

NO. CAAP-17-0000554

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

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 Hawai'i 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)

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

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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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