

NO. CAAP-15-0000915

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, by its Office of Consumer Protection,
Plaintiff-Appellee,

v.

DEBORAH ANN HOKULANI JOSHUA,
Defendant/Cross Claim Defendant/Appellant,
and
RONALD R. RABANG and MATTHEW G. AIELLO,
Defendants/Cross Claim Plaintiffs/Appellees

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-0240-02)

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

Upon review of the record on appeal in CAAP-15-0000951, it appears that this court lacks appellate jurisdiction over the appeal. Defendant/Cross-Claim Defendant/Appellant Deborah Ann Hokulani Joshua (Joshua) appeals from the Honorable Jeannette H. Castagnetti's September 25, 2015 "Amended Final Judgment and Permanent Injunction in Favor of Plaintiff and Against Defendants Deborah Ann Hokulani Joshua, Ronald R. Rabang and Matthew G. Aiello" (September 25, 2015 Amended Final Judgment).

In CAAP-15-0000046, this court dismissed a prior appeal from the same underlying case for lack of a final appealable

judgment. This court noted that there was no final appealable judgment in the record on appeal because the judgments that Joshua previously appealed from failed to satisfy Hawaii Revised Statutes (HRS) § 641-1(a), Rule 58 of the Hawaii Rules of Civil Procedure (HRCP), and Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994). Specifically, this court noted that the May 14, 2009 Final Judgment and March 4, 2015 Amended Final Judgment did not specifically identify the claim or claims on which the court intended to enter judgment in favor of OCP and against Joshua, the judgments failed to specifically enter judgment on OCP's claims against Defendants Ronald R. Rabang (Rabang) and Matthew G. Aiello (Aiello), and the judgments did not expressly enter judgment on or state that Rabang's and Aiello's cross claims against Joshua are dismissed. Instead, the judgments only stated that the cross claims were previously dismissed.

HRS § 641-1(a) (1993 & Supp. 2015) 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." Based on this requirement, the Supreme Court of Hawai'i has held 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 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).

[I]f 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. When interpreting the requirements for a judgment under HRCp Rule 58, the Supreme Court of Hawai'i noted 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 September 25, 2015 Amended Final Judgment did not resolve, on its face, all issues in the case. In the Complaint, Plaintiff-Appellee State of Hawai'i, Office of Consumer

Protection (OCP) alleged six claims against Joshua, Counts I through VI, and two claims each against Rabang and Aiello, Counts I and V. Rabang and Aiello each filed a cross claim against Joshua.

The September 25, 2015 Amended Final Judgment failed to specifically enter judgment or dismiss each claim against each defendant and dismiss each cross claim against Joshua. For example, paragraph 7 of the September 25, 2015 Amended Final Judgment fails to specify which claim or claims "judgment is entered in favor of OCP and against Defendants[.]" The September 25, 2015 Amended Final Judgment also did not identify the specific claim or claims in the Complaint that judgment was entered upon in favor of OCP in paragraphs 11 and 12.

In paragraph 19 of the September 25, 2015 Amended Final Judgment, it states "Except as set forth in this Amended Final Judgment and Permanent Injunction, all claims by and between OCP and Defendant Rabang were released and dismissed with prejudice pursuant to the Rabang Judgment." In paragraph 20 of the September 25, 2015 Amended Final Judgment, it states "Except as set forth in this Amended Final Judgment and Permanent Injunction, all claims by and between OCP and Defendant Aiello were released and dismissed with prejudice pursuant to the Aiello Judgment." Paragraphs 19 and 20 do not state which claims are dismissed.

In addition, dismissal of claims against Rabang and Aiello should have been made on the face of the judgment. HRCF Rule 58. Referencing prior judgments to validate that claims

against Rabang and/or Aiello were dismissed causes this court to have to search for those prior judgments. "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. Language such as "Count ____ against Defendant(s) ____ is/are dismissed with prejudice," would resolve the claims on the face of the judgment.

The September 25, 2015 Amended Final Judgment also did not expressly dismiss Rabang's and Aiello's cross claims. In paragraphs 21 and 22, the September 25, 2015 Amended Final Judgment states that Rabang's and Aiello's cross claims "were released and dismissed with prejudice," pursuant to prior judgments. Again, dismissal of the cross claims should have been made on the face of the judgment. HRCP Rule 58 and Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338.

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 28, 2016.

Presiding Judge

Associate Judge

Associate Judge