NO. CAAP-16-0000325

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

COMMERCIAL PROPERTIES, LIMITED, a Hawaii corporation,
Plaintiff/Counterclaim Defendant-Appellee,
v.
SANDY POEHNELT, PUAʻA ʻILI ʻOI ʻOI OHANA LLC,
a Hawaii limited liability company, and THE RIGHT SLICE, LLC,
a Hawaiʻi limited liability company,
Defendants/Counterclaim-Plaintiffs/Cross-Claim
Defendants/Appellees,
and
JOHN DOES 1-20, JANE DOES 1-20, DOE PARTNERSHIPS 1-20,
DOE CORPORATIONS 1-20, and DOE GOVERNMENTAL UNITS 1-10,
Defendants

SANDY POEHNELT PUAʻA ʻILI ʻOI ʻOI OHANA LLC,
a Hawaii limited liability company and THE RIGHT SLICE, LLC,
a Hawai'i limited liability company,
Defendants/Counterclaim-Plaintiffs/Third-Party Plaintiffs/Cross-
Claim Defendants/Third-Party Counterclaim-Defendants/Appellees,
v.
STACY MONIZ, Trustee of the Unrecorded Stacy Moniz
Revocable Trust Dated January 22, 2013,
Third-Party Defendant/Cross-Claim Defendant/Third-Party
Counterclaim Plaintiff/Appellant,
and
JO ANNE N. MONIZ, Trustee of the Unrecorded Jo Anne N. Moniz
Trust Dated February 12, 1999, ANTONIA L. MONIZ and JOHN MONIZ,
Third-Party Defendants/Cross-Claim Defendants/Appellants,
and

MARY C. WALSH, as Trustee of Trust A, a sub-trust of the Beatrice Duarte Living Trust, created under an unrecorded Trust Agreement dated September 24, 1991, as amended and restated in an unrecorded document dated July 14, 2008, and as Trustee of the Mary C. Walsh Declaration of Trust dated January 16, 2002, as amended and restated the 28th day of July 2008, as it may be further amended, Third-Party Defendant/Cross-Claim Plaintiff/Third-Party Counterclaim-Defendant/Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. 15-1-0087)

ORDER
DISMISSING APPELLATE COURT CASE NUMBER
CAAP-16-0000325 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 Third-Party Defendant/Cross-Claim Defendant/Third-Party Counterclaim-Plaintiff/Appellant Stacy Moniz ("Appellant Stacy Moniz"), and Third-Party Defendants/ Cross-Claim Defendants/Appellants Jo Anne N. Moniz, Antonia L. Moniz, and John Moniz's ("the Other Moniz Appellants") appeal from the Honorable Kathleen N.A. Watanabe's April 4, 2016 judgment as to one or more but fewer than all claims or parties pursuant to Rule 54(b) of the Hawaiʻi Rules of Civil Procedure (HRCP), because the April 4, 2016 HRCP Rule 54(b)-certified judgment does not satisfy the specificity 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 Hawaiʻi 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." "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, 76 Hawaiʻi 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 Hawaiʻi 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 April 4, 2016 HRCP Rule 54(b)-certified judgment enters a judgment for declaratory relief as to an easement through real property in favor of Defendants/Counterclaim-Plaintiffs/Third-Party Plaintiffs/Cross-Claim Defendants/Third-Party Counterclaim-Defendants/Appellees Sandy Poehnelt ("Appellee Poehnelt"), Puaʻa ʻIli ʻOi ʻOi Ohana, LLC ("Appellee Puaʻa ʻIli ʻOi ʻOi Ohana"), and The Right Slice, LLC ("Appellee The Right Slice"), and Third-Party Defendant/Cross-Claim Plaintiff/Third-Party Counterclaim-Defendant/Appellee Mary C. Walsh (Appellee Walsh) and against Appellant Stacy Moniz and the Other Moniz Appellants. Although multiple parties in this case have asserted multiple claims (including multiple separate claims for

declaratory relief regarding an easement through real property) by way of

1. Plaintiff/Counterclaim-Defendant/Third-Party Plaintiff/Third-Party Counterclaim-Defendant/Appellee Commercial Properties, Limited's (Appellee Commercial Properties), June 22, 2015 complaint that asserted three enumerated counts against Appellees Poehnelt, Puaʻa ʻIli ʻOi ʻOi Ohana, and The Right Slice,

2. Appellees Poehnelt, Puaʻa ʻIli ʻOi ʻOi Ohana, and The Right Slice's July 14, 2015 counterclaim that asserted four enumerated counts against Appellee Commercial Properties,

3. Appellees Poehnelt, Puaʻa ʻIli ʻOi ʻOi Ohana, and The Right Slice's July 14, 2015 third-party complaint that asserted two enumerated counts against Appellant Stacy Moniz and the Other Moniz Appellants,

4. Appellee Commercial Properties' August 13, 2015 third-party complaint that asserted a single count against Appellant Stacy Moniz, the Other Moniz Appellants and Appellee Walsh,

5. Appellee Walsh's October 23, 2015 cross-claim that asserted a single count against Appellee Poehnelt, Appellee Puaʻa ʻIli ʻOi ʻOi Ohana, Appellee The Right Slice, Appellant Stacy Moniz and the Other Moniz Appellants,

6. Appellant Stacy Moniz's February 23, 2016 third-party counterclaim that asserted six enumerated counts against Appellee Walsh,

7. Appellant Stacy Moniz's February 23, 2016 third-party counterclaim that asserted eight enumerated counts against Appellee Commercial Properties, and

8. Appellant Stacy Moniz's March 7, 2016 third-party counterclaim that asserted nine enumerated counts against Appellees Poehnelt, Puaʻa ʻIli ʻOi ʻOi Ohana, and The Right Slice,

the April 4, 2016 HRCP Rule 54(b)-certified judgment does not specifically identify the claim or claims on which the circuit court intends to enter judgment. Without specifically identifying the claim or claims on which the circuit court intends to enter judgment, the April 4, 2016 HRCP Rule 54(b)-certified judgment does not satisfy the specificity requirements for an appealable final judgment in a multiple-claim case under HRS § 641-1(a), HRCP Rule 54(b), HRCP Rule 58 and the holding in Jenkins, 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). The Supreme Court of Hawaiʻi 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 Hawaiʻi at 119, 869 P.2d at 1338 (citation omitted; original emphasis). 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-16-0000325 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawaiʻi, June 27, 2016.

Presiding Judge

Associate Judge

Associate Judge