

NO. 30020

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

LONGS DRUG STORES CALIFORNIA, INC.,  
Plaintiff-Appellant,

v.

LAHAINA CANNERY MALL, LLC.,  
Defendant/Cross-Claim Plaintiff/  
Third-Party Plaintiff/Appellee,

and

CFT-HAWAII, LLC,  
Defendant/Cross-Claim Defendant/  
Third-Party Plaintiff/Appellee,

and

WALGREEN COMPANY,  
Defendant-Appellee

and

HAWAII OMORI CORPORATION,  
LIPOA STAR, LLC and RDD, LLC,  
Third-Party Defendants/Appellees,

and

DOE DEFENDANTS 1-10,  
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 08-1-0188)

ORDER DISMISSING APPEAL  
FOR LACK OF APPELLATE JURISDICTION  
(By: Nakamura, Chief Judge, Watanabe and Fujise, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Plaintiff-Appellant Longs Drug Stores California, Inc. (Appellant Longs Drug Stores), has asserted from the Honorable Joel E. August's July 28, 2009 "Final Judgment in Favor of Defendant Walgreen Co. as to Count IV of

Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief Filed April 24, 2008" (the July 28, 2009 judgment) because the July 29, 2009 judgment does not satisfy the requirements for an appealable final judgment in Rules 54(b) and 58 of the Hawai'i Rules of Civil Procedure (HRCP) under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of appeals from final judgments, orders, or decrees. Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c). Under the rules of the court, "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on this requirement under HRCP Rule 58, the supreme court has held that "[a]n 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. Furthermore, "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. (emphasis added). The finding necessary for certification is "an express determination that there is no just reason for delay . . . for the entry of judgment." HRCP Rule 54(b). Therefore, when a party seeks appellate review of an order that adjudicates one or more but fewer than all of the claims, the "party cannot appeal from [the] circuit court order even though the order may contain [HRCP Rule] 54(b) certification language; the order must be reduced to a judgment and the [HRCP Rule] 54(b) certification language must be contained therein." Oppenheimer v. AIG Hawaii Ins. Co., 77 Hawai'i 88, 93, 881 P.2d 1234, 1239 (1994) (emphasis added).

The July 28, 2009 judgment resolves one or more but fewer than all of the parties' claims, but the July 28, 2009

judgment does not contain an express finding of no just reason for delay in the entry of judgment, as HRCP Rule 54(b) requires. Therefore, the July 28, 2009 judgment does not satisfy the requirements for an appealable judgment set forth in HRCP Rule 54(b) and HRCP Rule 58 under the holding in Jenkins.

Absent an appealable final judgment, the appeal of Appellant Longs Drug Stores is premature, and we lack jurisdiction over this appeal. Therefore,

IT IS HEREBY ORDERED that appellate court case number 30020 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 29, 2009.

Chief Judge

Associate Judge

Associate Judge