

NO. CAAP-17-0000565

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CIVIL NO. 13-1-1847

ASSOCIATION OF APARTMENT OWNERS OF ISLAND COLONY,
BY AND THROUGH ITS BOARD OF DIRECTORS,
Plaintiff/Counterclaim-Defendant/Appellant/Cross-Appellee,
v.

ISLAND COLONY PARTNERS and AMERICAN PACIFIC HOTELS, LLC.,
Defendants/Counterclaim-Plaintiffs/Appellees/Cross-Appellees
and

JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10;
DOE PARTNERSHIPS 1-10; DOE ENTITIES 1-10; and
DOE GOVERNMENTAL UNITS 1-10, Defendants.

CIVIL NO. 13-1-1961

ISLAND COLONY PARTNERS,
Plaintiff/Appellee/Cross-Appellee,
v.

SHUTO SALES & MANAGEMENT, LLC;
HAWAIIAN PARADISE RETRESTS, LLC; and
SUZANNE A. SHUTO,
Defendants/Appellees/Cross-Appellants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

ORDER

GRANTING IN PART AND DENYING IN PART TWO APRIL 12, 2018
MOTIONS TO DISMISS APPELLATE COURT CASE NUMBER CAAP-17-0000565
BY GRANTING DISMISSAL AS TO APPELLANT'S APPEAL, ONLY,
AND DENYING DISMISSAL AS TO CROSS-APPELLANTS' CROSS-APPEAL
(By: Ginoza, C.J., Leonard and Reifurth, JJ.)

Upon consideration of (1) Plaintiff/Counterclaim-Defendant/Appellant/Cross-Appellee Association of Apartment Owners of Island Colony's (AOAO Island Colony) March 15, 2018 notice of settlement of its claims against Defendant/Counterclaim-Plaintiff/Plaintiff/Appellee/Cross-Appellee Island Colony Partners (IC Partners) and Defendant/Counterclaim-Plaintiff/Appellee/Cross-Appellee American Pacific Hotels, LLC (American Pacific Hotels), (2) IC Partners and American Pacific Hotels' two April 12, 2018 motions to dismiss the appeal and cross-appeal in appellate court case number CAAP-17-0000565, (3) Defendants/Appellees/Cross-Appellants Shuto Sales & Mgmt., LLC, Hawaiian Paradise Retreats, LLC, and Suzanne Shuto's (the Shuto Cross-Appellants) April 19, 2018 memorandum in opposition to IC Partners and American Pacific Hotels' two April 12, 2018 motions, (4) AOAO Island Colony's May 8, 2018 "joinder" in IC Partners and American Pacific Hotels' two April 12, 2018 motions, and (5) the record, it appears that the voluntary dismissal of AOAO Island Colony's appeal is warranted under Rule 42(b) of the Hawai'i Rules of Appellate Procedure (HRAP), but the involuntary dismissal of the Shuto Cross-Appellants' cross-appeal is unwarranted in light of the Shuto Cross-Appellants' desire to proceed with appellate review of the

Honorable Dean E. Ochiai's February 1, 2018 amended judgment in the consolidated cases of Civil No. 13-1-1847-07 and Civil No. 13-1-1961-07.

AOAO Island Colony's appeal and the Shuto Cross-Appellants' cross-appeal arise out of two civil circuit court cases in Civil No. 13-1-1847-07 and Civil No. 13-1-1961-07 that the circuit court consolidated under Civil No. 13-1-1847-07 on December 9, 2014, expressly "for all purposes" pursuant to HRCF Rule 42. The February 1, 2018 amended judgment enters judgment in favor of IC Partners and American Pacific Hotels and against AOAO Island Colony only as to all of AOAO Island Colony's claims in its complaint in the Civil No. 13-1-1847-07 portion of the consolidated case. Although the February 1, 2018 amended judgment does not resolve IC Partners' complaint against the Shuto Cross-Appellants in the Civil No. 13-1-1961-07 portion of the consolidated case, the circuit court includes an express finding of "no just reason for delay" in the entry of the February 1, 2018 amended judgment as to one or more but fewer than all claims or parties, as HRCF Rule 54(b) requires. The record shows that AOAO Island Colony timely asserted its appeal pursuant to HRAP Rule 4, and the Shuto Cross-Appellants timely asserted their cross-appeal pursuant to HRAP 4.1.

Two of the seven interlocutory orders that led to the February 1, 2018 amended judgment are (1) a January 28, 2015 partial summary judgment order and (2) a May 4, 2015 partial summary judgment order, both of which expressly direct that, "[b]ased on the representations of counsel for the Shuto Parties

and counsel for Island Colony Partners in the Island Colony Partners v. Shuto Sales & Mgmt., LLC, et al. lawsuit, the parties therein have agreed to be bound by the decisions of this Court on this Motion for Summary Judgment." In other words, those particular rulings in the Civil No. 13-1-1847-07 portion of the consolidated cases are also expressly binding on the Shuto Cross-Appellants in the Civil No. 13-1-1961-07 portion of the consolidated cases. Consequently, the voluntary HRAP Rule 42(b) dismissal of AOA Island Colony's appeal from the February 1, 2018 amended judgment does not render moot the Shuto Cross-Appellants' cross-appeal from the same February 1, 2018 amended judgment. HRAP Rule 4.1(d) provides that "[i]f the appellant abandons the initial appeal or the appellate court dismisses it, the cross-appeal may nevertheless be prosecuted to its conclusion, if allowed by law." The Shuto Cross-Appellants' cross-appeal from the February 1, 2018 amended judgment is authorized by HRS § 641-1(a).

Accordingly, IT IS HEREBY ORDERED that IC Partners and American Pacific Hotels' two April 12, 2018 motions to dismiss the appeal and cross-appeal in appellate court case number CAAP-17-0000565 are granted in part and denied in part. We grant the two April 12, 2018 motions to dismiss to the limited extent that AOA Island Colony asserted an appeal from the February 1, 2018 amended judgment, and AOA Island Colony now voluntarily agrees to the dismissal of its appeal pursuant to HRAP Rule 42(b). We deny the two April 12, 2018 motions to dismiss to the

extent that the Shuto Cross-Appellants asserted a cross-appeal from the February 1, 2018 amended judgment, and the Shuto Cross-Appellants are entitled under HRAP Rule 4.1(d) to prosecute their cross-appeal to its conclusion.

DATED: Honolulu, Hawai'i, June 12, 2018.

Chief Judge

Associate Judge

Associate Judge