

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27970

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

BANKERS TRUST COMPANY, as Trustee and as Custodian,
Plaintiff/Counterclaim Defendant-Appellee,
v.
MICHAEL ABIVA,
Defendant/Counterclaim Plaintiff-Appellant,
and
JOHN and MARY DOES 1-10, Defendants

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CV. NO. 02-1-2353-10)

ORDER DISMISSING APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Defendant/Counterclaim Plaintiff-Appellant Michael Abiva's (Appellant Abiva) appeal from Honorable Karen N. Blondin's May 9, 2006 judgment, because the May 9, 2006 judgment is not an appealable final judgment under HRS § 641-1(a) (Supp. 2005), 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).

Under the HRCP Rule 58 separate document rule, "[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 v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338.

[I]f 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[.]

Id. (emphases added). Furthermore, "if the judgment resolves fewer than all claims against all parties, or reserves any claim for later action by the court, an appeal may be taken only if the judgment contains the language necessary for certification under HRCP [Rule] 54(b)[.]" Id. Therefore, "an appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id.

Although Appellant Abiva asserted three separate causes of action in his counterclaim against Plaintiff/Counterclaim Defendant-Appellee Bankers Trust Company (Appellee Bankers Trust Company), the May 9, 2006 judgment does not specifically identify the causes of action on which the circuit court has entered judgment. The May 9, 2006 judgment does not clearly express whether the circuit court has entered judgment on all three causes of action in Abiva's counterclaim or less than all three causes of action. Although the May 9, 2006 judgment states that there are no remaining claims, causes of action, defenses and/or counterclaims against any parties in this matter, the supreme

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court has explained that "[a] statement that declares 'there are no other outstanding claims' is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, . . . 'all other claims, counterclaims, and cross-claims are dismissed.'" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4. Therefore, the May 9, 2006 judgment does not satisfy the requirements for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright.

Absent an appealable final judgment, this appeal is premature. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 25, 2006.


Chief Judge


Associate Judge


Associate Judge