

*** NOT FOR PUBLICATION ***

NO. 25536

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

IMELETA S. BALBAS, Individually and as Trustee of the Imelda
Silolua Balbas Living Trust Dated June 4, 1998,
Plaintiff-Appellee

vs.

ATTORNEYS EQUITY NATIONAL CORPORATION, Defendant-Appellant

and

THE CHASE MANHATTAN BANK; MERITECH MORTGAGE SERVICES, INC.; JOHN
DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; ROE "NON-PROFIT" CORPORATIONS 1-10 and ROE
GOVERNMENTAL ENTITIES 1-20, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIVIL NO. 01-1-2210)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, and Nakayama, JJ.,
Circuit Judge Del Rosario, in place of Acoba, J., unavailable,
and Circuit Judge Town, assigned by reason of vacancy)

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Attorneys Equity National Corporation's (Appellant AENC) appeal from the November 15, 2002 order denying Appellant AENC's motion to set aside the November 1, 2001 judgment pursuant to Rule 60(b) of the Hawai'i Rules of Civil Procedure (HRCP). Although an order denying a HRCP Rule 60(b) motion to set aside a judgment is final and appealable, First Trust Company of Hilo, Ltd. v. Reinhardt, 3 Haw. App. 589, 592, 655 P.2d 891, 893 (1982), a HRCP Rule 60(b) motion is authorized only in situations involving a final judgment. Crown Properties, Inc. v. Financial Security Life Insurance Co., Ltd., 6 Haw. App. 105, 112, 712 P.2d 504, 509 (1985). The November 1, 2001 judgment in Civil No. 01-1-2210), the Honorable Virginia Lea Crandall presiding, does not satisfy the requirements for a final judgment pursuant to the HRCP

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Rule 58 separate document rule under our holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994).

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple partes, the judgment . . . must . . . specifically identify the party or parties for and against whom the judgment is entered, and . . . must . . . identify the claims for which it is entered, and . . . dismiss any claims not specifically identified[.]

Id. at 119, 869 P.2d at 1338.

For example: "Pursuant to the jury verdict entered on (date), judgment in the amount of \$___ is hereby entered in favor of Plaintiff X and against Defendant Y upon counts I through IV of the complaint." 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."

Id. at 119-20 n.4, 869 P.2d at 1338-39 n.4. "[A]n 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 HRCF [Rule] 54(b)." Id. at 119, 869 P.2d at 1338.

Although Plaintiff-Appellee Imeleta S. Balbas' (Appellee Balbas) complaint asserted six separate counts against multiple defendants, the November 1, 2001 judgment does not identify the claims for which it is entered. Furthermore, although the November 1, 2002 judgment resolved fewer than all claims against all parties at the time of its entry, it does not contain a finding that there is no just reason for delay in the entry of judgment, which is necessary for certification under

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HRCP Rule 54(b). Granted, a new judgment would not need to refer to Appellee Balbas' subsequent dismissal of her claims against Defendants The Chase Manhattan Bank and Meritech Mortgage Services, Inc., pursuant to HRCP Rule 41(a)(1)(A), because a voluntary dismissal pursuant to HRCP 41(a)(1)(A) is effective without an order of the circuit court. Cf. Amantiad v. Odum, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 266 n.7 (1999) ("We . . . hold that a separate judgment is neither required nor authorized, inasmuch as a plaintiff's dismissal of an action [pursuant to HRCP 41(a)(1)(B)], by filing a stipulation of dismissal signed by all parties, is effective without order of the court." (Internal quotation marks and original brackets omitted)). However, the November 1, 2001 judgment is not a final judgment because it does not identify the claims for which it is entered, as the HRCP Rule 58 separate document rule requires. Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. Therefore, Appellant AENC's appeal is premature. Accordingly,

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

DATED: Honolulu, Hawai'i, April 8, 2003.