

NO. CAAP-12-0001023

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

MCGRATH PROPERTIES, I, LLC a Hawai'i limited liability company, and SUZANNE M. KITAMURA, as Custodian for DAF, a minor child, Plaintiffs/Counterclaim-Defendants/Appellants,

v.

ASSOCIATION OF APARTMENT OWNERS OF LIHUE TOWNHOUSE, Defendant/Counterclaim Plaintiff/Appellee, and

CONRAD MURASHIGE; SHANNON BRUNNER; RAE NISHIKAWA; PATRICK MAHER; MARK MYERS; AND RE3, LLC, REAL ESTATE SERVICES, a Hawai'i limited liability company, Defendants-Appellees

and

JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, AND DOE GOVERNMENTAL ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. 10-1-0060)

ORDER

(1) GRANTING DEFENDANTS-APPELLEES'
APRIL 05, 2013 MOTION TO DISMISS APPEAL BY
PLAINTIFF-APPELLANT McGRATH PROPERTIES I, LLC,

and

(2) GRANTING DEFENDANTS-APPELLEES'
APRIL 16, 2013 MOTION TO DISMISS APPEAL BY
PLAINTIFF-APPELLANT SUZANNE KITAMURA, AS CUSTODIAN FOR DAF
(By: Nakamura, Chief Judge, Foley and Ginoza, JJ.)

Upon consideration of "Defendants-Appellees AOA of Lihue Townhouse, Conrad Murashige, Shannon Brunner, Rae Nishikawa, Patrick Maher, Mark Myers, and RE3, LLC, Real Estate Services' [(Appellees)] Motion to Dismiss Appeal by Plaintiff-

Appellant McGrath Properties I, LLC, a Hawaii Limited Liability Company," filed April 5, 2013, Appellees' and "Motion to Dismiss Appeal by Plaintiff-Appellant Suzanne Kitamura, as Custodian for DAF, a Minor," filed April 16, 2013, the papers in support, and the record and files herein, it appears that:

(1) On November 19, 2012, attorney Bobby A. Bautista (Counsel) filed a notice of appeal on behalf of Plaintiff-Appellant McGrath Properties I, LLC (Appellant McGrath Properties) and Suzanne Kitamura (Appellant Kitamura), as Custodian for DAF, a minor (Minor);

(2) Following an extension by the appellate clerk, the opening brief was due by April 1, 2013;

(3) On April 3, 2013, the court found Appellant Kitamura may also have an individual interest in this appeal, and granted Counsel's March 20, 2013 motion for withdrawal as counsel of record for Appellant Kitamura individually and in her capacity as Custodian for Minor. The court further ordered that within ten (10) days from the date of the order, new counsel shall enter an appearance for Appellant Kitamura in her capacity as Custodian for Minor, otherwise the appeal may be dismissed as to Appellant Kitamura in her capacity as Custodian for Minor. If counsel timely entered an appearance, then the due date for the opening brief for Appellant Kitamura in her capacity as Custodian for Minor would be extended to May 23, 2013. The court also granted Appellant Kitamura's March 25, 2013 pro se motion for a second extension to file an opening brief in her individual capacity, and extended the due date for that brief to May 3, 2013;

(4) Because Counsel did not move to withdraw as counsel of record for Appellant McGrath Properties, he remains counsel of record for Appellant McGrath Properties, and the opening brief for Appellant McGrath Properties was due by April 1, 2013;

(5) Appellant McGrath Properties has not filed an opening brief or requested an extension for the opening brief;

(6) Appellees seek dismissal of the appeal by Appellant McGrath Properties for failure to file an opening brief, pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 30;

(7) On April 12, 2013, the appellate clerk notified Counsel that the time for filing the opening brief for Appellant McGrath Properties had expired, pursuant to HRAP Rule 30, the matter would be called to the court's attention on April 22, 2013, for such action as the court deems proper, which could include dismissal, and any request for relief from default should be made by motion;

(8) Appellant McGrath Properties did not seek relief from default of the opening brief; and

(9) The date by which new counsel was to enter an appearance for Appellant Kitamura in her capacity as Custodian for Minor expired on April 15, 2013, and no appearance was entered. Therefore,

IT IS HEREBY ORDERED that Appellees' motion to dismiss the appeal by Appellant McGrath Properties is granted.

IT IS FURTHER ORDERED that Appellees' motion to dismiss the appeal by Appellant Kitamura in her capacity as Custodian for Minor is granted.

DATED: Honolulu, Hawai'i, May 3, 2013.

Chief Judge

Associate Judge

Associate Judge