

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28276

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

CYNTHIA MISERENDINO, Plaintiff-Appellee,
v.
LARISSA ALEXEEVA FERRER, Defendant/Cross-Claim
Respondent-Appellant,
and
RONALD MISERENDINO, Defendant/Cross-Claim
Respondent-Appellee,
TRACE MAUI CORPORATION, a Hawaii Corporation,
TRACE CORPORATION, a Wisconsin Corporation,
Defendants/Cross-Claimants/Third-Party Plaintiffs-Appellees,
and
MARK MISERENDINO, Third-Party Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 02-1-0348(2))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Defendant/Cross-Claim Respondent-Appellant Larissa Alexeeva Ferrer's (Appellant Ferrer) appeal from the Honorable Shackley F. Raffetto's October 16, 2006 Amended Final Judgment, because the it is not an appealable final judgment under Hawaii Revised Statutes (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

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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.

[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.

The parties asserted multiple claims in this case:

1. Plaintiff-Appellee Cynthia A. Miserendino's two-count complaint for fraud and unjust enrichment against Defendant/Cross-Claim Respondent-Appellee Ronald A. Miserendino (Appellee Ronald Miserendino), Appellant Ferrer, and Defendants/Cross-Claimants/Third-Party Plaintiffs-Appellees Trace Maui Corporation (Appellee Trace Maui Corporation) and Trace Corporation (Appellee Trace Corporation);
2. Appellees Trace Maui Corporation and Trace Corporation's two-count cross-claims for fraud and indemnification against Appellee Ronald Miserendino and Appellant Ferrer; and

3. Appellees Trace Maui Corporation and Trace Corporation's two-count third-party complaint for fraud and indemnification against Third-Party Defendant-Appellee Mark Miserendino.

Despite these multiple claims, the October 16, 2006 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). Granted, the October 16, 2006 judgment specifically identifies and enters judgment on all of Appellees Trace Maui Corporation's and Trace Corporation's cross-claims against Appellee Ronald Miserendino and Appellant Ferrer. However, it does not contain operative language that actually resolves (by entering judgment on or dismissing) the claims in paragraphs 1 and 3, above. Instead of resolving these claims, the October 16, 2006 judgment contains statements that declare how one party purportedly assigned claims to other parties, and how the circuit court resolved some other claims through a prior dismissal order. Declarations about a past claim assignments or past dismissal orders do not constitute a judgment. As the supreme court has explained,

[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, "Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is entered in favor of Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Jenkins, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4

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(emphasis added). Therefore, the October 16, 2006 judgment does not satisfy the requirements for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins.

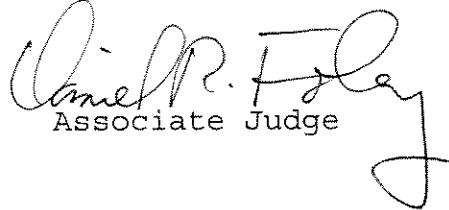
Absent an appealable final judgment, this appeal is premature. Accordingly,

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

DATED: Honolulu, Hawai'i, January 31, 2007.


Chief Judge


Associate Judge


Associate Judge