

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28354

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

UNITE HERE! LOCAL 5; ERIC W. GILL;
TODD A. K. MARTIN, Plaintiffs,

v.

CITY AND COUNTY OF HONOLULU, a municipal corporation;
KUILIMA RESORT COMPANY, a Hawai'i corporation;
DOE DEFENDANTS 1-10, Defendants

KUILIMA RESORT COMPANY, a Hawai'i general partnership,
Counterclaim Plaintiff,

v.

UNITE HERE! LOCAL 5 HAWAII, a Hawai'i labor organization;
ERIC W. GILL, an individual, Counterclaim Defendants
and

UNITE HERE! a New York labor organization;
DOE DEFENDANTS 1-10, Additional Counterclaim Defendants

(CV. NO. 06-1-0265)

KEEP THE NORTH SHORE COUNTRY, a Hawai'i non-profit
corporation, and SIERRA CLUB, HAWAI'I CHAPTER,
a foreign non-profit corporation,
Plaintiffs-Appellants,

v.

CITY AND COUNTY OF HONOLULU; HENRY ENG, Director of
Department of Planning and Permitting in his official
capacity; KUILIMA RESORT COMPANY, a Hawai'i general partnership;
Defendants-Appellees,

and

JOHN DOES 1-10; et al., Defendants

(CV. NO. 06-1-0867)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

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 Keep the North Shore

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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Country and Sierra Club, Hawai'i Chapter's, appeal from the Honorable Sabrina S. McKenna's December 20, 2006 judgment, because the December 20, 2006 judgment does not satisfy the requirements for an appealable final judgment under HRS § 641-1(a) (Supp. 2006), Rules 54(b) and 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 to the intermediate court of appeals from "final judgments, orders, or decrees[.]" Furthermore, under HRCP Rule 58, "[a]n appeal may be taken . . . 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 (1994).

[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). "[I]f 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 December 20, 2006 judgment, on its face, resolves all claims against all parties in Civil No. 06-1-0867. However, prior to entry of the December 20, 2006 judgment, the circuit court consolidated Civil No. 06-1-0867 with Civil No. 06-1-0265, and yet the December 20, 2006 judgment does not resolve the claims in Civil No. 06-1-0265. The Supreme Court of Hawai'i has adopted a rule "whereby a judgment or order in a consolidated case, disposing of fewer than all claims among all parties, is not appealable in the absence of [HRCP] Rule 54(b) certification." Leslie v. Estate of Tavares, 109 Hawai'i 8, 13, 122 P.3d 803, 808 (2005). The December 20, 2006 judgment does not, on its face, resolve all claims against all parties in the consolidated case of Civil No. 06-1-0867 with Civil No. 06-1-0265, nor does the December 20, 2006 judgment have HRCP Rule 54(b) certification.

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 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).). However, in order to be effective pursuant to HRCP Rule 41(a)(1)(B), a stipulation to dismiss must be "signed by all parties who have appeared in the action." HRCP Rule 41(a)(1)(B). Several of the parties did not sign the August 1, 2006 stipulation that purported to dismiss Civil No. 06-1-0265 pursuant to HRCP Rule 41(a)(1)(B). No person signed the August 1, 2006 stipulation for dismissal on behalf of Additional Counterclaim Defendant/Appellee Unite Here!, who had appeared in Civil No. 06-1-0265. No person signed the August 1, 2006 stipulation for dismissal on behalf of some of the parties who had appeared in Civil No. 06-1-0867, such as Plaintiffs-Appellants Keep the North Shore Country and Sierra Club, Hawai'i Chapter. Furthermore, the circuit court dismissed the amended counterclaim in Civil No. 06-1-0867 through a June 15, 2006 order that the circuit court has not reduced to a separate judgment, as HRCP Rule 58 requires.

Although the December 20, 2006 judgment contains a statement that declares that "[a]ll issues have been resolved herein, and there are no remaining issues or parties in this case[,]" the Supreme Court of Hawai'i has explained under similar circumstances that,

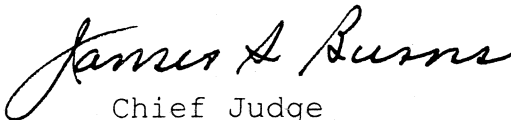
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[a] statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, "Defendant Y's counterclaim 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 v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added). The December 20, 2006 judgment does not, on its face, dispose of all claims against all parties in this consolidated case. Absent HRCP Rule 54(b) certification, the December 20, 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. Without an appealable final judgment, this appeal is premature and we lack jurisdiction. Therefore,

IT IS HEREBY ORDERED that the appeal in appellate court case number 28354 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 4, 2007.


Chief Judge



Associate Judge


Associate Judge