

NO. 23914

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL K. SPERKA dba OLD HAWAIIAN COFFEE, Plaintiff

vs.

DOUG WHITING, NILDA WHITING dba ROYAL HAWAIIAN
AND PACIFIC TRADING CO., Defendants

and

DOUG WHITING, NILDA WHITING dba ROYAL HAWAIIAN
AND PACIFIC TRADING CO., Third-Party Plaintiffs-Appellants

vs.

UESHIMA COFFEE CORPORATION, a Hawai'i corporation,
Third-Party Defendant-Appellee

and

YOSHIAKI KAWASHIMA, Third-Party Defendant

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 99-026K)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson,
Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that the September 18, 2000 order granting summary judgment on the third-party complaint has not been reduced to a separate judgment, as required by HRCP 58; see Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119-20, 869 P.2d 1334, 1339-39 (1994) (An order disposing of claims is not appealable unless it is reduced to a separate judgment.). The judgment entered on October 5, 2000 is not an appealable separate judgment on the September 18,

2000 summary judgment order inasmuch as the judgment merely declares that the third-party complaint has been resolved, but does not enter judgment in favor of and against the parties on the third-party complaint; see Jenkins (the HRCP 58 judgment must enter judgment in favor of and against the parties on the claims for which the judgment is entered). Furthermore, the October 5, 2000 judgment, which purports to be the final judgment resolving all claims in Civil No. 99-026K, declares that the third-party counterclaim has been resolved, but Count II of the third-party counterclaim was not resolved by the September 18, 2000 summary judgment order and the October 5, 2000 judgment does not dismiss that claim; see Jenkins (in a multiple claim, multiple party circuit court case, the final judgment must, on its face, show finality as to all claims of all the parties). Absent entry of a judgment on the complaint and the third-party claims, the appeal of the September 18, 2000 summary judgment order and the November 8, 2000 order denying relief therefrom is premature and we lack jurisdiction. Therefore,

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

DATED: Honolulu, Hawai'i, February 16, 2001.