

**Electronically Filed
Intermediate Court of Appeals
CAAP-17-0000554
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NO. CAAP-17-0000554

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RICHARD K. ADKINS and BROWN EYED GIRL, LLC,
an Illinois Limited Liability Company,
Plaintiffs-Appellants,

v.

GARY R. FISCHER; SAMANTHA K. FISCHER; and
ANINI ALOHA PROPERTIES, INC., a Hawaii corporation,
Defendants/Third-Party Plaintiffs/Appellees,

and

STEVEN NICKENS; CBIP, INC., dba
COLDWELL BANKER ISLAND PROPERTIES; AMY J. MARVIN; and
HANAIEI NORTH SHORE PROPERTIES, LTD.,
Third-Party Defendants/Appellees,

and

JOHN DOES 1-10, JANE DOES 1-10, et al., Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. 13-1-0032)

AMENDED ORDER

**GRANTING DECEMBER 7, 2017 MOTION TO DISMISS
APPEAL FOR LACK OF APPELLATE JURISDICTION**

(By: Fujise, Acting Chief Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) Third-Party Defendants/Appellees Steven Nickens (Nickens) and CBIP, Inc., dba Coldwell Banker Island Properties' (CBIP), December 7, 2017 motion to dismiss CAAP-17-0000554 for lack of appellate jurisdiction; (2) Third-Party Defendant/Appellee Hanalei North Shore Properties, Ltd.'s December 11, 2017 joinder to Nickens and CBIP's December 7, 2017 motion to dismiss; (3) Plaintiffs-Appellants Richard K. Adkins and Brown Eyed Girl, LLC's (the Appellants), December 13, 2017

memorandum in opposition to Nickens and CBIP's December 7, 2017 motion to dismiss, and (4) the record, it appears that we lack appellate jurisdiction over the Appellants' appeal from the Honorable Kathleen N.A. Watanabe's June 19, 2017 interlocutory order of dismissal in Civil No. 13-1-0032 because the circuit court has not yet resolved all claims as to all parties through a separate judgment, as Hawaii Revised Statutes (HRS) § 641-1(a) (2016) and Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) require under 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 to the Hawai'i Intermediate Court of Appeals from civil circuit court 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 HRCP Rule 58, the Supreme Court of Hawai'i held that "[a]n 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, 254, 195 P.3d 1177, 1186 (2008). 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 v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338 (citation omitted; original emphasis). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 20, 122 P.3d 809, 815 (2005) (citation omitted; emphasis added). "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 120, 869 P.2d at 1339 (footnote omitted).

On September 15, 2017, the circuit court clerk filed the record on appeal for CAAP-17-0000554, which does not contain a separate judgment resolving all claims as to all parties. Furthermore, the record does not clearly indicate that the circuit court intends to enter a final judgment at this time, because the circuit court has not yet dismissed all claims as to all parties in Civil No. 13-1-0032. For example, neither the June 19, 2017 order of dismissal nor any other order dismissed Defendants/Third-Party Plaintiffs/Appellees Gary R. Fischer, Samantha K. Fischer, and Anini Aloha Properties, Inc.'s, June 3, 2013 third-party complaint as to Third-Party Defendant/Appellee Amy J. Marvin, which, thus, is a claim that is still unresolved and pending before the circuit court.

Absent a separate and appealable final judgment that resolves all claims as to all parties or a judgment entered pursuant to HRCF Rule 54(b), we lack appellate jurisdiction, and the Appellants' appeal is premature.

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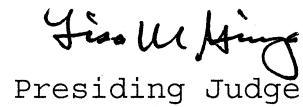
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Therefore, IT IS HEREBY ORDERED that Nickens and CBIP's December 7, 2017 motion to dismiss is granted, and appellate court case number CAAP-17-0000554 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, March 29, 2018.


Acting Chief Judge


Presiding Judge


Presiding Judge