

Electronically Filed
Intermediate Court of Appeals
CAAP-17-0000518
27-OCT-2017
10:47 AM

NO. CAAP-17-0000518

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

PETER MAC DONALD and CYNTHIA MAC DONALD,
Plaintiffs/Counterclaim-Defendants/Appellants,
v.

HAWAIIAN ACRES COMMUNITY ASSOCIATION,
a not-for-profit Corporation,
Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant/Appellee,
and
HAWAIIAN ACRES ROAD CORPORATION,
Defendant/Cross-Claim Defendant/Counterclaim-Plaintiff/
Cross-Claim Plaintiff/Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 14-1-0032)

ORDER GRANTING THE SEPTEMBER 7, 2017 MOTION TO
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Fujise and Chan, JJ.)

Upon review of (1) Defendant/Cross-Claim Plaintiff/
Cross-Claim Defendant/Appellee Hawaiian Acres Community
Association's (Appellee Hawaiian Acres Community Association)
September 7, 2017 motion to dismiss appellate court case number
CAAP-17-0000518 for lack of appellate jurisdiction, (2) the
absence of any memorandum by Plaintiffs/Counterclaim-Defendants/
Appellants Peter MacDonald and Cynthia MacDonald (the MacDonald
Appellants) in response to Appellee Hawaiian Acres Community
Association's September 7, 2017 motion, and (3) the record, it

appears that we lack appellate jurisdiction over the MacDonald Appellants' appeal from the Honorable Greg K. Nakamura's June 1, 2017 judgment, because the June 1, 2017 judgment does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (2016), Rules 54(b) and Rule 58 of the Hawaii 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).

Under HRS § 641-1(a), an "appeal may be taken from circuit court orders resolving claims against parties 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.

In the instant case, the June 1, 2017 judgment does not resolve all claims against all parties. The June 1, 2017 judgment enters judgment in favor of Appellee Hawaiian Acres Community Association as to all claims that the MacDonald Appellants asserted, but the June 1, 2017 judgment

- does not resolve the MacDonald Appellants' two-count complaint as to Defendant/Cross-Claim Defendant/ Counterclaim-Plaintiff/Cross-Claim Plaintiff/Appellee Hawaiian Acres Road Corporation (Appellee Hawaiian Acres Road Corporation),
- does not resolve Appellee Hawaiian Acres Community Association's cross-claim against Appellee Hawaiian Acres Road Corporation,
- does not resolve Appellee Hawaiian Acres Road Corporation's counterclaim against the MacDonald Appellants, and
- does not resolve Appellee Hawaiian Acres Road Corporation's cross-claim against Appellee Hawaiian Acres Community Association.

In addition, the June 1, 2017 judgment does not contain an express finding of "no just reason for delay" in the entry of judgment as to one or more but fewer than all claims or parties pursuant to HRCP Rule 54(b). Therefore, the June 1, 2017

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 over appellate court case number CAAP-17-0000518, and the MacDonald Appellants' appeal is premature. Therefore,

IT IS HEREBY ORDERED AND DECREED that Appellee Hawaiian Acres Community Association's September 7, 2017 motion to dismiss the MacDonald Appellants' appeal is granted, and appellate court case number CAAP-17-0000518 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 27, 2017.



Chief Judge



Associate Judge



Associate Judge