

**Electronically Filed
Supreme Court
SCWC-11-0000999
16-JUL-2012
08:24 AM**

NO. SCWC-11-0000999

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SAINGOEN DAVIS,
Petitioner/Plaintiff-Appellant/Cross-Appellee,

vs.

GARY W. VANCIL; MARK VAN PERNIS; and VAN PERNIS-VANCIL, a Law
Corporation,
Respondents/Defendants-Appellees/Cross-Appellants/
Cross-Claim Plaintiff,

and

NICHOLLE DAVIS,
Defendant/Cross-Claim Defendant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. CAAP-11-0000999; CIVIL NO. 08-1-352K)

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI,
VACATING ICA ORDER DISMISSING APPEAL AND CROSS-APPEAL FOR LACK
OF JURISDICTION, AND REMANDING APPEAL AND CROSS-APPEAL TO ICA

(By: Recktenwald, C.J., Nakayama, Acoba, and McKenna, JJ. and
Circuit Judge Crandall, assigned by reason of vacancy)

Petitioner/plaintiff-appellant/cross-appellee Saingoen Davis
filed a timely application for writ of certiorari on June 7, 2012
to review the intermediate court of appeals' (ICA) May 8, 2012
Order Dismissing Appeal and Cross-Appeal for Lack of
Jurisdiction. Petitioner and respondents appealed and cross-
appealed the November 21, 2011 Final Judgment entered in Civil
No. 08-1-352K. The ICA concluded that the November 21, 2011

Final Judgment did not resolve the Vancil defendants' cross-claim -- and therefore did not resolve all claims of all the parties, as required by Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1333, 1338 (1994) -- because: (1) the final paragraph of the judgment declared that the judgment did not dispose of the cross-claim "which may be resurrected" after the appeal of the good faith determination order and (2) the cross-claim was in fact resurrected on February 24, 2012 when the ICA vacated the good faith determination order. However, paragraph 11 of the November 21, 2011 judgment stated that "[the Vancil defendants] cross-claim against Defendant Nicholle . . . was dismissed." The judgment, on its face, resolved the cross-claim, notwithstanding the caveat that the cross-claim "may be resurrected" after the appeal of the good faith determination order. The finality and appealability of the November 21, 2011 judgment was not affected by the subsequent vacatur of the good faith determination order and reinstatement of the cross-claim on February 24, 2012.

Petitioner's application for writ of certiorari is accepted. The ICA's May 8, 2012 Order Dismissing Appeal and Cross-Appeal for Lack of Jurisdiction is vacated. Petitioner's appeal and respondents' cross-appeal are remanded to the ICA for disposition.

DATED: Honolulu, Hawai'i, July 16, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Virginia L. Crandall

