

NO. CAAP-16-0000122

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

BENJAMIN PAUL KEKONA and TAMAE M. KEKONA,
Plaintiffs-Appellees,

v.

PAZ FENG ABASTILLAS, also known as Paz A. Richter,
ROBERT A. SMITH, personally, ROBERT A. SMITH, Attorney At Law, A
Law Corporation, STANDARD MANAGEMENT, INC., U.S. BANCORP MORTGAGE
COMPANY, an Oregon Company, WESTERN SURETY COMPANY,
Defendants-Appellees,

and

MICHAEL BORNEMANN, Defendant-Appellant,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE
ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 93-3974-10)

ORDER DISMISSING 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 this appeal by Defendant-Appellant Michael Bornemann (**Appellant**) because the Circuit Court of the First Circuit (**circuit court**)¹ has not reduced its dispositive rulings on substantive claims to a separate, appealable, final judgment, as Hawaii Revised Statutes (**HRS**) § 641-1(a) (1993 & Supp. 2015) and Rule 58 of the Hawai'i Rules of Civil Procedure (**HRCp**)

¹ The Honorable Rhonda A. Nishimura presided.

require for an appeal from a civil circuit court case under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Under Hawai'i law, "[a]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c) (1993). 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 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, 195 P.3d 1177, 1186 (2008); Bailey v. DuVauchelle, 135 Hawai'i 482, 489, 353 P.3d 1024, 1031 (2015).

The Hawai'i Supreme Court has held that a final judgment in a case involving multiple claims or parties "(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 Haw. at 119, 869 P.2d at 1338 (emphasis added). "If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so; for example, . . . '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 HRCF Rule 58, the Supreme Court of Hawai'i 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 HRCF [Rule] 58.

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338.

This case involves multiple claims: Counts One, Two, Three, and Four in Plaintiffs-Appellees Benjamin Paul Kekona and Tamae M. Kekona's (collectively, **Appellees Kekona's**) Verified Complaint and two claims in a Counterclaim submitted by Defendants-Appellees Paz Feng Abastillas, also known as Paz A. Richter (**Appellee Abastillas**); Defendants-Appellees/Counterclaim Plaintiffs Robert A. Smith, personally, Robert A. Smith, Attorney at Law, a Law Corporation (collectively, **Appellee Smith**); and Appellant. The Consolidated Amended Amended Revised Final Judgment enters judgment in favor of Plaintiffs-Appellees Tamae Kekona, individually, and Tamae Kekona, as duly-appointed Personal Representative of the Estate of Benjamin Paul Kekona, and against Appellees Abastillas and Smith, and Appellant; and states that "[a]ny remaining parties and/or claims are hereby dismissed," which satisfies the requirement set forth in Jenkins, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4.

However, the Consolidated Amended Amended Revised Final Judgment does not specifically identify the claim or claims on

which the circuit court intends to enter judgment; and, therefore, does not satisfy the requirements for an appealable, final judgment under HRS § 641-1(a), HRCF Rule 58, and the holding in Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338.

Absent an appealable, final judgment, this court lacks jurisdiction over the appeal.

Therefore, IT IS HEREBY ORDERED that Appellate No. CAAP-16-0000122 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 27, 2016.

Presiding Judge

Associate Judge

Associate Judge