

NO. CAAP-19-0000064

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WCG, INC., a California Corporation, Plaintiff-Appellee, v.
RISING SUN LLC, a Hawaii limited liability company,
Defendant-Appellant, JOHN DOES 1-20; JANE DOES 1-20; DOE
CORPORATIONS 1-20; DOE PARTNERSHIPS 1-20; DOE "NONPROFIT"
CORPORATIONS; and DOE GOVERNMENTAL ENTITIES 1-20, Defendants

AND

RISING SUN LLC, a Hawaii limited liability company,
Counterclaim Plaintiff-Appellant, v. WCG, INC., a California
Corporation; SALESFORCE.COM, a Delaware Corporation,
Counterclaim Defendants-Appellees, JANE DOE 1-20;
JOHN DOES 1-20; and DOE ENTITIES, Counterclaim Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 17-1-0034(1))

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Reifurth, Presiding Judge, Chan and Hiraoka, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over Defendant/Counterclaim-Plaintiff/Third-Party Plaintiff/Appellant Rising Sun, LLC's (Rising Sun) appeal from the Honorable Rhonda I.L. Loo's December 31, 2018 order granting Third-Party Defendant/Appellee Salesforce.com's (Salesforce.com) motion to dismiss Rising Sun's third-party complaint (incorrectly referred to as a "counterclaim") against Salesforce.com, because the circuit court has neither adjudicated nor entered judgment on

- Plaintiff/Counterclaim-Defendant/Appellee WCG, Inc.'s (CG) three-count complaint against Rising Sun, and
- Rising Sun's three-count counterclaim against WCG,

which are both still unresolved and pending before the circuit court in Civil No. 17-1-0034(1).

Hawaii Revised Statutes ("HRS") § 641-1(a) (2016) authorizes appeals to the Hawai'i Intermediate Court of 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). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPC) requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement under HRCPC Rule 58, the Supreme Court of Hawai'i has held 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 HRCPC [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "Thus, based on Jenkins and HRCPC 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); Bailey v. DuVauchelle, 135 Hawai'i 482, 489, 353 P.3d 1024, 1031 (2015). The December 31, 2018 order is interlocutory, and the record shows that the circuit court is not yet ready to enter final judgment as to all claims in Civil No. 17-1-0034(1), as demonstrated by the parties' February 26, 2019 stipulation to continue trial pending this appeal.

Although exceptions to the final judgment requirement exist under the doctrine in Forgay v. Conrad, 47 U.S. 201 (1848) (the Forgay doctrine), the collateral order doctrine, and HRS § 641-1(b) (2016), the December 31, 2018 interlocutory order does not satisfy the requirements for appealability under the Forgay

doctrine, the collateral order doctrine, or HRS § 641-1(b). See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine); Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for the collateral order doctrine); HRS § 641-1(b) (regarding the requirements for an appeal from an interlocutory order). Absent an appealable final judgment, we lack appellate jurisdiction over appellate court case number CAAP-19-0000064.

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-19-0000064 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 16, 2019.

Presiding Judge

Associate Judge

Associate Judge