

NO. 28313

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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STATE OF HAWAII

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Civ. No. 02-1-0691

KRISTIE TOKUHISA, Court-Appointed Class Representative, individually and on behalf of all others similarly situated, Plaintiff-Appellant, and CYNTHIA ALTMAN and KELLY MULLER, individually and on behalf of all others similarly situated, Plaintiffs,

v.

CUTTER MANAGEMENT CO.; CUTTER MOTOR CARS, INC.; CUTTER DODGE, CHRYSLER, PLYMOUTH, JEEP OF PEARL CITY, INC. dba CUTTER DODGE CHRYSLER PLYMOUTH JEEP OF PEARL CITY; RED SWAN INCORPORATED, Defendants-Appellees, and DOE DEFENDANTS 1-50, Defendants, and CUTTER MANAGEMENT CO.; CUTTER MOTOR CARS, INC.; CUTTER DODGE CHRYSLER, PLYMOUTH, JEEP OF PEARL CITY, INC. dba CUTTER DODGE CHRYSLER PLYMOUTH JEEP OF PEARL CITY, Third-Party Plaintiffs/Counterclaim Defendants-Appellees,

v.

SAFE-GUARD PRODUCTS INTERNATIONAL, INC., Third-Party Defendant/Counterclaim Plaintiff

and

Civ. No. 02-1-2915

KRISTIE TOKUHISA, Court-Appointed Class Representative, individually and on behalf of all others similarly situated, Plaintiff-Appellant, and WALTER CALIZO, ROCHELLE MOLINA, FERILA PEREZ, FRANCISCO ANCHETA, KELLY ANCHETA, KHAMTAN TANHCHALEUN, and CHOU TANHCHALEUN, individually and on behalf of all others similarly situated, Plaintiffs,

v.

CUTTER MANAGEMENT CO.; CUTTER DODGE, INC.; RAINBOW CHEVROLET, INC.; CUTTER FORD, INC.; CUTTER IMPORTS, INC.; CUTTER MOTOR CARS, INC.; CUTTER OF WAIPAHU, INC.; CUTTER PONTIAC, BUICK, GMC OF WAIPAHU, INC.; RED SWAN INCORPORATED, SAFE-GUARD PRODUCTS INTERNATIONAL, INC., Defendants-Appellees, and DOE DEFENDANTS 1-50, Defendants, and CUTTER MANAGEMENT CO.; CUTTER DODGE, INC.; RAINBOW CHEVROLET, INC.; CUTTER FORD, INC.; CUTTER IMPORTS, INC.; CUTTER MOTOR CARS, INC.; CUTTER OF WAIPAHU, INC.; CUTTER PONTIAC, BUICK, GMC OF WAIPAHU, INC., Cross-Claim Plaintiffs-Appellees,

v.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

SAFE-GUARD PRODUCTS INTERNATIONAL, INC., Cross-Claim
Defendants-Appellees, and DOE DEFENDANTS 1-50,
Cross-Claim Defendants, and SAFE-GUARD PRODUCTS
INTERNATIONAL, INC., Cross-Claim Plaintiff-Appellee,
v.

CUTTER MANAGEMENT CO.; CUTTER DODGE, INC.; RAINBOW
CHEVROLET, INC.; CUTTER FORD, INC.; CUTTER IMPORTS,
INC.; CUTTER MOTOR CARS, INC.; CUTTER OF WAIPAHU, INC.;
CUTTER PONTIAC, BUICK, GMC OF WAIPAHU, INC.,
Cross-Claim Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding J., Lim and Foley, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Plaintiff-Appellant Kristie Tokuhisa's (Appellant Tokuhisa) appeal from the Honorable Sabrina S. McKenna's November 14, 2006 judgment (the Judgment) because it does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2006), 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).

HRS § 641-1(a) (Supp. 2006) authorizes appeals from "final judgments, orders, or decrees[.]" Under the 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 115, 119, 869 P.2d 1334, 1338 (emphasis added).

[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 the Judgment purports to enter judgment on all the claims, it does not enter judgment in favor of and against any specifically identified parties. Furthermore, it does not expressly dismiss the claims that it does not specifically identify.

Granted, a judgment does not need to identify and resolve claims that the parties have stipulated to dismiss pursuant to HRCP Rule 41(a)(1)(B) because a stipulation to dismiss pursuant to 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 HRCF Rule 41(a)], is effective without order of the court." (Quotation marks and brackets omitted.) However, in order to be effective pursuant to HRCF Rule 41(a)(1)(B), a stipulation to dismiss must be "signed by all parties who have appeared in the action." HRCF Rule 41(a)(1)(B). Not all of the stipulations to dismiss pursuant to HRCF Rule 41(a)(1)(B) are signed by all of the parties who have appeared in this action. For example, although the parties filed two stipulations on May 30, 2006 that attempted to dismiss several of the claims against two parties, no attorney signed the two May 30, 2006 stipulations on behalf of Appellant Tokuhisa. Consequently, the judgment must expressly resolve these claims in order to be appealable. The Judgment does not expressly resolve, among other things, the claims that the two May 30, 2006 stipulations attempted to dismiss.

The Judgment concludes with a statement that declares that "[t]here are no further claims or parties remaining in this action." Civil No. 02-1-0691 Record on Appeal (ROA) Vol. 16 at 389; Civil No. 02-1-2915 ROA Vol. 11 at 343. However, 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

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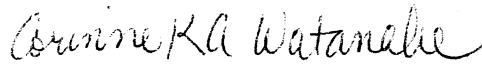
Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

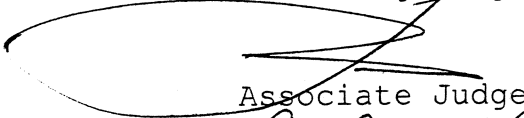
Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added). The Judgment does not, on its face, contain operative language that disposes of all claims against all parties in this case, nor does it contain the express finding necessary for certification pursuant to HRCF Rule 54(b). Therefore, the Judgment does not satisfy the requirements for an appealable final judgment under HRCF Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright.

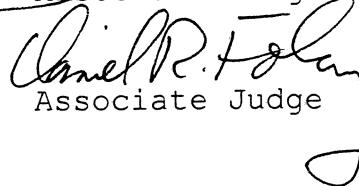
Absent an appealable final judgment, this appeal is premature. Accordingly,

IT IS HEREBY ORDERED that the appeal in appellate court case No. 28313 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, March 9, 2007.


Presiding Judge


Associate Judge


Associate Judge