

NO. CAAP-14-0000387

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

EARL C. CHARLES AND PATRICIA A. CHARLES IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE EARL C. CHARLES AND PATRICIA A. CHARLES REVOCABLE LIVING TRUST DATED DECEMBER 12, 1990; PETER COAD JR. AND JUDY E. COAD IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE COAD FAMILY TRUST DATED APRIL 14, 2006; JOHN E. CORK; SUSAN M. CORK; AL P. BRENDE; DOUGLAS M. DROESE AND RENEE S. DROESE IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE 1995 DROESE FAMILY TRUST 08/02/95; MARTIN GIUFFRE; PATRICIA GIUFFRE; MATTHEW GIUFFRE; WILLIAM G. GLENNON AND CAROLYN N. GLENNON IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE GLENNON LIVING TRUST DATED 01/16/97; BRIAN HOYLE IN HIS INDIVIDUAL CAPACITY AND AS TRUSTEE OF THE BRIAN H. HOYLE TRUST; WILLARD S. JOHNSTON IN HIS INDIVIDUAL CAPACITY AND AS TRUSTEE OF THE WILLARD SPENCER JOHNSTON JR. TRUST DATED 4-27-92; MICHAEL M. KEMPS IN HIS INDIVIDUAL CAPACITY AND AS CO-TRUSTEE OF THE KEMPS FAMILY TRUST DATED OCTOBER 23, 2003; GEMMA KEMPS IN HER INDIVIDUAL CAPACITY AND AS CO-TRUSTEE OF THE KEMPS FAMILY TRUST DATED OCTOBER 23, 2003; DOCTOR ROHIT KHANNA; THERESA KHANNA; TERRY G. NEGENDANK AND PAULA T. NEGENDANK IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE TERRY G. NEGENDANK AND PAULA T. NEGENDANK 2000 REVOCABLE LIVING TRUST; JULIA NEGENDANK; HEIDI NEGENDANK; STEPHEN E. PENFOLD; BARBARA A. PENFOLD; DONALD RECCHIO; MARIE WEBER; MARLON A. REYES; PATRICIA Y. SIGUENZA; THOMAS D. ROSINSKI; JANET S. ROSINSKI; CHARLES P. SCHULMAN; RICHARD J. STUART IN HIS INDIVIDUAL CAPACITY AND AS TRUSTEE OF THE RICHARD J. STUART TRUST UNDER AGREEMENT DATED JUNE 27, 2005; RICHARD VICKERS; NICOLE VITULLO; ANDREW H.W. BRANION; JOYCE L. ZIEBELL; WILLIAM BENDUSH AND SOPHIA BENDUSH IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE BENDUSH FAMILY TRUST DATED MARCH 25, 1987; DOCTOR THOMAS M. PROSE; RONALD A. ABELMANN; JERYL J. ABELMANN; ABELMANN

INVESTMENTS, LP; FRANCIS R. ZAMBON IN HIS INDIVIDUAL CAPACITY AND AS TRUSTEE OF THE FRANCIS R. ZAMBON LIVING TRUST DATED APRIL 21, 2000 AND AS CO-TRUSTEE OF THE FRANCIS R. ZAMBON AND KAREN E. ZAMBON LIVING TRUST DATED MAY 13, 2011; KAREN E. ZAMBON IN HER INDIVIDUAL CAPACITY AND AS CO-TRUSTEE OF THE FRANCIS R. ZAMBON AND KAREN E. ZAMBON LIVING TRUST DATED MAY 13, 2011; JOHN R. HENKEL; SUSAN A. HENKEL; CAROLINE GAUTHIER; MARC LEFEBVRE; DOUGLAS C. MCCORD; TRACEY A. MCCORD; KEVIN R. DUNCAN; GREG H. GIESLER AND ANN L. GIESLER IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE GIESLER FAMILY TRUST; LEE J. CHIMERAKIS; THERESA A. CHIMERAKIS; JOHN FITZPATRICK; BARBARA FITZPATRICK; DAVID APLIN IN HIS INDIVIDUAL CAPACITY AND AS A TRUSTEE OF THE APLIN KAPALUA TRUST; RICHARD GIARAMITA; LISA GIARAMITA; DOCTOR ROBERT M. JACKSON AND JUDITH JACKSON IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE ROBERT M. JACKSON AND JUDITH JACKSON REVOCABLE TRUST; CRAIG L. CAPRETTA; ARLINDA CAPRETTA; ALEX WERNBERG; JANE WERNBERG; JEFFREY L. ROTHENBERGER AND STACY L. ROTHENBERGER IN THEIR INDIVIDUAL CAPACITIES AND AS CO-TRUSTEES OF THE JEFF LYNN ROTHENBERGER AND STACY LEAH ROTHENBERGER REVOCABLE LIVING TRUST; WILLIAM C. GABRIELSON IN HIS INDIVIDUAL CAPACITY AND AS TRUSTEE OF THE WILLIAM C. GABRIELSON TRUST; GLENNA ANTHONY; KEITH DELLER; AL A. KASHANI; TRI M. LA; JOHN W. HARKINS; RENEE LA FORCE HARKINS,  
Plaintiffs-Appellants,

v.

