

NO. CAAP-16-0000018

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

RICHARD NELSON, III, KALIKO CHUN, JAMES AKIONA, SR.,  
SHERILYN ADAMS, KELII IOANE, JR., and CHARLES AIPIA,  
Plaintiffs-Appellees,  
v.

HAWAIIAN HOMES COMMISSION, THE DEPARTMENT OF HAWAIIAN HOME  
LANDS, JOBIE MASAGATANI, in her official capacity as  
Chair of the Hawaiian Homes Commission, WILLIAM K.  
RICHARDSON, MICHAEL P. KAHIKINA, RENWICK V.I. TASSILL,  
DOREEN NAPUA GOMES, GENE ROSS DAVIS, WALLACE A.  
ISHIBASHI, and DAVIS B. KAAPU, in their official  
capacities as members of the Hawaiian Homes Commission,  
Defendants-Appellees,

and

WESLEY MACHIDA, in his official capacity as  
the State Director of Finance, and the STATE OF HAWAI'I,  
Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 07-1-1663-08)

ORDER

DISMISSING APPELLATE COURT CASE NUMBER

CAAP-16-0000018 FOR LACK OF APPELLATE JURISDICTION

AND

DISMISSING AS MOOT ALL PENDING MOTIONS

(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over Defendants-Appellants State of Hawai'i and State Director of Finance Wesley Machida's (the State Appellants) appeal from the December 11, 2015 judgment in favor of Plaintiffs-Appellees Richard Nelson III, Kaliko Chun, James Akiona, Sr., Sherilyn Adams, Kelii Ioane, Jr., and Charles Aipia (the Plaintiffs) as to Count 1 and Count 2 of the Plaintiffs' October 19, 2007 first amended complaint, because the December 11, 2015 judgment neither resolves all claims against all parties nor contains the finding necessary for certification under Rule 54(b) of the Hawai'i Rules of Civil Procedure (HRCP) for an appeal from a judgment as to one or more but fewer than all claims or parties, as Hawaii Revised Statutes (HRS) 641-1(a) (1993 & Supp. 2015) and HRCP Rule 58 require under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

HRS § 641-1(a) authorizes appeals from final judgments, orders, or decrees. Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." "An 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, 76 Hawai'i at 119, 869 P.2d at 1338. "Thus, based on Jenkins and HRCP Rule 58, an order is not appealable, even if it resolves all claims against the parties, until it has been reduced to a separate

judgment." Carlisle v. One (1) Boat, 119 Hawai'i 245, 254, 195 P.3d 1177, 1186 (2008); Bailey v. DuVauchelle, 135 Hawai'i 482, 489, 353 P.3d 1024, 1031 (2015). When interpreting the requirements for an appealable final judgment under HRS § 641-1(a) and HRCP Rule 58, the supreme court has explained that

[i]f we do not require a judgment that resolves on its face all of the issues in the case, the burden of searching the often voluminous circuit court record to verify assertions of jurisdiction is cast upon this court. Neither the parties nor counsel have a right to cast upon this court the burden of searching a voluminous record for evidence of finality, . . . and we should not make such searches necessary by allowing the parties the option of waiving the requirements of HRCP [Rule] 58.

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (citation omitted; original emphasis). Consequently, "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 Plaintiffs' October 19, 2007 first amended complaint asserted four counts against the State Appellants and Defendants-Appellees Hawaiian Homes Commission, the Department of Hawaiian Home Lands, Jobie Masagatani, in her official capacity as Chair of the Hawaiian Homes Commission, William K. Richardson, Michael P. Kahikina, Renwick V.I. Tassill, Doreen Napua Gomes, Gene Ross Davis, Wallace A. Ishibashi, David B. Kaapu and Pua Chin, in their official capacities as members of the Hawaiian Homes Commission (the DHHL Defendants). Count 1 of the Plaintiffs' October 19, 2007 first amended complaint states a cause of action against all of the "Defendants" in this case (either unintentionally or intentionally). However, the December 11, 2015 judgment adjudicates Count 1 only as to the

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State Appellants, and neither enters judgment on nor dismisses Count 1 as to the DHHL Defendants.

In addition, the December 11, 2015 judgment does not either enter judgment on or dismisses Count 3 and Count 4 of the Plaintiffs' October 19, 2007 first amended complaint. We recognize that, on August 24, 2009, the parties entered an HRCP Rule 41(a)(1)(B) stipulation to dismiss Count 3 and Count 4 of the Plaintiffs' first amended complaint, and "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)(1)(B)], is effective without order of the court." Amantiad v. Odum, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 166 n.7 (1999) (internal quotation marks and original brackets omitted).. However, when the State Appellants appealed from the prior September 23, 2009 judgment in appellate court case number 30110, we vacated the September 23, 2009 judgment and remanded this case to the circuit court for further proceedings. Nelson III v. Hawaiian Homes Commission, 124 Hawai'i 437, 246 P.3d 369 (App. 2011). Then, when the State Appellants applied to the supreme court for a writ of certiorari, the supreme court construed our vacatur of the September 23, 2009 judgment to vacate the entire circuit court judgment and reopened all of the counts in the Plaintiffs' October 19, 2007 first amended complaint:

The parties stipulated to dismiss Count III and IV without and with prejudice, respectively.

Only Count 1 is at issue in this appeal, as Count 2 was alleged against only the DHHL Defendants, who did not apply for a writ of certiorari or file a response to the State's application for writ of certiorari. As a practical matter, however, the ICA's judgment vacated the entire circuit court judgment and remanded the entire case for a decision on the merits, which reopened all the Counts.

Nelson III v. Hawaiian Homes Commission, 127 Hawai'i 185, 191 n.4, 277 P.3d 279, 285 n.4 (2012) (emphases added). Thus, a subsequent judgment needs to resolve all four counts in the Plaintiffs' October 19, 2007 first amended complaint in order to be an appealable final judgment under HRS § 641-1(a), HRCP Rule 54(b), HRCP Rule 58 and the holding in Jenkins. Instead of utilizing operative language that would actually dismiss Count 3 and Count 4, the December 11, 2015 judgment merely states that Count 3 and Count 4 were dismissed through a prior document (presumably the August 24, 2009 HRCP Rule 41(a)(1)(B) stipulation to dismiss Count 3 and Count 4), and concludes with a conclusory statement that "[t]here are no other claims." As the Supreme Court of Hawai'i 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 Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Jenkins, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added). Because the December 11, 2015 judgment neither resolves all four counts in the Plaintiffs' October 19, 2007 first amended complaint as to all parties nor contains the finding necessary for certification under HRCP Rule 54(b), the December 11, 2015 judgment does not satisfy the requirements for an appealable final judgment under HRS § 641-1(a), HRCP Rule 54(b), HRCP Rule 58 and the holding in Jenkins. Absent an appealable final judgment, we lack appellate jurisdiction, and the State Appellants' appeal is premature.

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Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-16-0000018 is dismissed.

IT IS FURTHER HEREBY ORDERED that any and all pending motions in appellate court case number CAAP-16-0000018 are dismissed as moot.

DATED: Honolulu, Hawai'i, April 1, 2016.

Presiding Judge

Associate Judge

Associate Judge