-2 (1993) and HRS § 605-14 (Supp. 2015) prohibit a non-attorney from representing another person or entity in litigation before a circuit court. Cf. Oahu Plumbing and Sheet Metal, Ltd. v. Kona Construction, Inc., 60 Haw. 372, 377, 590 P.2d 570, 574 (1979) (Holding that "non-attorney agents are not allowed to represent corporations in litigation, for a wholly unintended exception to the rules against unauthorized practice of law would otherwise result." (Footnote omitted)). Despite that Appellant Henry Noa is neither a named defendant nor a licensed attorney in this litigation, the circuit court purportedly entered the November 2, 2015 HRCP Rule 54(b)-certified judgment against, among other persons, Appellant Henry Noa. See Kahala Royal v. Goodsill Anderson Quinn & Stifel, 113 Hawaii 251, 277, 151 P.3d 732, 758 (2007) ("Generally, it is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process.") (Citations, internal quotation marks and brackets omitted). We suggest that the parties and the circuit court address and resolve these issues prior to and in conjunction with the amendment of the November 2, 2015 HRCP Rule 54(b)-certified 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); Bailey v. DuVauchelle, 135 Hawai'i 482, 489, 353 P.3d 1024, 1031 (2015). 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).

For example: "Pursuant to the jury verdict entered on (date), judgment in the amount of \$\_\_\_ is hereby entered in favor of Plaintiff X and against Defendant Y upon counts I through IV of the complaint." . . . . 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."

Id. at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphasis 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).

Although the instant case involves five separate and distinct counts that Appellee Alexander & Baldwin asserted in its August 4, 2014 first amended complaint, the November 2, 2015 HRCP Rule 54(b)-certified judgment does not specifically identify the claim or claims upon which the circuit court intends to enter judgment. Although the November 2, 2015 HRCP Rule 54(b)-certified judgment closes with a statement that there are "no remaining claims or parties or issues[,]" 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). Without specifically identifying the claim or claims on which the circuit court intends to enter judgment, the November 2, 2015 HRCP Rule 54(b)-certified judgment does not satisfy the specificity requirements for an appealable final judgment in a multiple-claim case, even though the circuit court certified this judgment as to one or more but fewer than all claims or parties pursuant to HRCP Rule 54(b). Absent an appealable final judgment that specifically identifies the claim or claims on which the circuit court intends to enter judgment, we lack appellate jurisdiction, and this appeal is premature.

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-15-0000890 is dismissed for lack of appellate jurisdiction.

IT IS FURTHER HEREBY ORDERED that all pending motions in appellate court case number CAAP-15-0000890 are dismissed as moot.

DATED: Honolulu, Hawai'i, June 14, 2016.

Presiding Judge

Associate Judge

Associate Judge