

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28227

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

PHILIP LAU, Plaintiff-Appellant,
v.
CLOYCE E. THOMPSON, a.k.a. CORY THOMPSON,
and TAIME TOEAINA, Defendants-Appellees,
and
DOE CORPORATIONS 1-10, and
DOE INDIVIDUALS 1-20, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 04-1-1533)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Plaintiff-Appellant Philip Lau's (Appellant Lau) appeal from the Honorable Randal K.O. Lee's August 22, 2006 judgment and October 31, 2006 judgment, because neither judgment is 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

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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[.]

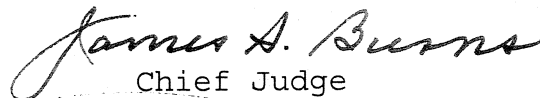
Id. (emphases added). Furthermore, "if the judgment resolves fewer than all claims against all parties, or reserves any claim for later action by the court, an appeal may be taken only if the judgment contains the language necessary for certification under HRCP [Rule] 54(b)[.]" Id. Therefore, "an appeal 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.

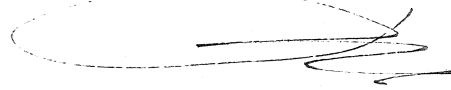
Although Appellant Lau asserted two separate claims in his amended complaint, neither the August 22, 2006 judgment nor the October 31, 2006 judgment specifically identifies the claim or claims for which judgment is entered. Neither the August 22, 2006 judgment nor the October 31, 2006 judgment contains operative language that specifically enters judgment all of the parties' claims. Although the October 31, 2006 judgment declares "that this Final Judgment resolves all claims between and among all named parties[,]" the supreme 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. Neither the August 22, 2006 judgment nor the October 31, 2006 judgment contains operative language that dismisses the claims. Therefore, neither judgment satisfies the requirements for an appealable final judgment under HRCF Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is premature. Accordingly,

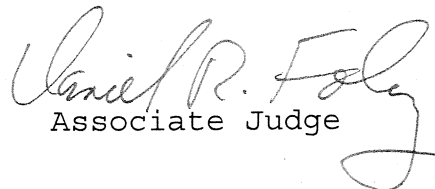
IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 11, 2007.


Chief Judge



Associate Judge


Associate Judge