KAPALUA BAY, LLC; MAUI LAND & PINEAPPLE CO., INC.; THE RITZ-CARLTON HOTEL COMPANY, LLC; THE RITZ-CARLTON DEVELOPMENT CO., INC.; MARRIOTT INTERNATIONAL, INC.; EXCLUSIVE RESORTS, LLC; MARRIOTT VACATIONS WORLDWIDE CORPORATION; THE RITZ-CARLTON MANAGEMENT COMPANY, LLC; MARRIOTT TWO FLAGS, LP; MH KAPALUA VENTURE, LLC; MLP KB PARTNER, LLC; EXCLUSIVE RESORTS CLUB I HOLDINGS, LLC; EXCLUSIVE RESORTS DEVELOPMENT COMPANY, LLC; ER KAPALUA INVESTORS FUND HOLDINGS, LLC; ER KAPALUA INVESTORS FUND, LLC; KAPALUA BAY HOLDINGS, LLC; JOHN DOES 1-100; JANE DOES 1-100; DOE CORPORATIONS 1-100; AND/OR OTHER DOE ENTITIES 1-100  
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 13-1-0640)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Fujise and Reifurth, JJ.)

In an appeal arising out of allegedly deceptive business practices in the sale of time-share interests, Plaintiffs-Appellants Earl C. Charles, et al., (collectively,

**Plaintiffs**) appeal from "Order Granting Defendants The Ritz-Carlton Hotel Company, LLC, The Ritz-Carlton Development Co., Inc., Marriott International, Inc., Marriott Vacations Worldwide Corporation, The Ritz-Carlton Management Company, LLC, Marriott Two Flags, LP, and MH Kapalua Venture, LLC's Motion to Compel Arbitration," (**Order Granting Motion to Compel Arbitration**) entered January 22, 2014 in the Circuit Court of the Second Circuit<sup>1</sup> (circuit court) granting the motion to compel arbitration submitted by Defendants-Appellees The Ritz-Carlton Hotel Company, LLC; The Ritz-Carlton Development Co., Inc.; Marriott International, Inc.; Marriott Vacations Worldwide Corporation; The Ritz-Carlton Management Company, LLC; Marriott Two Flags, LP; and MH Kapalua Venture, LLC (collectively, **Defendants**).

On September 17, 2013, the Defendants filed a motion to compel arbitration. On January 22, 2014, the circuit court entered the Order Granting Motion to Compel Arbitration. On January 28, 2014, the Plaintiffs filed a notice of appeal from the Order Granting Motion to Compel Arbitration.

The circuit court's Order Granting Motion to Compel Arbitration was based on this court's memorandum opinion in Narayan v. Ritz-Carlton Dev. Co., No. CAAP-12-0000819, (App. August 23, 2013) (mem.), which was vacated by the Hawai'i Supreme Court on June 3, 2015 in Narayan v. The Ritz-Carlton Dev. Co., Inc., No. SCWC-12-0000819, 2015 WL 3539805 (Haw. June 3, 2015), which controls this appeal.

Therefore,

IT IS HEREBY ORDERED that the "Order Granting Defendants The Ritz-Carlton Hotel Company, LLC, The Ritz-Carlton Development Co., Inc., Marriott International, Inc., Marriott Vacations Worldwide Corporation, The Ritz-Carlton Management Company, LLC, Marriott Two Flags, LP, and MH Kapalua Venture, LLC's Motion to Compel Arbitration," entered January 22, 2014 in

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<sup>1</sup> The Honorable Peter T. Cahill presided.

the Circuit Court of the Second Circuit is vacated, and this case is remanded for further proceedings consistent with the Hawai'i Supreme Court decision in Narayan v. The Ritz-Carlton Dev. Co., Inc., No. SCWC-12-0000819, 2015 WL 3539805 (Haw. June 3, 2015), *supra*.

DATED: Honolulu, Hawai'i, July 24, 2015.

On the briefs:

Mark J. Bennett  
Brandi B. Balanda  
(Starn O'Toole Marcus & Fisher)  
for Plaintiffs-Appellants. Presiding Judge

Bert T. Kobayashi, Jr.  
Lex R. Smith  
Joseph A. Stewart  
(Kobayashi Sugita & Goda)  
for Defendants-Appellees  
The Ritz-Carlton Hotel  
Company, LLC; The Ritz-Carlton  
Development Co., Inc.; Associate Judge  
Marriott International, Inc.;  
Marriott Vacations Worldwide  
Corporation; The Ritz-Carlton  
Management Company, LLC;  
Marriott Two Flags, LP; MH  
Kapalua Venture, LLC. Associate Judge