

DISSENTING OPINION BY FOLEY, J.

I respectfully dissent.

UPW argues that their Motion to Extend, filed on March 19, 2015, was timely filed within the ten-year period under Hawaii Revised Statutes (HRS) HRS § 657-5 (Supp. 2015) because the "original judgment" was the Hawai'i Supreme Court's 2005 Judgment on Appeal dismissing the City's appeal because it raised "the existence of an enforceable claim or right" under Estate of Roxas, 121 Hawai'i 59, 214 P.3d 598 (2009).

In Estate of Roxas, the Hawai'i Supreme Court interpreted "original judgment" under HRS § 657-5 where the circuit court made multiple amendments to a judgment. Estate of Roxas, 121 Hawai'i at 66-73, 214 P.3d at 605-12. The supreme court declined to adopt a "first-in-time" bright line rule to define "original judgment," and instead held that "the statute of limitations for extending a judgment begins to run at the creation of the judgment that creates the rights and responsibilities that the party is seeking to extend." Id. at 69, 214 P.3d at 608.

In interpreting the statute, the supreme court held, "the term 'judgment,' as used throughout HRS § 657-5, must refer to a valid and enforceable judgment." Id. at 67, 214 P.3d at 606. The supreme court also explained,

All judgments, even those that are modified or amended, become "enforceable claims or rights" only when the judgments creating those rights are entered. It is only at the time that the judgment is rendered when the parties are (1) aware of their rights and responsibilities created by the judgment and (2) able to enforce these rights.

Id. at 69, 214 P.3d at 608 (brackets omitted).

The City contends the circuit court's 2003 Judgment "is the only judgment that created the rights and responsibilities that [UPW] seeks to extend and renew--that the City cease and desist from repudiating its agreement with UPW." (Emphasis omitted.) The City compares the 2003 Judgment with the supreme court's 2005 Judgment on Appeal and argues that the 2005 Judgment on Appeal "did not, by any means, create any rights and responsibilities originally imposed by the [2003 Judgment]."

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UPW, on the other hand, argues that "[i]t was not until April 18, 2005 when the stay was lifted by the [Hawai'i] Supreme Court's disposition . . . that Decision [No.] 440 of the [HLRB] became 'operative.'" UPW explains, "[w]ith the [circuit court] judgment stayed, UPW had no enforceable claim or right upon which to seek to enforce and execute the circuit court judgment."

The circuit court's 2003 Judgment ordered the City to "cease and desist from repudiating the agreement with UPW" and imposed on the City its contractual duties identified by the HLRB. Both parties agree that the 2003 Judgment created "the rights and responsibilities that [UPW] seeks to extend." See Estate of Roxas, 121 Hawai'i at 69, 214 P.3d at 608. The parties dispute whether the supreme court's stay pending appeal rendered the 2003 Judgment unenforceable until the resolution of the appeal such that the 2005 Judgment on Appeal would become the effective "original judgment."

I agree with UPW's position that 2003 Judgment was unenforceable until the Hawai'i Supreme Court's 2005 Judgment on Appeal nullified the stay pending appeal. The supreme court in Estate of Roxas emphasized that a judgment constituting an "original judgment" must be enforceable. See Estate of Roxas, 121 Hawai'i at 67, 214 P.3d at 606 ("[T]he term 'judgment,' as used throughout HRS § 657-5, must refer to a valid and enforceable judgment."). By definition, a stay of proceedings to enforce a judgment precludes the enforcement of a judgment. See Hawai'i Rules of Civil Procedure Rule 62. Therefore, where an original judgment creating the rights and responsibilities that a party is seeking to extend is stayed pending resolution of an appeal from the judgment, the date from which the judgment may be extended under HRS § 675-5 is the date the stay is lifted and the judgment becomes enforceable.

In this case, the 2005 Judgment on Appeal was effectively the "original judgment" under HRS § 675-5 because the 2003 Judgment was not enforceable until the stay pending appeal had been lifted. The circuit court erred in concluding that the 2003 Judgment was the "original judgment."

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Pursuant to HRS § 675-5, UPW could request an extension of the 2003 Judgment until April 18, 2015. UPW filed its Motion to Extend on March 19, 2015, within the ten-year period. UPW's Motion to Extend was timely filed.

*Clamell R. Foley*