

NO. 28270

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JERRY KILARR and CONSTANCE GRANT KILARR,
Plaintiffs-Appellants,

v.

ROBERT GORDON; WILLIAM FONTANA; CLASSIC RESORTS LIMITED;
ASSOCIATION OF APARTMENT OWNERS OF KAAHAPALI ALII;
an unincorporated condominium association;
JOHN DOES 1-100; JANE DOES 1-100;
DOE PARTNERSHIPS 1-100 AND DOE CORPORATIONS 1-100,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 04-1-0125(3))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Plaintiffs-Appellants Jerry Kilarr and Constance Grant Kilarr's appeal from the Honorable Joseph E. Cardoza's October 30, 2006 judgment because it does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes § 641-1(a) (Supp. 2005), Rule 58 of the Hawaii Rules of Civil Procedure (HRCP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaii 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[.]"

CLARENDO
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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.

Although Plaintiffs-Appellants Jerry Kilarr and Constance Grant Kilarr asserted numerous claims in their complaint, the October 30, 2006 judgment does not state whether the circuit court is entering judgment on all of the claims, some specifically identified claims, or one specifically identified claim. The October 30, 2006 judgment also does not contain operative language that dismisses all of Plaintiffs-Appellants Jerry Kilarr and Constance Grant Kilarr's claims against Defendant-Appellee Classic Resorts, Limited.

Granted, the separate document rule does not apply to claims that the parties stipulate to dismiss pursuant to HRCP Rule 41(a)(1)(B), because a stipulation to dismiss under HRCP Rule 41(a)(1)(B) is effective without an order of the court. Cf.

Amantiad v. Odum, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 166 n.7 (1999) ("We . . . hold that a separate judgment is neither required nor authorized, inasmuch as a plaintiff's dismissal of an action, by filing a stipulation of dismissal signed by all parties [pursuant to HRCP Rule 41(a)], is effective without order of the court." (Citation, internal quotation marks, and brackets omitted). Although Plaintiffs-Appellants Jerry Kilarr and Constance Grant Kilarr dismissed some of their claims through purported "stipulations" to dismiss pursuant to HRCP Rule 41(a)(1)(B) through two documents that the circuit court entered on July 20 and August 8, 2006, neither of these two documents was "signed by all parties who have appeared in the action[,] " as HRCP Rule 41(a)(1)(B) requires for stipulations to dismiss claims without an order of the court. The July 20 and August 8, 2006 documents were signed by some, but not all, of the parties who have appeared in the action. Furthermore, both the July 20 and August 8, 2006 documents are signed by the circuit court judge as orders of the circuit court, and, thus, the July 20 and August 8, 2006 documents are not stipulations to dismiss pursuant to HRCP Rule 41(a)(1)(B), but rather, they are circuit court dismissal orders pursuant to HRCP Rule 41(a)(2). In order for this case to be appealable, the circuit court must reduce these two dismissal orders to the separate judgment, just as the circuit court must do with all dispositive orders.

The October 30, 2006 judgment concludes with a statement that declares that the circuit court has disposed of

all of the claims, and that there are no remaining claims.

However,

[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."

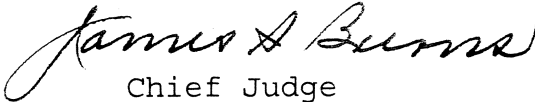
Jenkins, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4

(emphasis added). The October 30, 2006 judgment does not contain operative language that disposes of all of the claims of this case, and, thus, does not satisfy the requirements for an appealable final judgment under HRCF Rule 58 and the holding in Jenkins.

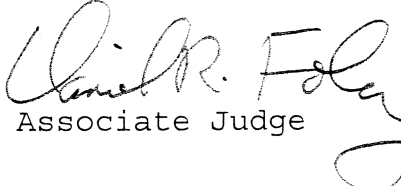
Absent an appealable final judgment, this appeal is premature. Accordingly,

IT IS HEREBY ORDERED that the appeal in appellate court case number 28270 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 12, 2007.


Chief Judge


Associate Judge


Associate Judge