CONCURRING OPINION BY NAKAMURA, C.J.

I concur in the majority's analysis because I agree that our decision is controlled by Makaneole v. Gampon, 70 Haw. 501, 777 P.2d 1183 (1989). In Makaneole, the Hawai'i Supreme Court implicitly endorsed the application of Restatement (Second) of Torts (Restatement) §§ 416 and 427 (1965) as a basis for imputing liability to a property owner who hires an independent contractor for injuries sustained by the independent contractor's employee as the result of the independent contractor's negligence. Id. at 504-08, 777 P.2d at 1185-87.[1/]

In this case, the trial court, in granting the summary judgment motion of Defendants-Appellees Don Dixon and Contenia Dixon (the Dixons), identified a number of reasons for questioning whether Restatement §§ 416 and 427 should apply as a basis for imputing liability to the Dixons under the circumstances of this case:

> First, Mr. Roth [(the person who was injured and died)] was employed by Tree Works, Inc., a tree removal business. Tree Works, Inc. was hired by the Dixons to remove trees. The reasonable expectation is that, as between the tree removal business and the person hiring the business, the business would be responsible for performing its activities safely and protecting its employees from harm. Further, the business protects its employees from work-related injuries by providing workers' compensation benefits.
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> Second, to impose a duty of care under the circumstances of this case would result in the owner of real property being exposed to liability for injuries suffered by an employee of [a] business hired by the owner, when the injuries were caused by the negligence of another employee of that same business. Yet, the owner was not in a position to control the activities of the negligent employee.
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> Third, to require an owner of real property to warn a trades person or employee of a trades person of obvious dangers of the trade or to require the owner to protect against the obvious dangers would have unreasonable consequences. For example, imagine the consequences: (1) if the owner were required to warn an electrician that a power line was strung from the utility pole to the house or to protect against the problem, (2) if the owner were required to warn a roofer of the severe pitch of the roof and that

[1/] In its decision, the Hawai'i Supreme Court reversed section III.C. of the Intermediate Court of Appeals's opinion in Makaneole v. Gampon, 7 Haw. App. 448, 459-60, 776 P.2d 402, 409-10 (1989), which contained this court's analysis regarding Restatement §§ 416 and 427.

> the distance between the edge of the roof and the ground is extraordinarily high or to address the problems, or (3) if the owner were required to warn the plumber that the floor near the electrical heater requiring repair has moisture on it or to address the problem.
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> The consequences would be that the owner would need: (1) to have sufficient expertise to superintend the job for which the trades person was hired and superintend the job, (2) to hire someone with such expertise to superintend the job and have that person superintend the job, (3) to contract with the trades person, with the probable payment of additional consideration, to have the trades person absolve the owner from liability from failing to warn or protect against an obvious danger, (4) to contract with the trades person, with the probable payment of additional compensation, for indemnification from liability for the trades person's own negligent acts or the negligent acts of his or her employees, or (5) to have sufficient insurance to indemnify against the risk engendered by having a duty to warn of or protect against the obvious danger. This would be commercially unreasonable and an economic waste.

In my view, the supreme court may wish to revisit the question of whether Restatement §§ 416 and 427 should apply as a basis for imputing liability to a property owner under the circumstances of this case.

Craig H. Nakamura