

NO. CAAP-16-0000124

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

BENJAMIN PAUL KEKONA and TAMAE M. KEKONA,
Plaintiffs/Counterclaim-Defendants/Appellees,
v.
PAZ FENG ABASTILLAS, also known as Paz A. Richter,
Defendant/Counterclaim-Plaintiff/Appellant,
and
ROBERT A. SMITH, personally, ROBERT A. SMITH, Attorney at Law,
A Law Corporation, Defendant/Counterclaim-Plaintiff/Appellee,
and
STANDARD MANAGEMENT, INC., MICHAEL BORNEMANN, M.D.,
U.S. BANCORP MORTGAGE COMPANY, an Oregon Company, WESTERN SURETY
COMPANY, Sued herein as Doe Entity 1, Defendants-Appellees,
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)

ORDER DISMISSING APPELLATE COURT CASE NUMBER
CAAP-16-0000124 FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record, it appears that we lack
appellate jurisdiction over the appeal of Defendant/
Counterclaim-Plaintiff/Appellant Paz Feng Abastillas (**Abastillas**)

and Defendant/Counterclaim-Plaintiff/Appellant Robert A. Smith (**Smith**) from the Honorable Rhonda A. Nishimura's February 1, 2016 Consolidated Amended Amended Revised Final Judgment in favor of Plaintiffs/Counterclaim-Defendants/Appellees Tamae Kekona, as Personal Representative of the Estate of Benjamin Paul Kekona and Tamae M. Kekona, Individually (**the Kekona Plaintiffs**) and against Abastillas and Smith, because the February 1, 2016 Consolidated Amended Amended Revised Final Judgment does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) 641-1(a) (1993 & Supp. 2015), Rule 58 of the Hawai'i Rules of Civil Procedure (**HRCP**), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

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." The Supreme Court of Hawai'i requires 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 at 119, 869 P.2d at 1338. 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). 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 HRC [Rule] 58.

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (citation omitted; original emphasis).

Although the instant case is a multiple-claim case in which the Kekona Plaintiffs' complaint asserts four separate and distinct counts against the defendants, the February 1, 2016 Consolidated Amended Amended Revised Final Judgment does not specifically identify the counts of the Kekona Plaintiffs' complaint on which the circuit court intends to enter judgment in favor of the Kekona Plaintiffs and against the defendants. The February 1, 2016 Consolidated Amended Amended Revised Final Judgment does include language stating that "[a]ny remaining parties and/or claims are hereby dismissed," which satisfies the following Jenkins requirement:

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).

However, without specifically identifying the claim on which the circuit court intends to enter judgment, the February 1, 2016 Consolidated Amended Amended Revised Final Judgment does not satisfy the requirements for an appealable final judgment under HRS § 641-1(a), HRCp Rule 58, and the holding in Jenkins. Absent an appealable final judgment, we lack appellate jurisdiction.

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-16-0000124 is dismissed for lack of appellate jurisdiction.

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

Presiding Judge

Associate Judge

Associate Judge